

(2024) 02 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 1113 Of 2024

Daleep Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 20-02-2024

Acts Referred:

Citation : (2024) 02 SHI CK 0011

Hon'ble Judges : Ranjan Sharma, J

Bench : Single Bench

Advocate : Seema K. Guleria, Ramakant Sharma

Final Decision : Disposed Of

Judgement

Ranjan Sharma, J

1. Notice. Mr. Ramakant Sharma, learned Additional Advocate General, appears and waives service of notice on behalf of respondents No.1 and 2.

2. With the consent of the appearing parties and in view of the nature of order intended to be passed herein, the present writ petition is taken up for disposal, at this stage.

3. The petitioner has filed the instant writ petition with the following prayers:-

“(i) That the office order dated 06.02.2024 contained in Annexure P-1 may kindly be quashed and set aside by issuing a writ of certiorari.

(ii) That the respondents may kindly be directed to allow the petitioner to complete his normal tenure at GMS Balohi u/c GSSS Gawal Muthani, District Bilaspur, H.P. or in the alternative it is prayed that the petitioner may kindly be directed to consider the case of the petitioner for adjustment at vacant post by issuing a writ of mandamus either in GMS Kanoyala Uperla under complex GSSS Nand, District Solan, HP or in GSSS Naghiyar, Tehsil Jhandutta, District Bilaspur, H.P.”

4. The petitioner is a TGT [Non-medical], earlier posted in GMS Balohi, under complex GSSS Gawal Muthani, District Bilaaspur, since July, 2022. The petitioner is aggrieved against the office order dated 06.02.2024 [Annexure P-1], transferring the petitioner from GMS Balohi, under complex GSSS Gawal Muthani, District Bilaspur [H.P.] to GSSS Telor, District Shimla, on the grounds; (i) that the petitioner has completed only one year and six months at the present station, i.e. GMS Balohi; (ii) the transfer has been ordered in view of the orders passed by this Court in CWP No.9716 of 2023, titled as Naresh Kumar Versus State of Himachal Pradesh and others, filed by private respondent No.3, which was treated as representation and decided by way of the orders dated 01.12.2023, whereby, the private respondent after serving in difficult/rural area, had sought for transfer to a soft station; (iii) the petitioner has been transferred when, two posts of TGT [Non-medical] are lying vacant in GMS Kanoyala Uperla, under complex GSSS Nand, District Solan [H.P.] or in GSSS Naghiyar, Tehsil Jhandutta, District Bilaspur [H.P.], where, either private respondent and the petitioner could have been considered; (iv) the transfer by clubbing the previous stay is contrary to Clause-10 of the Transfer Policy and also the Statutory Rules.

5. Per contra, Mr. Ramakant Sharma, Learned State Counsel, submits that the transfer has been ordered by acceding to the representation made by private respondent No.3 in pursuance to filing of CWP No.9716 of 2023 and the fact that the petitioner had completed the normal tenure within the radius of 30 Kms. At this state, the stand of the Learned State Counsel, is not in consonance with the spirit of the mandate of law, for the reason, that in case, the representation of the private respondent was required to be considered then, the private respondent should have been considered either against vacancy or against incumbents, who have completed their normal tenure in terms of Clause-10 of the Transfer Policy and under the Statutory Rules and not by clubbing the previous tenure in violation of Clause-10 of the Transfer Policy and the Statutory Rules, referred to above.

6. Learned counsel for the petitioner, submits that the petitioner shall be satisfied, in case, the petitioner is permitted to make a representation, to respondent No.2-Director, Elementary Education, Himachal Pradesh, ventilating his grievances within the stipulated period.

7. The prayer so made by the learned counsel for the petitioner is innocuous and is not opposed by the Learned State Counsel also.

8. Keeping in view the above facts and circumstances, this Court disposes of the present writ petition and permits the petitioner to make a representation to respondent No.2-Director, Elementary Education, Himachal Pradesh, within three days from today; with further direction to the aforesaid respondent to examine the same and to pass appropriate orders within ten days thereafter.

9. In the entirety of the facts and circumstances, referred to above, this Court is not inclined to stay the operation of the impugned orders dated 06.02.2024

[Annexure P-1], for the reason, that the petitioner stands relieved and the private respondent has already joined at GMS Balohi. However, this Court directs that the petitioner shall not be compelled to join the transferred station [GSSS Telor, District Shimla], till decision of the representation.

10. Till the decision of the representation, the vacant posts at GMS Kanoyala Uperla, under complex GSSS Nand, District Solan [H.P.] and in GSSS Naghiyar, Tehsil Jhandutta, District Bilaspur [H.P.], as mentioned in Para-6 of the writ petition, shall not be filled-up, without considering the petitioner.

In the aforesaid terms, the writ petition as well as the pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.