

(1994) 08 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : S.W.P. No. 128 Of 1998 and 631/1992

Irshada Gazi

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) SriLJ 251

Hon'ble Judges : S.M.Rizvi, J

Bench : Single Bench

Advocate : Jalil Andrabi, Jalil Andrabi, Advocates appearing for the Parties

Judgement

1. The petitioner is a teacher and was posted in Boys Middle School, Gurgarimehalla Srinagar vice Shamim Gadda on 2051988, by the Block

Education officer concerned. The petitioner had hardly worked in that school for about 31/3 months when the DEO transferred her again on

691988, and was directed to report to District Education officer, Budgam. She was shown relieved on 691988 itself. She challenged the said

order by way of a writ petition bearing No. 128 of 1988 interala on the ground that the said order was violative of the J and K Subordinates

Service Recruitment Rules 1987 as also J and K Decentralization of and Recruitment to nongazetted Rules of 1969. Under these rules a

Government servant working in the pay scale of Rs. 9001830, which the petitioner was also holding, could not be transferred from one District to

another without the approval of the administrative department concerned. The said petition came to be considered by a Division Bench of this

Court on 1391988, and the order impugned was stayed. The petition stands admitted to hearing on 2871993 and is still subjudice. While admitting

the said petition on 28/11/1993, the Court has directed that the interim direction dated 13/9/1988 shall continue in operation.

2. It appears that on 27/12/1991 the DEO Srinagar transferred many teachers vide his order No. DEO/trans/8659760, where under one Ghulam

Qadir teacher was transferred to Srinagar from Ganderbal, and the ZEO concerned was directed to spare a teacher having the longest stay in

Srinagar, for being posted at Bahama Ganderbal. The ZEO on receiving the said order adjusted the said Ghulam Qadir in place of the petitioner

who was directed to report to ZEO Ganderbal for further adjustment. The said order appears to have been passed by him on 17/3/1992. The

petitioner challenged the said order also by medium of the writ petition No. 631/1992, assailing the order impugned on various grounds, including

the one that ZEO has no power to transfer her. The petition came to be considered 31/3/1992 and the order impugned passed by the ZEO on

17/3/1992 was stayed.

3. The respondents have filed the counter/objections in the said petition.

4. I have the learned counsel for the parties. With their consent I am deciding both the petitions by this common Judgment. As already stated, the

writ petition No. 128/88 stands already admitted to hearing. However the subsequent writ petition bearing No. 631/ 1992 is to be considered for

admission. As the controversy involved in both the petitions pertains to the transfer of the petitioner, it would therefore be just and proper to

dispose of both the petitions together. Nodoubt the counter is yet to be filed in the previously instituted petition but in the opinion of the Court the

controversy can be resolved after going through the counter filed in the subsequently instituted petition. Moreover the respondents have produced

the record also, which has made the job of the Court easier to decide the cases. Not only that, the petitioner is a petty lady teacher and has been

dragged into litigation for the last six years on a mere question of her transfer.

5. In these circumstances the Court is of the opinion that it would be in the interests of justice to resolve the controversy without being looked into

procedural wranglings.

6. Admittedly the impugned order in the previously instituted writ petition transferring the petitioner to Budgam District from Srinagar District is

violative of the J and K Subordinate Service Recruitment Rules as also the J and

K Decentralization Rules, as it has been passed by the ZEO

without approval of the administrative Deptt. Under rules neither the ZEO and nor the DEO is competent to transfer such teachers from one

District to another. Moreover the said impugned order was stayed by this Court on 1391988, which order is still in operation. The respondent

ZEO has passed another order which is impugned in the subsequently instituted writ petition, transferring the petitioner to Behama Ganderbal. The

ZEO has no power to transfer the petitioner, more so, the said order is also violative of the stay order of this Court.

The DEO himself is a delegate and he has no power to further delegate his power of transfer to ZEO. Not only that, the DEO had only said that as

teacher who has the longest stay in Srinagar be spared to be sent to Behama Ganderbal. It is not stated anywhere that the petitioner had the

longest stay in SRinagar. Moreover such order could not be passed without the approval of the Court, as the stay order is still in operation.

7. In these circumstances of the case both the orders which are impugned in the two writ petitions are bad in law. The order impugned in the

previously instituted writ petition is violative of the decentralization Rules, and the order impugned in subsequently instituted petition is violative of

the stay order of this Court dated 1391988 which is still in force. Strictly speaking the ZEO as also the DEO are liable to be produced against for

the contempt of this Court, as they have defied the orders of this Court. Without getting the stay order vacated or modified, they have shifted the

petitioner from Boys Middle School, GG mohalla.

8. I have given my serious consideration to the matter and it appears that the ZEO concerned is biased against the petitioner. He appears to be

bent upon to put the petitioner at inconvenience, in one way or the other,

9. The result is that both the writ petitions are allowed and both the orders impugned in these writ petitions are hereby quashed. However keeping

in view the interest of the school administration, the respondents shall be at liberty to pass fresh orders for the transfer and posting of the petitioner,

adjusting her either in Boys Middle School CG Mohalla or in some school nearby. She shall however be treated on duty from the date she was

ordered to be transferred on 6.9.1988, till her adjustment as per this order, and be paid her salary also for the whole period without any break.

10. In view of the nature of this order, I think it would be just and proper to drop the proceedings in the contempt matter also. The rule issued against the ZEO is therefore hereby discharged.
11. There shall be no order as to costs.