

**(2008) 07 J&K CK 0002**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 991 Of 2008 And CMP No. 1789 Of 2008

Shakeel Aijaz Fazili

APPELLANT

Vs

State & Ors.

RESPONDENT

---

**Date of Decision :** 25-07-2008

**Acts Referred:**

**Citation :** (2009) 3 JKJ 189

**Hon'ble Judges :** Nisar Ahmad Kakru, J

**Bench :** Single Bench

**Advocate :** S.R.Hussain, B.A.Dar, G.N.Shaheen, Advocates appearing for the Parties

---

**Judgement**

1. Allegations of communal bias by unbridled illiterates are conceivable but certainly not expected of a qualified officer of the rank of an Assistant

Executive Engineer, just to escape the fallout of an order of transfer. Frankly speaking I was inclined to leave it untouched but the difficulty is that it

was the main ground urged to sustain the challenge thrown to the impugned order, therefore, no option but to deal with it in light of the documents

forming part of the pleadings, including a communication of the Vice Chairman LAWWDA which essentially speaks of necessity of replacement of

the petitioner because of reasons spelt out therein, followed by views near to similarity to the ones communicated by other superiors of the

petitioner who admittedly do not belong to petitioner's community but amazingly comments of the Vice Chairman belonging to petitioner's

community did not offend him but he has a grouse to register against the comments made by officers of other community, least appreciating that

their opinion emanates from complication they are confronted with in their

official business necessitating replacement of the petitioner in the public interest, consequently, order of transfer.

2. At the very outset let it be placed on record that the averment unfolds an unbecoming approach of a public servant and I am afraid if

controversy raised is stretched a bit further it may give rise to an inquiry into petitioner's conduct, within the purview of conduct and discipline rules.

More so, if interference with the order of transfer is displayed on such an irresponsible averment, devotion to the duty on the part of the public

servants is bound to be undermined that too at the cost of communal harmony making the public interest a casualty. That apart transfer being an

incidence of service none of the rights of the petitioner is violated.

3. This brings me to a feeble mention made at the bar that Government having transferred the petitioner to LAWWDA, no authority other than

Government can shift him to any other place. The argument need not detain me because the question is completely answered by judgment

incidentally handed down by me in Bilal Ahmad Bhat Versus State of J&K and others [2007(1) SLJ 332]. Paragraph 9 of the judgment may be

noticed:

Indisputably a deputationist cannot lay a claim with the borrowing department for his transfer to a post other than the one he is deputed to, but

until repatriation the borrowing department is within its powers to assign the duty to him and extract the work as per requirement, following any

other course would render the borrowing department helpless and deprive it of its control over the deputationist and there being no bar imposed

by the rules against the transfer of a deputationist, the borrowing department can transfer him to any other post and place provided such transfer is

not prejudicial to the conditions of his service." Examining the question on the strength of judgment supra, it is crystal clear that borrowing

department is within its powers to post and place the petitioner wherever he is required.

4. It needs a mention that respondents have brought on record a series of communications to attribute dereliction of duty to the petitioner. No

expression of opinion excepting an observation that nothing prevents them to initiate an inquiry, of course, in accordance with procedure

established by law.

5. In the aforementioned backdrop, writ petition fails. Dismissed along with CMP. However, no order as to costs.