

(2024) 05 SHI CK 0071

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 8223 Of 2024

Dixit

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 07-05-2024

Acts Referred:

Citation : (2024) 05 SHI CK 0071

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Srishti Chauhan, Anup Rattan, Rajat Chauhan, Kiran Lata Sharma

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this Writ Petition, the petitioner has, inter alia, prayed for the following reliefs:-

“(a) That a writ in the nature of certiorari may kindly be issued thereby quashing and setting aside impugned transfer order dated 25.10.2023 (Annexure P-9), qua the petitioner.

(b) That, a writ in the nature of mandamus may very kindly be issued thereby directing the respondent No.1 to allow the petitioner to continue working as Secretary, Agriculture Produce Market Committee, Kangra, Himachal Pradesh.”

2. The case of the petitioner is that in terms of Annexure P-1, order dated 04.06.2020, he was appointed as Secretary, Class-1 (Gazetted), on contract basis and he joined as such at Agricultural Produce Market Committee, Chamba, vide Annexure P-2, dated 08.06.2020. He continued to serve at Chamba till he was transferred vide notification dated 20.06.2022, to Kangra, where he joined as such on 22.06.2022. His grievance is that in terms of the impugned order Annexure P-9, dated 25.10.2023, the petitioner has been again transferred to APMC, Chamba and the private respondent has been transferred and posted as

Secretary, APMC, Kangra on secondment basis, ignoring the fact that neither the term of the petitioner at the said station is complete, nor respondent No.3 was eligible to hold the post of Secretary of an APMC, in terms of the Recruitment and Conditions of Service of Officers and Staff, Regulations, 2006, that have been framed for the employees of Himachal Pradesh State Agricultural Marketing Board under the provisions of the Himachal Pradesh and Horticulture Produce Marketing Development and Regulations Act, 2005. It is also the case of the petitioner that the impugned transfer order has neither been passed on account of any administrative exigency nor on account of any public interest, but to adjust the private respondent. Accordingly, the petitioner has prayed that the petition be allowed and the impugned transfer order be quashed and set aside.

3. Respondent No.3 despite service has chosen not to contest the petition. Accordingly, the said respondent is proceeded against ex parte.

4. Reply to the petition has been filed by the respondents. The stand of the respondent-State is that as the petitioner happens to be a Class-I officer, therefore, he cannot take the plea that he has been transferred without enabling him to complete the normal tenure of 3 to 5 years and further it is the prerogative of the employer as to where an employee is to be posted. As far as respondent No. 2 is concerned, its stand is that the transfer order has been passed by respondent No. 1 and respondent No. 2 abides by whatever decision is taken in this regard by respondent No. 1.

5. I have heard learned counsel for the parties and also carefully gone through the pleadings and documents appended therewith.

6. There are on record appended with the petition the Recruitment and Conditions of Service of Officers and Staff of the respondent-Board (Annexure P-10), as amended from time to time. In terms of these Regulations, the post of Secretary is filled 80% by way of direct recruitment and 20% by way of promotion from amongst the feeder category of Assistant Secretaries. It is mentioned in the Regulations that failing this, the recruitment can be made on secondment basis amongst the category of District Agriculture Officer or equivalent of the department of Agriculture/ Horticulture preferably, but not the below the rank of ADO/HDO, having experience in Agriculture/Horticulture, Marketing and trained as a Secretary of the Market Committee.

7. It is the specific allegation of the petitioner that the private respondent is not eligible to be appointed even on secondment basis as he is not trained as a Secretary of Market Committee. Whereas, this allegation of the petitioner has gone un-rebutted on behalf of respondent No.3 as he has chosen not to contest the petition, respondents No.1 and 2 have also not placed any material on record to substantiate that the private respondent had undergone training as Secretary of the Market Committee. That being the case, it is not understood as to how an ineligible person could have been appointed against the post of Secretary and that too on secondment basis by displacing a regularly serving and qualified

Secretary.

8. Here it is not a case where the private respondent was appointed against a vacant post on secondment basis. The private respondent has been appointed on secondment basis by transferring the incumbent who already was serving at the said station. Simple use of the word that, this was done on account of administrative exigency and public interest, does not suffice the purpose, because there is nothing placed on record by the respondents to substantiate as to how appointment of an ineligible person on secondment basis by displacing a regular incumbent is in public interest. This clearly and manifestly demonstrates that the impugned transfer order was passed just to adjust respondent No.3.

9. There is a specific averment made in the petition by the petitioner that the private respondent was not eligible to be posted as Secretary as he has not undergone the training as Secretary of the Marketing Committee and in the reply filed to this paragraph by the State, there is no rebuttal to the averments so made in the writ petition.

10. In this view of the matter, the petition succeeds. The impugned transfer order dated 25.10.2023 (Annexure P-9) is quashed and set aside and the respondents are directed to permit the petitioner to continue to serve as Secretary, APMC, Kangra, for a normal tenure.

The petition stands disposed of. Pending miscellaneous application(s), if any also stand disposed of accordingly.