

(2019) 09 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9417, 9031, 9296, 9297, 9569, 9625 Of 2019

Het Ram Mehrera And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Citation : (2019) 09 RAJ CK 0096

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : J.S. Bhaleria, Ravindra Singh Rathore, Surender Bhagmalani, Hemant Choudhary, Vishal Jangid

Final Decision : Allowed

Judgement

These writ petitions have been filed by the petitioners aggrieved against the orders of transfer dated 19.6.2019, whereby, the petitioners, working in various schools as Principal/ Headmaster, have been transferred to schools situated at Jaisalmer indicating low result in the school, where they are presently working.

The petitioners, who are Principal and Headmaster at various schools situated at Chittorgarh, Barmer and Bikaner, have been ordered to be transferred by orders dated 19.6.2019 inter alia indicating the following:-

"राजस्थान माध्यमिक शिक्षा बोर्ड राजस्थान अजमेर द्वारा आयोजित माध्यमिक / उच्च माध्यमिक परीक्षा 2018-19 में विभाग के अधीन कार्यरत निम्नांकित प्रधानाचार्य - उमावि एवं प्रधानाध्यापक - मावि का परीक्षा अति-न्यून (0-45 प्रतिशत) रहा है। यह इनके पदीय कर्तव्यों में लापरवाही शिक्षण कार्य में अरुंधि एवं पर्यवेक्षणीय निष्क्रियता का द्योतक है।"

Learned counsel for the petitioners made submissions that the action of the respondents in transferring the petitioners for low result, is absolutely arbitrary action, inasmuch as, merely on account of low result, the petitioners could not have been transferred.

Submissions have been made in the petitions indicating that the petitioners being Principal and Headmaster of the institutions took all possible measures to ensure

good result, however, the students for various reasons, failed in the examination. It is further submitted that most of the students have passed in most of the subjects, however, they have failed in one or two particular subjects like Science, Maths and English, resulting in, overall result getting affected.

Further submissions have been made that the overall view of the result would indicate that the failure may be that of subject Teachers and the same cannot be attributed to the petitioners alone. In few of the petitions, the petitioners have also indicated the steps taken by them during course of the session to improve the result like holding of extra classes etc.

In S.B. Civil Writ Petition No.9417/2019, the petitioner has placed on record as many as 100 schools to indicate that even the result of those schools is also lower than 45% even zero percent, however, the Principal and Headmaster of those schools have not been subjected to transfer.

It is submitted that this Court in Ashok Kumar Kulhari v. State of Rajasthan : 2009 WLC (Raj.) UC 53 had indicated that no disciplinary proceedings can be taken against a teacher merely on ground that result in subject he taught had been reduced.

Learned counsel appearing for the respondent - State made submissions that the State has formulated policy dated 24.5.2019 and 18.4.2016, wherein, the performance of the Principals and Headmasters are judged based on the result of the schools. Provisions have also been made for taking disciplinary proceedings against Principals and Headmasters on account of low result.

It is submitted that the orders have been passed by the competent authority, whereby, the petitioners have been transferred, to which, the petitioners cannot object. Further submissions have been made that the action of the respondents is based on the administrative exigency, which is reflected in the orders and on that count also, the orders impugned do not call for any interference and the petitions 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 nature of orders passed by the respondents as quoted hereinbefore, i.e. the ground for subjecting the petitioners to transfer would reveal that the respondents without even issuing notices to the petitioners and holding any inquiry after taking response from them, have come to a conclusion only on account of the low result that the same was reflective of the negligence, disinterest in academic work and supervisory negligence of the petitioners.

The observations made in the orders of transfer, merely based on the low result without even taking response from the petitioners, is clearly against settled position, wherein, disciplinary authority and/or the appointing authority cannot pass adverse orders against the officers in a casual manner based on a particular event. The passing of the orders of transfer with the above observations are

clearly punitive in nature, therefore, bad in law and cannot be sustained.

The reason indicated for affecting the transfer of petitioners i.e. low result by itself apparently cannot be a reason for affecting the transfer, inasmuch as, if the respondents come to a conclusion that petitioners are incompetent as alleged, then merely transferring them to a particular district i.e. Jaisalmer in the present cases, probably would not solve the problem of their alleged incompetence.

The action of the respondents in transferring the petitioners by indicating them as incompetent to a particular school in a particular district, also reflects that the respondents have no regard for that particular area, wherein, allegedly incompetent Principal / Headmaster have been transferred, which also indicates an arbitrary exercise on part of the respondents and the intention being to punish the petitioners by transferring them to Jaisalmer, which is treated as a dark-zone area.

It is surprising that despite the judgment in the case of Ashok Kumar Kulhari (*supra*), wherein, the Court had specifically come to the conclusion that no disciplinary proceedings can be taken against a teacher merely on ground that result in subject he taught had been reduced / is low, the respondents by their subsequent Circulars have provided for taking disciplinary proceedings against the Principals and Headmasters on account of low result.

Once this Court has held that the subject teacher cannot be proceeded against for low result, the Principals and Headmasters as such also cannot be proceeded against for the same unless the respondents undertake disciplinary proceedings by issuing specific charge-sheet quoting specific instance of alleged negligence, incompetence and lack of interest in the work, taking response and holding an inquiry in this regard.

In view of the above fact situation, the action of the respondents in transferring the petitioners merely on account of low result with the kind of observations made against them, cannot be sustained.

Consequently, the writ petitions filed by the petitioners are allowed. The orders dated 19.6.2019 passed by the respondents qua the petitioners are quashed and set aside.