

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT JAMMU**

SWP No. 2166/2013

Date of order: 01.01.2016

Naresh Kumar Jain son of Mr. Nirmal Kumar Jain resident of F-66/2 Shakti Nagar Jammu aged 52 years.

Vs.

1. State of Jammu and Kashmir through its Chief Secretary, Civil Secretariat Srinagar.
2. Secretary to Government, School Education Department, J&K Government Civil Secretariat Srinagar.
3. Director School Education Jammu.
4. Chief Education Officer, Jammu
5. Principal Government SRML Higher Secondary School Jammu.
6. Smt. Sheetal Sharma lecturer in Mathematics orders of transfer from Government Girls Higher Secondary School, Pallanwala to Government SRML Higher Secondary School Jammu.

**Coram:**

**Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice**

**Appearing counsel:**

For the petitioner(s)	:	Mr. D.S.Chouhan Advocate. .
For the respondent(s)	:	Mr. Ravinder Gupta AAG.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

1. This writ petition is filed challenging the transfer of the petitioner, who is working as Master from Government SRML Higher Secondary School Jammu to Government Girls Higher Secondary School Pallanwala by order dated 04.10.2013 issued by the Director of School Education Jammu .

2. The grievance of the petitioner is that he is a physically challenged person due to amputation of his right arm below shoulder and his disability was assessed

at 85% as certified by the Department of Social Welfare after examination by the District Medical Board, Jammu. The petitioner was selected as a Teacher under the Handicapped category and thereafter was promoted as Master in the Handicapped category by order dated 27.01.2004. While serving in Government SRML Higher Secondary School Jammu, the petitioner was transferred to Girls Higher Secondary School Pallanwala which is about 60 kilometers and is causing great inconvenience to the petitioner, who is having 85% disability.

3. The Jammu and Kashmir Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998 was enacted bearing in mind the enactment of the Central Act 1 of 1996 i.e The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation )Act, 1995. The said Act mandates rehabilitation measures to be taken for the disabled persons not only for employment even during the course of employment. By transferring the petitioner from Government SRML Higher Secondary School Jammu to Girls Higher Secondary School Pallanwala, his workplace has been put to jeopardy.

4. Considering the physical condition of the petitioner, this Court granted interim stay of the order of transfer of the petitioner and the said order is still in force.

5. The respondents have not chosen to file any reply in the writ petition.

6. Heard Mr. D.S.Chouhan learned counsel for the petitioner as well as Mr. Ravinder Gupta learned AAG representing the respondents.

7. The point arises for consideration in this writ petition is as to whether the writ petitioner, who is having 85% disability due to amputation of his right arm below shoulder can be transferred to far off place from his original place of posting i.e from Government SRML Higher Secondary School Jammu to Girls Higher Secondary School Pallanwala.

8. The persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) was enacted with an object to improve the living conditions of people in large with disabilities, which is specifically stated in the objects and reasons of the Act. It is further stated therein that the Act was enacted to create barrier free environment for persons with disabilities; to lay down a strategies for comprehensive

development of programmes and services and equalization of opportunities for persons with disabilities; and to make special provision for the integration of persons with disabilities into the social mainstream. The purpose of the Act was to enact a comprehensive legislation as per the proclamation in the meeting held by the Economic and Social Commission for Asian and Pacific Region held at Beijing during December 1992 in which India was a signatory.

9. Section 66 of the Act 1/1996 mandates the appropriate Government and Local Authorities to undertake rehabilitation. Section 66(2) reads as follows:

***“Sec.66(2)For the purpose of sub section (1), the appropriate Governments and local authorities shall grant financial assistance to Non Government organizations.”***

10. As per Section 66(3), Appropriate Government and Local Authorities, while formulating rehabilitation policies were directed to consult the non-governmental organizations working for the cause of persons with disabilities. Section 72 of the Act states that the provisions of the Act as well as the Rules framed thereunder shall be in addition to and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or

issued for the benefit of persons with disabilities. Section 38(1)(d) of the Act mandates the appropriate Government and Local authorities to frame schemes for health and safety measures and creation of a non handicapping environment in places where persons with disabilities are employed. Thus, it is evident that the appropriate Government as well as Local Authorities are bound to frame regulation/schemes for protecting the safety measures and creation of environment in place of employment of the physically challenged persons.

11. In the light of the above statutory provisions which give protection to the physically challenged persons i.e statutory right to work at healthy and safe places, which can be insisted by the physically challenged persons as a matter of right under section 27 of the Jammu and Kashmir Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998 and also on the ground of violation of human rights, the transfer order issued so far as transferring the petitioner from Government SRML Higher Secondary School Jammu to Government Girls Higher Secondary School Pallanwala is bad.

12. The Division Bench of Madras High Court considered a similar transfer order issued to a 100% blind person and taking note of the provisions of the Central Act quashed the order of transfer. The said Judgment is reported in **2014 (6) MLJ 641 (Dr. D. Ramkumar vs. Pondicherry Society for Higher Education and ors.**

13. Thus, this Court is of the view that the order of transfer of the petitioner cannot be sustained and the same is set aside. The writ petition is allowed.

**(N. Paul Vasanthakumar)**  
**Chief Justice**

Jammu,  
01.01.2016  
Sanjeev