

(2019) 04 J&K CK 0068

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 732 Of 2019, IA No. 01 Of 2019

Firdous Ahmad Bhat

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 103
Constitution Of India, 1950 — Article 226

Citation : (2019) 04 J&K CK 0068

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : G.A. Lone, Shah Aamir

Final Decision : Dismissed

Judgement

1. In an earlier round of litigation, the petitioner approached this Court through the medium of writ petition SWP No.443/2019, challenging order bearing No. 266-HME of 2019 dated 1st of March, 2019, whereby he was transferred as I/C BMO, Sogam, and posted as Medical Officer, SDH, Langate.

2. This Court, after hearing the learned counsel for the parties, in terms of judgment dated 8th of March, 2019, disposed of the said writ petition, relevant portion whereof reads thus:

"

The services of the petitioner are governed by the Jammu & Kashmir Health and Family Welfare (Gazetted) Service Recruitment Rules, 2006, wherein it is provided that the post of BMO is to be filled up by the senior-most Assistant Surgeon having 10 years' experience. Nothing has been brought on record of the writ petition to show that the incumbent Dr. Riyaz War is junior to the petitioner.

It is well settled position of law that transfer/ posting of a Government employee is an exigency of service and is the sole prerogative of the Executive. Ordinarily,

the Courts are not interfering with the policy of the Government directing posting/ transfers of the Government employees, but, in exceptional cases, where the transfer/posting is made by an incompetent authority or is against the rules or is a result of malafides, the Courts do interfere. No such ground is available to the present petitioner. However, if the petitioner has any grievance with reference to his posting, he can approach the authorities concerned for seeking redressal of his grievances as the Courts cannot issue any mandamus directing the authorities to transfer/place or not to transfer/ place a Government employee at a particular place. The petitioner's claim, being senior and entitled for adjustment as BMO, also needs to be considered by the respondents.

Mr Shah Aamir, the learned Additional Advocate General, representing the State respondents, submits that the respondents are well within their rights to adjust any government officer/ officer, including the petitioner herein, and no Government employee can claim his/ her continuation at a particular place of posting.

Mr Syed Sajad Geelani, the learned counsel, representing the Caveators, submits that the only concern of the Caveators, who are residents of Sogam, Lolab, Kupwara, is that an able Officer shall be placed as a BMO in their area. Caveat, as lodged, shall stand discharged, accordingly.

With the consensus of the learned counsel for the parties, coupled with the nature of relief sought for, this writ petition is taken on board and is finally disposed of by directing the petitioner to file a detailed representation before the respondent No.2 seeking redressal of his grievances with reference to his posting as Medical Officer, SDH Langate within one week. Upon receipt of such representation, the respondent No.2 shall accord consideration to the same in accordance with the law and the rules governing the field within two weeks, thereafter. The petitioner may, on his part, make available all the relevant documents before the competent authority so as to substantiate his claim for posting as BMO.

Writ petition disposed of as above, alongwith the connected IA, being Interim Application No. 01/2019."

3. A perusal of the order aforesaid, as passed by this Court, would reveal that the writ petition was disposed of without interfering with the order of transfer of the petitioner, but, at the same time, liberty was given to the petitioner to file a detailed representation before the competent authority seeking redressal of his grievances.

4. The grouse of the petitioner, as projected herein this petition, is that notwithstanding the pendency of the representation of the petitioner before the competent authority, the respondents are ignoring the merit and suitability of the petitioner in granting regular promotion as Block Medical Officer in his favour as they are in the process of depriving the petitioner from performing his duties as BMO Kalaroos. In that backdrop, the petitioner is seeking a Writ of Mandamus in

the name of the respondents to allow him to continue to perform the functions and duties as Incharge Block Medical Officer, Kalaroos and direct the Treasury Officer, Sogam, to entertain and pass the bills which may be placed before him under the signatures of the petitioner in his capacity as Drawing & Disbursing Officer of Block Medical Office, Kalaroos.

5. Heard the learned counsel for the parties, perused the record and considered matter.

6. Mr Lone, the learned counsel for the petitioner, when, pointedly, asked as to how the Court can direct the respondents to allow the petitioner to continue discharging his duties on a particular post, i.e. as Block Medical Officer, Kalaroos, submits that the petitioner is holding the said charge under the valid orders of the Director General Health Services, Kashmir, issued vide endorsement No. 3/1-133/3207-11 dated 21 st of June, 2018.

7. Mr Shah Aamir, the learned Additional Advocate General, representing the respondents, submits that the petitioner has no right to claim continuation on the post of BMO Kalaroos on the basis of order dated 21st of June, 2018 issued by the Director General Health Services, Kashmir, which order was only issued by way of a temporary arrangement. The learned Additional Advocate General further pleads that the petitioner has violated the process of the Court as after the passing of the judgment dated 8th of March, 2019 in SWP No. 443/2019, the petitioner has also filed a civil suit which was dismissed by the civil Court. To substantiate this plea, the learned Additional Advocate General has produced a photocopy of the judgment dated 20th of March, 2019, passed by the Court of learned Additional District Judge, Srinagar, whereby the suit of the petitioner has been dismissed with costs. Copy of the judgment aforesaid, as produced by the learned Additional Advocate General, is taken on record.

8. Time and again, it has been observed by various Courts of the country, including the Hon'ble Apex Court, that the Courts shall refrain from interfering in the administrative matters of the Government by directing the executive authorities to transfer/post/place the Government officials/ officers at a particular place/ post. It is for the Government to see as to at what place/ post a particular Government official/ officer is best suited, as per requirement and suitability.

9. Reverting back to the facts of the case on hand, merely because the petitioner has been asked to hold the additional charge of BMO, Kalaroos in terms of order dated 21st of June, 2018 by the Director General Health Services, Kashmir, does not confer any right on the petitioner; be it legal, constitutional or fundamental, to approach this Court by filing the writ petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir for directing the respondents to allow him to continue as BMO, Kalaroos. In the event, such a submission is acceded to and relief granted, same will amount to usurping the powers of the Government. The respondents are well within their rights and authority to see as to whether or not the petitioner is to

be allowed to continue to perform the duties of BMO Kalaroos. For grant of a Writ of Mandamus, the petitioner has to establish violation of his right however, in the present case, there is no violation of any of the rights of the petitioner in case the petitioner is not allowed to continue as Incharge BMO, Kalaroos.

10. It needs must be said that this Court, vide judgment dated 8th of March, 2019, passed in SWP No. 443/2019, has already directed the petitioner to file a detailed representation before the respondents for seeking redressal of his grievance with a further stipulation to the respondents to consider the same in accordance with the law and the rules governing the field. This representation is pending before the competent authority and the petitioner, without waiting for the outcome of the said representation, has, firstly; filed a civil suit before the civil Court which was dismissed with costs and, secondly; the petitioner, now, has approached this Court by way of the present writ petition seeking continuation as BMO, Kalaroos. The conduct of the petitioner is deprecable as even after being burdened with costs by the Additional District Judge, Srinagar, the petitioner has not estopped himself from approaching the Court leading to multiplicity of litigation without any fruits to be reaped by the petitioner. The petitioner had the option to pursue the representation pending before the respondents for seeking redressal of his grievances as directed by this Court, which he has not done and, instead, has approached this Court with the instant petition. Admittedly, no decision has been, as yet, taken by the respondents on the representation of the petitioner which would have warranted the petitioner to, again, knock at the doors of this Court. Viewed in that context, no relief can be granted in favour of the petitioner as claimed by him in this petition.

11. In view of the preceding analysis, this writ petition is found to be devoid of any merit, as such, same fails and shall stand dismissed alongwith the connected Interim Application, being IA No.01/2019. It is, however, made clear that mere dismissal of this writ petition shall not preclude the petitioner from pursuing the representation pending before the competent authority for seeking redressal of his grievances.

12. There shall, however, be no order as to costs.