
(2019) 12 RAJ CK 0088

In the Rajasthan High Court

Case No : Civil Writ Petition No. 16865 Of 2019

Vandana Vyas

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Citation : (2019) 12 RAJ CK 0088

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Nitin Trivedi, Vishal Jangid, Hemant Choudhary

Final Decision : Allowed

Judgement

This writ petition has been filed by the petitioner aggrieved by order dated 29.09.2019 (Annexure-6), whereby, the petitioner has been transferred from the School at Jhanwar to the School at Sadadi, Lohawat and order dated 01.11.2019 passed by the respondents, whereby, the representation made by the petitioner has been rejected.

It is, inter alia, submitted by learned counsel for the petitioner that against the order dated 29.09.2019 the petitioner approached this Court by filing S.B.C.W.P. No. 15112/2019, which came to be decided by order dated 14.10.2019, whereby, the petitioner was permitted to withdraw the writ petition with liberty to approach the respondents by way of an appropriate representation.

The petitioner filed a representation indicating her difficulties including the fact that she was suffering from heart disease, her father-in-law was in coma and that the place of transfer was about 200 kilometers from the place of her residence. The petitioner also pointed out other vacant positions in her representation where she could be adjusted.

The respondents by order dated 01.11.2019 (Annexure-10) merely indicating the circular dated 24.09.2019 have rejected the representation filed by the petitioner.

Learned counsel for the petitioner submitted that the respondents were directed to decide the representation objectively and pass a speaking order, whereas, the respondents have simply referred to the guidelines and have rejected the representation, which is not justified.

Learned counsel for the respondents supported the order impugned and submitted that for the reasons indicated in the order dated 01.11.2019, the respondents were justified in rejecting the representation.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

This Court time and again has reiterated that the representation have to be considered objectively and not by merely referring to the guidelines and indicating that the case of the petitioner does not fall within the said guidelines.

Recently in *Bhabhut Ram Vishnoi v. State of Rajasthan & Ors.* : S.B.C.W.P. No. 16600/2019, decided on 10.12.2019, it was, inter alia, laid down and directed as under:-

"A bare look at the order dated 22.10.2019 passed by the respondents would reveal that instead of dealing with the issues as raised by the petitioner and noticed by this Court while deciding the earlier writ petition, the respondents have mechanically examined as to whether the indications pertaining to physical disability made by the petitioner fell within the parameters as laid down by the State Government in its circular dated 24.09.2019 and by simply observing that the submissions made were not as per the Rules, has rejected the representation.

It has been observed by this Court in several other matters also and the directions were issued in relation to the manner in which the representation should be dealt with by the respondents, which directions apparently have not been followed by the respondents while deciding the representation made by the petitioner.

This Court in the case of *Vimla Soni v. State of Rajasthan & Ors.* : S.B. Civil Writ petition No.15035/2019, decided on 17.10.2019, inter-alia, observed as under :-

"However, once the respondents have provided for a mechanism of filing representations and the representations are being filed by the teachers, the filing of the representation and its consideration by the respondents cannot be made an empty formality. But a perusal of orders passed by the respondents reveal that mechanical orders are being passed by relying on the circular dated 24.09.2019, which manner of deciding representations by the respondents cannot be countenanced, rather the same deserves condemnation. The empty formality being undertaken by the respondents is apparently an eye-wash only with a view to some how implement the transfer orders, which have already been passed without taken into consideration the difficulties of the teachers involved. It is sine qua non that the representation made must be decided by way of an speaking order dealing with the grievances raised and not merely

noticing the same and rejecting the same."

Once the Court directs for consideration of a representation, the respondents are expected to deal with the same in an objective manner and not confine themselves to the circulars issued, inasmuch as, in case the action was contrary to the circulars, there was no occasion for sending back the matter to the respondents for reconsideration.

The very fact that the matter has been sent back to the respondents necessary means that the respondents are required to consider the circumstances which are different from what has been indicated in the circulars and therefore, instead of mechanically dealing with the issues, the respondents are required to apply their mind and pass appropriate orders."

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"In view of the above fact situation, the order passed by the respondents dated 22.10.2019 (Annex.5) deciding the representation pursuant to the directions issued by this Court cannot be sustained. The same is, therefore, set-aside.

The petitioner may make a fresh representation and the respondents are directed to decide the same within a period of one week from the date of receipt of the said representation alongwith a copy of this order appropriately keeping in view the observations made hereinbefore.

With the above directions, the writ petition stands disposed of."

In view of the order of this Court in Bhabhut Ram Vishnoi (supra), as the respondents have passed only a mechanical order by referring to the Circular dated 24.09.2019, the writ petition filed by the petitioner is allowed. The order dated 01.11.2019 (Annexure-10) is set aside.

The petitioner may make a fresh representation and the respondents are directed to decide the same within a period of one week from the date of receipt of the said representation alongwith a copy of this order appropriately keeping in view the observations made hereinbefore.