

(2013) 09 RAJ CK 0024
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13532/2012

Mehram Dholiya

APPELLANT

Vs

RSRTC and Others

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 2 WLN 1

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—Heard learned counsel for the parties. In this writ petition, the petitioner is challenging validity of the transfer order dt. 11.12.2012 on the ground that the impugned transfer order is outcome of certain allegations levelled against the petitioner for committing misconduct and order has been passed in compliance of the order dt. 28.03.2012 issued by the Chairman of Raj State Road Transport Corporation.

2. While inviting attention towards order dt. 28.03.2012, it is submitted that as per said condition, it is provided that if any driver or conductor is involved in case of misconduct for allowing the passengers without ticket in the vehicle of Corporation then he may be transferred to other depot.

3. As per petitioner, the transfer order can be issued on the basis of Administrative exigency but it should not be penal in nature, if any misconduct is committed by driver or conductor, then, disciplinary action can be taken against him but no transfer order can be issued for the reason that misconduct has been committed by him, therefore, the impugned transfer order deserves to be quashed.

4. Learned counsel for the respondents submits that the duties of drivers and conductors in the corporation is to provide facilities to the public at large and if they act to violate the basic purpose for which the corporation is providing

service to the public, then, power is left with the authorities of the Corporation to transfer any employee in public interest, therefore, when decision has been taken by the Administration of the Corporation to transfer an employee for above purpose that cannot be questioned by the petitioner of any employee.

5. After hearing learned counsel for the parties, this Court is of the opinion that the transfer is incident of service and employer has every right to transfer its employees if any Administrative exigencies arise. In the order under challenge, it is mentioned that this transfer order has been issued as per para 1 of the office order dt. 28.03.2012, in which following decision was taken:--

6. In the opinion of this Court, impugned transfer order has been issued as per the order dt. 28.03.2012 in which it is stated that those conductors/drivers who are involved in the case of misconduct for allowing the passengers without ticket in the vehicle of Corporation may be transferred but as per the contention of the counsel for the petitioner such condition is erroneous because transfer cannot be made on the basis of such misconduct although transfer order can be passed on Administrative exigency. In view of the assertion made in the impugned transfer order, it appears that transfer order has not been passed on Administrative exigency but same has been passed under the decision taken by the Corporation as a whole, therefore, such order is not sustainable in law. Any employee cannot be penalized by way of punishment of transfer before the conclusion of enquiry conducted or to be conducted against him for the alleged charges, therefore order impugned is contrary to law. In view of above, this writ petition is allowed and the order dt. 11.12.2012 qua the petitioner is hereby quashed and set aside with liberty to the respondent Corporation to pass fresh order if any Administrative exigency arises in future.