

**(1997) 08 J&K CK 0021**  
**In the Jammu And Kashmir High Court**  
**Case No : S.W.P. No. 1670 of 1996**

|                                       |    |            |
|---------------------------------------|----|------------|
| Manmohan Lal and others               | Vs | APPELLANT  |
| State of Jammu and Kashmir and others |    | RESPONDENT |

**Date of Decision :** 06-08-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1998) 1 SCT 40

**Hon'ble Judges :** R.C.Gandhi, J

**Bench :** Single Bench

**Advocate :** M.I. Sher Khan, D.S. Chauhan, D.K. Khajuria, Advocates appearing for the Parties

## Judgement

R.C. Gandhi, J.—The petitioners have challenged by means of this petition Order No. ENG/648595 dated 7.12.1996, whereby the

petitioners have been transferred from their places of posting by the Chief Education Officer, Poonch, Respondent No. 4 as desired by the Deputy

Minister for Education. The Order No. ENG/649899 dated 10.12.1996 has been issued in partial modification of the Order dated 7.12.1996,

whereby Mohd. Latif Supervisor A.E. Mandi Cluster has been adjusted as Supervisor Part Time Centre vice Mohd. Khursheed Kirmani

Supervisor Part Time Centres Mandi/Sathra Cluster, who will report to Zonal Education Officer, Sathra for suitable adjustment.

2. These impugned orders have been challenged on the ground that the orders are passed by Respondent No. 4 as desired by the Deputy Minister

for Education, which is nothing but a political transfer. The Deputy Minister for Education has no authority to direct the Respondent No. 4 to

transfer the petitioners from Adult Education to School Education. The impugned

order has been passed for political considerations and is not in the interest of administration. The services of the petitioners are protected under the Service Rules framed by the Respondent No. 1 and the

Deputy Minister for Education has no authority or power under any rule to ask for such transfers of the petitioners.

3. The respondents have filed the objections supported by an affidavit opposing the maintainability of the petition, stating therein that no

fundamental or statutory rights of the petitioners have been violated. The petitioners have been transferred in the interest of administration and the

impugned order cannot be called in question in writ jurisdiction.

4. I have heard the learned counsel for the parties and perused the record. The learned counsel for the parties have submitted that though the

matter is listed for consideration of admission and since it has been argued at length, the same be finally disposed of.

5. It is admitted position of law that the Chief Education Officer, Poonch, Respondent No. 4 has statutory power and jurisdiction to transfer the

petitioners, whereas the Deputy Minister for Education neither can transfer the petitioners nor can direct the Respondent No. 4 for ordering such

transfers under any provision of the rules of the law. The transfer is an exigency of service and the Competent Authority is vested with the power to

transfer the public servant, whenever necessary, in the interest of administration but at the same time the Competent Authority has to keep in mind,

the policy of transfer, if any, and the order must reflect the application of mind of the authority exercising such power. The impugned order has

been passed on the dictates and to oblige the desire of the Deputy Minister for Education and not in that interest of public or administration.

6. The Competent Authority having the power to transfer the employee is the best judge of the exigencies of public servants and the interests of

administration. The authority should apply its mind and act on its own satisfaction that the circumstances in the interest of administration warranted

transfer of the employee but where the power is exercised for the collateral purposes or with oblique motive, such as in the present case, the

impugned order of transfer is issued as desired by the Deputy Minister for Education, amounts to colourable exercise of power. The petitioners are

within their right to assail such orders and canvass in the court of law in the

public interest so that the political influence in the matter of transfers is not entertained by the authorities.

7. The impugned order on the face of it has been passed by the Respondent No. 4 without application of mind and is against public interest when it

has been issued to oblige the desire of the Deputy Minister for Education. The desire of the Deputy Minister is no substitute of application of mind

by the authority having power to transfer the petitioners in the interest of public or administration. The impugned order need to be set aside.

For the foregoing reasons, the writ petition is allowed and the impugned Order No. ENG/648595 dated 7.12.1996 and Order No. ENG/64 9899

dated 10.12.1996 are set aside. However, the transferring authority is at liberty to transfer the petitioners in accordance with law. It also disposes

of I.A.No. 1/96.

8. Petition allowed.