
(2014) 05 RAJ CK 0239

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 648/2014

Gajendra Singh Nain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0239

Hon'ble Judges : Amitava Roy, C.J;Vijay Bishnoi, J

Bench : Division Bench

Advocate : K.R. Saharan, Advocate for the Appellant; Mukesh Rajpurohit for Respondent No. 5-caveator, Advocate for the Respondent

Final Decision : Allowed

Judgement

Vijay Bishnoi, J.—The respondent No. 5 Baldeo Singh Suda, who was working as Tehsildar Kolayat, District Bikaner was transferred on the post of Tehsildar Lohawat vide order dated 1.3.20014 along with 143 Tehsildars by the Board of Revenue, Ajmer. The respondent No. 5 challenged his transfer by way of an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur (hereinafter referred to as "the Tribunal"). On 12.3.2014, the Tribunal, while admitting the appeal, has stayed the execution of the transfer order dated 1.3.2014 qua the respondent No. 5 while observing that if the respondent No. 5 has not joined the duties pursuant to the said transfer order, the execution of the same shall be stayed qua the respondent No. 5 till further orders. However, while passing the said interim order, the Tribunal had clarified that if the competent authority issues any order for paying travelling allowances to the respondent No. 5, the said interim order shall come to an end automatically. Being aggrieved with the clarification made by the Tribunal in the order dated 12.3.2014 of automatic vacation of interim order on paying of travelling allowance, the respondent No. 5 preferred the writ petition before this Court, which came to be disposed of by learned Single Judge vide order dated April 16, 2014 without calling upon the respondents. In the said order dated April 16, 2014, the learned Single Judge

has observed as under:-

In the opinion of this Court, at the time of hearing appeal against the transfer order at admission stage by the Tribunal, if Tribunal feels that there is ground for granting interim order and granting interim order, then obviously matter is to be decided finally after hearing both the parties upon the grounds taken in the appeal, therefore, ordinarily the Tribunal should not grant any liberty to the respondents not to comply the directions of the Tribunal on payment of TA & DA but in this case, such liberty has been granted, therefore, the Tribunal is directed to decide the appeal itself within a period of two months from the date of receiving certified copy of this order and in the meantime, the petitioner shall not be disturbed from the place of posting till decision of the appeal by the Tribunal.

2. Being aggrieved with the said directions, the appellant, who has been transferred as Tehsildar Kolayat, has preferred this appeal while contending that the said order has been passed by the learned Single Judge without providing any opportunity to the appellant because on the first date of hearing, the learned Single Judge has disposed of the writ petition even without issuing notices to the respondents. It is further contended that pursuant to the transfer order dated 1.3.2014, the appellant was already relieved from the post of Tehsildar Khivisar and has joined his duties as Tehsildar Kolayat on 3.3.2014, however, with the direction of learned Single Judge of not to disturb the respondent No. 5 from his place of posting till decision of appeal by the Tribunal, the appellant will be displaced from the post of Tehsildar Kolayat. The learned counsel for the appellant has further argued that the Board of Revenue has passed the order dated 03.04.2014 whereby, it has clarified that the respondent No. 5 is entitled for travelling allowance as well as joining period and, therefore, in view of the said order passed by the Board of Revenue, the challenge of the respondent No. 5 to his transfer order on the ground of non-payment of travelling allowance has become non-existent. It is contended that the fact of joining of the appellant at Kolayat and the passing of the order dated 3.4.2014 by the Board of Revenue of payment of travelling allowances to the respondent No. 5 has not been brought into notice of the Court and, therefore, the impugned order passed by the learned Single Judge is liable to be quashed and set aside.

3. Per contra, Shri Mukesh Rajpurohit appearing on behalf of respondents No. 5 (caveator) has argued that the Tribunal has illegally ordered that on payment of travelling allowance to the respondent No. 5, the interim order of staying the transfer order shall come to an end automatically and, therefore, the learned Single Judge has not committed any illegality in passing the impugned order.

4. Heard learned counsel for the parties and perused the impugned order as well as the material placed on record.

5. The Tribunal, while passing the order dated 12.3.2014, has observed that the main ground, apart from the other grounds, taken by the respondent No. 5 in the appeal is that in the impugned transfer order it has not been mentioned that the

respondent No. 5 has been transferred in public interest or in the administrative exigencies and it has also not been mentioned in the transfer order whether the respondent No. 5 is entitled for travelling allowance or not. The Tribunal has further observed that it is argued on behalf of respondent No. 5 that as per Rule 17 of the Rajasthan Travelling Allowance Rules, 1971 (hereinafter referred to as "the Rules of 1971"), the travelling allowance is not admissible to an employee if he is transferred on his own request. However, the respondent No. 5 has contended that he has never requested for his transfer and, therefore, the execution of transfer order is liable to be stayed. After observing this, the learned Tribunal has ordered that if the respondent No. 5 has not already joined the duties pursuant to the transfer order dated 1.3.2014, the execution of the same qua the respondent No. 5 is stayed, however, the Tribunal has further clarified that if the competent authority issues order for payment of travelling allowance to the respondent No. 5, the stay order shall automatically come to an end.

6. It is noticed that the transfer order dated 1.3.2014 was challenged by the respondent No. 5 before the Tribunal mainly on the ground that in the transfer order it has not been mentioned that whether he is entitled for travelling allowance or not and, therefore, it would be deemed that he has been transferred on his own request whereas he had not made any such request. While admitting the appeal filed by the respondent No. 5 against the transfer order, the Tribunal has observed that as per Rule 17 of the Rules of 1971, if the respondent No. 5 is paid travelling allowance then the said ground is not available to him for assailing his transfer and, therefore, the Tribunal has ordered that if the respondent has not joined his new place of posting pursuant to the transfer order, the execution of transfer order is stayed. However, the Tribunal has further clarified that if the competent authority passes an order for payment of travelling allowance to the respondent No. 5, the interim stay order shall automatically come to an end.

7. Looking to the facts and circumstances of the case, we are of the opinion that main ground raised by the respondent No. 5 while challenging the transfer order is regarding the non-payment of travelling allowance and the learned Tribunal has not committed any illegality in passing the conditional stay order that if the competent authority issues an order for grant of travelling allowance to the respondent, the stay order shall come to an end automatically. It is also noticed that the fact of issuance of order dated 3.4.2014 by the Board of Revenue, regarding entitlement of travelling allowance as well as joining period to respondent No. 5, was not brought into notice of the learned Single Judge and the fact of joining of the appellant at new place of posting i.e. Tehsildar Kolayat has also not been brought into notice of the learned Single Judge. The learned Single Judge has passed the impugned order without giving any opportunity of hearing, either to the State or to the appellant.

8. In the above fact and circumstances, particularly taking into consideration the main ground of challenge to his transfer by the respondent No. 5 before the

Tribunal, we do not find any illegality in the clarification made by the tribunal in the order dated 12.3.2014, regarding automatic vacation of the stay order of transfer on payment of travelling allowance to respondent No. 5, we are also of the opinion that the direction given by the learned Single Judge of not disturbing the respondent No. 5 from the place of posting till decision of the appeal is unwarranted.

9. In view of above discussions, the appeal is allowed. The impugned order dated 16.4.2014 passed by the learned Single Judge is quashed and set aside. The stay petition is also disposed of.