

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.1438/2013
CMA No.2077/2013

Date of order: 28.03.2014

Urja Bhutyal and others. v. State of J&K and others.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Appearing counsel:

For the Petitioner(s) : Mr. Sudershan Sharma, Advocate.

For the respondent(s) : Mr. Ravinder Sharma, AAG.

i/	Whether to be reported in Press, Journal/Media	:	Yes/No
ii/	Whether to be reported in Digest/ Journal	:	Yes/No

1. The matter pertains to transfer of the petitioners. As per the transfer order passed by the Chief Education Officer, Kishtwar, who himself was under transfer. Petitioner No.1 Urja Bhutyal, Teacher HSS Palmar Zone Nagseni was transferred and adjusted in GMS Sarkoot Zone Kishtwar against the vacancy caused by Mtr. Fehmida Iqbal. Likewise, transfer of Farida Banoo, Tasleema Begum, Sheetal Sharma, Shamima Akhtar were ordered. The aforesaid orders were issued on different dates of May, 2013. However, the Additional Secretary to Govt., School Education Department passed an order cancelling the transfer of the petitioners from one school to another ordered by the Chief Education Officer, Kishtwar, who himself was under transfer. The impugned order dated

26.06.2013 passed by the Additional Secretary to Govt., Education Department is set out below *in extenso*, which reads thus:-

“No:Edu/II/262/2013 Dated: 20.06.2013
Subject:- Cancellation of transfer orders issued by the
then Chief Education Officer, Kishtwar.

Sir,

I am directed to enclose herewith a list of teachers/ReT regularized teachers who have been transferred from one School to another School by the then Chief Education Officer, Kishtwar who was under orders of transfer. These orders of transfers are hereby rescinded with immediate effect. Further the new Chief Education Officer, Kishtwar will examine the whole issue and submit a detailed report in the matter.”

2. The principal ground to challenge the order dated 20.06.2013 (Annexure-C) cancelling the transfers is that the petitioners have served at the previous places of postings for a period of 4 to 10 years and they had already joined at the new place of postings. According to the allegations made in para 5(E) of the writ petition, the impugned order has been passed by political intervention and it is not in public interest.

3. Mr. Ravinder Sharma, appearing on behalf of the respondents has placed on record two documents dated 16.02.2013 and 21.06.2013, showing that there was a complete ban on transfers till further orders and the ban was lifted only on 21.06.2013. A copy of each of the order dated 16.02.2013 and 21.06.2013 has been taken on record as mark "A" and "B".

4. I have heard learned counsel for the parties and have perused the record.

5. It goes without saying that transfer is an incidence of service and it can always be ordered in larger public interest. The transfer orders earlier passed were rescinded because the Chief Education Officer, who passed the orders, was himself under transfer. Moreover, those orders were against the ban imposed on transfer and postings. Therefore, recalling of all those transfers by the impugned order issued by the Additional Secretary to Government, School Education Department on 20.06.2013 (Annexure-C) cannot be regarded as illegal or suffering from any legal infirmity warranting interference of this Court.

6. It is well settled that judicial review of transfer order is almost impermissible. It has been repeatedly held by Hon'ble the Supreme Court that transfer is prerogative of the authority concerned and the Courts should not normally interfere in such orders except when the transfer order shown to be (a)vitiated by malafides; or (b) in violation of any statutory provisions; (c) having been passed by a authority not competent to issue such orders. In that regard reliance may be placed on the observations made by Hon'ble the Supreme Court in the cases

of State of U.P. v. Gobardan Lal, (2004) 11 SCC 402 and Airport Authority of India v. Rajeev Ratan Pandey, (2009) 8 SCC 377.

7. When we apply the principles enunciated in the aforesaid judgments to the facts of the present case, it is evident that transfer orders earlier passed by the Chief Education Officer, Kishtwar were contrary to the ban imposed on transfers and postings. There are no allegations of malafide or violation of rules, which may warrant interference of this Court. Moreover, the Additional Secretary to Government, School Education Department has merely directed the new Chief Education Officer, Kishtwar to examine the whole issue and submit detailed report in the matter. It is thereafter that the competent authority is to take action. There is no illegality in the aforesaid process.

8. As a sequel to the above discussion, this petition fails and the same is dismissed. However, the process initiated by the impugned order shall be completed within a period of four weeks and the petitioners shall continue to function on their present place of postings till then.

(M. M. Kumar)
Chief Justice

Jammu,
28.03.2014
Vinod.