



GOVERNMENT OF JAMMU AND KASHMIR
SCHOOL EDUCATION DEPARTMENT,
CIVIL SECRETARIAT JAMMU/SRINAGAR

(Legal Section)

Subject:- C.P. No. 115/2021 in O.A No. 783/2021 titled Mushtaq Ahmad V/s
UT of J&K and others.

Government Order No: 251 - Edu of 2022

D a t e d: 29 - 03 - 2022

Whereas, in the interest of administration and with the concurrence of General Administration Department vide No. GAD(ser)Genl/95/2013-III dated 03.05.2021, Sh. Mushtaq Ahmed, In-charge Chief Education Officer, Reasi has been transferred and his services has been placed at the disposal of UT of Ladakh vide Government order No. 303-Edu of 2021 dated 06.05.2021;

Whereas, Sh. Mushtaq Ahmed, is aggrieved of the above said Government Order filed O.A. No. 783/2021 titled Mushtaq Ahmed Vs Union Territory of Jammu and Kashmir and others before the Hon'ble Central Administrative Tribunal, Jammu Bench, Jammu;

Whereas, the Hon'ble Central Administrative Tribunal Jammu vide order dated 12.05.2021 disposed of the O.A of the applicant with the following directions:-

"...Looking to the limited prayer made by the learned counsel for the applicant, we dispose of the O.A with direction to the respondents to take a decision on the representation dated 06.05.2021 (Annexure No. VI to the O.A) by passing a reasoned and speaking order and communicate the decision so taken to the applicant within a period of ten days from today. Till then, the applicant may not be relieved from the present place of posting, if not already relieved for a period of ten days".

Whereas, the representation of the applicant was examined in the Department and found that the post of Chief Education Officer is a UT cadre

Contd.....2

post and the UT cadre Officer is required to serve in any part of the Union Territory of J&K/Ladakh upon Administrative requirement of the Government and as such cannot insist upon posting at a particular place of his choice;

Whereas, in terms of Rule 27 of Classification Control and Appeal Rules, 1956, a member of a service or class of a service may be required to serve in any part of the Union Territory of Jammu and Kashmir/Ladakh on any post borne on the cadre of such service or class;

Whereas, the issue of transfer and postings has been considered time and again by the Hon'ble Supreme Court, and the entire law is settled by catena of decisions of the Apex Court. It is settled law that transfer of a Government servant appointed to a particular cadre of transferable post from one place to the other is an incident of service. No Government servant, therefore, has any legal right for being posted at any particular place. Moreover transfer from one place to another is necessary in public interest and exigency in public administration as held in "Gujrat Electricity Board Vs Atma Ram Sugomal Poshani", AIR 1989 SC 1433, which reads as under:-

"An employee holding a transferable post cannot claim any vested right to work on a particular place as the transfer order does not affect any of his legal rights and Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency."

Whereas, the Hon'ble High Court of Jammu and Kashmir at Jammu vide its judgment dated 18.05.2018 passed in SWP No. 891/2018 titled Shivani Manhas Vs State of J&K and others has held that the transfer of an employee is the mandate of the employer and an employee can be transferred at any place keeping in view the administrative exigency;

Whereas, a Division Bench of the Hon'ble Supreme Court while dismissing a Special Leave Petition (SLP) vide its judgment dated 06.09.2021 has passed the following:-

"It is not for the employee to insist to transfer him/her and/or not to transfer him/her at a particular place. It is for the employer to transfer an employee considering the requirement,"

Contd.....3

Whereas, his services was needed in Ladakh and being a joint cadre till that point, it was exigencies to post him there.

Now, therefore, the claim of the applicant has been considered in light of the directions passed by the Hon'ble Central Administrative Tribunal, Jammu Bench, Jammu on 12.05.2021 passed in O.A. No. 61/783/2021 titled Mushtaq Ahmad Vs Union Territory of Jammu and Kashmir and others and has been found devoid of merit, hence rejected.

By Order of the Government of Jammu and Kashmir.


Sd/-
(B.K. Singh)
Principal Secretary to Government
School Education Department

Dated 29 -03-2022

No. Edu-LGL0Jmu(CAT)/9/2021-01

Copy to the:-

1. Joint Secretary, (J&K), Ministry of Home Affairs, Government of India.
1. Secretary to Government, School Education Department, UT of Ladakh for information and necessary action.
2. Director School Education, Jammu for information and necessary action.
3. Pvt. Secretary to Principal Secretary to Government, General Administration Department.
4. Pvt. Secy. to Principal Secy. to Government, School Education Department.
5. Concerned petitioner.
6. I/C Website
7. Govt. Order file (w.3.s.c).


(Javid Ahmed)
Additional Secretary to Government
School Education Department