HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 459/2025

Smt. Gauri wife of Bhagwan Das, aged about 44 years, resident of C-Block, Ward No. 7, Srikaranpur, District Sri Ganganagar.

----Appellant

Versus

1. The State of Rajasthan, through the Secretary, Department of Education, Secretariat, Rajasthan, Jaipur.
2. The Director, Secondary Education, Secretariat, Jaipur.
3. The District Education Officer, Headquarter, Secondary Education, Sri Ganganagar.
4. The Director, Elementary Education, Bikaner.

----Respondents

For Appellant(s) : Mr. Dheerendra Singh Sodha, Advocate
For Respondent(s) : Mr. Ravindra Jhala, Advocate

HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE SANDEEP SHAH

Order

16/05/2025

(*Per Hon'ble Mr. Sandeep Shah, J*)

The appellant has filed the present appeal being aggrieved against the judgment dated 4th February 2025, passed in S.B. Civil Writ Petition No.2858 of 2025 (Smt. Gauri v. State & Anr.), whereby the writ petition filed by the appellant, seeking prayer to quash the transfer order along with other prayers, has been dismissed.

2. The brief facts of the case, as stated in the writ petition, are that the appellant came to be appointed on the post of Teacher

Grade-III by way of order dated 27th March 2006, wherein the subject under which she was appointed as Teacher Grade-III was not specified. It has been asserted by the appellant that she had English as her compulsory subject during the Bachelor of Arts qualification acquired by her and to fortify the same, she has placed on record the relevant mark-sheets. The assertion is also to the extent that she had subjects such as History, Economics, etc. as her optional/elective subjects, and therefore, she was appointed essentially as a teacher to teach the subject of Social Science.

3. The appellant further asserted that, for the purpose of setting out details of the teachers, Shala Darshan Portal maintained by the Education Department, the Director of Primary Education, Bikaner issued guidelines dated 16th February 2016 and the table appended therewith specified that the persons with optional subject of the corresponding field shall be treated as teacher in that particular subject. The appellant lays emphasis on Column K at Serial No.6 of the table (Page 34 of paper book of writ petition) that since she had the subject of History etc., she was treated as teacher in Social Science. The appellant has further emphasized that by way of order dated 29th July 2019 while changing the staffing pattern, she was declared surplus and subjected to posting in Secondary Education Department while treating her to be a teacher in subject of English, whereas she was not appointed as a teacher in subject of English nor was teaching the subject in question.

4. The appellant submitted a representation emphasizing that she was teaching Social Science and therefore, her name in the

order dated 29th July 2019 was wrongly placed. The appellant subsequently approached this Court by way of filing S.B. Civil Writ Petition No.12543 of 2019 (Smt. Gauri v. State of Rajasthan) wherein, initially, while considering the submissions made by the appellant, an interim order was passed by this Court vide order dated 22nd August 2019. Subsequently, the writ petition was disposed of on 7th May 2024 and while considering the duration of the interim protection granted by this Court, the same was made absolute. However, liberty was granted to the respondent to pass fresh order in future, if necessary, due to administrative exigencies. It was further specified that the granting of liberty above-mentioned should not be construed as a direction of the Court to necessarily pass fresh order of transfer, in case there is no such requirement.

5. Pursuant to the order above-mentioned, the respondent, however, passed the order dated 9th January 2025 whereby, again appellant was transferred from Upper Primary School Sardarsinghpur, Naggi to Government Senior Secondary School, 6FA Radewala, Srikaranpur on the post of Teacher Level-II in the subject of English. Being aggrieved against the same, the above-mentioned writ petition was filed by the appellant while asserting that even as per the advertisement issued by the respondent on 16th December 2022, it was specified that as far as Teacher Level-II are concerned, they can be treated eligible to teach only those subjects which were identical to the subjects opted as optional subjects while undertaking the degree of graduation and for no other subject. The appellant had also taken the ground that there

was a ban on the transfer orders during the relevant period and, therefore, the transfer order could not have been passed.

6. The learned Single Judge after considering the arguments of learned counsel for the petitioner, vide order dated 4th February 2025, dismissed the writ petition while observing that in the appointment order, the designation of the appellant was shown as "Teacher Level-II" and no further sub-designation whether she is to teach subject of English or Social Science had been specified. It has further been observed that it appeared that the level at which the appellant have been appointed, subjects can be assigned as per requirements in the school. The learned Single Judge thus did not agree with the argument of the learned counsel for the appellant herein regarding change of designation. Further, as far as violation of policy is concerned, the learned Single Judge granted liberty to the appellant to pursue the remedy by way of filing appropriate representation. As regards the ban, it was observed that consent for transfer can be both pre and post-facto and therefore, the Court was not inclined to interfere in the present Writ Petition.

7. The learned counsel for the appellant has asserted that her initial appointment was on the post of Teacher Grade-III and not on the post of Teacher Grade-II and thus the observation made by the learned Single Judge in the impugned order with regard to the appointment of the appellant on the post of teacher Grade-II is per se contrary to the record. It has further been argued that a perusal of the mark-sheet(Anne.13 of the Writ Petition) reveals that the appellant did not have English as her optional/elective subject and English was only her compulsory subject thus she was

not possessing the qualification for teaching English and was working as teacher in the subject of Social Science only, which is clear from perusal of her elective subjects opted by her during her graduation.

8. It has further been emphasized that perusal of the guidelines (Annex.5 of the writ petition), will reveal that the appellant was to be treated as Teacher Level-II in the subject of Social Science and not in English. It was asserted that she had been teaching in the subject of Social Science only and initially also when order dated 29th July 2019 was passed this fact was duly considered by the learned Single Judge while granting the interim order.

9. The learned counsel for the appellant to fortify his submissions has placed reliance upon the advertisement No.13/2022 dated 16th December 2022, filed along with writ petition wherein it was clear that for appointment on the post of teacher Level-II (i.e. teachers for class 6th to 8th), the necessary qualifications has been provided under the relevant Panchayati Raj Rules of 1996 wherein subject-wise requirement for teaching a particular subject is based on the optional/elective subject pursued by the candidate while pursuing his/her graduation.

10. It was thus emphasized that the appellant was eligible for teaching Social Science and not the subject of English therefore, the transfer order dated 9th January 2025 is illegal, contrary to law and rather amounts to fresh appointment to the appellant and will also entail adverse civil consequences upon the appellant because she will be liable for disciplinary proceedings without any fault on her part if she is not able to achieve the requisite results.

11. The learned counsel appearing for respondent has supported the order passed by the learned Single Judge and has asserted that the appellant, being a teacher has to be ready to teach any subject, and she cannot claim her choice of subject, more particularly when her appointment order did not specify appointment for a particular subject.

12. Heard learned counsel for both the parties. This Court is well-aware that as far as transfer orders are concerned the scope of interference is very limited as held in judgment passed by the Hon'ble Apex Court in judgment of *"Shilpi Bose v. State of Bihar AIR 1991 SC 532"* wherein it has clearly been specified that transfer order can be interfered only in case of proved allegation of mala fide, order being without jurisdiction or being punitive in nature. However, the present case is peculiar case wherein the appellant has been asked to teach a subject for which she was not specifically appointed and therefore, the impact of the order would be punitive in nature and having been passed with malice in law and could not have been passed in the guise of any administrative exigencies.

13. A perusal of the appointment order of the appellant reveals that she was not appointed specifying her to teach any particular subject. Rather, it is clear that her optional subjects during the course of her graduation were History and Economics. The scenario with regard to the status of the teachers has been clarified by way of the correspondence dated 16th February 2016(Annex.5 to the writ petition) issued by the Director Primary Education, Bikaner wherein it has been clarified that a teacher shall be treated as a teacher of the optional subject which he/she

had cleared during his/her graduation and not as teacher of the subject which he/she cleared as compulsory subject in graduation.

14. The Entry No.6 of Column 'K' further specifies that the persons like the present appellant are eligible to teach Social Science. The assertion of the appellant that she was teaching Social Science has not at all been controverted by the respondents. Rather order dated 29th July 2019 and the order impugned dated 9th January 2025 passed by the District Education Officer, Sri Ganganagar reveal that the appellant was absorbed and thereafter transferred for teaching in the subject of English. Whereas, the bare perusal of the advertisement dated 16th December 2022 as also the Rule 266 of the Rajasthan Panchayati Raj Rules will reveal that as far as qualification for appointment on the post of Upper Primary teacher level II(Class 6th to 8th) is concerned, it has specifically been provided that the candidate must have passed graduation or equivalent examination with corresponding language as an optional subject. Same is provision for the teacher of Social Studies or teacher for Science and Maths etc. The relevant provision is quoted as under:-

Rule 266:-

"[(3) Primary and Upper Primary School Teacher(100% by direct recruitment)

(a) General Education

Level –(i) Classes I to V Qualifications as laid down by the National Council for Teacher Education under the provisions of sub-section (1) of section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act. No. 35 of 2009), from time to time and must have passed the R.E.E.T./R.T.E.T.

Level –(ii) Classes VI to VIII Qualifications as laid down by the National Council for Teacher Education under the provisions of sub-section (1) of section 23 of the Right of Children to Free and Compulsory Education Act 2009 (Central Act No. 35 of 2009), from time to time, and

(i) for the teacher of Social Studies, the candidate must have passed graduation or equivalent examination with at least one subject as an optional subject from amongst History, Geography, Economics, Political Science, Sociology, Public Administration, Philosophy, Accountancy, Economic & Financial Management and Banking & Business Economics;

(ii) For the teacher of Science and Mathematics, the candidate must have passed graduation or equivalent examination with at least one subject as an optional subject from amongst Chemistry, Physics, Botany, Zoology, Micro-Biology, Bio-technology, Bio-chemistry and Mathematics;

(iii) for the teacher of language, the candidate must have passed graduation or equivalent examination with the corresponding language as an optional subject;

(iv) the candidate who has Graduated in Elementary Education (B.EI.Ed.) or B.A.B.Ed./ B.Sc. B.Ed., i.e. a candidate with the qualification of four years integrated course, must also have passed the qualifying examination with the corresponding subject; and

(v) must have passed the R.E.E.T./R.T.E.T. in the subject applying for.]"

15. Even under the Rajasthan Educational (State and Subordinate) Services Rules 2021 the Schedule II wherein qualification for teacher and senior teacher has been provided states as under:-

Schedule – II
Subordinate Service Posts

Group A : Teaching wing

S. No.	Name of the post	Method of recruitment		Minimum qualification and experience for direct recruitment	Post from which promotion to be made	Minimum qualification and experience for promotion	Remarks
		Direct	Promotion				
	2	3	4	5	6	7	8
	ior che indi English 3. Maths 4. Science 5.Third Language 6.Social Science	50%	50%	(i) For the posts at serial number 1,2,3 and 5: Graduate or equivalent examination recognized by UGC with concerned subject as optional subject, and Degree or Diploma in Education recognized by the National Council of Teacher Education/Government. (ii) For the post at serial number 4: Graduate or equivalent examination recognized by UGC with at least two of the following subjects as optional subject: Physics, Chemistry, Zoology, Botany, Micro-Biology, Bio-technology and Bio-chemistry and Degree or Diploma in Education recognized by the National Council of Teacher Education/Government. (iii) For the post at serial number 6: Graduate or equivalent examination recognized by UGC with at least two of the following subjects as optional subject: History, Geography, Economics, Political Science, Sociology, Public Administration and Philosophy, and Degree or Diploma in Education recognized by the National Council of Teacher Education/Government.	1. Teacher 2. Laboratory Assistant *"3. Teacher (Special Education)"	Five years' experience on the post mentioned in column number 6 with - (i) For the posts at serial number 1,2,3, and 5: Graduate or equivalent examination recognized by UGC with concerned subject as optional subject, and Degree or Diploma in Education recognized by the National Council of Teacher Education/Government. (ii) For the post at serial number 4: Graduate or equivalent examination recognized by UGC with at least two of the following subjects as optional subject: Physics, Chemistry, Zoology, Botany, Micro-Biology, Bio-technology and Bio-chemistry and Degree or Diploma in Education recognized by the National Council of Teacher Education/Government. (iii) For the post at serial number 6: Graduate or equivalent examination recognized by UGC with at least two of the following subjects as optional subject: History, Geography, Economics, Political Science, Sociology, Public Administration and Philosophy, and Degree or Diploma in Education recognized by the National Council of Teacher Education/Government.	-
5.	Teacher	--	--	--	--	--	100% to be taken from Panchayati Raj and Rural Development Department in order of seniority.

16. Thus it is clear that as per the rules also the appellant was entitled for appointment in the subject of Social Science and therefore, she cannot be posted at a place where she is forced to teach a subject qua which she is not qualified. Needless to

emphasize that in case she is not able to impart education (teach) properly in subject-English the same may entail adverse civil consequences including departmental proceeding. Further, the students will be denied the benefit of a qualified teacher to teach on the subject and that by itself would be a violation of Article 21-A of the Constitution of India.

17. In view of the discussions made above, the order impugned dated 4th February 2025 passed by the learned Single Judge as also the order dated 9th January 2025 passed by the District Education Officer, Secondary Education, Sri Ganganagar are quashed and set aside. The respondents shall post the appellant at the same place or at a nearby place where she is required to teach students the subject of Social Science as per her qualifications.

18. Special Appeal Writ No.459 of 2025 is allowed in the aforesaid terms.

(SANDEEP SHAH),J **(SHREE CHANDRASHEKHAR),J**

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