

(Reserved)

Central Administrative Tribunal
Jammu Bench, Jammu

O.A. No.61/79/2021

This the 2nd day of March, 2021

(Through Video Conferencing)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Hon'ble Mr. Anand Mathur, Member (A)

Smt. Neeraj w/o Ashwani Kumar r/o Ward No. 1, Tehsil Ramnagar, Udhampur

. Applicant

By Advocates: M/s Sachin Dogra/ A.M.Malik

v/s

1. Union Territory of Jammu and Kashmir, through Secretary to Government, Education Department, Civil Secretariat Jammu/Srinagar-180001.
2. Chief Education officer, Udhampur-182101.
3. Zonal Education Officer, Zone Ghordi, District Udhampur-182122.
4. Zonal Education Officer, Zone Ramnagar, District Udhampur-182122.
5. Smt. Sonika Sharma, W/o Surinder Lakhotra R/o Village Rathian, Tehsil and District Udhampur, Teacher Govt. Middle School Chigla Prowa Zone Ghordi District Udhampur-182101.

By Advocate: Mr. Sudesh Magotra, Dy. A.G.

O R D E R

Per Hon'ble Mr. Anand Mathur, Member (A)

1. Case of applicant Smt. Neeraj is that she is a general line teacher and vide order dated 19.07.2004, she being posted at RET PS Prowa (Zone Ghordi) and one Sonika Sharma being posted at RET PS Romain (Zone Ramnagar) were permitted to mutually swap their place of posting. Respondent No. 2 on

the basis of unsubstantiated complaint and without looking into the genuineness of the said complaint passed the impugned order dated 04.11.2020 whereby the aforementioned order of mutual swapping of post by applicant and Sonika Sharma has been cancelled and both the teachers are directed to report at their original place of postings and which order has been challenged by the applicant. Applicant also seeks interim relief of staying the operation of the impugned order dated 04.11.2020 and the relieving order dated 17.11.2020.

2. In the counter affidavit filed by the respondents it has been averred that the impugned order has not been passed on the complaint of anyone or arbitrarily. The applicant and Sonika Sharma were not transferred but only permitted to swap their place of posting and arrangement has been cancelled by the respondents, as such, no right has accrued to the applicant to file the present O.A.
3. We have heard and considered the arguments of learned counsel for the parties and gone through the material on record.
4. Perusal of the impugned order does not show that the mutual swapping order has been cancelled on the ground of the applicant being a RET. The case of applicant that the impugned order has been passed on basis of a complaint has been categorically denied by the respondents in their counter affidavit. Nothing has been brought on record by the applicant to show that the impugned order violates any rule or regulation or is not within the jurisdiction of the Chief Education Officer. It simply cancels the order dated 19.07.2004 and directs the applicant to join her original place of posting. Looking to the facts of the case, we are of the opinion that no *prima facie* case is made out by the applicant to issue interim relief in her favour.
5. Even so, it is also a settled law that interim relief should not be given wherein it tantamount to giving the final relief. Looking to the facts of the case as well as the nature of final relief and the interim relief sought by the applicant, it is apparent that grant of interim relief would practically give the main relief sought in the O.A. In this regard, we may refer to Assistant Collector Vs.

Dunlop India Ltd., AIR 1985 S.C. 330 wherein the Hon'ble Apex Court observed that:-

“5. We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations”.

And in P.R. Sinha Vs. Inder Krishan Raina & others, 1996 SCC (1) 681, it was held by the Hon'ble Apex Court that:-

“This court has pointed out repeatedly that while entertaining the writ petition the High Court should not pass interim order, the nature of which is to grant a relief which can be granted only at the final disposal of such writ petition”.

6. In view of the law laid down by the Hon'ble Apex Court, we are of the opinion that the grant of interim relief in the present case would practically give the principal relief sought in the O.A which is impermissible under law. Even so, applicant stands relieved from her place of posting.
7. Looking to the facts of the case, we are of the view that no prima facie case is made out by the applicant for issuance of interim direction. Therefore, the prayer of applicant seeking interim relief is rejected. It be mentioned that nothing observed herein before be construed as a comment on merit of the case which shall be decided on its own merits.
8. Learned counsel for the applicant, may file rejoinder-affidavit, if any, within 2 weeks. Put up file for further orders on 25.03.2021.

(Anand Mathur) (Rakesh Sagar Jain)
Member (A) Member (J)
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