

(2018) 11 J&K CK 0139

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2305 Of 2018, IA 01 Of 2018

Sameer Singh Rana

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Jammu And Kashmir Civil Services Decentralization And Recruitment Rules, 2010 — Rule 23

Citation : (2018) 11 J&K CK 0139

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Koshal Parihar, Suneel Malhotra

Final Decision : Disposed Off

Judgement

Sindhu Sharma, J

Petitioner was initially appointed as Junior Assistant in District Cadre, Kishtwar in the Transport Department vide Order No. 58-TC of 2015 dated 04.03.2015 pursuant to his selection and recommendation by the SSRB. Since his appointment, the petitioner is working on the said post of Junior Assistant, which is a District Cadre Post. The petitioner is aggrieved of his transfer order No. 124 TC of 2018 dated 25.10.2018 vide which the petitioner has now been posted in the office of Assistant Regional Transport Office, Ramban. However, the petitioner states that he has not relieved till date. Petitioner submits that State Government had promulgated Rule 23 of the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010, which reads 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 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."

In terms of the said rules, a member of the State, Divisional or District Cadre is transferable only within his own cadre. Thus, petitioner being the District Cadre employee of District Kishtwar states that he could not have been transferred outside his District, Kishtwar, as such, his transfer to the office of ARTO, District Ramban is in contravention to the aforesaid Rules. Thus, this order of transfer, transferring him from the office of ARTO, Kishtwar to ARTO, Ramban is bad in the eyes of law and is required to be quashed. Further petitioner states that he had also moved a representation dated 29.10.2018 to the Competent Authority stating that he being a member of District, Kishtwar could only be transferred within his District and not outside the District in terms of the Rule 23 of the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010. However, till date no decision has been taken on the representation of the petitioner. Petitioner also places reliance on the judgment of this Court in SWP No. 2461/2013 dated 03.06.2016 titled "Girdhari Lal and ors. V. State of J&K & ors" in support of his contention.

At this stage, however, petitioner states that he would be satisfied in case the representation made by him is decided by the concerned authority at the earliest. To this, Mr. Suneel Malhotra, learned Government Advocate, appearing for the respondents, has no objection.

In view of the peculiar facts and circumstances of the case, this petition is disposed of by directing the respondents to decide the representation of the petitioner within a period of six weeks from the date copy of this order is supplied to them along with the petition by the petitioner and till such time the representation of the petitioner is decided by passing a speaking order, the petitioner shall be allowed to continue at his earlier place of posting in District, Kishtwar.

Disposed of.