
(2007) 08 RAJ CK 0062
In the Rajasthan High Court

Heera Lal Meena	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Citation : (2007) 08 RAJ CK 0062

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—Though the matter has been listed for orders in the "notice awaited" category; however, having regard to the circumstances of the case, particularly in view of the fact that the order impugned is a transfer order made as back as on 29.06.2007 and the appeal filed by the petitioner was also dismissed by the Tribunal on 09.07.2007 and there is no interim order passed in this case yet, learned Counsel for the petitioner has been heard on merits before considering necessity of issuing fresh notices.

2. Learned Counsel appearing for the petitioner has contended that the petitioner is at the verge of his retirement inasmuch as he is going to retire on 31.01.2008 and yet has been transferred by the impugned order dated 29.06.2007; and the Tribunal has been in error in rejecting the appeal filed by the petitioner on entirely irrelevant considerations. Learned Counsel has relied upon the decision of the Division Bench of this Court in the case of Dr. (Smt.) Pushpa Mehta v. Rajasthan Civil Services Appellate Tribunal and Ors. 2001 (1) RLR 398.

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 ground 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 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. 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. There appears no reasonable ground to interfere in the transfer order in this case. The submissions that no provision has been made for allowing joining time and travelling allowance to the petitioner seems to be of no relevance. There is no prohibition contained in the transfer order that the petitioner would be deprived of the admissible allowances in accordance with law.

7. There is no force in the writ petition and there appears no cause to consider any interference in the transfer order made on 29.06.2007; and thus, no useful purpose would be served by awaiting notices or issuing afresh.

8. The writ petition is, therefore, rejected.