
(1984) 02 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Special Appeal No. 485 of 1983

Prem Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-02-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 86(9)
Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 — Rule 28

Citation : AIR 1984 Raj 179 : (1984) RLW 393

Hon'ble Judges : Shyam Sunder Byas, J; D.L. Mehta, J

Bench : Division Bench

Advocate : M.R. Singhvi, for the Appellant; Niyazudeen Khan, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mehta, J.—By this appeal u/s 18 of the Rajasthan High Court Ordinance, 1949, the appellant has challenged the order dt. Oct. 28. 1983 of the learned single Judge passed in S. B. Civil Writ Petn. No. 727 of 1983.

2. A few facts leading to filing of this may be noticed in brief:

The petitioner appellant challenged under Article 226 of the Constitution the legality of the orders Ext. 3, 4 and 5. Ex. 3 is the order dt. Jan. 22. 1983 passed by the District Establishment Committee, Barmer whereby the Block Development Officer. Shiv was directed to issue transfer orders of the petitioner from Panchayat Samiti. Bavetu to Panchayat Samiti, Shiv. In compliance of the order Ex. 3, the Block Development Officer. Shiv passed the order (Ex. 5) dt. Feb. 22, 1983 transferring the petitioner from Panchayat Samiti Bavetu to Panchayat Samiti. Shiv. Ex. 4 is the order dt Mar. 4, 1983 issued by the Block Development Officer. Bavetu whereby the petitioner was relieved with immediate effect for submitting his joining report at Panchayat Samiti, Shiv. By the impugned order dt. Oct. 28, 1983, the learned single Judge held that the

Collector and Zila Pramukh were competent to pass the transfer order and that there is no illegality in the transfer of the petitioner. Being dissatisfied with the order under appeal, the appellant has preferred this appeal for quashing the orders Exs. 3, 4 and 5.

3. We have heard Mr. M. R. Sinchvi, learned counsel for the appellant and Mr. Niyazudeen Kham, learned Additional Government Advocate.

4. It was contended by the learned counsel appearing for the appellant that the transfer orders have been passed in accordance with the decision taken by the Vigilance Committee in its meeting and that the transferring authority has not applied its mind, as such, the transfer orders should be set aside. According to the learned Counsel. Vigilance Committee is having no legal entity and as such, it cannot decide the transfer matters. He has invited my attention to Section 86 (9) of the Rajasthan Panchayat Samitis & Zila Parishads Act, 1959 (hereinafter referred to as "the Act") which reads as under:--

"86 (9). Appointments by promotion or transfer of incumbents holding posts encadred in the Service shall be governed by rules made in this behalf and may be ordered by the Panchayat Samiti or the Zila Parishad, as the case may be, from amongst persons entered in district-wise lists prepared in the prescribed manner-

(a) in the case of promotions or transfers within the same district by the District Establishment Committee constituted u/s 88, and

(b) in the case of other transfers, by the Selection Commission constituted under Sub-section (6) on the recommendation of the Panchayat Samiti or the Zila Parishad under whose administrative control they are for the time being and after consulting the Panchayat Samiti or the Zila Parishad as the case may be under whose administrative control they are proposed to be transferred."

5. On the other hand. Mr. Niyazudeen Khan, learned Additional Government Advocate has vehemently supported the order under appeal and has submitted that the Vigilance Committee had not transferred the petitioner but in fact, the District Establishment Committee has passed the necessary orders which is evident from Ex. 3. He has invited our attention to decision of Smt. Pushpa Bhandari v. Smt. Lalita Mathur (Civil Revision Petn. No. 235 of 1982. decided on July 29, 1982).

6. In Smt. Pushpa Bhandari's case (supra) Smt. Pushpa Bhandari was holding the Post of Acting Head Mistress in Bal Mandir. School. Jodhpur. The Vigilance Committee considered the matter and found that continuation of Smt. Pushpa Bhandari as Acting Head Mistress is not in the interest of the Institution and directed that Smt. Shanti Chandravanshi should be appointed as Head Mistress. On the directions of the Vigilance Committee, the District Education Officer (Female) passed the order that Smt. Pushpa Bhandari should be reverted on her original post and the charge should be handed over to Smt. Shanti

Chandravanshi. Smt. Pushpa Bhandari filed a suit in the Court of Munsif and her application for temporary injunction was rejected. She preferred an appeal before the Additional District Judge, Jodhpur who rejected the appeal, vide his order dt. July 26, 1982. Thereafter, Smt. Pushpa Bhandari filed a revision before this Court and it was contended that the directions issued by the Vigilance Committee are bad in law and the District Education Officer (Female) without applying the mind has passed the order in favour of Smt. Shanti Chan-dravanshi. It was also submitted that the Vigilance Committee is not a statutory body and the directions issued by the Vigilance Committee cannot be considered at all and it is an interference in the administration of justice. Our learned brother Hon'ble Mr. Justice D. P. Gupta rejected the revision petition and it seems that he might have considered that the order passed by the Vigilance Committee is only of a suggestive nature.

7. We have given considered thought in the matter and WP are of the opinion that the Vigilance Committee is having no legal existence and is only an administrative machinery to report the matter to the competent authority to take necessary action in the matter. In the instant case, the Vigilance Committee has not passed the order of transfer but it has suggested the transfer of the petitioner, and thereafter, the matter was considered by the District Establishment Committee of which the Collector and Zila Pramukh were members and they have passed the order of transfer considering the recommendations made by the Vigilance Committee.

8. Mr. M. R. Singhvi, learned counsel appearing for the petitioner appellant has invited our attention to Section 88 of the Act, which provides about the District Establishment Committee and their functions. Rule 28 of the Rajasthan Panchayat Samitis & Zila Parishad Service Rules, 1959 (for short the Rules) reads as under :--

"28. Transfer within the District. The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the Committee by the Panchayat Samiti or the Zila Parishad, as the case may be. The Committee shall thereupon, enter these names in district-wise lists.

(2) Appointment by transfer of such an employee shall be made by the Panchayat Samiti or the Zila Parishad concerned on the recommendations of the Committee which shall consult the Panchayat Samiti or the Zila Parishad, as the case may be, under whose administrative control they are for the time being and also under whose administrative control they are proposed to be transferred."

Mr. Singhvi submits that the Rule 28 of the Rules is mandatory in nature and the Panchayat Samitis or the Zila Parishads should report the matter relating to the desired transfers to the District Establishment Committee and thereafter, the District Establishment Committee can recommend and the Panchayat Samiti shall issue orders of transfer. Mr. Singhvi has invited our attention to *Anant Ram v. State of Rajasthan* 1977 WLN 463. In *Anant Ram*'s case there was a case of

transfer of an employee whose transfer was resisted by the Panchayat Samiti. In para 5 of the report, it was observed as under:--

"As mentioned above, the Samiti, under whose administrative control the two petitioners were working had consistently resisted the attempt to transfer the two petitioners from the control of the Samiti. It has been throughout opposing the transfer of the two petitioners from the administrative control of the Samiti to any other Panchayat Samiti. In these circumstances the Question of the Samiti recommending the transfer of two petitioners did not at all arise. On the other hand, the facts narrated above go to show that the Committee disregarded the recommendation of the Samiti while ordering the transfer of the two petitioners to the administrative control of the other panchayat Samitis. Thus it is absolutely clear that the transfer of the two petitioners was made in utter contravention of the provisions of sub-section (9) of Section 86 of the Act. If the Samiti was not agreeable to the transfer of the petitioners from its administrative control, then the Committee had no power or authority to transfer them to any other Panchayat Samiti."

Mr. Singhvi has invited our attention to para 6 of the report and has submitted that it is a positive act of recommendation on the part of such Panchayat Samiti or the Zila Parishad which is required for empowering the Committee to effect a transfer of the employees from the service of such Panchayat Samiti or Zila Parishad to another Pan-chayat Samiti or Zila Parishad within the same District and in the absence of any recommendation of the Panchayat Samiti, under whose administrative control the employee sought to be transferred is working at the relevant time, the Committee is powerless to effect a transfer under the provisions of sub-sec. (9) of the Section 86 of the Act. As stated above, Section 86 (9) of the Act provides that the appointments by promotion or transfer of incumbents holding posts encadred in service shall be Governed by rules made in this behalf and may be ordered by the Panchayat Samiti or the Zila Parishad, as the case may be, from amongst persons entered in district-wise list pre-Dared in the prescribed manner -- (a) in the case of promotions or transfers within the same district by the District Establishment Committee constituted u/s 88 and (b) in the case of other transfers, by the Selection Commission constituted under sub-sec. (6) on the recommendation of the Panchayat Samiti or the Zila Parishad under whose administrative control, they are for the time being and after consulting the Pan-chayat Samiti or the Zila Parishad, as the case may be, under whose administrative control they are promised to be transferred. Mr. Nivazuddin Khan, learned Additional Government Advocate submits that Section 28 does not prohibit the Establishment Committee to consider the matters of transfer suo motu. He further submits that if an application is moved by an employee for transfer, it is obligatory on the part of the Panchavat Samiti under Rule 28 of the Rules to report the matter to the District Establishment Committee, and if the Panchayat Samiti. desires that the transfer of one employee under its control to another Panchayat Samiti within the same district, it should report the matter to the District Establishment Committee so that it may take necessary action in the

matter. According to Mr. Nivazuddin Khan, learned Additional Government Advocate. Rule 28 of the Rules is not prohibitory in character but it is mandatory as it casts a duty on the Panchayat Samiti to forward the application received from the employee for transfer and that the District Establishment Committee can suo motu consider the matter of transfer and may make necessary recommendations thereon.

9. We have given considered thought in the matter and we are of the view that Rule 28 of the Rules cannot stretch to prohibit the consideration of the transfers by the District Establishment committee. Final authority vests in the Panchayat Samiti and the District Establishment Committee can make a request to the Panchayat Samiti and the Panchayat Samiti may after taking into consideration the suggestion made by any authority, effect the transfer. In the in-stant case, the Panchayat Samiti under whose control, the petitioner was working has passed the transfer order, on the recommendation made by the District Establishment Committee vide Ex. Rule 3. The Panchayat Samiti. Bavatu and the Panchayat Samiti. Shiv have not resisted the transfer of the petitioner but on the contrary, they exercised the powers vested in them and acted upon the recommendations made by the District Establishment Committee. If there is any irregularity in the matter of transfer, the aggrieved Party, the Panchayat Samiti its employee as the case may be. cannot agitate the matter in a way which may disturb the administration. The Panchayat Samiti has given consent in this matter by accepting the request/recommendation made by the District Establishment Committee vide Ex. Rule 3. Thus, the transfer order has been passed by the Panchayat Samiti after taking into consideration the recommendation made by the District Establishment Committee. In the facts and circumstances of the case, the case of Anantram 1977 WLN 463 cited by the learned counsel for the petitioner does not at all apply. Even if it is assumed that there is no recommendation of the Panchayat Samiti at the initial stage, even then its consent is evident from the fact that it has acted upon the request made by the District Establishment Committee and has passed the transfer order. The Panchayat Samiti. Bavetu by its act of passing the further order has given further consent in the matter of transfer and the consent has more weightage than the mere consultation which is made at the earlier stage.

10. As far as the question of the Vigilance Committee is concerned, we asree with the learned counsel for the petitioner that the Vigilance Committee is not a legal entity and cannot pass the transfer order. Whatever may be the language used by the Vigilance Committee, the order of transfer has not been passed by the Vigilance Committee but in fact, the District Establishment Committee has made the recommendation and the Panchayat Samiti. Shiv has passed the order of transfer. The Collector and Zila Pramukh were vigilant in the matter and they knfrw that the ViS"lance Committee cannot exercise any power under the law in the matter of transfer and they treated it as suggestion and thereafter, they pondered over the matter, started new proceedings at all and thereafter, made the recommendations for transfer of the petitioner vide Ex. 3, u/s 86 (9) of the

Act. Thus, it is not a case of passing the order by the Vigilance Committee but it is only a case in which the authorities have considered the suggestion made by the Vigilance Committee. It is well settled that while exercising the discretionary power under Article 226 of the Constitution, every illegality or irregularity is not to be corrected unless there is a substantial failure of justice. The mere transfer of a person from one Panchayat Samiti to other Panchayat Samiti cannot be said to be substantial failure of Justice.

11. For the reasons mentioned above, we do not find any force in the submissions made by the learned counsel appearing for the appellant.

12. The result is that the appeal has no merit and it is, accordingly, dismissed without any order as to costs.