
(2007) 08 RAJ CK 0058
In the Rajasthan High Court

Ghewar Chand Soni

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Citation : (2007) 08 RAJ CK 0058

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this writ petition the petitioner, working as a Lower Divisional Clerk with Agriculture Marketing Department, seeks to challenge the order of his transfer from Pali to Abu Road (impugned order Annex.P-1). It is contended that the petitioner is on the verge of retirement with about three years of service period left; that he is suffering from illness and has been transferred to a distant place at Abu Road and shall have difficulty in taking the medical facility; and that the persons who are staying in the office concerned even before the petitioner have been retained. It has further been contended that the impugned order of transfer is bad in law because no provision has been made for requisite allowances related with transfer. Learned Counsel has relied upon a decision of the Division Bench of this Court in Dr. (Smt.) Pushpa Mehta v. Rajasthan Civil Services Appellate Tribunal and Ors. 2000 (2) WLC (Raj.) 725.

2. Having given a thoughtful consideration to the submissions made by the learned Counsel for the petitioner and having examined the material placed on record, this Court is clearly of the opinion that this writ petition remains totally bereft of substance and does not merit admission.

3. So far the argument regarding approaching date of retirement with reference to the decision of this Court in Dr. (Smt.) Pushpa Mehta's case is concerned, it may be noticed that the appellant in the said case, Dr. (Smt.) Pushpa Mehta, working as professor in the Department of Micro-Biology was transferred from

Kota to Udaipur and the second respondent Dr. (Smt.) Shanta Dubey was transferred in her place from Udaipur to Kota. The second respondent challenged the order of transfer before the Rajasthan Civil Services Appellate Tribunal on the grounds that she was on the verge of retirement; that she was suffering from cancer; that her husband had expired about a year back; and that her younger son was studying at Udaipur. The Tribunal found that there was no administrative reason to transfer Dr. Dubey from Udaipur to Kota except to accommodate Dr. Mehta and, thus, set aside the order of transfer. The Hon''ble Division Bench noticed that the State chose not to challenge the order made by the Tribunal and the same was challenged only by Dr. Mehta by way of writ petition that was rejected by the learned Single Judge. In the back drop of such fact situation, Hon''ble Division Bench considered the submissions made on behalf of the writ petitioner-appellant about the limited grounds on which order of transfer could be challenged and the Hon''ble Division Bench noticed the decisions of Hon''ble Supreme Court cited before it and observed,-

The propositions of law laid down in all the three cases cannot be disputed. It is well settled that ordinarily, the Tribunals and the Courts are not to interfere with the order of transfer unless it is challenged on the ground of malafide or the transfer is effected for extraneous considerations than the administrative reasons.

4. Thereafter the Hon''ble Division Bench noticed that the second respondent was due to retire in the month of January 2001 (the said Division Bench appeal was decided on 16.12.1999); and that the appellant (Dr.Mehta) had long to go in service. Significant aspect was noticed that though the Tribunal observed regarding policy of the government of not disturbing the employee on the verge of retirement and set aside the transfer order, the State Government did not challenge the order made by the Tribunal; thus showing that the government was satisfied with the reasoning of the Tribunal, and it was only the appellant who was interested in posting at Udaipur preferred to challenge the order of the Tribunal. The Hon''ble Division Bench again noticed that in the opinion of the Tribunal the order of transfer suffered from malafide for having been passed only in order to accommodate the appellant and the finding also got confirmed from the fact that the State Government chose not to challenge the order of the Tribunal. In the aforesaid circumstances and fact situation, the Hon''ble Division Bench made the following observations:

We are of the view that unless there are compelling reasons, ordinarily, an employee should not be disturbed from the place of his/her posting, when he/she is at the verge of retirement. An employee should be given sufficient time, which may be of two years or so to plan peacefully his/her post retirement life.

5. The aforesaid observations in Dr. Pushpa Mehta are not of laying down a rule of universal application in mandatory form that in no case an employee on the verge of retirement could be transferred by his employer for administrative exigency; and further the observations are required to be read in conjunction with the fact situation of the said case and so also with the significant aspect that

when the Tribunal set aside the transfer order, the State Government chose not to challenge the order made by the Tribunal. The said case of Dr.Pushpa Mehta is of no help to the petitioner; and there appears no reason to interfere in the present case. Apart from the fact that the petitioner is not within such period of two years as indicated in the aforesaid decision, in the fact situation of the present case it cannot be said that the order of transfer suffers from any malafide or has been made in violation of any statutory provision.

6. The submission regarding hardship related with medical facilities is uncertain as made in this case; and if there was any such reason, nothing prevented the petitioner from making specific representation in that regard. It is noticed from the representation (Annex.P-2) made by the petitioner that he made a cryptic statement that "(sic)". The suggestion as made by the petitioner does not inspire confidence.

7. The submission regarding retaining of other incumbent working in the same department in contravention of the transfer policy of transferring the persons with longer stay is also uncertain; and such being not the requirement of Rules but only suggested to be the norms by way of so called policy, cannot be enforced in the manner that non-compliance of any norm thereof, the transfer order could be treated as bad on that count alone.

8. So far allowances, joining period etc. are concerned, the impugned order dated 31.07.2007 is silent in that regard and it has not been stated that the petitioner would not be entitled for such allowances or joining time as related with such transfer orders; and it cannot be assumed that the respondents would not allow the facilities as per Rules. There is no force in this writ petition.

9. The petition fails, and is, therefore, rejected.