

Chhotu Ram Vs. State of Raj. and ors

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Court : Rajasthan Jodhpur

Decided On : Feb-03-2014

Appellant : Chhotu Ram

Respondent : State of Raj. and ors

Judgement :

S.B. Civil Writ Petition No.8871/2012 Chhotu Ram Vs. State of Rajasthan & Ors.
Order dt:

03. 02/2014 1/3 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B. Civil Writ Petition No.8871/2012 Chhotu Ram Vs. State of Rajasthan & Ors.
DATE OF

ORDER

:::

03. d February 2014 PRESENT HON'BLE DR. JUSTICE VINEET KOTHARI
Appearance: Mr. Kuldeep Mathur, for the petitioner. Dr. Prathishtha Dave, Govt.
Counsel. -- 1. The order impugned in the present writ petition is Annex.2 dated
17.08.2012, whereby the petitioner and other persons working on various positions
in the respondent, Municipal Board, Sangaria, District: Hanumangarh, as LDC,
Fireman, Safai- Karamchari and driver, were kept Awaiting Posting Order (APO)

and were directed to report in the office of Local-Self Govt. Department, Bikaner, before the Deputy Director during the period of APO under the powers conferred under Section 336 of the Rajasthan Municipalities Act, 2009 (Act of 2009).

2. The challenge has been made to the impugned order on the ground that Section 336 of the Act of 2009 only permits transfer of the employees of the Municipal Board from one Municipal Board to other and without there being any administrative exigency, the order S.B. Civil Writ Petition No.8871/2012 Chhotu Ram Vs. State of Rajasthan & Ors. Order dt:

03. 02/2014 2/3 impugned has been passed and operation whereof has been stayed by a coordinate bench of this Court vide the interim order dated 04.09.2012. Counsel for the petitioner, therefore, submitted that order impugned is illegal and same deserves to be set aside.

3. Having heard the learned counsel for the petitioner, this Court is satisfied that in such administrative matters, interference under Article 226 of the Constitution of India cannot be made. The Section 336 of the Act of 2009 reads as under: -

336. Transfer from one Municipality to another.- (1) Any officer or servant of a Municipality who is a member of subordinate service, ministerial service or class IV service may be transferred by the State Government from the service of one Municipality to the services of another Municipality. (2) Any officer or servant of the Municipality may be transferred by the State Government to the Jaipur Development Authority or Jodhpur Development Authority or Rajasthan Housing Board of any Urban Improvement Trust or any other local body on post carrying pay scale not lower than the pay scale of the officer or servant to be transferred Provided that the lien of the Officer or servant so transferred shall remain in the parent Municipality and he shall be considered for further promotion whenever a consideration for promotion to the higher post in his cadre is made in the Municipality.. 4. It is true that Section 336 of the Act of 2009 permits that an officer or servant of the municipal council to be transferred from S.B. Civil Writ Petition No.8871/2012 Chhotu Ram Vs. State of Rajasthan & Ors. Order dt:

03. 02/2014 3/3 one municipality to another within the State of Rajasthan but the impugned order was passed only at for stage prior to actual transfer order. Admittedly, there is no prohibition or negation of the power to keep an employee APO and, therefore, the transfer orders were yet to be passed in exercise of power u/s 336 of the Act of 2009. In such administrative matters, until and unless the malafide or violation of statutory rules is established, no interference can be made under the writ jurisdiction under Article 226 of the Constitution of India.

5. The respondents have filed reply to the writ petition and have objected the writ petition, however, today none has appeared on behalf of respondents.

6. Considering the submissions made by the learned counsel for the petitioner and in view of statutory provisions, and there being no prohibition against the employees being kept under APO, the impugned order cannot be interfered with in the writ jurisdiction. The writ petition thus bereft of any merit deserves dismissal.

7. The writ petition is, accordingly, dismissed. No costs. A copy of this order be sent to the concerned parties forthwith. (Dr. VINEET KOTHARI), J.

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