
(2015) 07 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : SWP No. 1312 of 2015

Mohammad Hussain

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 103
Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 27

Citation : (2016) 4 JKJ 410

Hon'ble Judges : Mr. Muzaffar Hussain Attar, J.

Bench : Single Bench

Advocate : Mr. M.M. Dar, Advocate, for the Appellants

Final Decision : Dismissed

Judgement

Mr. Muzaffar Hussain Attar, J. (Oral) - The petitioners were promoted on in-charge basis as Physical Education Masters on 03rd March,

2014, and in sequel thereto were posted at different places. In terms of order dated 23rd June, 2015, petitioners have been transferred to different

places in the same District which order has been passed at the behest of Chairman/Chief Executive Councillor of LAHDC, Kargil.

2. Learned counsel for the petitioner submitted that the petitioners have challenged the transfer order inter alia on the ground that it is pre-mature; it

has been passed in breach of order dated 31st March, 2015 issued by Director General, Youth Services and Sports; and the transfer order has

been passed for the malafide reasons.

3. The Order of transfer which is impugned in this petition in respect of the petitioners is not premature, inasmuch as, in terms of order dated 03rd

March, 2014, petitioners were not transferred but were promoted and posted on higher posts. Transfer in terms of Rule 27 of Jammu and

Kashmir Civil Services (Classification, Control and Appeal) Rules 1956 takes effect when an employee is transferred from one place to another

place or one post to another post in his cadre and category of services. In this case as already stated that order dated 03rd March, 2014, is not

transfer order but a promotion order and in-sequel thereto petitioners were posted on the promoted posts, so in law it is not a transfer.

4. Petitioners are for the first time ordered to be transferred to different places against the posts of Physical Education Masters in District Kargil

itself. Transfer order cannot be said to be pre-mature as this is the first transfer order after the petitioners have been promoted on the post.

5. The next contention of learned counsel for the petitioner that in view of the order of Director General Youth Services and Sports the impugned

order could not be issued, cannot be accepted as the appointments and issuance of incidental orders thereto are regulated by Hill Development

Council Act in respective districts of Kargil and Leh.

6. Contention of learned counsel for petitioner is that transfer order has been issued for malafide reasons by the Deputy Commissioner, also cannot

be accepted, inasmuch as, the order is passed by the Deputy Commissioner Kargil in pursuance of order of Chairman/Chief Executive Councilor

of LAHDC, Kargil. Furthermore, the Deputy Commissioner, Kargil/Chairman/Chief Executive Councilor of LAHDC, Kargil has not been

impleaded in person as party respondents so alleged mala-fides cannot be taken cognisance of.

7. For the above stated reasons, this petition is held to be meritless is accordingly dismissed along with connected MP(s).