
(2013) 05 SHI CK 0041

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2616 of 2013-B

Chander Shekhar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1227

Hon'ble Judges : Rajiv Sharma, J; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Onkar Jairath, for the Appellant; Parmod Thakur, Additional Advocate General with Ms. Meenakshi Sharma, Additional Advocate General and Mr. Neeraj Sharma, D.A.G., for the Respondent

Judgement

Dharam Chand Chaudhary, J.—The challenge herein is to the order dated 30.3.2013, Annexure-P6, whereby the petitioner has been ordered to be transferred from the office of the Executive Engineer, HP PWD Division, Ghumarwin, District Bilaspur (Sub Division, Ghumarwin), to HP PWD Division, Dodra Kwar in District Shimla. The impugned order has been sought to be quashed and set aside on the grounds inter alia that the petitioner was ordered to be transferred to the present place of posting vide order dated 14.3.2013, Annexure P-2 on the representation dated 23.2.2013 Annexure P-1 made by his mother to the Chief Minister, Himachal Pradesh. Consequently, he stands relieved from his previous place of posting i.e. HP PWD, 10th Circle, Bilaspur vide office order Annexure P-3 on 14.3.2013 and resumed his duties on that very day vide joining report Annexure P-4. The Assistant Engineer concerned even vide letter dated 14.3.2013, Annexure P-5 informed the Authorities qua the petitioner having reported for duties at the transferred station. His transfer after about 20 days of his reporting for duties at his present place of posting to Dodra Kwar vide Annexure-P6, has been stated to be violative of the Transfer Policy and being also the result of malafide exercise of power. On 2.5.2013, following order came to be passed in this writ petition:

Notice. Mr. Kush Sharma, learned Deputy Advocate General waives service of notice on behalf of the respondents. List on 7th May, 2013. In the meantime, learned Additional Advocate General shall obtain instructions from the State/ respondents.

2. On the next date i.e. on 7.5.2013, the learned Additional Advocate General has placed on record letter No. PWLC-CWP-2616/2013/Chander Shekhar, Sr. Asstt./1910, dated 6.5.2013, of Deputy District Attorney, HP PWD, Shimla, enclosing thereby another office order dated 3.5.2013, whereby pending disposal of this writ petition before this Court, one Shri Roop Lal, Sr. Assistant, under transfer from 8th Circle to HP PWD, 10th Circle, HP PWD, Bilaspur, has been adjusted in HP PWD Sub Division, Ghumarwin, from where the petitioner has been ordered to be transferred to Dodra Kwar and the subject matter of dispute in this writ petition. On going through the contents of the letter and also the subsequent development that pending disposal of this writ petition in this Court, the second respondent has transferred and posted Shri Roop Lal aforesaid at the place of the petitioner, the impugned order Annexure P-6 and also the order dated 3.5.2013, whereby said Shri Roop Lal was adjusted at the place of the petitioner, were ordered to be stayed. The order passed on 7.5.2013 reads as follows:--

List on 15th May, 2013. Reply, if any, be filed before that date. We also direct that order dated 30th March, 2013, Annexure P-6 and order No. PWD-79-1-Sr.Asstt. Tr.12/ESM790-94 dated 3rd May, 2013 shall remain stayed till further orders. Respondent Engineer-in Chief shall remain present in Court on the next date of hearing.

3. Reply has not been filed. The Engineer-in-Chief, who is present in person had agreed to withdraw the Office Order No. PWD-79-I-Sr.Asstt.Tr.12/ESI-1790-94, dated 3.5.2013.

4. In view of the written instructions placed on record alone by learned Additional Advocate General, on the previous date, we propose to dispose of this writ petition on the basis of the instructions so placed on record because the transfer of the petitioner vide impugned order dated 30.3.2013 Annexure P-6 from Ghumarwin to Dodra Kwar in District Shimla, has been ordered on the basis of some approval received from the Office of the Chief Minister, Himachal Pradesh. The contents of this communication further reveal that the approval, as received in the Office of second respondent was qua the transfer of the petitioner to a place out of District Bilaspur. In these circumstances, the transfer of the petitioner vide impugned order Annexure P-6 to Dodra Kwar, is in the exigency of service or in the larger public interest seems to be highly doubtful. The petitioner rather seems to have been transferred to Dodra Kwar for some other consideration and may be with malafide intention to the reasons best known to the respondents.

5. True it is that as per own case of the petitioner, he also seems to have

managed his posting at the present place i.e. HP PWD, Sub Division, Ghumarwin on the basis of the representation Annexure P-1 made by his mother to the Chief Minister, Himachal Pradesh. Not only this, but throughout his service career, except for six months i.e. initially on his appointment in the month of January, 1998, when he was posted at HP PWD 8th Circle, Hamirpur, the petitioner remained posted throughout at Bilaspur in his Home Town, as he belongs to village Masdhan, Tehsil Ghumarwin. Vide order dated 12.3.2013 Annexure P-2, he has managed his posting at Ghumarwin locally in his home Sub Division.

6. From the perusal of the written instructions placed on record by the learned Additional Advocate General, we are satisfied that the distance between Bilaspur and Ghumarwin is now only 13 Kms. and in no case more than 25 Kms. On this score also, he cannot be treated to have been transferred from Bilaspur to Ghumarwin vide Annexure P-2 and rather a case of local adjustment. Therefore, it does lie ill in his mouth to say that he has been transferred after twenty days in violation of the Transfer Policy. The ailment of his mother, if any, and he being the only son to lookafter her, also does not weigh with us for the reason that the petitioner being a public servant, can be transferred and posted at any place in the State and cannot be heard to have any complaint of this nature against his transfer. However, our concern in the case in hand is that the transfer order of the petitioner is not a case of exigency of service or in the larger public interest and rather politically motivated for all the reasons hereinabove. Therefore, only on this short ground also, in our opinion, the impugned order dated 30.3.2013 Annexure-P6 is vitiated and as such deserves to be quashed and set aside. There should, however, be no misunderstanding that the petitioner cannot be transferred. The respondents may transfer the petitioner to any other place, however, in the public interest or in the exigency of service. With the above observations, we quash and set aside the impugned order dated 30.3.2013 Annexure P-6. The Writ Petition stands disposed of so also the pending application(s), if any.