



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

Subject: OA.No.1179/2023 titled Manmohan Singh V/s UT of J&K & Ors.

Government Order No. 42 -JK (Edu) of 2024

Dated: 05 -01-2024

Whereas, vide Notification No. 01-JK (Edu) of 2023 dated 26.04.2023, online representations 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 Manmohan Singh was received by the Department through Online Transfer Portal;

Whereas, the representation of Manmohan Singh was considered under the provisions of the Transfer Policy issued by the Department vide Government Order No. 103-JK(Edu) of 2023 dated 24.04.2023 and subsequently, the applicant, Mr. Manmohan Singh Lecturer, Chemistry working at DIET Poonch was transferred and posted at HSS Mankote, Poonch vide G.O No. 283-Jk(Edu) of 2023 dated 01.09.2023;

Whereas, Manmohan Singh pursuant to his transfer has filed OA.No.1179/2023 titled Manmohan Singh V/s UT of J&K & Ors before the Hon'ble Central Administrative Tribunal, Jammu praying for following reliefs:

- i. Quashing of Government Order No:283-JK(Edu) of 2023 Dated:01.09.2023 issued by Respondent No.1 to the extent of serial No.163 reflected in Annexure-A appended to the aforesaid order by virtue of which Applicant has been transferred from DIET Poonch to HSS Mankote being in violation of Transfer Policy in vogue.
- ii. Directing and commanding the respondents to allow the Applicant to discharge his duties as Lecturer at his present place of posting i.e., DIET Poonch

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:

"..... Keeping in view the aforesaid limited prayer made by learned counsel for the applicant, I deem it appropriate to dispose of the present Original Application at the admission stage itself without entering into the merits of the case, with the

observation that if the applicant submits a comprehensive representation within a period of one week from today, the same shall be considered by the Principal Secretary to Government, Department of School Education, Union Territory of Jammu & Kashmir and a decision shall be taken on the same within a period of ten days, thereafter, while keeping in view the observations made by the Hon'ble High Court in Tahira's case (supra). Before taking such a decision, the applicant shall also be afforded an opportunity of hearing.

So long as the applicant's representation remains pending with the Principal Secretary to Government, Department of School Education, Union Territory of Jammu & Kashmir, the applicant shall be permitted to work at District Institute of Education and Training, Poonch.

Ordered accordingly.

However, there shall be no orders so as to costs.. "

Whereas, in compliance to the directions of the Hon'ble Central Administrative Tribunal, vide letter dated 22.09.2023, the applicant was requested to appear in the Administrative Department for hearing on 25.09.2023. 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 has stated that he has been transferred from DIET Poonch to HSS Mankote, Poonch which is far away from his residence and is a remotest areas more than 50 KM terrain. Further the applicant has stated that he is 58 years and 07 month and has been posted at HSS Mankote Zone-IV . Besides his spouse is also a Govt. employee RReT posted at HS Degwar which falls in Zone-I of Poonch. Further stated that he had met with an accident and fractured his knee cap of his right leg which was operated two times. The applicant has requested that transfer order may be modified and he may be allowed to continue at DIET Poonch;

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..."

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Whereas, the case of the applicant was thoroughly examined in the Department 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 spouse of the applicant is working in District Poonch and the applicant himself has been also posted in the same District i.e Poonch District. It is to mention here that in terms of Clause-16 of transfer policy-2023 that where both the husband and wife are in Government service, they may be posted conveniently as far as practicable, subject to the availability of post. In this case, the spouse of the applicant is working in District Poonch and the applicant himself has been also posted in the same District i.e Poonch District. Therefore, the question of modification on spouse criteria seems unjust. Further, the department reserves the right to post/adjust the employees beyond the choice opted by him/her for administrative reasons. The post of lecturer is a UT cadre post and the applicant can be posted anywhere in the UT of J&K. The applicant was serving in zone I from last more than five years, so his request for modification seems unjust ;

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 Bench, Jammu on 11.09.2023 passed in OA.No.1179/2023 titled Manmohan Singh 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 Mankote, Poonch 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

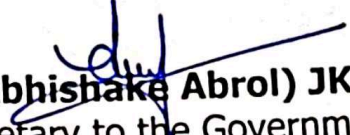
Dated:- 05.01.2024

No: Edu-LGL0Jmu(CAT)/379/2023-01

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, Poonch.

8. Principal Concerned for necessary compliance in the matter.
9. Concerned.
10. Private Secretary to Principal Secretary to Government, School Education Department.
11. I/c website.
12. Government Order file (w.2.s.c).


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