

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP No.325/2017
C/W
SWP No.822/2017

Date of order:31.08.2017

Dr. Mohammad Jaffar Akhoon v. State of J&K and ors

Coram:

Hon'ble Mr Justice Mohammad Yaqoob Mir, Judge.

Appearance:

SWP No.325/2017:

For the Petitioner(s): Mr. Z. A. Shah, Sr. Adv.

For the Respondent(s): Mr. B. A. Dar, Sr. Adv.for R1 to R3.
 Mr. M. Y. Bhat, Adv.-for R4.

SWP No.822/2017

For the Petitioner(s): Mr. M. Y. Bhat with Mr. Shuja-ul-Haq, Adv.

For the Respondent(s): Mr. B. A. Dar, Sr. Adv.for R1 to R3
 Mr. Z. A. Shah, Sr. Adv-for R4.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. Vide Government order No.76-GHME of 2017 dated 17.02.2017, petitioner Dr. Mohammad Jaffer Akhoon has been attached with the Directorate of Health Services, Kashmir, and has been relieved vide order dated 18.02.2017. Aggrieved thereof, he has filed the instant petition seeking quashment of both the two orders and has also sought issue of mandamus so as to command the respondents to allow the petitioner to discharge his duties as Chief Medical Officer, Kargil.

2. While considering the writ petition on 1st March, 2017, no stay was granted, however, keeping in view the allegations about *mala fides* projected in the petition, it was observed to be appropriate to decide the matter after detailed objections are filed by the respondents.

3. In the above referred order dated 17.02.2017, instead of “I/C C.M.O” word “C.M.O” was recorded which has been corrected by issue of corrigendum dated 01.03.2017.

4. During the pendency of writ petition, vide Government order No.163-HME of 2017 dated 17.03.2017, petitioner Dr. Mohammad Jaffer Akhoun was transferred and posted as Assistant Director (HEB), Jammu, with immediate effect. With the issue of order dated 17.03.2017, petition (SWP) No.325/2017 was rendered infructuous, however, petitioner filed an application for amendment so as to pray for quashing the said order dated 17.03.2017, which application has remained to be decided.

5. Again another development i.e. during pendency of the petition, vide Government order No.251-HME of 2017 dated 28.04.2017, petitioner Dr. Mohammad Jaffer Akhoun was transferred and posted as I/C CMO, Kargil, vice respondent No.4(Dr. Mohammad Ibrahim Khan). The said order is challenged by respondent No.4 by medium of connected petition SWP No.822/2017 titled “Dr. Ibrahim Khan Vs. State and others”. Vide detailed order dated 05.05.2017, operation of order dated 28.04.2017 along with relieving order dated 01.05.2017 was stayed with a further direction that the petitioner shall function as I/C CMO, Kargil, till further orders.

6. Heard learned counsel for the parties.

7. The fact of the matter is that Dr. Mohammad Jaffer (petitioner in SWP No.325/2017) right from the date he has been transferred from Kargil as I/C CMO has been agitating with a hope to get posted back at Kargil, which attempt has succeeded. According to respondent No.4-Dr. Mohammad Irbahim Khan (writ petitioner in SWP No.822/2017), petitioner Dr. Mohammad Jaffer, with the support and intervention of M. L. A. Mr. Bakir Rizvi, got transferred back to Kargil pursuant to order dated 28.04.2017, means just within two months, he has managed two transfers,

first he was attached, secondly he succeeded in getting himself transferred and posted as Assistant Director (HEB), Jammu vide order dated 17.03.2017 and then after one month succeeded in getting the order impugned dated 28.04.2017 issued. Dr. Mohammad Ibrahim Khan, in his petition, has levelled various allegations suggesting *mala fides*.

8. It appears that the order of transfer dated 28.04.2017 is not free from blame as the said order has the effect of dislodging Dr. Mohammad Ibrahim Khan just after two months of his stay as I/C CMO, Kargil. The orders have to be passed in the interests of administration not with a design to accommodate a particular officer/official. When it appears that the order of transfer has been issued with a design, then *bona fides* are wanting. Under such circumstances intervention of the Court becomes necessary.

9. No doubt, transfer is an exigency of service. No one can claim a vested right to remain posted at a particular place. When exigencies arise, it necessitates adjustments and dislodgment. When it is required in the interests of administration then it is un-interferable but once it appears to be with a design, then such a transfer is interferable.

10. No grounds, what to speak of sufficient grounds, are discernible from the records available and also from the records as produced by learned AAG which would suggest that the transfer order dated 28.04.2017 has been passed in the interests of administration. In turn it suggests that the same has been passed simply to accommodate Dr. Jaffar, therefore, same is not justified.

11. Viewed thus, Government Order No.25-HME of 2017 dated 28.04.2017 is quashed. SWP No.822/2017, accordingly, succeeds.

12. So far as SWP No.325/2017 is concerned, same, in view of later developments, more particularly in view of Government order No.163-

HME of 2017 dated 17.03.2017, is rendered infructuous, as such, is dismissed.

13. Record as produced by learned AAG is returned to him.

(Mohammad Yaqoob Mir)
Judge

Srinagar
31.08.2017
“Bhat Altaf, PS”

