

(2019) 09 RAJ CK 0174

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10406 Of 2019

Dr. Naresh Bansal And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Citation : (2019) 09 RAJ CK 0174

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : C.S. Kotwani, Rajat Arora, K.S. Rajpurohit, Dr. Sachin Acharya, Nitin Trivedi, Manvendra Singh

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioner aggrieved against the order dated 12.07.2019 (Annex.1), whereby the petitioner, who was working as CM & HO, Sriganganagar has been posted as Deputy Controller, District Hospital, Sriganganagar and order dated 13.07.2019 (Annex.8), whereby respondent No.4 has assumed the charge.

It is, inter-alia, submitted by learned counsel for the petitioner that the action of the respondents in posting the petitioner as Deputy Controller is wholly illegal and as such, the same deserves to be quashed and set-aside. It is submitted that the post on which the petitioner was transferred, was not vacant as one Dr. Prem Kumar Bajaj was already working on the said post, the posting of the respondent No.4 is in violation of the guidelines dated 08.09.2015 (Annex.3), which required experience of 20 years for being posted as CM & HO, which experience is not possessed by the respondent No.4.

Further submissions have been made that the petitioner has been subjected to transfer only with a view to accommodate respondent No.4 and that posting the petitioner as Deputy Controller is essentially demotion, inasmuch as, the petitioner is presently in the grade pay of Rs. 8700/-, whereas the post in

question is meant for grade pay of Rs.7600/- and therefore, also, the order impugned deserves to be quashed and set-aside.

The plea raised by the petitioner has been vehemently opposed by the respondent-State as well as respondent No.4. Submissions have been made that the guidelines dated 08.09.2015 (Annex.3) are not enforceable, the plea raised by the petitioner pertaining to accommodation of the respondent is baseless, the post of Deputy Controller was vacant as Dr. Prem Kumar Bajaj was merely manning the said post, who was otherwise working as Senior Medical Officer ('SMO'). The plea raised pertaining to demotion of the petitioner based on the grade pay is also without any basis as the grade pay for the post of CM & HO and that of Deputy Controller is identical i.e. Rs.7600/-, which even otherwise is of no consequence as the petitioner being in grade pay of Rs.8700/- is being paid the same. It is prayed that the writ petition be dismissed.

Reliance has been placed on State of U.P. & Ors. v. Gobardhan Lal & Ors. : (2004) 11 SCC 402, Krishan Vallabh Paliwal v. Director, Sanskrit Education : SBCWP No.5905/2019, decided on 11.04.2019 at Jaipur Bench and Balveer Singh v. State of Rajasthan & Ors. : SBCWP No.15603/2015, decided on 15.10.2015 at Jaipur Bench.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The petitioner has raised three pleas to question the validity of order of posting passed by the respondents.

The plea pertaining to enforcement of the guidelines, in view of the stand taken by the respondents and emphasized by learned counsel for the respondent No.4 that the same have not been followed, coupled with the fact that the Hon'ble Supreme Court in the case of Gobardhan Lal (supra) has categorically laid down that the administrative guidelines can at best may afford an opportunity to the officer to approach its higher authorities for redress but cannot have the consequence of depriving and denying the competent authority to pass orders, has no substance and no case for interference on the said ground is made out.

Lot of arguments were advanced based on the fact as to whether the post on which the petitioner has been transferred was vacant or not, the additional affidavit filed by the respondents, though indicates a sorry state of affairs, wherein despite repeatedly indicating Dr. Prem Kumar Bajaj as Deputy Controller, a stand has been taken that he was not manning the post of Deputy Controller.

Be that as it may, the mere fact that Dr. Prem Kumar Bajaj, on the particular date was manning the said post besides the position as SMO and now the petitioner has been posted on the said position, would result in the natural consequence where now Dr. Prem Kumar Bajaj would be no more Deputy Controller once the petitioner take charge of the said position and as such, the plea raised by the petitioner in this regard also cannot be accepted.

An alternative stand was taken by the respondents that in the order of transfer it was indicated that if the post on which the transfer has taken place is already occupied by an incumbent, the said fact be brought to the notice of the higher authorities and therefore, the said fact of the post being already manned by somebody cannot provide the ground to the petitioner, speak volumes of the working of the respondent-State wherein apparently without ensuring as to whether the posts on which officers are being transferred, are vacant or not, orders are passed irrespective of the post being vacant and / or the incumbent being also subjected to transfer which state of affairs cannot be approved under any circumstance. It is the minimum requirement of the appointing authority to apply its mind while making transfer / ordering postings to the fact as to whether the place where the officer is being transferred / posted is vacant or not. It is expected of the authorities to be vigilant in this regard in future so that note as being relied on by the respondent-State is not required to be placed in any transfer order.

So far as the ground pertaining to transferring the petitioner for accommodating the respondent No.4 is concerned, no material is available on record to substantiate the said allegation so as to require interference of this Court.

The last plea relating to alleged demotion of the petitioner in subjecting him to work on a post where the grade pay is Rs.7600/- also has no substance, inasmuch as, the post where the petitioner is presently working i.e. CM & HO also carries the grade pay of Rs.7600/-, for which the petitioner does not have any objection to work on the post of CM & HO, therefore, the objection raised in this regard for working on the post of Deputy Controller on the said ground, cannot be countenanced.

In view of the above discussion, there is no substance in the writ petition, the same is, therefore, dismissed. The interim order dated 20.07.2019 is vacated.