

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPA No. 46/2018

MP No. 01/2018

Date of order: 31.05.2018

Din Mohd Khan

Vs.

State of J&K and others

Coram:

Hon'ble Mr. Justice Tashi Rabstan-Judge

Hon'ble Mr. Justice Sanjay Kumar Gupta-Judge

Appearance:

For the petitioner(s) : Mr. Iqbal Hussain Bhat, Advocate

For the respondent(s): Mr. Rohit Kapoor, Sr. AAG

Tashi Rabstan-J

1. Issue notice. Mr. Rohit Kapoor, Sr. AAG waives notice on behalf of respondents.
2. This Letters Patent Appeal is directed against order dated 01.05.2018 passed by the learned Writ Court in SWP No. 676/2018, whereby writ petition filed by the writ petitioner-appellant has been dismissed being without any merit.
3. The writ petitioner-appellant along with five other persons filed writ petition, being SWP No.676/2018 titled *Sujjan Singh and others v. State and others*, for quashment of Forest Order No.51 of 2018 dated 30.03.2018 passed by respondent No.4 and a direction to respondent No.4 to allow them to perform their duties at their present places of posting. Learned writ Court after analyzing facts projected in the writ petition dismissed the same while holding that order of transfer can be challenged only on the ground that if the same has been passed by an authority not having the jurisdiction to issue such an order or has been passed for *mala*

fide reasons or is otherwise contrary to the statutory provisions governing such transfers, but none of the aforesaid conditions existed. Being aggrieved, instant appeal has been filed by writ petitioner No.4-appellant primarily on the following grounds:-

- (i) That writ petitioner-appellant is at the verge of retirement and be transferred and posted to his home town: and
- (ii) That impugned order of transfer is discriminatory in nature and has been passed by the authorities at the behest of Minister concerned with *mala fide* intention;

4. Learned counsel for the writ petitioner-appellant has in support of his first contention relied upon a judgment passed by the Division Bench of this Court in case titled ***Tahira and others v. State and others*** reported in (2003) 3 JKJ 345. It is profitable to reproduce paragraph No.53 of the said judgment here as under :-

“53. Learned counsel, appearing in SWP No.1031/2003, Shahzada Zarkoob v. State of J&K and others brought to the notice of the Court that the petitioner is approaching her retirement. We understand that there is some rule or policy framed by the Government that Government servants nearing superannuation should be posted near their places of residence. Therefore, we observe that any of the petitioners, who is retiring within a period of two years from the date of this judgment, shall not be disturbed if he or she is presently posted near the place of residence.’

5. We have perused the judgment aforesaid, by which the Division Bench of this Court has observed that there is some rule or policy framed by the Government that the Government servants nearing superannuation should be posted near their places of residence and who are retiring within a period of two years from the date of judgment shall not be disturbed if he or she presently posted near the place of residence.

6. In the present case, it appears that in the impugned order of transfer, writ petitioner-appellant has been transferred and posted from Chilli Block, Bhalesh Range of Bhaderwah Forest Division to Home Block, Thakrai Range of Doda Forest Division, and in the memo of appeal writ petitioner-appellant has mentioned that he is resident of Tehsil Gandoh, District Doda. Thus, particulars given by writ petitioner-appellant show that he is residing in District Doda and insofar as impugned order of transfer dated 30.03.2018 is concerned, it on its cursory perusal reveals that writ petitioner-appellant has been transferred from Range of Bhaderwah Forest Division to Range of Doda Forest Division. Be that as it may, writ petitioner-appellant has been very much posted near the place of his residence, thus, the judgment relied upon by the learned counsel for the writ petitioner-appellant is not applicable to the case in hand.
7. With respect to the second contention that order impugned is discriminatory in nature and has been passed by the authorities at the behest of Minister concerned with *mala fide* intention, it may be mentioned here that in terms of order impugned not only writ petitioner-appellant, but ten more officers have been transferred and posted. The documents referred to by the writ petitioner-appellant is with respect to the meeting held by the Minister on 08.03.2017 in Civil Secretariat in which the said Minister issued certain directions, including to shift and transfer such staff who was not working satisfactorily for removal of encroachment of Forest Land. Pursuant to said direction, name of petitioner was also forwarded to Conservator of Forests, Chenab Circle, Doda. Having said so, it cannot be heard saying that order impugned is a single order of transfer relating to writ petition-appellant only, but ten more officers have also been transferred and posted, therefore, action of respondents based upon the directions of the Minister Incharge for

removal of the writ petitioner-appellant cannot be said to be *mala fide* in any manner.

8. Learned counsel for the writ petitioner-appellant contends that transfer of the petitioner was not in the public interest as the same is arbitrary, discriminatory and result of *mala fides* and, as such, transfer order be quashed.
9. *Per contra*, learned counsel for the respondents has contended that transfer of petitioner is made by an authority, who has competency and that too in the public interest, as such, it cannot be said that it is either discriminatory or *mala fide* in nature. It cannot be said that the respondents have followed discriminatory attitude in picking up only the petitioner. The petitioner has been transferred on the directions of the Forest Minister along with other ten persons. If the working of an employee in the governmental organization is unsatisfactory, then in the interest of administration, it becomes necessary to remove such officer to achieve the desired results. If the Minister Incharge was dissatisfied with the working of the Officers and staff in the anti-encroachment derive, it would be open to the respondent department to shift and transfer such staff so that the Forest could be protected from encroachments. There has to be accountability in the department. An employee cannot take his employment for granted and, therefore, transfer of petitioner cannot be said to be suffering from the arbitrariness.
10. The Supreme Court in **Union of India Vs S. L. Abbad, AIR 1993 SC 2444**, while holding that guidelines do not confer upon the Government employees a legally enforceable right, has held as under:

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority

must consider the same having regard to the exigencies of administration.....”

11. Learned counsel for writ petitioner-appellant also claimed that the order impugned has been passed with *mala fide* intentions. However, no such allegation of *mala fide* is contended nor has he arrayed the person(s), against whom the *mala fide* is alleged as party respondents. The same, therefore, cannot be accepted for the reason that the writ petitioner-appellant has not given any material or evidence constituting the *mala fides*. Mere making an allegation does not serve the purpose.
12. 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 alter the decisions with respect to transfers in the interest of administration unless an order of transfer is shown to be an outcome of *mala fide* 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. The order impugned as is apparent from its bare perusal, is general order effecting transfers of about eleven 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.
13. Transfer of Government servants, appointed to a particular transferable post from one place to another, is an exigency and incidence of service and does not affect or alter his terms and conditions of service. The Government has the power to transfer its employees from one place to another carrying equivalent pay scale and grade, but surely the Government has to exercise this power in a *bona fide* manner to meet the exigency of administration.
14. Learned counsel for the writ petitioner-appellant is unable to persuade us to take the view contrary to the one taken by the learned Single Judge.

Viewed thus, we do not find any reason to differ with the views taken by the learned Single Judge in the writ petition. Accordingly, the impugned judgment of learned Single Judge dated 01.05.2018 is upheld and appeal is **dismissed** along with connected MP(s), if any.

(Sanjay Kumar Gupta)
Judge

(Tashi Rabstan)
Judge

Jammu
31.05.2018
'Madan'

