

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 577/2024
CM No. 1399/2024
c/w
WP(C) No. 700/2023
CM No. 3517/2023
CM No. 1659/2023
CM No. 1823/2023
CCP(S) No. 108/2023
In WP(C) No. 700/2023

Shafayatulla

.....Appellant(s)/Petitioner(s)

Through: Ms. Shivani Jalali, Advocate

vs

UT of J&K and ors.

..... Respondent(s)

Through: Mr. S. S. Nanda, Sr. AAG for R-1 to 3
Ms. Priyanka Bhat, Advocate vice
Mrs. Monika Kohli, Sr. AAG for R-4 & 5

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

(ORAL)

03.12.2024

1. The issues involved in the instant petitions are akin and analogous, as such, are being taken for disposal together here under.
2. The facts necessary for disposal of the instant petitions as detailed out in the instant petitions reveals that the petitioner herein came to be appointed on 16.12.1991 in the respondents' department on consolidated basis and subsequently on 23.10.1992 regularized against the post of Khilawarzi Inspector in the grade of 3050/4590 (pre

revised) and Rs. 5000-8000 (revised) w.e.f. 25.04.2011 and that on the basis of various representations made by him and recommendations in his favour, the petitioner herein vide Order No. 580DULBJ/2022 dated 26.11.2022 came to be transferred from Municipal Committee, Banihal while working as Khilawarzi Inspector to Municipal Committee, Thanamandi as Incharge Executive Officer in his own pay and grade with a direction to look after the affairs thereof till the post is filled up on regular basis. Vide Order No. 580DULBJ/2022 dated 26.11.2022, the following direction was issued by the respondent:-

“Therefore, in the interest of administration, following adjustments are being made to look after the affairs of ULBs by the officials in their own pay and grade, till the time these posts are filled on regular basis on recommendations of DPC.

Sh. Shashi Kant, Khilafwarzi Inspector is transferred and posted in Municipal Committee, Ramnagar from M.C, Samba.

Sh. Shafatullah, Khilafwarzi Inspector (RBA) is transferred and posted in Municipal Committee, Thanamandi from M.C, Banihal.

Sh. Shashi Kant is directed to look after the affairs of Municipal Committee, Ramnagar and Sh. Shafatullah is directed to look after the affairs of Municipal Committee, Thanamandi in their own pay and grade, till the time posts of Executive Officer is filled on regular basis on the recommendations of the DPC or any other alternative provided by the administrative department. The above arrangement is purely temporary and shall not confer any preferential right on the aforesaid officials to hold these posts on substantive basis or claim promotion, which shall be made in accordance with the extant Rules and shall be subject to the outcome of the writ petitions(s), if any pending, in the court of Law. The official is deemed to be relieved with immediate effect and directed to report to their new place of posting without availing any joining time.”

The petitioner herein pursuant to the order dated 26.11.2022 joined at Municipal Committee, Thanamandi and started discharging his duties as Executive Officer. However the respondent/Director in terms of Order No. DULBJ/2023/9315-19 dated 06.03.2023 ordered the petitioner herein to rejoin back his services in Municipal Committee, Banihal as Khilawarzi Inspector for the reasons spelt out there in the order dated 06.03.2023 and aggrieved of the said order dated 06.03.2023, the petitioner herein filed WP(C) No. 700/2023 before this Court seeking *inter alia* quashing of said order dated 06.03.2023 on the premise that the said order had been issued malafidely on irrelevant and non-existent grounds prematurely inasmuch as in violation of the transfer policy as well as as a measure of punishment and that this Court while considering the said petition passed an interim order on 18.03.2023 therein directing the operation of impugned order dated 06.03.2023 to remain in abeyance and instead of complying with the said order, the respondents did not allow the petitioner herein to discharge his duties in Municipal Committee, Thanamandi against the post of Executive Officer and issued Order No. 56/DPCR of 2024 dated 07.03.2024, whereunder the District Development Commissioner, Rajouri ordered the holding of the charge of post of Executive Officer, Municipal Committee, Thanamandi by the Tehsildar, Thanamandi in addition to his own duties, which order came to be thrown challenge to by the petitioner

herein subsequently in WP(C) No. 577/2024 fundamentally on the ground that the District Development Commissioner had no power and jurisdiction to direct the Tehsildar to hold the charge of the post of Executive Officer, Municipal Committee, Thanamandi.

3. **Objections** to the petitions have been filed by the respondents wherein the petitions are being opposed, *inter alia*, on the grounds that the petitioner herein is holding substantively the post of Khilawarzi Inspector and that though he was ordered to hold the charge of the post of Executive Officer, Municipal Committee, Thanamandi in terms of order dated 26.11.2022, yet for the reasons recorded therein in the said order, the petitioner herein came to be brought back to Municipal Committee, Banihal in terms of order dated 06.03.2023 against the post of Khilawarzi Inspector and that in the process, none of the rights be it statutory, legal or fundamental of the petitioner herein have been violated by the respondents, while stating further that the posting of the petitioner as Executive Officer in Municipal Committee, Thanamandi was ordered on temporary basis for looking after the affairs of ULBs' till the post of Executive Officer is filled up on regular basis and that the petitioner was brought back against his substantive post in terms of order dated 06.03.2023 on account of his dissatisfactory working as also in view of his failure to deliver upon the required parameters in Municipal Committee, Thanamandi as the developmental works of the area had got badly hampered on account of unsatisfactory working of the petitioner besides owing to the

recommendation having been made by the petitioner for regularization of a temporary employee working in the office of Additional District Development Commissioner, Rajouri being administrator of Municipality/Councils, without any power and authority and in breach of rules and norms and that the Municipal Committee, Thanamandi after re-transfer of the petitioner to Banihal would not left headless, as such, the Tehsildar came to be assigned the charge of the same by the District Development Commissioner being the administrator of the Municipality and competent to post an officer therein to manage the same.

Heard learned counsels for the parties and perused the record.

4. Before proceeding to advert to the respective pleadings of the parties inasmuch as the respective submissions of the appearing counsels for the parties, it would be appropriate to refer to the Jammu and Kashmir Urban Local Bodies Institutions (Management) Service Recruitment Rules, 2008 issued vide SRO 417 dated 18.12.2008 by the Government of Jammu and Kashmir Housing and Urban Development Department in exercise of powers conferred by Section 307 and other enabling provisions of the Jammu and Kashmir Municipal Act, 2000. The said Rules govern and regulate the service conditions of the employees of the Urban Local Bodies and in terms of Schedule I appended to the said rules, the post of Khilawarzi Inspector carries a pay scale of Rs. 5000-8000 and in Schedule (II) is figuring in Class (III) and category of (f) having the next higher promotion to the post

Enforcement/Khilawarzi Officer carrying the pay scale of 6500-10500 existing in Class (II) and category (g) which post in turn is to be filled up by promotion from Class (III) category (d) being the post of Khilawarzi Inspector having 5 years substantive service in that Class and Category. The post of Executive Officer in the said Rules is provided in Class (I) and Category (d) carrying the pay scale of 7500-12000 to be filled up 30% by Direct Recruitment and 70% by Promotion from Class (II) (Category a, b, c, f & g) proportionate to their cadre strength with atleast five years substantive service in that Class and Category.

5. Having regard to the aforesaid Rule position not denied and disputed by the appearing counsels for the parties to be occupying the field, the petitioner herein in terms of the said Rules has not been eligible for holding the post of Executive Officer, but for the post of Enforcement/Khilawarzi Officer. The respondents however having posted the petitioner herein against the post of Executive Officer seemingly have observed the Rules of 2008 in breach, in that the petitioner herein disputably lack the qualification and eligibility, as such, could not have been posted against the post of Executive Officer even though in public interest or administrative exigency, so also the petitioner herein had no right much less one recognized by law to have hold the post of Executive Officer on any grounds whatsoever.
6. Since the petitioner herein came to be posted as Executive Officer by the respondents in breach of the Rules of 2008 and was ordered to be

reverted back in terms of the impugned order dated 06.03.2023 for the reasons spelt out there in the said order, the petitioner herein, in law cannot, complaint that the order has not been issued either in the interest of administration or in administrative exigency inasmuch as has been issued as a measure of punishment against him or else in breach and violation of the guidelines governing and regulating the transfers, in that, as observed above, in law have had no right recognized by law either be posted against the said post or else to hold the same.

7. It is by now well settled that a government servant or an employee of a public undertaking has no legal right to be posted at a particular place since transfer of an employee is not only an incident but a condition of service. It is equally well settled that the courts cannot interfere with the orders of transfer and substitute their own decision for that of the management, in that the assessment of worth of an employee must be left to the bonafide decision of the employer and such assessment of the employer taking into account multiple factors including suitability of the person for a particular post and exigency of administration cannot be looked into. A reference in this regard to the judgment of the Apex Court passed in case titled as '**National Hydroelectric Power Corporation Ltd. Vs. Sh. Bhagwan**' reported in (2001) 8 SCC 574 would be relevant and appropriate. Further in case titled as '**N.K. Singh vs. Union of India**' reported in 1995 AIR 423 it has been observed by the Apex Court that in the matter of transfer of an

employee, the only realistic approach is to leave it to the wisdom of superiors to make that decision as there are no judicially manageable standards for scrutinising the transfers as the courts lack the necessary expertise for personnel management of a government department and has to be left in public interest to the employers.

8. Having regard to the aforesaid principles and position of law and reverting back to the case in hand, as has been noticed in the preceding paras, the petitioner was not eligible and entitled to be posted against the post of Executive Officer, Municipal Committee, Thanamandi by the respondents, yet the respondents in law can said to be well within their rights to post a suitable officer against the post in question and re-post the petitioner herein against his substantive post of Khilawarzi Inspector on the basis of the assessment made by them recognizing his work, efficiency and suitability, which assessment cannot be subjected to judicial review of this Court. The judgments relied upon by the counsel for the petitioner titled as '**T.R.P. Singh vs. TSRTC and ors.**' and '**Lekh Raj vs. State of Himachal Pradesh & ors.**' in view of the aforesaid analysis do not lend any support to the case of the petitioner herein.
9. For the aforesaid reasons, this Court is not inclined to interfere with the impugned orders in exercise of extraordinary writ jurisdiction. Accordingly, petitions are **dismissed**.

10. In view of the dismissal of the petition, contempt notice issued in CCP(S) No. 108/2023 is recalled and the contempt proceedings are dropped.

(JAVED IQBAL WANI)
JUDGE

Jammu
03.12.2024
Neha-II

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes

