

(2012) 10 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No's. 781 of 2012, 778 of 2012, 766-67 of 2012, 779-80 of 2012 and 782 of 2012

State of Rajasthan and Others

APPELLANT

Vs

Gambhir Singh and Another

RESPONDENT

Date of Decision : 26-10-2012

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 89(8)

Citation : (2012) 4 WLN 429

Hon'ble Judges : Sangeet Lodha, J;Arun Mishra, J

Bench : Division Bench

Advocate : K.K. Bissa, for the Appellant;

Judgement

Sangeet Lodha, J.—Heard learned counsel for the appellants. These intra Court appeals are directed against order dt. 25.07.2012 of learned Single Judge, whereby the writ petitions preferred by the appellants assailing the order dt. 31.05.2012 passed by the Chief Executive Officer, Zila Parishad, Bikaner transferring the appellants from one Panchayat Samiti to another has been quashed, being violative of provisions of sub-Section 8 of Section 89 of Rajasthan Panchayati Raj Act, 1994 (for short "the Act of 1994").

2. In one of the appeals, being No. 781/12, the registry has pointed out a defect in terms that certified copy of the order impugned has not been filed. Other appeals filed are accompanied by certified copy of the common order impugned and therefore, the requirement of certified copy in Appeal No. 781/12 is dispensed with.

2A. The appellants are employed as Gram Sewak/Class IV employees in various Panchayati Samitis of District Bikaner. By the order impugned in the writ petition, issued by the Chief Executive Officer, Zila Parishad, Bikaner in exercise of the power conferred by Section 89(8) of the Act of 1994, the appellants were transferred from one Panchayat Samiti to another. The validity of the transfer order was questioned by the appellants on the ground that the transfers have

been effected as aforesaid, without consultation with the Pradhans of Panchayati Samities from and to which such transfer is made, which is violative of provision of Section 89(8) of the Act of 1994.

3. It was contended on behalf of the State before the learned Single Judge that the Chief Executive Officer has passed the transfer order exercising powers under Sec. 89(8A) of the Act of 1994 and therefore, consultation with Pradhans of respective Panchayat Samitis was not necessary though the transfer orders were approved by Zila Parishad, Bikaner in its meeting held on 23.05.2012.

4. Learned Single Judge found that transfer order impugned nowhere mentions that the same has been passed by the State Government in exercise of the power conferred by Section 89(8A) of the Act of 1994. Learned Single Judge observed that order impugned in specific terms mentions that transfers were effected pursuant to decision taken by the District Establishment Committee, Zila Parishad, Bikaner in its meeting held on 23.05.2012 and therefore, it cannot be said that the order was passed on behalf of the State Government. Learned Single Judge opined that in terms of provisions of Section 89(8) of the Act of 1994 before effecting the appellants' transfer from one Panchayat Samiti to another, consent of Pradhans of Panchayat Samiti from and to which the transfer is made, was necessary. Admittedly, no such consent was taken and therefore, the order passed was held to be violative of the provisions of Section 89(8) of the Act of 1994.

5. Learned counsel for the appellants contended that in terms of provisions of Section 89(8) of the Act of 1994, the consultation with Panchayat Samitis from and to which the transfer is proposed to be made, is not mandatory and therefore, the transfer order could not have been quashed by the learned Single Judge on account of technical breach of the said provision. Learned counsel submitted that learned Single Judge has erred in holding that in terms of provisions of Section 89(8) of the Act of 1994, if the appellants herein were intending to transfer the respondents from one Panchayat Samiti to another to Panchayat Samiti, the consent of Pradhan of Panchayat Samiti wherefrom and to which the transfer was proposed to be made, was necessary. Learned counsel submitted that the "consultation" with the Pradhans of respective Panchayati Samitis within the meaning of Section 89(8) of the Act of 1994 in no manner can be construed to mean that before effecting the transfer from one Panchayat Samiti to another, "consent" of Pradhan of Panchayat Samiti from and to which transfer is made, is necessary.

6. We have considered the submissions of the learned counsel for the appellants.

7. The controversy involved in the instant intra Court appeals rolls round provisions of Section 89(8) of the Act of 1994, which reads as under:-

89(8) Appointment by

(i) promotion shall be made by the Panchayati Samiti or the Zila Parishad, as the

case may be, in the prescribed manner from amongst the persons whose names have been entered in the list prepared by the District Establishment Committee; and

(ii) transfer shall be made after consultation with the Pradhans or the Pramukhs, as the case may be of the Panchayat Samitis or the Zila Parishad from and to which such transfer is proposed to be made.

8. It is to be noticed that sub-Section (5) of Section 89 of the Act, which deals with sources of recruitment, prescribes transfer as one of the mode of recruitment to various posts in the Panchayat Samiti and Zila Parishad service. A bare perusal of clause (ii) of sub-Section (8) of Section 89, makes it abundantly clear that the provision for "appointment by transfer" from one Panchayat Samiti or Zila Parishad to another Panchayat Samiti or Zila Parishad is permissible only after consultation with Pradhans or Pramukhs, as the case may be, of the Panchayat Samitis and Zila Parishads concerned. In considered opinion of this Court, the consultation with the Pradhans or Pramukhs, as the case may be, of the Panchayat Samitis or Zila Parishads from and to which the transfer is proposed is to be made, is condition precedent for exercise of the power under Sec. 89(8) of the Act of 1994. The provision cannot be considered to be directory as suggested by learned Government Counsel, rather it has to be held mandatory. Thus, we are in full agreement with the view taken by the learned Single Judge that the transfers effected without consultation with the Panchayati Samitis concerned, is ex facie violative of provisions of Section 89(8) of the Act of 1994.

9. Coming to the contention of the learned counsel for the appellants that the "consultation" within the meaning of Section 89(8)(ii) of the Act of 1994 cannot be construed to mean "consent" of the Panchayat Samitis concerned, it is to be noticed that while discussing the provision of Section 89(8), the learned Single Judge has observed that a transfer could have been made after consultation with Pradhans or Pramukhs, as the case may be, of Panchayati Samitis or Zila Parishads from and to which such transfer is proposed to be made. However, in the concluding portion, it is observed that the consent of the Pradhans of Panchayat Samitis where from and to which the transfer is made, was necessary. In our opinion, it appears to be an inadvertent error. As a matter of fact, the transfer order is held to be invalid by the learned Judge for want of consultation in terms of provisions of Section 89(8) of the Act of 1994. A bare perusal of the provisions of Section 89(8) makes it abundantly clear that the transfers from one Panchayat Samiti or Zila Parishad to another Panchayat Samiti or Zila Parishad could be effected only after consultation with the concerned Panchayat Samitis and Zila Parishads and it nowhere mandates that the "consent" of the Pradhans or Pramukhs, as the case may be, of Panchayat Samitis or Zila Parishads is necessary. Obviously, the object of consultation is to obtain the view of the Panchayati Samiti or Zila Parishad concerned, as the case may be so as to arrive at conclusion in respect of the transfer proposed to be made and therefore, the

"consultation" contemplated under the provisions of Section 89(8) of the Act cannot be construed to mean "consent" of the respective Panchayat Samitis or Zila Parishads, as the case may be in respect of the transfer proposed to be made.

10. In view of the discussion above, the order impugned passed by the learned Single Judges does not warrant any interference by us in these intra Court appeals. In the result, the appeals fail, the same are hereby dismissed.