

**(2018) 06 J&K CK 0017**  
**In the Jammu And Kashmir High Court**  
**Case No : SWP No.1204 OF 2018**

NASEER AHMED

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND OTHERS

RESPONDENT

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**Date of Decision :** 06-06-2018

**Acts Referred:**

**Citation :** (2018) 06 J&K CK 0017

**Hon'ble Judges :** SANJEEV KUMAR

**Bench :** Single Bench

**Final Decision :** Dismissed

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## 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, Barshalla 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. The petitioner was initially appointed as ReT in Government Middle School, Sunarthwa and later on regularized as General Line Teacher on

successful completion of service of five years as ReT vide Order dated 30.3.2009 issued by respondent No. 4. The petitioner was

subsequently attached in the office of Zonal Education Officer Thathri on 2.6.2009. There is another order placed on record by the petitioner issued

by the Zonal Education Officer, Thathri on 8.7.2010 which indicates that the petitioner was then transferred and posted in High School,

Jangalwar. Respondent No.3 thereafter, transferred the petitioner to High School, Barshalla against the available vacancy vide its order

No.CEO/D/Estt/20105-06 dated 4.7.2014. In the year 2018, respondent No.3 vide his order dated 24.3.2018 directed that all the teachers who

had been regularized after serving as ReTs, are required to be transferred and posted back to their original place of posting where they

were initially engaged as ReT. This order of respondent No. 3 was called in question by the petitioner along with 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:

“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.”

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 from where they have been initially appointed/engaged as ReT. It

appears that in compliance to the aforesaid direction, 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 was transferred from High School, Barshalla to UPS, 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 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 the 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.

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 affecting transfers, are in the nature of executive instructions and not justiciable in the court of law. The

other plea of the petitioner that the order impugned is actuated by malice also, cannot be accepted in the absence of specific averments of mala fide

demonstrated against an officer named in the writ petition. Mere bald assertions do not constitute mala fide.

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, is an argument which is too specious to be accepted.

8. From the narration of events that have 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.