
(2001) 11 J&K CK 0034
In the Jammu And Kashmir High Court

Sudershan Kumar Gupta

APPELLANT

Vs

State & Others

RESPONDENT

Date of Decision : 12-11-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) KashLJ 377 : (2002) SriLJ 128

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : Seema Shehkar, Advocates appearing for the Parties

Judgement

1. This petition call in question Govt Order No. 348HME of 2001 dated 23.5.2001 in so far as the same relates to the petitioner. Petitioner's

name figures at Sr. No. 34 of the impugned transfer order and has been transferred from SRTC and directed to report Director Health Services,

Jammu. Petitioner has not filed any rejoinder though vide order dated 31.12.2001 he was given such option. He has assailed the transfer order on

following two grounds:

i. That by virtue of Govt Order No. 172HME of 2001 dated 14.3.2001 he was required to continue in service in SRTC up to the end of 2001.

The transfer order made prior to that is incompetent.

ii. That the order of transfer is violative of council decision No. 101 dated 27.5.1997 which lays down the criteria for making transfers.

2. Both these grounds have been repelled in the counter filed.

3. I have heard the petitioner, gone through the pleadings and also heard Mrs Shekhar. I propose to dispose of the two grounds taken in the

following manner:

(i) Rule 27 of Classification. Control & Appeal Rules vests an absolute power of transfer with the employer. It reads as under:

27. Posting and transfers(1) A member of a service or class of a service may be required to serve in any part of the Jammu and Kashmir State in

any post borne on the cadre of such service or class. (a) All transfers and postings shall be made by the authority prescribed by Government in this behalf".

4. An order passed by an officer though a decision does not constitute law. It on the other hand is an executive action of a functionary which

formally expresses his intention. Such an executive fiat can not divest the competent authority from exercising a statutory power. Here on this

analogy order dated 1432001 will therefore create no bar for the respondents in passing the impugned order. This is one aspect of the matter.

5. The other aspect is that an authority which passes a particular order has the power to rescind that order also. This is what is contemplated in

section 21 of the General Clauses Act.

6. Thus on both the counts the order impugned does not suffer from any infirmity.

7. Law with respect to guidelines and Council Decision is amply clear. A single bench of this court in case titled Syed Khurshid Ahmad Vs State of

J&K & others, reported in 1985 KLJ 47 held that Circular No. 36GD of 1983 dated 8.8.1983 did not have a binding force, therefore no writ for

violation of the Circular could lie.

8. In case titled Mohammad Sikander Bhat Vs State of J&K and others, reported in 1989 SLJ 141, a Division Bench of this court drew a line of

distinction between orders which related to conditions of service and other orders. Guidelines, decisions, policies and orders relating to transfer

were held not to be mandatory as transfer is not a condition of service. It was therefore held that these orders were not justiciable. Thus violation

of Council Decision No. 101 of 1977 would not vitiate the order impugned. Even otherwise the petitioner had a stay of more than three years. So

if we look at the guidelines the same contemplate that no Government servant will continue at a place for more than three years. Therefore, the

impugned order has adhered to and not violated the guidelines.

9. Accordingly on the above analogy I find no substance in this petition and dismiss the same. The result is that interim direction issued on

28.5.2001 is vacated. Writ petition stands disposed of.