

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP No. 1014/2013
CMA No. 1438/2013

Date of order :05.06.2013

Ashok Kumar Kikloo v. State and others.

Coram:

Hon'ble Mr. Justice Tashi Rabstan,Judge.

Whether approved for reporting : Yes.

Appearing counsel:

For the petitioner (s) : Mr.P.N.Raina, Sr. Adv. with Mr. JA Hamal, and Mr. Virender Bhat, Mr. Sudershan Sharma Advocates.

For the respondent(s) : Mrs. Seema Shekhar, AAG for official respondents 1 and 2.
Mr. S.S.Lehar, Sr. Adv. with Mr. Ravi Abrol, Adv. for respondent No.3.

1. Petitioner while serving as Incharge Assistant Executive Engineer in JK PCC on deputation came to be repatriated and posted as Incharge Executive Engineer, PMGSY, Reasi. After completion of a period of ten months, he again vide Order No.516-PW(R&B) of 2012 dated 06.12.2012 came to be transferred as Incharge Executive Engineer, PMGSY, Jammu against one Javed Iqbal. Accordingly, he took over the charge on 12.12.2012. While the petitioner was working there, he again came to be transferred vide Govt. Order No.146-PW (R&B) of 2013 dated 26.04.2013. It is this order which is called in question by the petitioner in the present writ petition on two counts; firstly that frequent and premature

transfer of the petitioner is against the transfer policy issued by the Government; and secondly that impugned transfer order suffers from malafide. The very basis of malafide as alleged in the writ petition is that there are other persons in the Department, who are serving in the same capacity having more than two years of stay have not been touched, but, the petitioner is being transferred frequently.

2. Upon notice, respondents have filed the reply contending therein that transfer from one place to another is an exigency of service and it is the prerogative of an employer to make transfers in the interest of administration. It is contended that the State Government is clothed with the powers to make transfers in administration exigency and no right is vested in any employee to remain posted to a particular place. Law is well settled that the order of transfer issued by the competent authority in the interest of administration cannot be construed to be violative of any right of the employee. Thus, it is contended that the order has been passed in the interest of administration after due application of mind.
3. I have heard learned counsel for the parties and perused the record.
4. The short question for determination is as to whether transfer orders issued by the official respondents transferring the petitioner thrice from one place to another place within the span of about 15 months are beyond the executive domain of the respondents or as to whether the impugned order is infested with malice and suffers from malafide.

5. The precise case of the petitioner in this petition is that he is being transferred frequently without assigning any reason and with malafide intentions. It is averred that transfer order of the petitioner being patently illegal, arbitrary, against law and service jurisprudence as also against the latest transfer policy of the Government, is liable to be quashed as the same seems to have been passed without non-application of mind and in hush-hush manner.
6. This Court vide order dated 06.05.2013 directed for keeping in abeyance the impugned transfer order so far as it related to the petitioner.
7. Feeling aggrieved, respondent No.3 herein filed application for vacation of order dated 06.05.2013 on the grounds that he had already joined at the transferee place. It was contended that he after serving for a period of more than two years on deputation in Jammu Development Authority came to be transferred as Incharge Executive Engineer in Public Works Department at Udhampur vide Government Order no. 215-PW(R&B)/2012 dated 27.04.2012. In pursuance of order No.146-PW (R&B) of 2013 dated 26.04.2013, which is impugned in this writ petition, he came to be transferred from Public Works Department (R&B), Udhampur to PMGSY Jammu vice Shri A. K. Kikloo-petitioner. It was further contended that in terms of aforesaid order, impugned herein, respondent No.3 has already joined his new place of posting and was working there for the last more than seven days. In this regard, he had also placed on record a copy of his joining report.
8. Mrs. Shekhar, learned counsel for the official respondents submitted that the petitioner was on leave and vide

application dated 02.05.2013, he sought further extension of leave, which too was extended in favour of the petitioner. She further contended that transfer from one place to other is an exigency of service and it is the prerogative of an employer to make transfers in the interest of administration. No right is vested in any employee to remain posted at a particular place. Law is well settled that the order of transfer issued by the competent authority in the interest of administration cannot be construed to be violative of any right of the petitioner or any other employee of the Department. The order has been issued in the interest of administration after due application of mind. Mrs. Shekhar, learned counsel for the official respondents further contended that the petitioner has not approached this Court with clean hands and suppressed the material facts in the writ petition as also in the application for interim relief as he has not revealed before the Court that respondent No.3 had since joined against the post from which the petitioner had been transferred. The law is well settled that the extra ordinary writ jurisdiction of the Hon'ble Court needs not to be exercised in favour of a person, who does not approach the Hon'ble Court with clean hands.

9. Learned counsel appearing for the petitioner submitted that the petitioner was on casual leave w.e.f. 29.04.2013 to 01.05.2013 on account of marriage ceremony of one of his relations and the same was further extended on 02.05.2013, therefore, he was not aware about the passing of impugned transfer order nor was he aware about putting the joining report by respondent No.3. When he came to know about the passing of impugned order, he approached this court and got the order. Therefore,

there was no question of concealing/suppressing material facts or approaching the court with un-cleaned hands.

10. Therefore, in the given circumstances that respondent No.3 had already joined at the place of the petitioner before issuance of order dated 06.05.2013, this court vide order dated 10.05.2013 while modifying its earlier order dated 06.05.2013 directed the petitioner to report to the office of Chief Engineer, PMGSY, till final decision of the writ petition.
11. As stated above, order impugned is primarily challenged on two counts that the same is in violation of transfer policy issued by the Government and secondly that the transfer has been made with malafide and has not been issued to subserve the interest of administration.
12. So far as plea of the petitioner with regard to transfer policy is concerned, the same is not sustainable for the reason that the transfer policy promulgated by the Government is an executive order having no statutory flavour, as such, cannot be enforced by way of writ of mandamus. Policy decisions of the Government are in the shape of executive instructions and Government in a peculiar facts and circumstances is well within its competence to modify or debate in the interest of administration unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts normally cannot interfere with such orders as a matter of routine.
13. The order impugned as is apparent from its bare perusal, is general order effecting transfers of about sixty one persons, as such, cannot be called to be either malafide

or arbitrarily and it is for the employer to decide as to whether services of a particular employee can be better utilized and the Courts cannot substitute their opinion in this regard. The plea of frequent transfer would also not be available to the petitioner for the reason that first transfer was only by way of deputation and second transfer though pre-mature was happily accepted by the petitioner and it is only third transfer impugned in this writ petition, the petitioner has felt aggrieved.

14. Vide order dated 06.12.2012, the petitioner was transferred and posted as Incharge Executive Engineer, PMGSY at Jammu. Thereafter, vide order dated 26.04.2013, he was again transferred and posted at Agriculture Production Department, Jammu itself against an available vacancy. It appears that the petitioner came to be transferred from PMGSY to Agriculture Department, Jammu i.e. within the same District, therefore, how he is aggrieved of the transfer order is not forthcoming, when as per the particulars given by the petitioner in the writ petition, he is residing at Jammu itself. No Government servant has any legal right to be posted forever at any one particular place or place of his choice. Since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Therefore, the plea of the petitioner of frequent transfer is not sustainable.
15. So far as 2nd plea of the petitioner is concerned, the same cannot be accepted for the reason that the petitioner has not given any material particulars constituting malafide in the writ petition nor he has

arrayed the persons, against whom the malafide is alleged, as party respondents. Though, the petitioner has leveled allegations of malafides against the official respondents, but no particulars of malafide are detailed in the writ petition. The allegation of malafide is to be proved by the petitioner with materials or evidence, otherwise the Court will not entertain the point. Mere making an allegation does not serve the purpose. In case at hand, no material fact has been pleaded in the writ petition supported by evidence regarding the alleged allegation of malafide. The onus of proving malafides is on the person leveling such allegation. The present transfer order is passed by the competent authority, therefore, the ground of frequent transfer order is not made out. Accordingly, the pleas raised by the petitioner against his transfer order do not require any judicial review. Therefore, I am not inclined to interfere into the matter.

16. Having heard learned counsel for the parties and on perusal of the record, it is clear that challenge to the order of transfer, is not made out on the ground of any statutory rules or regulations being violated nor any malafides made out.
17. Therefore, on consideration of the matter in the totality of the circumstances, I am of the considered view that there is no merit in this petition. Accordingly, the same is **dismissed** along with connected CMA(s).
18. Interim arrangement, if any, shall stand vacated.

**(Tashi Rabstan)
Judge**

Jammu.
05.06.2013
'Madan'PS