

Rajasthan High Court - Jodhpur

Anusuiya Bishnoi vs State Of Rajasthan on 3 September, 2021

Bench: Dinesh Mehta

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR S.B. Civil Writ Petition No. 11529/2021 Anusuiya Bishnoi W/o Naresh Kumar, Aged About 42 Years, R/o 19, 20 Verdhaashram Road, Mahaveer International Colony 5 E Choti (Rural), Sri Ganganagar (Raj.).

----Petitioner Versus

1. State Of Rajasthan, Through The Secretary, Department Of Rural Development And Panchayati Raj, Secretariat, Rajasthan, Jaipur.
2. The Chief Executive Officer, Zila Parishad Sri Ganganagar.
3. The Vikas Adhikari Panchayat Samiti, Sri Ganganagar, District Sri Ganganagar.

----Respondents

For Petitioner(s) : Mr. J.S. Bhaleria
For Respondent(s) : Mr. Kunal Upadhyay for
Mr. Sunil Beniwal, AAG

JUSTICE DINESH MEHTA

Order

03/09/2021

1. By way of the present writ petition, the petitioner has challenged the order dated 14.08.2021, whereby petitioner's transfer order dated 28.07.2021 has been amended and she has been posted at Gram Panchayat 12 LNP.
2. The facts appertain are that the petitioner is working as Gram Vikas Adhikari and vide order dated 28.07.2021, she was posted at Gram Panchayat, Sahuwala, pursuant to which she joined her duties at Sahuwala on 30.07.2021.
3. Thereafter, after about 14 days of the transfer order transferring her to Sahuwala, order dated 14.08.2021 came to be (2 of 4) [CW-11529/2021] passed and she was transferred to Gram Panchayat, 12 LNP, treating her to be 'under transfer' at Sahuwala.
4. Learned counsel for the petitioner submits that pursuant to order dated 28.07.2021 the petitioner was relieved from earlier place of posting on 29.07.2021 and she has joined on 30.07.2021 at Gram Panchayat Sahuwala. Thus, she cannot be treated to be 'under transfer' and the impugned order

amounts to fresh transfer order within a short span of 14 days.

5. Learned counsel argues that after 14 days of the transfer order, having been executed, the respondents cannot amend or cancel the same.

6. Mr. Kunal Upadhyay, associate to Mr. Sunil Beniwal, learned AAG, invites Court's attention towards para No.43 of the judgment dated 05.09.2021, rendered by a Division Bench of Allahabad High Court in the case of Krishna Chandra Dubey Vs. Union of India (Civil Misc. Writ Petition No.52249/2000) and submits that the State can cancel or amend the transfer order even after having been executed.

7. Para No.43 of the aforesaid judgment reads thus:-

"43. Once a transfer order is passed, the Competent Authority has a right to cancel it or modify it, even after it stood executed. The transfer order must be passed by the Competent authority and employee should be relieved for joining at the transferred place, if it is necessary to relieve him formally. There is no prohibition to post both the spouses at different places, if they are in service, and cannot be adjusted at the same place or services of one of them is required in administrative exigency at a different place. Same remains the position of mid-academic session. The employer may consider and keep this aspect in mind, but he cannot compromise with administrative requirement."

(3 of 4) [CW-11529/2021]

8. Mr. Bhaleria, learned counsel for the petitioner, on the other hand, relied upon the judgment of this Court dated 26.03.2016, rendered in the case of Smt. Meenaxi Sharma Vs. State & ors., reported in 2010 WLC (UC) 441. In the said judgment, this Court has observed thus:-

"8. The orders which have not seen the light of the day cannot be treated to be an order in force and in view of the facts mentioned above, the order dated 29.9.2009 was never acted upon and it remained in the file of the concerned authority and, therefore, it did not come into force before 6.10.2009 and 9.10.2009. Once the transfer order is complied with, then it cannot be amended.

9. At this juncture, it will be relevant to mention here that acting upon an order means that an order should be given effect to. The orders dated 25.9.2009 were given effect to by both the parties rather say all the parties as all the four schools had knowledge of the orders dated 25.9.2009 and had no knowledge of the order dated 29.9.2009. Therefore, only the order which was acted upon was 25.9.2009."

9. According to Law of Precedence, judgment passed by Coordinate Bench of this Court is binding, whereas judgment of other High Court is only having persuasive

value.

10. It has been consistent view of this court that a transfer order once executed, cannot be cancelled. A gainful reference of the judgment in the case of Kalu Singh Vs. State & Ors., reported in 2003(1) WLC 674 and Gangaram Bishnoi Vs. State & Ors., reported in 1994 WLR 537 can also be made in which this Court has taken the same view.

11. A perusal of the impugned order dated 14.08.2021 reveals that the respondent No.2 has treated the petitioner 'under transfer'. In the opinion of this Court, since pursuant to the order dated 28.07.2021 the petitioner had been relieved on 29.07.2021 by the concerned Vikas Adhikari and she had even joined at (4 of 4) [CW-11529/2021] Panchayat Samiti, Sahuwala, it cannot be said that petitioner was under transfer. As a matter of fact, on 29.07.2021, the petitioner has become Gram Vikas Adhikari of Sahuwala. The order dated 14.08.2021 is thus, clearly contrary to facts.

12. That apart, as the petitioner had joined at Sahuwala, directing her to join at Gram Panchayat, 12 LNP amounts to fresh transfer, which cannot be countenanced as it has been passed within a short span of 14 days.

9. In view of the above, this Court is of the considered view that the transfer order, which has been executed, cannot be cancelled, altered or modified.

10. As a result of discussion foregoing, instant writ petition deserves to be and is hereby allowed. The impugned order dated 14.08.2021 (Annex.5), qua the petitioner, is hereby quashed.

11. The stay application also stands disposed of accordingly.

(DINESH MEHTA),J 341-skm/-

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