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**(2019) 03 J&K CK 0095**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 2557 Of 2017, IA 01 Of 2017

Shafayat Ulla

APPELLANT

Vs

State & Ors

RESPONDENT

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**Date of Decision :** 19-03-2019

**Acts Referred:**

**Citation :** (2019) 03 J&K CK 0095

**Hon'ble Judges :** Sindhu Sharma, J

**Bench :** Single Bench

**Advocate :** R.K.S. Thakur, S.S. Nanda

**Final Decision :** Dismissed

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## **Judgement**

1. Petitioner has assailed Order No. DULBJ/2017/9408-45 dated 09.10.2017 vide which the petitioner has been transferred as Khilafwarzi Inspector from the Municipal Committee, Banihal to Municipal Committee, Kishtwar. The petitioner is aggrieved of this order on the ground that the son of the petitioner is suffering from two serious diseases, i.e., black cataract in both eyes and hole in heart and his wife is suffering from Asthma for last six years. Thus, the petitioner has to spend a time and huge amount in the treatment of his wife as well as his son. It is submitted that some doctors have also suggested a surgery in the hospital and thus had made an application for sanction of amount for the treatment to be undergone. Thus, the basic ground of challenge to his transfer is that his wife suffering from Asthma is not in a position to look after their ailing son, as such, it is only the petitioner who has to take care of his son and therefore, his transfer from Municipal Committee Banihal to Municipal Committee, Kishtwar which is a distance of about 170 Kms would make it impossible for the petitioner to join his new place of posting and since he being transferred at such a distant place would make it difficult for him to take care of his family.

2. Respondents have filed their objections and stated that the present petition filed by the petitioner against his transfer order dated 09.10.2017 is not

maintainable as it has been passed in the interest of administration by respondent No.2 as vide the order impugned as many as 37 officials of different categories were transferred. The respondents submit that the ground challenging the transfer order, regarding the fact that his wife and son are not keeping well and are suffering from some diseases, is not a ground available under law or under any Government Policy as the petitioner himself is not suffering from any health problem. Moreover, the respondents state that petitioner has been serving in Municipal Committee, Banihal since 2006 i.e. for the last more than twelve years and has no vested right to remain posted at Banihal, as such, has rightly transferred to Municipal Committee, Kishtwar where medical facility is available and he can take care of his family. The respondents further state that the petitioner since serving in the department and transfer being an exigency of service and having been transferred after ten years from the Municipal Committee, Banihal cannot plead the health ground of his wife and his son as he can make arrangements to look after them wherever he is posted.

3. The petitioner admittedly was transferred in 2017 and this Court vide its order dated 24.10.2017 allowed the petitioner to continue as Khilafwarzi Inspector, Municipal Committee, Banihal, as such, the petitioner has remained posted in this place even after the transfer order of more than 1½ years, as such, the petitioner has remained posted there for more than 12 years. Transfer and posting being an incidence of service can only be interfered by this Court if there is any violation of any statutory rules passed by the competent authority or for mala fide reasons. Since none of these grounds have been raised by the petitioner in this petition, as such, the petitioner cannot seek interference of this court for quashing the said order. In *Shilpi Bose and others v. State of Bihar*, reported as 1991 Supp (2) SCC 659, the Hon'ble Apex Court has held that, even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authority of the department.

4. In *Union of India and others v. Janardhan Debanath and others*, reported as AIR 2004 SC 1632, the Hon'ble Apex Court has held as under:

"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of Transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration."

5. The petitioner has remained posted in Municipal Committee Banihal for more than 12 years, thus, transfer on administrative ground is for effective and efficient public administration, however, the petitioner is at liberty to approach the competent authority for redressal of his personal grievance.

6. For the aforementioned, there being no merit in this case, which is

accordingly, dismissed. Interim order dated 24.10.2017 shall stand vacated.