
(2019) 12 RAJ CK 0089

In the Rajasthan High Court

Case No : Civil Writ Petition No. 17807 Of 2019

Girdhari Singh

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Citation : (2019) 12 RAJ CK 0089

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Kuldeep Mathur, Vishal Jangid, Hemant Choudhary, Manoj Bhandari

Final Decision : Disposed Of

Judgement

This writ petition has been filed by the petitioner aggrieved against the order dated 29.09.2019 (Annex.2), whereby the petitioner has been transferred from Mahila Bagh to Jesala and order dated 18.11.2019 (Annex.6), whereby the representation made by the petitioner, has been rejected by the respondents.

Feeling aggrieved by the order of transfer dated 29.09.2019 (Annex.2), the petitioner approached this Court by filing SBCWP No.14850/2019, wherein by order dated 03.10.2019, this Court on noticing the fact that daughter of the petitioner has been suffering from Chronic Renal disease and has to undergo dialysis twice a week at Dialysis Centre, directed the respondents to decide the representation of the petitioner and effect & operation of the order dated 29.09.2019 transferring the petitioner and 30.09.2019 relieving the petitioner were stayed subject to the final outcome of the decision of the representation.

The petitioner made a representation indicating the issues alongwith material in this regard.

The respondents by their order dated 18.11.2019 on coming to the conclusion that the prayer made by the petitioner does not fall within the parameter as indicated in the guidelines dated 24.09.2019 rejected the representation made

by the petitioner.

Learned counsel for the petitioner made submissions that the action of the respondents in rejecting the representation of the petitioner only based on the guidelines dated 24.09.2019, is not justified in view of the directions given by this Court and the respondents were required to objectively consider the representation made by the petitioner looking to the difficulties faced by her, therefore, the order impugned deserves to be quashed and set-aside.

Learned counsel appearing for the respondent-State made submissions that as the petitioner has simply sought cancellation of the order of transfer, rejection of the representation is justified.

Learned counsel appearing for the respondent No.4 made submissions that though rejection of the representation may not be justified, however, as the respondent No.4 on account of his personal difficulties i.e. illness of his father, has been transferred to the present place of posting, his posting may not be disturbed.

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

The facts are not in dispute, wherein the daughter of the petitioner is suffering from Chronic Renal disease and is undergoing treatment, based on which, this Court directed the respondents to consider the representation of the petitioner, when the respondents in a wholly cursory manner by simply referring to the circular dated 24.09.2019, which pertains to case of illness of the employee himself, rejected the representation made by the petitioner.

This Court in the case of Bhabhut Ram Vishnoi v. State of Rajasthan & Ors. : S.B. Civil Writ Petition No.16600/2019, decided on 10.12.2019, in similar nature circumstances pertaining to passing of cursory order, came to the following conclusion and directed as under :-

"A bare look at the order dated 22.10.2019 passed by the respondents would reveal that instead of dealing with the issues as raised by the petitioner and noticed by this Court while deciding the earlier writ petition, the respondents have mechanically examined as to whether the indications pertaining to physical disability made by the petitioner fell within the parameters as laid down by the State Government in its circular dated 24.09.2019 and by simply observing that the submissions made were not as per the Rules, has rejected the representation.

It has been observed by this Court in several other matters also and the directions were issued in relation to the manner in which the representation should be dealt with by the respondents, which directions apparently have not been followed by the respondents while deciding the representation made by the petitioner.

This Court in the case of Vimla Soni v. State of Rajasthan & Ors. : S.B. Civil Writ

petition No.15035/2019, decided on 17.10.2019, inter-alia, observed as under :-

"However, once the respondents have provided for a mechanism of filing representations and the representations are being filed by the teachers, the filing of the representation and its consideration by the respondents cannot be made an empty formality. But a perusal of orders passed by the respondents reveal that mechanical orders are being passed by relying on the circular dated 24.09.2019, which manner of deciding representations by the respondents cannot be countenanced, rather the same deserves condemnation. The empty formality being undertaken by the respondents is apparently an eye-wash only with a view to some how implement the transfer orders, which have already been passed without taken into consideration the difficulties of the teachers involved. It is sine qua non that the representation made must be decided by way of an speaking order dealing with the grievances raised and not merely noticing the same and rejecting the same."

Once the Court directs for consideration of a representation, the respondents are expected to deal with the same in an objective manner and not confine themselves to the circulars issued, inasmuch as, in case the action was contrary to the circulars, there was no occasion for sending back the matter to the respondents for reconsideration.

The very fact that the matter has been sent back to the respondents necessary means that the respondents are required to consider the circumstances which are different from what has been indicated in the circulars and therefore, instead of mechanically dealing with the issues, the respondents are required to apply their mind and pass appropriate orders."

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"In view of the above fact situation, the order passed by the respondents dated 22.10.2019 (Annex.5) deciding the representation pursuant to the directions issued by this Court cannot be sustained. The same is, therefore, set-aside.

The petitioner may make a fresh representation and the respondents are directed to decide the same within a period of one week from the date of receipt of the said representation alongwith a copy of this order appropriately keeping in view the observations made hereinbefore.

With the above directions, the writ petition stands disposed of."

In view of the order of this Court in the case of Bhabhut Ram Vishnoi (supra), the rejection of the petitioner's representation by order dated 18.11.2019, cannot be sustained. The same is, therefore, quashed and set-aside. The respondents are directed to decide the representation made by the petitioner in terms of the directions issued in the case of Bhabhut Ram Vishnoi (supra) and pass an appropriate order within a period of one week.

While passing the order, the respondents would also take into consideration the reasons for transfer of respondent No.4 to the present place of posting and would explore the possibility of adjusting the petitioner at any place nearer to the present place of posting, in case the representation is accepted.

Till the representation is decided by the respondents, the status quo as it exists today shall be maintained by the respondents, qua the posting of the petitioner.

With the above observations and directions, the writ petition stands disposed of.