

(2018) 06 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : SWP No.1194 OF 2018

MADAN LAL

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND OTHERS

RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Citation : (2018) 06 J&K CK 0016

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. In this petition, the petitioner has called in question the order of his transfer issued by respondent No.3 vide No. CEO/D/Estt/4581-86 dated

26.5.2018 whereby the petitioner has been transferred from Government High School, Nagni Bhatyara to Upper Primary School, Batara. Challenge to

the order impugned of transfer has been thrown primarily on two counts ; one that it is in violation of Circular No. 7-Edu of 2018 dated 4.4.2018 issued

by respondent No.1 banning mid- term transfers in the Winter Zone Schools of Jammu Division and second that it is actuated by mala fide

consideration.

2. Having heard learned counsel for the parties and perused the record, I am of the considered opinion that challenge to the impugned order is not

sustainable.

3. From the record of the petition, it is quite clear that petitioner was initially engaged as ReT in the year 2004 in Government Upper Primary School,

Balwana Zone Gundana, District Doda and was subsequently regularized as General Line Teacher on successful completion of service of five years

as ReT vide Order dated 26.9.2009 issued by respondent No. 4. On 22.8.2014, the petitioner was transferred and adjusted in High School Nagni zone

Bhatyas. The respondent No.3 issued general order of transfer on 24.3.2018 vide No. CEO/D/Estt/36891-37035 dated 24.3.2018 directing repatriation

of the general line teachers who had been regularized from ReTs to their original place of posting . The name of the petitioner figured at Serial No.45.

The aforesaid order was called in question by the petitioner along with many others in SWP No. 703/2018 and a bench of this Court while issuing

notice to the respondents, issued interim direction in the following manner:Â Â

â?? In the meantime, subject to objections and till next date of hearing, order impugned dated 24.3.2018 in regard to the petitioners is stayed.

Respondents- authorities, however, shall have the option in the meantime to transfer the petitioners anywhere within the district other than from where

they have been initially appointed /engaged as ReT. Learned counsel for the petitioners submits that in that eventuality, the petitioners shall have no

further cause and would serve willingly.â??

4. As is apparent from interim order passed by this Court, order dated 24.3.2018 issued by respondent No. 3 was stayed, giving liberty to the

respondents to transfer the petitioners at any place in the district other than where they have been initially appointed/engaged as ReT. It appears that

in compliance to the aforesaid direction, respondent No.3 issued order dated 24.3.2018 in so far as it pertains to the petitioner, was not given effect to

and another order dated 26.5.2018 was passed whereby the petitioner has been transferred from Government High School, Nagni Bhatyara to Upper

Primary School,Batara.. It is this order, the petitioner is aggrieved of and has assailed on the grounds enumerated in the petition.

5. Learned counsel for the petitioner submits that the order impugned is not sustainable as the same runs contrary to Circular No. 07 â?"Edu of 2018

dated 4.4.2018 which imposes complete ban on mid-term transfers of teachers for the schools falling in winter zone of Jammu division. It may be

noted that aforesaid circular was issued on 4.4.2018; whereas the petitioner was transferred by respondent No. 3 alongwith many others on

24.3.2018. This order was called in question by the petitioner and others and this court while staying the same, gave liberty to the respondents to post

the petitioner at any place in the district except the one where he was initially

appointed as ReT . This is exactly what has been done by respondent

No. 3. The petitioner has not been sent back to his original place of posting where he was initially appointed as ReT but has been sent to another

school in district Doda. The order impugned is in essence, in compliance to the direction issued by this Court in earlier writ petition filed by the

petitioner which has already been reproduced hereinabove.

6. The order impugned though issued on 26.5.2018, has to be read in continuation to the earlier order issued by respondent No.3 on 24.3.2018. Even on

facts, order impugned is not hit by the Circular relied upon by the petitioner. That apart, the circulars issued by the Administrative Department from

time to time laying the guidelines for effecting transfers, are in the nature of executive instructions and justiciable in the court of law. The other plea of

the petitioner that the order impugned is actuated by malice also, cannot be accepted.

7. The contention of the learned counsel for the petitioner that the order impugned has been issued to punish the petitioner for having gone to the court

in SWP No. 703/2018, the argument raised, is too specious to be accepted.

8. From the narration of events that led to the passing of order impugned, it is abundantly clear that the order impugned has been passed to show

compliance to the direction passed by this Court in the case of petitioner only.

9. Viewed from any angle, the order impugned which has been issued in the interest of administration and also to comply with the direction of this

court, cannot be interfered with.

10. This petition is, therefore, devoid of any merit and consequently dismissed alongwith connected MP.