
(1986) 06 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 998 of 1984

Vijay Singh Sankhla

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-06-1986

Acts Referred:

Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 86(9)(a)
Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 — Rule 28

Citation : (1986) WLN 129

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, J.—The petitioner by this writ petition has challenged the order of transfer (Anx. 10) on the ground that Section 28 and Section 86(9)(a) and (b) of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (here in after referred to as the Act of 1959) have not been complied with.

2. The petitioner was appointed as Upper Division Clerk in the office of the Pauchayat Samiti, Sirohi on 24th February, 1971. Thereafter the petitioner was transferred from Sirohi to Shivganj vide order dated 4th January, 1983. Then again on 7th January, 1983 the order dated 4th January, 1983 was amended and the petitioner was transferred from Sirohi to Pindwara. Thereafter on 11th January, 1983 the Vikas Adhikari Panchayat Samiti, Pindwara posted the petitioner at Panchayat Samiti Pindwara. The Pradhan Panchayat Samiti, Sirohi vide communication dated 13th January, 1983 addressed to Shri N.N. Chaturvedi, Secretary, District Establishment Committee requested that the order of transfer of the petitioner may be cancelled. This letter written by the Pradhan Panchayat Samiti Sirohi was not accepted and the petitioner was asked to join at Pindawara and it was also stated that failing which the disciplinary action will be taken. Thereafter by the communication dated 9th February, 1983 the Vikas Adhikari Panchayat Samiti Sirohi communicated that the Taxation

Finance and Administration Committee of the Panchayat Samiti vide its Resolution No. 9 dated 7th February, 1983 has directed that the petitioner should not be relieved. The letter dated 9th February, 1983 as well as the Resolution dated 7th February, 1983 have been filed with the writ petition as Annexures 6 and 7. The Pradhan of the Panchayat Samiti again wrote to the Secretary, District Establishment Committee that the order of transfer of the petitioner was made without any consultation with him, and be requested that the transfer should not be effected. The Dy. Development Commissioner Administration-3 directed the Vikas Adhikari Sirohi vide its communication dated 5th April, 1983 to relieve the persons including the petitioner for carrying out the transfer order. It is also stated that the District Establishment Committee has made the order after oral consultation with the Pradhan but this allegation was repudiated by the Pradhan that he was never consulted either orally or in writing. Thereafter explanation of the Vikas Adhikari was also sought that why disciplinary action would not be taken against him for not complying with the transfer order of the petitioner. In these circumstances the petitioner has approached this court by filing the present writ petition that the petitioner's transfer has been made without complying with the provision of Section 86(9) as well as Rule 28 of the Rajasthan Panchayat Samiti and Zila Parishad Service Rules, 1959 (here in after referred to as the Rules of 1959).

3. A return has been filed and it has been submitted that on account of the political influence exerted by the petitioner on Pradhan, the Pradhan resiled from his consent. It has further been submitted that subsequent resolution of the Panchayat Samiti is meaningless because of the order of transfer was already made with the consent of the Panchayat Samiti.

4. I have heard both the learned Counsel for the parties and perused both the writ petition and reply filed by the respondents. I think the transfer order of the petitioner was issued in contravention of the provision of Section 86(9) of the Act of 1959 and is illegal and without jurisdiction. The admitted fact is that the petitioner has been transferred without consultation with Panchayat Samiti. As per the requirements of Sub-section (9) of Section 86 consent of the Panchayat Samiti has to be obtained before effecting transfer. In the present case no resolution of the Panchayat Samiti Sirohi has been brought to my notice whereby the Panchayat Samiti Sirohi agreed for transfer of the petitioner from Panchayat Samiti Sirohi to Panchayat Samiti Pindwara. On the contrary the Pradhan has said that the petitioner should not be transferred and he clearly mentioned in the communication which was addressed to the Secretary District Establishment Committee that he did not give any consent for transfer of the petitioner either orally or written. More so the resolution has been passed by the Panchayat Samiti, though it may be after effecting the transfer of the petitioner, that the Panchayat Samiti did not agree with the transfer of the petitioner from Panchayat Samiti Sirohi to Panchayat Samiti Pindawara. In view of this fact it is clear that the transfer of the petitioner is in contravention of Section 86(9) of the Act of 1959, therefore the transfer of the petitioner from Panchayat Samiti Sirohi to

Panchayat Samiti, Pindawara (Anx. 2) dated 7th January, 1983 is quashed. It will be open for the respondents to pass a fresh order in accordance with law.

5. The writ petition is allowed as indicated above. No order as to costs.