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**(2013) 09 SHI CK 0011**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Writ Petition No. 7378 of 2013**

Ashok Kumar Attri

APPELLANT

Vs

Himachal Pradesh Power Corporation Limited

RESPONDENT

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**Date of Decision : 30-09-2013**

**Acts Referred:**

**Citation : (2013) 3 ShimLC 1594**

**Hon'ble Judges : A.M. Khanwilkar, C.J.;Kuldip Singh, J**

**Bench : Division Bench**

**Advocate :** Neel Kamal Sood, for the Appellant; Ajay Mohan Goel, Advocate for the Respondent No. 1, Mr. Rajpal Thakur, Advocate for the Respondent No. 2 and Mr. Bhuvnesh Sharma, Advocate for the Respondent No. 3, for the Respondent

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## **Judgement**

A.M. Khanwilkar, C.J.—Heard Counsel for the parties. As short question is involved, petition is taken up for final disposal forthwith, by consent. The controversy brought before us emanates from the transfer order passed against the petitioner, who was working as Senior Manager at Sarabai in District Kullu and in his place, private respondent No. 3 has been posted under the same orders. The grievance of the petitioner is primarily two fold. Firstly, that the petitioner was about to attain the age of superannuation in January, 2015 and as per the extant transfer policy, such employee should be posted at a convenient place. The second grievance of the petitioner is that respondent No. 3 has been posted at Sarabai, District Kullu, by transferring the petitioner at the behest of the office of Chief Minister. According to the petitioner, respondent No. 1 should not have acted on the basis of such D.O. note keeping in mind the observations of this Court in the case of Sanjay Kumar versus State of Himachal Pradesh and others, in CWP No. 801 of 2013-A and connected cases, in which the Court has explicitly found that the Corporation, such as respondent No. 1, should act independently and not under dictation from the office of the Chief Minister. This decision has been upheld even by the Apex Court on account of dismissal of SLP (C) Nos. 29308-29310 of 2013 filed by the State of Himachal Pradesh.

2. Respondent No. 1 has contested this petition. According to respondent No. 1, no indulgence be shown to the petitioner, who himself was the beneficiary of similar procedure of D.O. note received from the office of the Chief Minister, pursuant to which he was posted at Sarabai, District Kullu. Further, the petitioner has been working in and around Sarabai, District Kullu for over last 15 years. Moreover, respondent No. 3 has been posted on account of medical reasons of his wife. Respondent No. 3 has also supported the stand taken by respondent No. 1.

3. Having considered the rival submissions, we have no hesitation in taking the view that the Appropriate Authority of respondent No. 1 has clearly abdicated its authority and was swayed away by the D.O. letter received from the office of the Chief Minister pursuant to which, respondent No. 3 came to be posted at Sarabai, District Kullu and transferring the petitioner to Hatkoti (Rohru), District Shimla. The action of the Appropriate Authority of respondent No. 1 cannot be countenanced in view of the exposition of this Court in the case of Sanjay Kumar (*supra*). Moreover, respondent No. 1 has completely glossed over the mandate specified in the extant transfer policy that if the employee is to retire in less than two years, he should be posted at a convenient place of his choice.

4. During the course of hearing, Counsel for respondent No. 1 pointed out that the petitioner has succeeded in getting D.O. letter from the office of the Chief Minister to favour him with his posting at Sarabai, District Kullu and to reverse the transfer order.

5. Taking overall view of the matter, therefore, we not only quash and set aside the office order, dated 31st August, 2013, but also direct respondent No. 1 to reconsider the issue of posting of petitioner and respondent No. 3 afresh, taking into account all aspects of the matter and that decision should be taken in accordance with the extant transfer policy and not under dictation or influence of the D.O. letters received from the office of the Chief Minister, which has no value and if that is taken into account, it would be nothing short of extraneous consideration by the Appropriate Authority of respondent No. 1. Respondent No. 1 shall decide the matter afresh within 10 days from today and issue appropriate orders posting petitioner and respondent No. 3 to suitable places, as may be advised. All questions in that behalf are left open.

6. We make it clear that in view of this order, respondent No. 1 will be free to take independent decision and comply with the direction contained in this order without requiring anything to do further, which would be only a paper formality to be complied by respondent No. 1. The petition is disposed of accordingly, so also the pending application(s), if any.