



GOVERNMENT OF JAMMU & KASHMIR
SCHOOL EDUCATION DEPARTMENT
CIVIL SECRETARIAT, J&K

Subject: OA.No.1162/2023 titled Ashfaq Hussain Shah V/s UT of J&K & Ors.

Government Order No. 395-JK (Edu) of 2023
Dated: 05-12-2023

Whereas, vide Notification No. 01-JK (Edu) of 2023 dated 26.04.2023, online representation were invited from various teaching cadres of Education Department including the Lecturer Cadre for consideration of transfer during the year 2023 and in response, representation of Ashfaq Hussain Shah was received by the Department through Online Transfer Portal;

Whereas, the representation of Ashfaq Hussain Shah was considered under the provisions of the Transfer Policy issued by the Department vide Government Order No. 103-JK(Edu) of 2023 dated 24.0.2023 and subsequently, the applicant, Ashfaq Hussain Shah Lecturer Zoology working at GHSS Prori, Rajouri (Zone III) was transferred and posted HSS Behrote, Rajouri (Zone II) vide G.O No. 287-Jk(Edu) of 2023 dated 01.09.2023;

Whereas, Ashfaq Hussain Shah pursuant to his transfer filed OA.No.1162/2023 titled Ashfaq Hussain Shah V/s UT of J&K & Ors before the Hon'ble Central Administrative Tribunal, Jammu praying for following reliefs:-

- i. To Quash the Government Order No. 287-JK(Edu) of 2023 dated 01.09.2023 whereby the name of the applicant is figuring at S. No. 128.
- ii. To direct the respondents to allow the applicant to perform her duties at his present place of posting i.e Government Higher Secondary School Prori, Rajouri till the final disposal of the above titled OA.

Whereas, the Hon'ble CAT after hearing the applicant disposed of the OA by passing order dated 11.09.2023, the operative part of which is reproduced as under:

"..... Accordingly, the Original Application is disposed of with a direction to the Principal Secretary to Government, of School Education, Union Territory of Jammu & Kashmir to decide the applicant's representation dated 02.09.2023 while keeping in view the provisions of Clause C-16 of the policy guidelines dated 24.04.2023. Before taking such a decision, the applicant shall also be afforded an opportunity of hearing.

The whole exercise shall be undertaken within a period of ten days from the date of receipt of a certified copy of this order.

So long as the applicant's representation remains pending with the Principal Secretary to Government, of School Education, Union Territory of Jammu & Kashmir, the applicant shall be permitted to work at Government Girls Higher Secondary School, Prori, Rajouri."

Whereas, in compliance to the directions of the Hon'ble Central Administrative Tribunal, vide letter dated 19.09.2023, the applicant was asked to appear in the Administrative Department for hearing on 21.09.2023. The applicant appeared on the scheduled date and time and the applicant was heard in person and was also allowed to submit his written statement as well;


Whereas, in his written statement, the applicant stated that he has been transferred from GHSS Prori, Rajouri to HSS Behrote, Rajouri which is about 40 Kms away from his residence. Further the applicant has stated that his wife is also serving as Teacher and presently posted at Government Middle School Palyarni District Rajouri and his mother is 92 years old who is on wheel chair. The applicant has requested that either retain him or modify his transfer order to the nearest station of his residence i.e DIET Rajouri or GHSS Darhal.;

Whereas, in terms of **Rule 27 of J&K 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 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."

"...transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the



matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules'.

Whereas, In *E. P. Royappa v. State of Tamil Nadu AIR 1974 SC 555*, it has been held that:-

"...Transfer of a Government servant appointed to a particular transferable post from one place to another place is an incidence of service and does not affect or alter his terms and conditions of service. The Government has power to transfer its employees from one post to another carrying equivalent pay scale and grade."

In *Rajendra Singh & Ors. v. State of U.P. & Ors., (2009) 15 SCC 778* it has been held that:-

"... It is well settled that transfer is an exigency of service. An employee does not have any indefeasible right to remain posted at a particular place ad-infinitum or seek a posting of his choice. It is also no longer res integra that orders of transfer can only be interfered with by courts if the same are questioned on the ground of malafides or lack of jurisdiction or if the same is otherwise contrary to statutory rule governing such transfers. (J&K Central Non-Gazetted Electrical Employees Union, Rajouri v. State of J&K & Ors 2017 (6) JKJ[HC] 431 See & Shanti Kumari v. Regional Deputy Director, Health Services, Patna Division, Patna & Ors. (1981) 2 SCC 72)

In *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan, (2001) 8 SCC 574*, it has been held that:-

"... No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and

efficiency in the public 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 or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/ management, as against such orders passed in the interest of administrative exigencies of the service concerned..."

In **Syed Hilal Ahamd & Ors. v. State 2015 (3) JKJ[HC] 398; 2015 SLJ** it has been held that:-

"...transfer is an incidence of service and a Government Servant is subject to orders of transfer on administrative exigencies and a Government Servant cannot insist that he is entitled to continue in a particular station/post for a definite period."

In *A. D. Manhas (Dr) v. State & ors 2005 JKJ (HC) (1) 314*, it has been held that:-

"...transfer is an exigency of service and it is the prerogative of the employer to see at what place the service of an employee can be utilized properly in the larger public interest. An employee holding transferable post has no right to insist that he should be allowed to serve at a particular place for a particular period. Simply because he has been transferred against the higher post, does not mean that he would have to perform the duties of that post. The only purpose of his transfer against the post appears to be that his pay etc shall be drawn against said post..."

Whereas, the case of the applicant was thoroughly examined in light of the written submission adduced by the applicant as well as the standing rule position and the directions of the Hon'ble Central Administrative Tribunal and it has been found that the applicant has been posted within the same district where his spouse is posted. Moreover he has been posted as per his preference Rajouri zone II. The applicant has not submitted his willingness to continue in the same school. Further, he is having a stay of more than 3 years, as such the claim of the applicant regarding his retention seems unjust. It is to mention here that the applicant has applied under Regular Transfer Criteria and in terms of clause-21 of transfer policy-2023 the medical disease covered are Life consuming disease of self, spouse and dependent children.

Now, therefore, in light of the above stated facts and circumstances, the claim of the applicant has been considered in light of the directions passed by the Hon'ble Central Administrative Tribunal, Jammu on 11.09.2023 passed in OA.No.1162/2023 titled Ashfaq Hussain Shah V/s UT of J&K & Ors and the same

has been found not tenable under rules and is hereby rejected. The applicant is further directed to immediately join at HSS Behrote, Rajouri (Zone II) without any further delay, failing which strict disciplinary action shall be initiated against him under rules.

By order of the Government of Jammu and Kashmir.


Sd/-
(Alok Kumar), IRS
Principal Secretary to the Government

No: Edu-LGL0Jmu(CAT)/365/2023-01

Dated:- 05.12.2023

Copy to the:-

1. Joint Secretary, J&K, Ministry of Home Affairs, Government of India.
2. Director, SCERT, J&K.
3. Secretary, JKBOSE.
4. Director, School Education, Jammu/Kashmir.
5. OSD to Advisor (B) to the Hon'ble Lieutenant Governor, J&K UT.
6. Project Director, Samagra Shiksha J&K.
7. Chief Education Officer Rajouri.
8. Concerned.
9. Private Secretary to Principal Secretary to Government, School Education Department.
10. I/c website.
11. Government Order file (w.2.s.c).


(Abhishake Abrol) JKAS
Deputy Secretary to the Government
School Education Department.