

(2020) 11 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1852 Of 2020

Balbir Singh

APPELLANT

Vs

State Of Himachal Pradesh And Other

RESPONDENT

Date of Decision : 03-11-2020

Acts Referred:

Citation : (2020) 11 SHI CK 0021

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Archana Dutt, Ashok Sharma, Vinod Thakur, Shiv Pal Manhans, Seema Sharma, Bhupinder Thakur, Yudhvir Thakur, Tara Singh Chauhan, Rajesh Prashar, Dharmender Kumar

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the order of transfer, the petitioner has filed the instant petition for grant of the following relief:

"That the impugned notification dated 11.06.2020 whereby the petitioner has been transferred from Forest Circle Office, Bilaspur to Forest Circle Office, Hamirpur, H.P. at Annexure P-2 may very kindly be quashed and set aside and the petitioner may very kindly be allowed to work at the present place of posting i.e. Forest Circle Office, Bilaspur, District Bilaspur, H.P. in the interest of justice."

2. The petitioner is a permanent resident of Village Naisarli, Post Office Kothipura, Tehsil Sadar, District Bilaspur, H.P. and vide notification dated 11.06.2020 has been ordered to be transferred from Forest Circle Office, Bilaspur to Forest Circle Office, Hamirpur and in his place 3rd respondent has been ordered to be transferred from the Office of the Principal Chief Conservator of Forests (HoFF), Shimla to Forest Circle Office, Bilaspur. Both, the petitioner as also 3rd respondent are the Class-I Officers and working as Superintendents, Grade-I, in the Forest Department.

3. The petitioner was appointed as a Clerk on 19.03.1982 and remained posted at different places as given below:

Sl. No

Name of office in which posted

Period

Remarks

1.

Rajgarh Forest Division

19.3.1982 to 24.08.1987

As Clerk

2.

Bilaspur Forest Circle

25.08.1987 to 24.10.1991

As Clerk

3.

Kunihar Forest Division

25.10.1991 to 23.08.1995

As Junior Assistant

4.

Bilaspur Forest Division

24.8.1995 to 03.6.2000

As Junior Assistant

5.

Wild Life Division Shimla

14.06.2000 to 26.10.2002

As Senior Assistant

6.

Bilaspur Forest Division

28.10.2002 to 06.08.2010

Senior Assistant/ Supdt. Gr.II

7.

Rampur Forest Circle

30.08.2010 to 07.02.2011

As Supdt. Gr.II

8.

Nalagarh Forest Division

08.02.2011 to 31.10.2014

As Supdt. Gr.II

9.

Bilaspur Forest Division

01.11.2014 to 16.04.2017

As Supdt. Gr.II

10.

Dharamshala Forest Circle

17.04.2017 to 18.06.2017

On promotion as Supdt. Gr.I

11.

Chief Conservator of Forests (Forest Protection & Fire Control) Bilaspur

19.06.2017 to 09.07.2018

As Supdt. Gr.I

12.

Conservator of Forests Bilaspur

09.07.2018 to date

As Supdt. Gr.I

4. It would be evident that in his entire career of service of 38 years, the petitioner remained posted in Forest Circle, Bilaspur, for about 30 years and at Bilaspur proper for about 21 years. Therefore, in such circumstances, the petitioner has no occasion to complain as even the Comprehensive Guiding Principles-2013 for regulating the transfer of the State Government employees are not applicable to the petitioner being a Class - I Officer and, therefore, the further plea of the petitioner that he is at the verge of retirement is not legally sustainable.

5. Moreover, it has specifically come in the reply of respondent No.3 that the wife of the petitioner is an illiterate lady and is a forest contractor and working in the same division and these averments have gone unrebutted. The public would clearly view this to be a case of conflict of interest and it is more than settled that public person should have a crystal clear and transparent personality. After-all, caesar's wife must be above suspicion.

6. As a matter of fact, the Corporation itself has taken cognizance over the issue of near relatives of Officers/Officials executing works as contractors for the concerned Divisions/Circles of their respective postings and issued instructions vide letter dated 23.10.2020, the relevant portion whereof reads as under:

"There could be such a situation in field offices/head quarter of the department that where registered contractors/private sale contractors are working for the particular Circle(s) Division(s), their close relatives are also posted on key posts leading to likely possibility that the officers or officials posted in the Circle/ Divisional Offices, where their relatives are executing different works for the department either in private sale or other related desks, may influence the field officers/officials to grant under favours. To eliminate any such possibility of giving undue favour/unjust award of works to relatives of officers/officials of concerned Division/Circle, it is directed that the following instructions be strictly adhered to, while registering the contractors/private sale contractors and awarding them the works of different nature:-

"i) Before applying for registration as contractor/private sale contractor, an application should be taken from the applicant, disclosing clearly that no any officer(s)/official(s) is/are posted in the particular Circle/Division is related to him/her where he/she wishes to work as contractor/private sale contractor. The application form can also be devised in such a manner so as to include all such details. The information provided in application should also be supported/ authenticated with/by an affidavit to the effect.

ii) When the work is awarded to any contractor/private sale contractor, similar terms and conditions should also be incorporated in the contract agreement/work order. A contractor shall not be permitted to participate in the tender process for works from the office in which his near relative is posted in the rank of Accountant or above or as an officer in any capacity between grades of Assistant Conservator of Forests and to the level of Conservator of Forests/Chief Conservator of Forests. The contractor shall in also intimate subsequent posting of his near relative in such office if any during the course of execution of the said works. Any breach of the conditions by the contractor would render him liable to be removed from the approved list of the contractor of the Department.

It is again emphasized that above instructions may be kept in view while registering any person as contractor/private sale contractor and also while awarding the works to them and these instructions should also be conveyed to all the officers/officials working under your control for strict compliance."

7. However, that does not mean that the transfer of respondent No.3 is required to be upheld. Respondent No.3 has been transferred simply on the basis of the D.O. letter and the same is not sustainable in view of the judgment rendered by this Court in Sanjay Kumar vs. State of H.P. & Ors, Latest HLJ 2013 (HP) 1051.

8. Interestingly, even respondent No.3 is a permanent resident of District Bilaspur being a resident of Village Challela, Post Office Nakrana, Tehsil Shree Naina Devi Ji, District Bilaspur, H.P. and was thus interested to be posted in his Home District. However, in the given facts and circumstances, both the petitioner and 3rd respondent are not entitled to be posted in District Bilaspur.

9. Therefore, we dispose of this writ petition by directing the official respondents to transfer both the petitioner as also 3rd respondent outside their home districts within a period of two weeks from today. Pending applications, if any, also stand disposed of.

10. For compliance, to come up on 18.11.2020.