
(2016) 03 RAJ CK 0119
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11082 of 2015

Vishwajeet Singh	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Citation : (2017) 1 WLN 43

Hon'ble Judges : Mr. Sandeep Mehta, J.

Bench : Single Bench

Advocate : Mr. Pramendra Bohra, Advocate, for the Petitioner; Mr. B.L. Bhati, AGC, for the State; Mr. Hemant Kumar Upadhyay, DEO (Secondary), Bikaner, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Sandeep Mehta, J. - By way of this writ petition, the petitioner has approached this Court assailing the order (Annex.6) dated 11.9.2015 whereby, the petitioner, who is working as PTI Gr.III in the Secondary Education Department, was transferred from Govt. Upper Primary School, Subhashpura, Bikaner to Govt. Secondary School, Hafasar, Loonkaransar.

2. The order has been assailed on the ground that the same does not provide that the transferred employee would be entitled to any TA.

3. Learned counsel for the petitioner placing reliance on the Appendix 7 of the Rajasthan Travelling Allowance Rules, 1971 submits that as per the Appendix, it is mandatory to mention in the order that the transfer of the concerned employee has been ordered in public interest or for administrative exigencies. Failure to do so would give rise to an assumption that the transfer is being made at the request of the employee and such employee would thereafter not be entitled to claim transfer allowance. Learned counsel submits that it is not mentioned in the impugned transfer order that the transferred employee would be entitled to transfer allowance. Thus, as per him, it has to be presumed that

the transfer was made at the request of the employee concerned. Learned counsel contends that admittedly the petitioner made no request for his transfer and therefore, it is evident that the impugned order is illegal and has been passed with total ignorance to the mandatory requirement of the Appendix of the Rules of 1971. He submits that officials of the Education Department are in the habit of passing such mechanical transfer orders, which is resulting into institution of large number of writ petitions before this Court or appeals before Rajasthan Civil Services Appellate Tribunal for assailing such illegal orders. He thus prays that the writ petition deserves to be accepted and the impugned transfer order should be quashed and set aside.

4. In order to appreciate the assertion made by the learned counsel for the petitioner that the impugned transfer order was passed with total non-application of mind, Shri B.L. Bhati, learned AGC had been directed to keep the concerned District Education Officer (Secondary Education), Bikaner present in the Court.

5. The District Education Officer (Secondary Education) Bikaner Shri Hemant Kumar Upadhyay is present in the Court today.

6. He admitted that by inadvertence, it could not be mentioned in the order that the transferred employee would be entitled to transfer allowance. However, it is submitted that a corrigendum was issued on 18.12.2015 wherein, it has been provided that all the transferred employees would be entitled to transfer allowance.

7. Be that as it may, the fact remains that owing to this non-application of mind by the concerned Officer while passing the transfer order, unnecessary and unwarranted litigation has been added to the ever growing coffer of cases pending in the Court. The situation could have been avoided if the rules had been applied earnestly. The notice of the writ petition and the interim order was served upon the authorities in the month of September 2015. The rectification was effected much later i.e. in December 2015.

8. From the above situation, it is evident that the mistake though may be inadvertent has given rise to unnecessary litigation before this Court. The concerned official is cautioned to remain careful in future.

9. Thus, while allowing the writ petition and setting aside the impugned transfer order (Annex.6) dated 11.9.2015 qua the petitioner, the interim order dated 24.9.2015 is made absolute. However, the concerned authorities are given liberty to pass a fresh lawful order for the petitioner's transfer/posting if administrative exigencies so require. No order as to costs.