
(2003) 02 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2166 of 2000

Smt. Pushpa Bharadwaj

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 97 FLR 1184 : (2003) 2 RLW 1406 : (2003) 2 WLC 653 :
(2003) 1 WLN 473

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : M. Mridul, sisted by R.N. Upadhyay, for the Appellant; B.M. Bohra, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—Heard learned counsel for the parties.

2. By this writ petition, the petitioner has challenged the order dated 12.5.1999 (Annexure-16) by which the petitioner, who is teacher of subject English was transferred from the Government Secondary School, Vidhyashala to the Government Secondary School, Kaliberi. The gist of the argument of the learned counsel for the petitioner is that this transfer order is liable to be quashed as the order has been passed malafidely and because of the pressure exerted by respondents No. 4 and 5 upon respondent No. 3 the District Education Officer and because of the reason that the petitioner has been transferred to the place where respondent Nos. 4 and 5 are also teachers and they are having inimical relations with the petitioner and in addition to that, the petitioner has been transferred to a school where there is no need of English teacher as there are already two teachers for the subject whereas after transfer of the petitioner from the Government Secondary School, Vidhyashala, no English teacher will be there.

3. The learned counsel for the respondents raised preliminary objection that the

writ petition of the petitioner is not maintainable because an effective alternative remedy is available to the petitioner to challenge the impugned order before the Rajasthan Civil Services Appellate Tribunal. It is also submitted that looking to the conduct of the petitioner, the petitioner is not entitled for any relief in exercise of jurisdiction under Article 226 of the Constitution of India.

4. Since this Court by order dated 6.11.2000 issued notice for final hearing of the writ petition itself without admitting it and since both the counsels addressed their arguments on merit also and since I found that the writ petition is liable to be dismissed on merit also, therefore, I do not incline to dismiss the writ petition on the ground of alternative remedy despite the fact that the petitioner has not given any reason for not availing the statutory remedy to challenge the impugned order though in the facts of this case this itself is a sufficient ground for dismissal of the writ petition. The petitioner has challenged the order on the ground of malafide and impleaded Shri S.S. Boda, Principal, Senior Secondary School, Kaliberi and Shri Lalit Kishore Purohit, Teacher, Senior Secondary School, Kaliberi. According to the petitioner, they have inimical relations with the petitioner but the petitioner has not chosen to implead the person who was holding the post of District Education Officer who passed the transfer order dated 12.5.1999. There is no sufficient pleading on the basis of which it can be gathered that the respondents No. 4 and 5 were in a position to influence the District Education Officer who passed the order dated 12.5.1999. The allegation of malafide levelled by the petitioner deserves to be rejected on the ground of non-joinder of necessary party, the person who passed the order dated 12.5.1999 and because of lack of pleading to substantiate that the order dated 12.5.1999 is result of any pressure which compelled the District Education Officer to pass the order dated 12.5.1999.

5. Not only this but the petitioner even tried to say that one order was passed on 18.6.1990 by the Director, Department of Education which was not permitted to be complied with by respondent No. 4 who was holding the post of Deputy District Education Officer and because of this reason, she had to remain out of Jodhpur. The petitioner wants to take benefit of an order passed in the year 1990 to show the malafides in passing order in the year 1999 after nine years. The petitioner even failed to disclose who was the District Education Officer who did not comply with the order of the Director and obliged another teacher and denied the posting to the petitioner despite the direction of the Director (Education).

6. The petitioner also submitted that since the petitioner, while holding the charge of the Head Master in Government Secondary School, Doli Jhanwar, she lodged complaint against four teachers. One of the teachers was wife of respondent No. 4. This complaint was lodged in the year 1996. According to the petitioner this further developed illwill of respondent No. 4 because respondent No. 5 is neighbour of respondent No. 4. It is true that none of respondents No. 4 and 5 have filed the reply to the writ petition, therefore, in view of the law laid down by the Hon''ble Supreme Court in : S. Partap Singh v. State of Punjab (1)

and Hukma Ram Choudhary v. Shri K.C. Mathur (2), relied up on by the learned counsel for the petitioner when the respondent Nos. 4 and 5 did not chose to rebut the allegations levelled by the petitioner, then it may be presumed, facts are admitted by the respondent Nos. 4 and 5. In the facts of this case, the said decision has no application because the petitioner failed to prove whether respondent Nos. 4 and 5 were in position to influence the District Education Officer and because of that reason this order was passed. Assuming for the sake of argument that respondent Nos. 4 and 5 had inimical relations with the petitioner and they tried to influence the District Education Officer, still it cannot be presumed that they were in position to influence the District Education Officer, Jodhpur. The impugned order was issued due to such influence or not can be explained by the person who passed the order when allegations of malafide are of malafide in fact. The person who was holding the said post cannot be condemned unheard. Therefore, the contention of the petitioner on the basis of non-filing of the reply by respondents No. 4 and 5 only helps petitioner in this petition to prove only that the respondent Nos. 4 and 5 had inimical relation with the petitioner. In view of the above discussion, there is no force in the writ petition and is liable to be dismissed.

7. However, it is relevant to mention here that there are serious allegations against the petitioner levelled by the respondents in the reply, as given in sub- paras (1) to (8) of para 5 of the reply submitted by the respondents. A bare look at the allegations against the petitioner makes it clear that the respondents, who are responsible to look into the administration of education, failed to discharge their duties. The respondents, if were in knowledge of such grave misconduct of the petitioner to the extent that the petitioner did not return the answer books of the half yearly examination of classes IXth and Xth and the answer books were handed over to the police due to which even the declaration of the result of the students was effected (as mentioned at page 49 read with allegations levelled in Sub-clause (3) & (4) of para 5), and the respondents claiming themselves having authority over the petitioner, then why they have not initiated any proceeding against the petitioner for such a long period of about more than three years and initiated proceeding under Rule 16 of the C.C.A. Rules, merely for not joining the duties at a transferred place by serving charge-sheet dated 7.3.2002. The learned counsel for the respondents tried to justify his argument showing one order dated 7.3.2002 which was passed in the enquiry conducted in pursuance of the memorandum and charge-sheet dated 4.6.1999. Copy of this order was also not placed on record nor copy of this order was provided to the learned counsel for the petitioner but a bare perusal of the above order itself shows that a charge-sheet Was issued on 4.6.1999 to the petitioner but serious allegations of not submitting the checked answer books in time and were deposited with the police, were not the charges against the petitioner. It is further relevant to mention here that in sub- paras (1) to (8) of para 5 of the reply, it is mentioned that about more than 10 letters were issued to the respondents in a short span of period commencing from 20.4.1999 to 12.5.1999 except two letters dated 10.7,1999

and 15.9.1999. The respondents failed to explain if the petitioner had her past bad conduct as alleged in the reply then what compelled the respondents to not to take action against the petitioner. In view of the facts mentioned in the reply, this matter is either a case of victimisation of the petitioner as she was served with the large number of letters calling upon the explanation in a short span of period as given in sub-paras (1) to (8) of para 5 of the reply to the writ petition or it is a serious matter of protecting a teacher who has no good conduct, towards her superiors and even towards the students. Therefore, copy of this order be sent to the Education Secretary, Government of Rajasthan so that the matter can be enquired into with respect to the allegations and counter allegations and the Education Secretary may take appropriate steps to see that the students should not suffer.

8. Hence the writ petition of the petitioner is dismissed with direction to respondent No. 1 as mentioned above.