

(2024) 05 SHI CK 0107

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 23 Of 2024

Bhanu Pratap

APPELLANT

Vs

State Of Himachal Pradesh And Ors

RESPONDENT

Date of Decision : 31-05-2024

Acts Referred:

Citation : (2024) 05 SHI CK 0107

Hon'ble Judges : M.S. Ramachandra Rao, CJ; Satyen Vaidya, J

Bench : Division Bench

Advocate : Arun Kaushal, Arsh Rattan

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. Heard.

2. By way of this Letters Patent Appeal, appellant has assailed judgment dated 10.01.2024, passed by learned Single Judge of this Court in CWP No. 7864 of 2023, titled as Bhanu Pratap Vs. State of H.P. and Another., whereby the petition filed by the petitioner challenging his transfer has been dismissed.

3. Appellant is working as Patwari. He was ordered to be transferred from Patwar Circle Shikawari, Tehsil Thunag, District Mandi, H.P. to Patwar Circle South Magroo, Sub -Tehsil Chattri, District Mandi, H.P., vide office order dated 11.10.2023.

4. Appellant had assailed office order dated 11.10.2023 on following grounds:-

1. Appellant had not been allowed to complete his normal tenure at Patwar Circle Shikawari, Tehsil Thunag, District Mandi, H.P..

2. Appellant had already served hard area at Magroo, Sub Tehsil Chattri, District Mandi, H.P. w.e.f. 13.06.2011 to 18.05.2018 and his transfer again to a hard area was in violation of th transfer policy of the State.

3. The impugned transfer order was not for any administrative exigency or in public interest but was only due to political intervention.

5. Respondents by way of their replies had contested the grounds raised by the appellant by alleging that appellant himself had been beneficiary of D.O. notes in the past for the purposes of securing his transfer. The right of the respondents to transfer appellant was also asserted. Noticeably, the fact that the appellant had already served hard area and that the impugned transfer was again to most difficult area was not denied.

6. Learned Single Judge has dismissed the petition on the ground, firstly that the petitioner himself was beneficiary of D.O. Notes on previous occasions and secondly, no legal right accrued in his favour based on the transfer policy.

7. A Division Bench of this Court, vide judgment dated 27.08.2007, passed in CWP No. 1105 of 2006, titled as Sushila Sharma Vs. State of H.P. and Ors. had issued following directions:-

"We, accordingly, dismiss the petition. We, however, direct that a copy of this judgment be sent to the Chief Secretary to the Govt. of H.P. , who shall ensure that a proper transfer policy is formulated to ensure that the transfers are made only on administrative grounds and not on any others grounds. In the policy to be framed, it shall be ensured that all the employees are treated fairly and equally and every employee during his tenure of service serves in tribal/hard areas and also in remote/rural areas. When transfers are made, the administrative department shall ensure that the employees who have already served in tribal/hard areas as well as remote/rural areas are not again sent to these areas and there is a continuous process of change whereby all the employees have a chance to serve in tribal/hard areas as well as remote/rural areas. In the policy so framed, It should also be ensured that the transfer orders are not cancelled without making reference to the administrative department to put-forth its views. In the policy, measures shall be provided to ensure that employees (obviously influential) who have managed to remain posted in the urban areas/cities are posted to rural/remote areas and hard/tribal areas in the transfer season when the transfers are made. The transfer policy should also ensure that people, who are posted in remote/rural areas, join their place of postings and do not manage to get their transfers cancelled on frivolous grounds as has happened in the present case. The policy be framed and filed in Court within two months from today. The Chief Secretary shall file his affidavit of compliance on or before 29th October, 2007 when the matter be listed in Court for this purpose only."

8. Evidently, it was on the basis of aforesaid directions that Clause-12 has been inserted in the Transfer Policy of the State Government as under:-

"12. Posting of Employees in Hard/ Difficult/ Remote/ Hard Areas: In view of the observations made by the Hon'ble High Court vide judgment dated 27-08-2007 in CWP No. 1105/2006 titled as Sushila Sharma, Head Teacher V/s State of H.P.

& others, every department will ensure that all the employees are treated fairly and equally in the matter of transfer and posting. The Departments may also ensure that every employee during his tenure of service, serves in Tribal/Hard/Difficult Areas and also in Remote/ Rural Areas. While making transfers the Department shall ensure that the employees who have already served in Tribal/ Hard Areas as well as Remote/ Rural Areas are not again sent to these Areas and there may be a continuous process of change whereby all the employees have a chance to serve in Tribal/ Hard Areas as well as Remote/ Rural Areas and measures shall be taken to ensure that employees remained posted in the Urban Areas/ Cities for a long period, are transferred and posted to Rural/ Remote Areas and Hard/ Tribal Areas in the transfer season when the transfers are made. It will be the responsibility of concerned Head of Department/competent authority to relieve the officer/official transferred to tribal/difficult/hard/remote/rural areas.”

9. Thus, to hold that petitioner had not acquired any legal right will not be a correct proposition. Clause-12 of the Transfer Policy, as reproduced above, has its basis in the direction issued by this Court. Respondents are bound to adhere to aforesaid provision and in this view of the matter, the transfer of petitioner to hard area was a clear violation of the aforesaid provision.

10. Further, the Writ Court can always test the administrative action at the touch stone of fairness and bonafide. In the facts of the case in hand, respondents had failed to produce any material to suggest imminent requirement to transfer the petitioner to a hard area, that too, without allowing him to complete his normal tenure at one place.

11. We are of the considered view that learned Single Judge has erred in rejecting the prayer of the appellant to above extent. Therefore, we allow this appeal. The judgment dated 10.01.2024, passed by learned Single Judge of this Court in CWP No. 7864 of 2023 is set-aside and office order dated 11.10.2023 whereby petitioner was ordered to be transferred from Patwar Circle Shikawari, Tehsil Thunag, District Mandi, H.P. to Patwar Circle South Magroo, Sub-Tehsil Chattri, District Mandi, H.P. is also quashed and set aside.

12. Accordingly, the appeal is disposed of, so also the pending miscellaneous application(s), if any.