

(2014) 02 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2388 Of 2012 and CMA No. 3678 Of 2012

Rakesh Kumar Bhat

APPELLANT

Vs

State of J. and K.

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Citation : (2014) 1 JKJ 25

Hon'ble Judges : M.M. Kumar, C.J

Bench : Single Bench

Advocate : M.K. Raina, Advocate for the Appellant; Ravinder Sharma, AAG, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, C.J.—The petitioner is originally resident of Uttersoo District Anantnag Kashmir. His father late Sh. Maharaj Krishan Bhat

was working as a Master in the Education Department and was borne on the cadre of District Anantnag. In the year 1990 the father of the

petitioner along with other family members migrated from Kashmir Valley to Jammu because of the militancy in the area. They are registered

migrant at Jammu with the Relief Organization. The father of the petitioner was allowed to draw his leave salary from the office of Chief Accounts

Officer, Migrant Cell, Education Department Udhampur. Thereafter he was promoted and transferred to Leh which was a tenure post. However,

he died in a road accident. The petitioner was then appointed as teacher on compassionate ground on a tenure post at Leh but his substantive

posting was made in District Anantnag in District Cadre vide order dated 27.10.2001 (Annexure A). After completing the tenure of five years at

Leh the petitioner was transferred from Leh to Migrant Cell Education Department Jammu vide order dated 19.06.2006 (Annexure B). It is

claimed that post of Teacher is a District cadre post and the petitioner belongs to District Cadre of Anantnag in Education department. He was

allowed to draw his leave salary from Migrant Cell, Jammu. The petitioner continued to draw the migrant salary from Chief Accounts Officer,

Migrant Cell, Education Department Jammu after his transfer from Leh. The Director School Education Jammu vide order dated 11.10.2012

ordered the transfer of the petitioner from Migrant Cell, Jammu to Government High School Basohli (Annexure C). According to the order,

petitioner has been deployed there in the interest of administration. The Chief Accounts Officer Migrant Cell has been asked to relieve the

petitioner and he was accordingly relieved by the Chief Accounts Officer, Migrant Cell Jammu vide order dated 20.10.2012 (Annexure D).

2. The petitioner has claimed that he should have been attached at Migrant School at Jammu. He has also placed reliance on Rule 17 of the J & K

Subordinate Service Recruitment Rules 1992 (for brevity the Rules) which creates a bar on the inter cadre transfer. It is claimed that the order of

his posting from Migrant Cell Jammu to Government High School Basohli violates Rule 17 of the Rules and is thus liable to be set aside.

3. I have heard Mr. M.K. Raina learned counsel for the petitioner who has argued that Rule 17 of the Rules has been violated. It would be

appropriate to study the said Rule, which is set out below in extenso:

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

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

Provided that for posts in Leh/Kargil districts, irrespective of 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.

4. A perusal of the Rule shows that ordinarily a member of the District Cadre is to be transferred only within his own cadre, but there is exception

carved out in respect of Leh/Kargil District. However, Rule 17 would not apply to

a case like the one in hand because the petitioner is a migrant and belongs to District Anantnag. The rules do not contemplate the situation created by migration. He has been allowed to draw salary from the office of Chief Accounts Officer, Migrant Cell, Education Department, Jammu. For all intents and purposes, he is staying at Jammu. Rule 17 would not be attracted to a case of a migrant who is placed in peculiar situation. Had it not been so, then the petitioner could have not been permitted to draw his salary from the office of Chief Accounts Officer, Migrant Cell, Education, Jammu. Therefore, Rule 17 cannot be relied upon to argue that the petitioner may be posted at Leh/Kargil or District Anantnag but not anywhere else. In fact I am left with an impression that petitioner does not wish to work as a Teacher by putting forward one excuse or the other. The distance between Jammu and Kathua is about 80 Kms and no sustainable objection could be raised by the petitioner to work in District Kathua. If petitioner is keen to discharge his function as a Teacher within District Anantnag then he may file a representation to that effect as the law and order situation has now undergone sea change. The respondents shall then give him posting in a appropriate School in the District Anantnag. The writ petition is wholly without merit and the same is dismissed.