

(2019) 06 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7815??, 7833??, 7843??, 7845??, 7850??, 7874??, 7875??, 7884??, 7886??, 7907??, 7919??, 7923??, 7928??, 7929??, 7933??, 7934??, 7938??, 7939??, 7940??, 7941??, 7942??, 7943??, 7944??, 7948??, 7949??, 7950??, 7952??, 7954??, 7955??,

Gena Ram Choudhary

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 21-06-2019

Acts Referred:

Rajasthan Education Subordinate Service Rules, 1971 — Rule 6D

Citation : (2019) 06 RAJ CK 0013

Hon'ble Judges : Dr. Pushpendra Singh Bhati, VJ

Bench : Single Bench

Advocate : Mukesh Rajpurohit, Kailash Jangid, Vikas Bijarnia, Harish Purohit, Mahaveer Singh, M.S. Godara, Himmat Singh Shekhawat, Awar Dan Ujjwal, Tanwar Singh, Parmendra Bohra, Vinit Sanadhya, Sukesh Bhati, Ramdeen Choudhary, Rishabh Tayal, Devi Lal Rawla, Himmat Jagga, DLR Vyas, L.R.Punia, Varda Ram Choudhary, Narpal Singh Arha, PRS Jodha, Surendra Bagmalani, J.S. Deora, Tribhuvan Singh, Hameer Singh Sidhu, B.S. Sandhu, Trilok Joshi, J.S. Bhalaria, Shree Kant Verma, Kuldeep Mathur, Sushil Solanki, Nishant Motsara, Ramdev Potalia, Ramesh Kumar, Surendra Singh Choudhary, R.C. Joshi, R.L. Dave, Hanuman Singh, VLS Rajpurohit, Digvijay Singh, Dinesh Vishnoi, Devki Nandan Vyas, Anil Kumar, Banshi Lal, Binja Ram, Chandra Prakash Trivedi, Amardeep Lamba, Varsha Bissa, Ravindra Singh Champawat, Hemant Choudhary, Vishal Jangid, Shyam Sunder Solanki, Prem Chand Sankhla, Om Singh Rajpurohit

Final Decision : Disposed Off

Judgement

These bunch of writ petitions arise of impugned set-up change/absorption/transfer order dated 11.06.2019, amended transfer order dated 14.06.2019 and other similar transfer orders passed by respective District Education Officer (Secondary) in respect of petitioner Grade-III Teachers.

The facts arising out of these writ petitions are that the petitioners were selected

and appointed as Teacher Grade-III and are discharging their duties at various places in the State of Rajasthan. Some of the petitioners were initially appointed under the Rajasthan Panchayati Raj Act 1994 and the Rajasthan Panchayati Raj Rules 1996 {herein after 'the Panchayati Raj Act & Rules'} whereas others were appointed directly under the Rajasthan Education Subordinate Service Rules 1971 {herein after 'the Rules of 1971'}.

The common feature between petitioners today is that the petitioner-Teachers who were appointed under the Panchayati Raj Act & Rules, have subsequently been brought under the umbrella of the Education Department of the State, by invocation of rule 6-D of the Rules of 1971. Thus, once the exercise of set up was completed, then remixing of the petitioners' transfer exercise with the set up change again, would be contrary to the spirit of Rule 6-D. Therefore, now when any transfer exercise is to be undertaken, both sets of Teachers as mentioned above are to be governed by the Rules of 1971.

The precise grievance of the petitioners is that while conducting their transfers, the respondents have re-invoked rule 6-D of the Rules of 1971 whereas rule 6-D was to be invoked only for the teachers who are serving under the Panchayati Raj Act & the Rules and were being administered in a separate cadre whereas the petitioners, even if they had initially joined under the said Act and the Rules, are now serving under common umbrella of the Rules of 1971.

The petitioners further submitted that despite repeated orders passed by this Court in this regard, the respondents have failed to separate present petitioners from exercise of rule 6-D of the Rules of 1971, being commonly conducted with general transfers to be made strictly in accordance with the Rules of 1971. The petitioners have relied on judgment of this Court passed in the case of Smt Neelam Saxena vs State of Rajasthan & others [SBCWP No.13729/2017, decided on 29.01.2018], which reads as follows:

" These writ petitions have been filed by the petitioners aggrieved against order dated 24.09.2017 passed by the respondents, wherein, petitioners have been granted posting order and order dated 18.10.2017 passed by Rajasthan Civil Services Appellate Tribunal, Jaipur ('the Tribunal'), whereby, the appeals filed by the petitioners have been dismissed.

The grievance of the petitioners is that they were appointed under the provisions of Rajasthan Education Sub-ordinate Service Rules, 1971 ('the Rules of 1971'), which fact is fortified from the order of appointment Annexure-1, however, the order impugned dated 24.09.2017 has been passed indicating that pursuant to (16 of 22) CWP 8085/2019 & connected petitions the provisions of Rule 6D of petitioners were being posted after transferring them from posting the Rules of 1971, the at the respective place their present place of posting.

It is submitted that provisions of Rule 6D of the Rules of 1971 pertain to the recruitment/transfer of Teachers, who are governed by the provisions of Rajasthan Panchayati Raj Act, 1994 ('the Act of 1994') and Rajasthan Panchayati

Raj Rules, 1996 ('the Rules of 1996') and has no application to the employees like petitioners, who are already governed by provisions of Rules of 1971 and, therefore, passing of order Annexure-3 is on account of non-application of mind and the same deserves to be quashed and set aside.

Further submissions were made that aggrieved against the said order, petitioners had approached the Tribunal, which though came to the conclusion that the petitioners were not governed by the provisions of Rule 6D of the Rules of 1971, has dismissed the appeals filed by the petitioners observing that the order passed is a simple order of transfer and respondent being employer has full powers to transfer an employee. It is submitted that the orders passed by the State as well as the Tribunal being contrary to the legal position deserve to be quashed and set aside.

Learned counsel appearing for the respondents reiterated the stand as taken before the Tribunal. It was submitted that alongwith counseling of the Teachers recruited/transferred under the provisions of Rule 6D of the Rules of 1971, the Teachers recruited under the Rules of 1971 were also called for counseling for their posting and based on the counseling the orders impugned have been passed. Merely because a wrong provision has been indicated, the petitioners cannot take advantage of the said aspect and, therefore, the writ petitions filed by them deserve to be dismissed.

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

A bare look at the order dated 24.09.2017 indicates that the same pertains to the Teachers, who were recruited/transferred under the provisions of Rule 6D of the Rules of 1971 as repeatedly the word absorption has been used in the said order and it is also not disputed by learned counsel for the respondents that most of the Teachers, as indicated in the order impugned, are Teachers, who were working under the Act of 1994 and the Rules of 1996.

The submission made that the respondents had undertaken the exercise of transferring the Teachers appointed under the Rules of 1971 also simultaneously by itself cannot make the order impugned as valid, inasmuch as, if the said exercise was undertaken, the respondents should have passed a separate order and the names of the petitioners could not have been included in the order, pertaining to the Teachers, who were governed by Rule 6D of the Rules of 1971.

The very fact that the names of the petitioners, even if, on account of inadvertence have been included in the order impugned, clearly reflects non-application of mind on part of the respondents while passing the order impugned and, therefore, the same cannot be sustained.

The reasoning given by the Tribunal that the respondent being employer have full power to transfer the employees cannot be applied everywhere, once non-application of mind is reflective from the order impugned, the same was required

to be quashed and set aside.

In view of the above discussion, the writ petitions filed by the petitioners are allowed. The orders dated 24.09.2017 & 18.10.2017 qua the petitioners are quashed and set aside. It goes without saying that in case the petitioners are required to be transferred, the respondents would be free to pass appropriate orders in accordance with law."

Counsel for the petitioners further submitted that the arbitrariness and illegality in the impugned orders of transfer is that the respondents have mixed the exercise under rule 6-D of the Rules of 1971 {applicable for teachers serving under Panchayati Raj Rules} with the exercise of general transfers under the Rules of 1971 {for the teachers already serving under the Rules of 1971}. The counsel for petitioners further asserted that by the aforementioned judgment of this Court in Neelam Saxena's case (supra), an obligation was cast upon respondents to conduct separately the transfer of such two set of Teachers, particularly the petitioners who are governed by the Rules of 1971. The counsel for petitioners have also opposed jurisdiction & competence of the authority passing the impugned transfer orders i.e. respective District Education Officers (Secondary).

Counsel for the respondents, Mr Hemant Choudhary, Government Counsel assisted by Deputy Government Counsel Mr Vishal Jangid, admitted that all the petitioners before this Court in present writ petitions are already serving with the Education Department and thus, are directly governed by the Rules of 1971. The counsel for the respondents has made out a case that the exercise under rule 6-D of the Rules of 1971 is a separate exercise and provisions of rule 6-D admittedly would not be made applicable to the petitioners; still, to clarify the earlier transfer order dated 11.06.2019 for conducting counselling under rule 6-D, a revised order dated 14.06.2019 was passed, in which persons not falling under the category of Teachers subject to rule 6-D have been mentioned in a separate column and hence, no irregularity is being made.

The counsel for the respondents further submitted that the District Education Officer (Secondary) has been empowered in this regard by repeated Circulars issued by the State Government, which are in vogue, particularly Circular dated 30.11.1983 and Circular dated 28.11.1997, which have been made part of the record in reply to these writ petitions and these Circulars clearly indicate that the District Education Officer (Secondary) was entitled to pass the transfer order impugned.

After hearing the counsel for the parties, undisputed fact is that the petitioners are those Teachers who do not fall within the domain of provisions of rule 6-D of the Rules of 1971, as previously they already had travelled from Panchayati Raj Act/Rules to 1971 Rules under the set up change exercise. This Court expresses its displeasure to the exercise conducted by the respondents in this manner even after judgment passed by this Court in Neelam Saxena's case (supra) on

29.01.2018, whereby a categorical direction was made for bifurcation of these two sets of Teachers. An observation was clearly made that inclusion of Teachers, to be subjected to rule 6-D of the Rules of 1971 along with present exercise of general transfers of Teachers serving under the Rules of 1971, is non-application of mind and a separate exercise therefor ought to have been considered.

This Court, thus, finds from bare reading of the impugned orders that the respondents have though tried to demarcate Teachers to be subjected to rule 6-D exercise separately but they have repeatedly mixed the exercise of set-up change under rule 6-D of the Rules of 1971 with general transfers undertaken under the Rules of 1971. This Court finds that most of the impugned orders examined earlier by this Court carry the reflection of joint exercise, for Teachers to be subjected to rule 6-D of the Rules (set-up change) along with general transfers being carried out under the Rules of 1971.

This Court is of the opinion that the respondents have got completely confused and in spite of repeated judgments passed by this Court on earlier occasions regarding conduct of transfer exercises, by separating the exercise for set-up change under rule 6-D and exercise of general transfers to be conducted under the Rules of 1971, they have failed to do so. Hence, looking into over all facts & circumstances of petitioners, present writ petitions are disposed of with following directions:

1] This order shall apply qua present petitioners only and since transfer is individual incidence of service, therefore, relief shall apply only to the sole petitioner or to the petitioner No.1 (in petitions filed by more than one petitioners).

2] The petitioners shall be free to submit representation and raise their grievances, if any, before the respondent-Department within a period of ten days from today i.e. up to 30th June 2019.

3] The Director, Secondary Education, Government of Rajasthan shall constitute a committee afresh, to decide the grievance raised by representations and also to implement transfers in accordance with the Rules of 1971 without repeating the exercise of set up change twice for the teachers.

4] Rule 6-D of the Rules of 1971 shall not be applied upon the present petitioners and their transfers shall be kept free from operation of provisions of rule 6-D of the Rules, as their set up change already stood completed earlier. The transfer of petitioners, Teachers governed by the Rules of 1971, may be carried out by the competent authority as general transfers under the Rules of 1971.

5] The aforementioned committee constituted by the respondents shall pass order for transfer of petitioners, after considering their representations, if any, preferably within a period of 15 days from today.

6] The respondents shall be free to conduct counselling or use their software Shala Darpan but shall not apply rule 6-D of the Rules upon present petitioners.

7] Until such fresh orders are passed, the petitioners shall not be transferred from place of their posting before passing of the impugned transfer orders.

8] The impugned transfer orders qua present petitioners are quashed and set aside accordingly, with the liberty to respondents to pass fresh transfer orders.

9] It is made clear that these directions shall apply to the petitioners who have come before this Court in the present writ petitions. Those Teachers, who accepted the postings pursuant to impugned transfer orders, would not be entitled to approach the committee to be constituted by the respondents pursuant to this order. Their transfer orders shall remain effective.

10] It is further made clear that all those petitioners, who have filed their petitions but due to circumstances have joined at the transferred place of posting, shall be permitted to approach the aforementioned grievance committee constituted by respondents.

11] Transparency maintained by the respondents by bringing in counselling and software Shala Darpan in conducting transfers of the Teachers is applauded by this Court, as it would give some choice to the teachers and shall also reduce unnecessary interference in the transfer exercise. However, it is made clear that any Teacher against whom the exercise under rule 6-D of the Rules of 1971 had already been undertaken in past, shall now not be subjected to rule 6-D again for conducting transfers under the Rules of 1971.

12] Apart from this, if any petitioner has any other grievance then he shall be free to approach the Grievance Committee of respondents as formed pursuant to this order and the Grievance Committee shall redress their grievance strictly in accordance with law and pass final orders of transfer..

13] Till final decision pertaining to petitioners is taken, as directed aforesaid, the petitioners shall be kept post at the place they were posted prior to passing of the impugned transfer orders.

14] This exercise shall be conducted with utmost priority to avoid any disturbance to the students in the ensuing academic session.