

(2018) 03 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : SWP No. 2247 OF 2017

MOHD AYUB AND ANOTHER	Vs	APPELLANT
STATE OF JAMMU & KASHMIR AND OTHERS		RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010 — Rule 4(2), 23
Jammu and Kashmir Civil Services Decentralization and Recruitment Act, 2010 — Section 2(c), 4, 15, 124

Citation : (2018) 03 J&K CK 0010

Hon'ble Judges : TASHI RABSTAN

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The challenge in this petition is to Order No. 34-ADSJ of 2017 dated 8th September, 2017 passed by respondent No.3 to the extent petitioners have been transferred from the office of District Sericulture Officer, Sericulture Development Department, Rajouri to the office of District Sericulture Officer, Sericulture Development Department, Ramban and Jammu respectively.

2. The case of the petitioners is that they have been transferred by the impugned order despite the fact that they belong to the district cadre and they cannot be transferred outside the district. It is contended that they are presently posted as Senior Assistants in the office of District Sericulture Officer, Sericulture Development Department, Rajouri. They being Senior Assistants hold the District Cadre post as defined by the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010 and as per Rule 4(2), all the posts carrying the pay scale equivalent or upto the post of Senior Assistant are the District Cadre Posts provided they are not

included in the Divisional or State Cadre. The posts against which, the petitioners have been appointed as Senior Assistants are District Cadre Posts and they do not belong to the Divisional Cadre or State Cadre. It is contended that District Cadre employee can only be transferred within the district and the competent authority to issue such transfer order, is the Director, Sericulture Development Department, Jammu and Kashmir State. Both the petitioners hold the District Cadre posts and can only be transferred within the district that too by the competent authority, i.e., Director, Sericulture Development Department, J&K. It is contended that in the year 2016, respondent No.3 had issued transfer orders of Senior Assistants despite the fact that he was not competent to do so and when the matter came to the notice of the respondent No.2, respondent No.2 vide his communication dated 13th December, 2016 had cancelled the transfer orders issued by respondent no.3. It is contended that respondent No.3 has once again transferred the petitioners despite the fact that the petitioners belong to the district cadre and they cannot be transferred outside the district. Otherwise also respondent No.3 is not competent to order the transfer of the petitioner. Hence the present writ petition.

3. The petitioner has challenged the impugned transfer order primarily on following grounds :-

(i) That in pursuance of the Jammu and Kashmir Decentralization and Recruitment Act, 2010, the statutory rules have been framed by the

Government of Jammu and Kashmir in exercise of powers conferred by Section 124 of the Constitution of Jammu and Kashmir read with Section 15

of the Jammu and Kashmir Decentralization and Recruitment Act, 2010 and as per Rule-23, a member of the State, Divisional or District Cadre can

be transferred only within his own cadre and he cannot be transferred from one divisional cadre to another divisional cadre or from one district cadre

to another district cadre and vice versa. The aforesaid rules are statutory and binding upon the respondents. The petitioners hold the posts borne on

the District Cadre, Rajouri, as such, they cannot be transferred to District Cadre, Ramban or Jammu;

(ii) That otherwise also, respondent No.3 does not have the power to issue the transfer order of the petitioners, inasmuch as, as per the delegation of

powers, only the respondent No.2 is competent to order the transfer of the

petitioners and transfer of the petitioners is against the statute and defies of logic, as such, the same is liable to be set aside.

4. Respondents have filed objections contending therein that both the petitioners are Senior Assistants belonging to Jammu Divisional cadre. They

figure in the final seniority list of Senior Assistants of Sericulture Development Department of Jammu Division as it stood on 30.04.2015. Petitioner

No.1 figures at S.No.6 and petitioner No.2 at S.No.9, thus, they are liable to be transferred within Jammu Division by the competent authority. In so

far as authority of respondent No.3 is concerned, it is contended that respondent No.3 has issued the impugned order of transfer not only in respect of

petitioners but also in respect of other employees of the department in Jammu Division. Government Order No.861-GAD of 2010 dated 28.07.2010,

which has been issued in pursuance of the cabinet Decision No.156/12/2010 dated 27.07.2010 provides for transfer within the Division by the

Divisional Head of the Department. The respondent No.3 is the Divisional Head of the Jammu Division and is competent to effect the transfer in the

Jammu Division of the employees belonging to the Divisional Cadre. Next it is contended that previous order of transfer passed by respondent No.3 in

respect of the employees of the department during the year 2016 was rescinded on the orders of respondent No.2 does not in any manner either

effect the transfer powers of the respondent No.3 nor does it render the transfer of the petitioners defective. It is contended that respondent No.2 in

his wisdom arrived at the decision that the orders of transfer issued ought to have been issued with prior approval from the Directorate. Whatever is

the inter-se opinion between the respondent No.2 and respondent No.3 would not create any right in favour of the employees including the petitioners

nor would take away the jurisdiction and competence of either to issue orders of administrative nature. Transfer of the petitioner is governed by the

Govt. Order supra governing transfer policy and which has been duly issued after approval by the Cabinet and respondent No.3 is competent to issue

the transfer orders of petitioners. It is further pleaded that impugned order has been issued in the interest of administration and public interest and

respondent No.3 is fully competent to issue the transfer order.

5. Heard learned counsel appearing for the parties and considered the pleadings.

6. Petitioner questions order impugned on the grounds that the same has been

issued against the statutory rules framed by the Government of Jammu and Kashmir and order impugned has been issued by incompetent person as respondent No.3 who has passed the order does not have the power to issue the transfer order of petitioners.

7. I have meticulously gone through the writ record so as to ascertain as to whether the petitioners have been transferred against the statutory rules or by incompetent person(s).

8. It is argued on behalf of the petitioners that petitioners working as Senior Assistants in the respondents department are district cadre employees

and, as such, can be posted only against a district cadre post. It is contended that in terms of the impugned transfer order, petitioner has been

transferred against the divisional cadre post, though they belong to district cadre. The argument advanced on behalf of petitioners are refuted by

learned counsel for the respondents who maintains that impugned transfer order has been passed by the competent authority in the interest of

administration and public interest and in absence of allegations of malafide, bias or prejudice, petitioners cannot assail the same. He further contends

that petitioners have been transferred by the respondent No.3, who is competent to transfer in terms of Govt. Order dated 28.07.2010. Learned

counsel further contends that both the petitioners are Senior Assistants belonging to Jammu Divisional Cadre. To substantiate his arguments, he has

placed on record a copy of seniority list of Jammu Division in which petitioner No.1 figures at S.No.6 and petitioner No.2 at S.No.9.

9. Rule 23 of the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010 for facilitation is reproduced here as under :-

23. Intra and Inter-cadre transfers.

A member of the State, Divisional or District Cadre shall be transferable only within his own cadre and shall in no case be transferable from one

Divisional cadre to another Divisional Cadre or District Cadre or from one District Cadre to another District Cadre or Divisional Cadre post;

Provided that for posts in Leh and Kargil Districts, notwithstanding any other provision contained in these rules, members of any of the State,

Divisional or District Cadres may be transferred for such tenure as the Government may deem appropriate from time to time. In all such cases the

lien and promotion prospects of such members shall be protected in their parent

cadre.â??

10. As per aforesaid Rule, it is provided that a member of the State, Divisional or District Cadre can be transferred only within his own cadre and shall

in no case be transferrable from one divisional cadre to another divisional cadre or from district cadre to another district cadre.

11. Divisional cadre post is defined in Section 2(c) of the Jammu and Kashmir Civil Services Decentralization and Recruitment Act, 2010, which reads

as under :-

2(c) â??Divisional Cadreâ?? means the cadre of a department in a Division comprising the following posts:-

(i) All non-gazetted posts the basic pay of which exceeds the basic pay for the post of Senior Assistant but does not exceed the basic pay for the post

of Sectional Officers and does not include the posts falling under the State Cadre;

(ii) Such gazetted posts or services as the Government may from time to time notify in this behalf.

12. However, Section 4 of the aforesaid Act provides for Constitution of the District, Divisional and State Cadre.

(1) From the commencement of these rules, there shall be constituted District, Divisional and state Cadres of the services in each department of the

Government. In case a department has more than one office at the District, Divisional or State level, each such District, Divisional or State level office

shall constitute a separate District, Divisional or State Cadre, as the case may be:

Provided that gazetted posts borne on various services and departments, as on the date of coming into force of these rules, shall continue to be the

State Cadre posts as heretofore.

(2) All the posts borne on the establishment of a District level office of a department whether executive, ministerial, technical or manipulative which

carry a pay scale of, or equivalent to, the post of Senior Assistant but are not included in a Divisional or State cadre shall be the District cadre posts.

(3) All the posts borne on the establishment of:-

(i) A Divisional level office of a department which carry a pay scale not exceeding the pay scale for the post of Section Officer or its equivalent but

are not included in a District or State Cadre; and

(ii) A District level office carrying a pay scale which exceeds the pay scale of the

post of senior assistant or its equivalent but does not exceed the pay scale for the post of section Officer or its equivalent shall be the Divisional Cadre posts.

(4) All the posts borne on the establishment of the headquarter office of a department, having jurisdiction over the whole State and all other posts in a District or Divisional Cadre exceeding the pay scale of the post of section officer shall be the State Cadre posts.â??

13. However, Section 4 of the aforesaid Act provides that while the District, Divisional and State Cadres of the services shall be organised on

Department basis, the State Government may by Notification exclude a post or a category of posts ordinarily falling within District or Divisional Cadre

and include it in the Divisional or State Cadre. Admittedly, petitioners are Senior Assistants which posts are included in the Divisional Cadre. Moreso,

as per seniority list, it is crystal clear that the same has been issued by the Divisional Head wherein it is mentioned â??Final Seniority List of Senior

Assistants of Sericulture Development Department of Jammu Division as it stood on 30.04.2015.

14. The plea of the petitioners with regard to competence of respondent No.3 for issuance of impugned transfer order is concerned, in this regard, it is

contended that respondent No.3 has issued the impugned order of transfer not only in respect of petitioners but also in respect of other employees of

the Department in Jammu Division. Otherwise also, in terms of Clause (D) (II) Delegation of Powers for making Transfers/postings as per Govt. order

No.861-GAD of 2010 dated 28.07.2010, it has been provided that the authority to whom the powers have been delegated for transfer of Divisional

Cadre nongazetted employees within the Division is the Divisional Head of the Department. The contention of the petitioners that respondent No.3 has

not adhered to Government order dated 28.07.2010 while effecting transfers, whereas in the present case, transfer of the petitioners has been made

by the respondent No.3, who is a Divisional Head of the Jammu Division of the employees. Thus no question arises for non-implementation of the

policy. Transfer of the petitioner is governed by the Govt. Order supra governing transfer policy and which has been duly issued after the approval by

the Cabinet and respondent No.3 is competent to issue the transfer orders of the petitioners.

15. The Jammu and Kashmir Civil Service Decentralization and Recruitment Rules, 2010 providing for Constitution of District, Divisional and State

Cadres, does not prohibit streamlining of such cadres and power vests with the Government to include a member of the District or Divisional cadre in

Divisional cadre or state Cadre. The transfer in the instant case is within the same cadre, though from one wing to another. The post of Senior

Assistant held by the petitioners is a Divisional Cadre post and they could be transferred to any particular wing/office within Jammu Division. The

impugned order has not been assailed on the grounds that the same was actuated by any mala fide intention on the part of the competent authority or

the transfer was premature.

16. It is a settled position of law that an order of transfer of a government servant is no doubt justifiable, but such transfer order can be interfered with

in writ jurisdiction in rarest and exceptional cases and such transfer order can be interfered with, if it is issued by an authority, not competent to do so,

or if there is violation of any statutory rule, or there is gross discrimination between the petitioner vis-à-vis similarly situated officers/employees, or if

the transfer is actuated by mala fide.

17. That being the situation and in view of the above discussion, order impugned, on being examined, does not appear to be suffering from any

competence, or is made on the ground of violation of any statutory rules/regulations or transfer policy or is based on malafide, nor do I find that the

order on the face of it appears to be stigmatic or in the nature of a punitive order. In absence of any of above, no prejudice can be cited by the

petitioners and as such they have failed to make out any case for interference with the impugned order. Consequently, I do not find any merit in the

writ petition. The same is, accordingly, dismissed along with connected MP(s).