



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

Subject: OA No.1601/2023 titled Vinod Kumar Vs UT of J&K & Ors.

Government Order No. 255 -JK (Edu) of 2024

Dated: 27 -06-2024

Whereas, the applicant, Vinod Kumar, Lecturer Chemistry working at HSS Kathar, Jammu was transferred and posted at HSS Jhulas, Poonch (Zone-2) vide Government Order No. 283- JK(Edu) of 2023 dated 01.09.2023.

Whereas, the applicant being aggrieved with his transfer, approached the Hon'ble Central Administrative Tribunal under Original Application No. 1144/2023 before the Hon'ble Central Administrative Tribunal, Jammu. The Hon'ble Central Administrative Tribunal pass an order dated 06.09.2023 in the matter and the said order was examined in the Department and case of the applicant was considered and same was found not tenable under rules. Accordingly, was rejected vide Government Order No. 399-JK(Edu) of 2024 dated: 05.12.2023 with the further direction to join at HSS Jhulas, Poonch (Zone-2) without any further delay;

Whereas, the applicant again challenged the Government Order No. 399-Jk(Edu) of 2024 dated 05.12.2023 and filed OA No. 1601/2023 titled Vinod Kumar V/s UT of JK and others before the Hon'ble Central Administrative Tribunal , Jammu praying for following reliefs:-

- i) Quashing Govt. Order No. 399-Jk(Edu) of 2023 dated 05.12.2023 issued by respondent No. 1.
- ii) Directing the respondents to allow the applicant to continue his present place of posting i.e HSS Kathar Jammu till the case of the applicant is re-considered for his appropriate posting in District Jammu strictly in tune with the provisions of the Transfer Policy dated 24.04.2023 or to posted at DIET Jammu and SCERT

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- Jammu in accordance with the mandate of the judgment passed by this Hon'ble Tribunal bearing O.A No. 1144/2023.
- iii) Directing the respondents to ensure that while according consideration to the posting of the applicant, the guidelines laid down by Hon'ble Supreme Court in case titled S.K. Naushad Rehman & Ors vs union of India & Ors arising out of civil appeal No. 1243/2022 be strictly complied with.
 - iv) Direct the respondents to release the unpaid salary of the applicant.

Whereas, the Hon'ble CAT after hearing the applicant disposed the OA by passing order dated 08.12.2023, the operative part of which is reproduced is as under:

".....Accordingly, the Original Application is disposed of with a direction to respondents to treat this O.A. as representation of the applicant and decide the same by passing a reasoned and speaking order keeping in view the judgment passed by the Hon'ble Supreme Court in case titled S.K. Naushad Rehman & Ors. Vs Union of India & Ors passed in Civil Appeal No. 1243/2022 as well as the provisions of Clause C (16) of the Transfer Policy dated 24.04.2023.

Respondents are further directed to communicate the order so passed to the applicant. Before passing any order, 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 respondents, status quo as on today, qua the applicant, shall be maintained."

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;

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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."

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Whereas, In *E. P. Royappa v. State of Tamil Nadu* AIR 1974 SC555, 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-indefinitum 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

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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 examined afresh and it has been found that the case of the applicant was rejected after examining the issue in detail and no new grounds emerged which warrants re-consideration of the issue. Besides, the post of lecturer is a UT cadre post and applicant can be posted anywhere in the UT of J&K.

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Now therefore, keeping in view the above stated facts and circumstances of the case, the claim of the applicant has been considered in the light of directions passed by the Hon'ble Central Administrative Tribunal, Jammu on 08.12.2023 passed in O.A No. 61/1601/2023 titled Vinod kumar Vs UT of J&K &Ors and the same has been found not tenable under rules is hereby rejected. The applicant is further directed to immediately join at HSS Jhulas, Poonch (Zone-2) without any further delay, failing which strict disciplinary action shall be initiated against him under rules.

Sd/-


Alok Kumar, (IRS)
Principal Secretary to the Government,
School Education Department.

No: Edu-LGLOJmu(CAT)/342/2023-04

Dated:- 27.06.2024

Copy to the:-

1. Joint Secretary, J&K, Ministry of Home Affairs, Government of India.
2. Director, School Education, Jammu.
3. OSD to Advisor (B) to the Hon'ble Lieutenant Governor, J&K UT.
4. Chief Education Officer, Poonch/Jammu.
5. Principal Concerned for necessary compliance in the matter.
6. Concerned.
7. Private Secretary to Principal Secretary, School Education Department.
8. I/c website.
9. Government Order file (w.2.s.c).


(Abhishake Abrol) JKAS
Deputy Secretary to the Government
School Education Department.
27/06/24
