

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP no. 1503/2008

CMP no. 2127/2008

Date of Decision: **03.01.2009**

Pritam Singh

v.

State and Ors.

Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : Mr. B.S.Salathia, Advocate.

For Respondent(s) : M/s D.C.Raina, AG & Vikram
Sharma, Advocate.

- | | | | |
|-----|--|---|---------|
| i) | Whether to be reported
in Press/Journal/Media | : | Yes/No. |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No. |

Petitioner has filed this writ petition questioning Government Order no. 383-FST of 2008 dated 10.10.2008 in so far as it directs petitioner's transfer and posting as Incharge Deputy Director, Forest Protection Force, Kishtwar against an available vacancy, on the ground that the order had neither been issued in the interest of administration nor in public interest.

Pleading the impugned order to be malafide and in arbitrary exercise of authority by the respondents, it is urged by petitioner's counsel Mr. Salathia that, respondents' non-application of mind in issuing petitioner's transfer order was writ large as they had incorrectly shown him, in the impugned order, as

Incharge **ACF, Udhampur** whereas he had been working as Incharge Project Officer, **Ujh-I, Kathua**.

Supplementing his submissions, learned counsel urged that the impugned order had not been implemented before coming into force of the Model Code of Conduct during the Assembly Elections but despite that the respondents had been pressurizing the petitioner to join his new place of posting, although they were not obliged to do so to respect the Code of Conduct.

Referring to petitioner's earlier transfers and postings, learned counsel submits that petitioner had suffered because of his frequent transfers and the impugned order therefore needs to be interfered with.

Questioning petitioner's right to invoke extraordinary writ jurisdiction of the Court, respondents have stated that petitioner was one of various officers of the Forest Department who had been transferred, in the interest of administration, vide Government Order No. 383-FST of 2008 dated 10.10.2008 and the typographical error appearing in the order showing him to be I/C ACF, Udhampur rather than I/C P.O, Ujh-I, Kathua, had been subsequently corrected vide corrigendum dated 29.10.2008, as desired by the petitioner vide his representation.

Meeting petitioner's plea regarding violation of Model Code of Conduct, it is stated that although petitioner's transfer order was not affected by coming into force of the Model Code of Conduct, yet the Chief Electoral Officer, Jammu and Kashmir had communicated its No Objection to implementation of Order no. 382/383-FST of 2008 dated 10.10.2008 vide its No. 01/CS-Elec/MCC/2008/173 dated 20.11.2008 and in that view of the matter, the order impugned in the writ petition would not suffer from any irregularity or illegality, as canvassed on behalf of the petitioner.

I have considered the submissions of learned counsel for the parties and perused the official records made available by learned Advocate General.

Perusal of the official records indicates that the State administration had felt need to rationalize postings in the Forest Department as, in the past, no criteria had been followed for such transfers and postings. Even the junior officers are stated to have been given important assignments and senior officers either attached or given postings not commensurate with their status.

The Administration had thus, after reviewing earlier postings, ordered postings of various officers in the Forest Department on the basis of criteria reflected in the office notings.

The impugned order had been issued by the respondents after getting it examined at required levels.

The law on the point is well settled that no Government Servant has any legal right to be posted for ever at any one particular place since transfer of a particular employee appointed to the Class or Category of transferable posts from one place to another is not only an incident, but a condition of service which is additionally necessary, in public interest and efficiency in public administration (please see (2001) 8 SCC, 574).

Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts are not required to interfere with such orders passed in the interest of administrative exigencies of the service concerned.

Except raising bald allegation in the writ petition that the impugned transfer order was malafide, the petitioner has neither laid any basis nor made requisite pleadings on the basis whereof plea of malafides may be gone into.

A Government Servant cannot disobey transfer order by avoiding reporting at the place of posting and rather approaching the Court to ventilate his grievances. It is his duty to first report for work where he is

transferred and thereafter make representation to his employer regarding any grievance or personal problem he may have.

Petitioner's counsel's submission that administrative instructions issued by the State Government against pre-mature transfers having not been followed would render impugned order unsustainable, is not tenable as the administrative instructions, referred to by the petitioner's counsel, do not contain any prohibition as such against pre-mature transfers.

That apart, transfer order may be questioned only if there is either any statutory prohibition against transfer or it is otherwise malafide or unconstitutional.

In view of the position emerging from the official records indicating that transfers had been made on the basis of a set out criteria, I do not find any ground for interference in the impugned transfer order.

There is no merit in the writ petition which is, accordingly, dismissed vacating interim order issued on 04.11.2008.

(J.P.Singh)
Judge

JAMMU:
03.01.2009
Pawan Chopra