

(2018) 12 J&K CK 0044

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2482 Of 2018, IA No. 01 Of 2018

Zamir Ahmad Bhat And Others APPELLANT@Hash Union Of India And Others

Date of Decision : 14-12-2018

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 94(7)

Citation : (2018) 12 J&K CK 0044

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : M. A. Wani, Sajad Sarwar, T. M. Shamsi, Altaf Haqani

Final Decision : Dismissed

Judgement

1. The case set up by petitioners in this petition is that they were initially engaged as Labourers by respondent no.2 at TMGPB, Manasbal, in the year 1988 and 1991. They were assigned the job of labour to dig and plant mulberry and other trees in the nursery, which was spread over 39 acres of land. They were all converted as Time Scale Farm Workers (for short "TSFW") with effect from 1st April 1997 and were placed in the then pay-scale of 1200-1700. Petitioners have placed on record the orders pertaining to their conversion from casual workers to TSFWs.

2. Petitioners state that even after their conversion as TSFW, they continued to perform their duties in PMGPB, Manasbal, but immediately after respondent no.2 took over as Director, Central Sericultural Research & Training Institute, Pampore, he decided to shift them and other Small Time Employees of Ganderbal Nursery, for extraneous considerations and vide order no.CSB/CTRITI/01(5)/2018-19 / 19 dated 6th April 2018, petitioners along with other fellow workers from Manasbal Station were deputed to Pampore Station. Petitioners claim that they approached respondent no.2 and made a detailed representation to him. Respondent no.2 by way of representation was beseeched not to transfer petitioners, who were Small Time Temporary Workers, from Manasbal to Pampore - a far off place. It is submitted that respondent no.2 acceded to

request of petitioners and did not shift them to Pampore. However, this was only a temporary relief as respondent no.2 issued individual orders (Annexure D with writ petition), shifting petitioners from Manasbal to CSR&TI, Pampore. All petitioners were relieved of their duties with effect from 17th October 2018 with a direction to report at CSR&TI, Pampore on 18th October 2018, positively. All these orders were issued on 8th October 2018.

3. Petitioners are aggrieved of orders of their transfer, which are appended with the petition as Annexure D and order of their relieving (Annexure E) and challenge the same, inter alia, on the following grounds:

(a) That petitioners are temporary employees and are getting wages less than Class-IV employees and as such, they cannot be transferred from one place to another, for this would not only put them to grave inconvenience but would virtually deprive them of their respectable livelihood.

(b) That respondent no.2 has passed impugned order at the verge of his retirement and therefore same are actuated by extraneous considerations.

(c) That petitioners have been working in District of Ganderbal for last 20 years and therefore cannot be transferred outside the District.

(d) That orders impugned are arbitrary as the same have not been issued to subserve any interest of administration.

4. Respondents have filed their objections and have stated that all the petitioners are Farm Workers and therefore hold transferable positions. It is stated that transfers of petitioners were necessitated in the exigency of work and it is for employer to decide as to where services of its employees can be better utilised. It is submitted that CSR&TI, Pampore, has been catering main research activities of the Board by utilizing the services of 20 Scientists, 55 Technical Staff Members, and 15 Ministerial Employees. They are assisted by 27 Skilled Workers (previously known as Time Scale Workers) against sanctioned/required strength of 40 Skilled Workers, whereas Basic Seed Farm at Manasbal, only grows mulberry tree plantation, which does not require any watch and ward and is only spread over an area of 02 hectares. It is, thus, submitted that need of the Farm Workers in Pampore is much more pressing than in the Basic Seed Farm, Manasbal. It is stated that against requirement of 10 Skilled Farm Workers, the Basic Seed Farm at Manasbal has a deployment of 32 Skilled Farm Workers and therefore, excess of staff there. It is urged that keeping in view the best interest of administration and utilisation of surplus workers of Basic Seed Farm, Manasabal, the impugned orders were necessitated. Lastly, it is urged that the post of Farm Worker is transferable post and such Workers can be transferred from one farm to another farm subject to payment of Disturbance Allowance as provided in Labour Manual of Central Silk Board.

5. Having heard learned counsel for parties, I am of the considered view that petitioners have no cause to maintain this petition nor orders impugned call for

any interference by this Court.

6. Chapter 9 of Labour Manual 2011, issued by Central Silk Board, Ministry of Textiles, Government of India deals with general conditions of Farm Workers. Rule 9 of Chapter 9, which was strongly relied upon by respondents, deserves to be reproduced hereunder:

"Transfer of Farm Workers:

9. A Farm Worker is generally not liable for transfer from one State to another unless it is requested for. However, he is liable for shifting from one unit to another in public interest in exigencies of work, in which event, he is eligible for Disturbance Allowance....."

7. From the perusal of aforesaid Rule 9 of Chapter 9, it is abundantly clear that the post of Farm Worker is transferable and a person, working as Farm Worker, is liable to be transferred/shifted from one unit to another in exigency of work and in that event, he would only be entitled to payment of Disturbance Allowance. In the face of aforesaid specific condition of service, the plea of petitioners that they being Class-IV Farm Workers cannot be transferred, is not acceptable. It is true that a Farm Worker is Class-IV employee with meagre salary and his transfer from one place to another would definitely expose him to some hardship; realising this aspect, respondents have provided for payment of Disturbance Allowance over and above the salary to which such workers are entitled to.

8. The other allegations of petitioners that impugned orders have been actuated by ulterior considerations are not supported by any material or is there anything on record which would indicate or suggest that respondent no.2, who is Director of the Institute, is inimical to them. Respondent no.2 in his Reply Affidavit, has explained the reasons, which have constrained him to shift petitioners from Manasbal to Pampore. In compliance to the orders impugned, one of the petitioners, who appeared before this Court in person, has already joined and even indicated his intention to withdraw from the writ petition.

9. Needless to reiterate, that transfer is an exigency of service and it is for the employer to decide where services of his employee are required or better utilised. Once it is demonstrated that petitioners are holding transferable posts, they cannot claim that they should stay at a particular place for decades together and should not be transferred. Reliance placed by learned counsel for petitioner on the judgement of the Supreme Court rendered in the case of State of Madhya Pradesh v. Shankar Lal and others, (1980) 1 SCC 702, is also misplaced. In the aforesaid case, the Supreme Court was considering provisions of Section 94 (7) of the Madhya Pradesh Municipalities Act, 1961 and in the context of controversy raised therein, held that the State Government is though empowered to transfer the employees of the Municipalities, should exercise such power of transfer sparingly and under only compelling exigencies if it pertains to transfer of an employee getting small emolument. It was also held that such transfers should not be made as a matter of routine. In the instant case, as noted above, facts

are entirely different. Petitioners, who have been posted in Seed Farm, Manasbal, for the last several years, have now become due for transfer and their services are required elsewhere, i.e. Pampore. Under the compelling exigencies and the peculiar situation obtaining in the case respondent no.2 has decided to shift petitioners to Pampore, so that their services are better utilised there. Realising that such shifting of employees getting small emoluments would expose them to hardship, respondents in terms of Rule 9 of Chapter 9 have provided for payment of Disturbance Allowance. Similarly, other judgement, relied upon by learned counsel for petitioner reported as 2003 LLR 760, titled as Usha Workers' Union v. Usha Martin Industries Ltd and another, would also be of no use to the petitioners. As noted above, petitioners have failed to demonstrate any mala fide on part of officers of respondent Institute, including respondent no.2. It is evident that the transfer of petitioners has been ordered in administrative exigencies.

10. For the aforesaid reasons, I do not find any reason to interfere with the orders of transfer of petitioners. Writ petition is, therefore, found to be without any merit and is, accordingly, dismissed. Interim direction(s), if any, shall stand vacated.