

(2021) 01 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 5914 Of 2020

Dot Ram Paharia

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 01-01-2021

Acts Referred:

Citation : (2021) 01 SHI CK 0022

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

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Ashok Sharma, Vinod Thakur, Vikas Rathor, Seema Sharma, Bhupinder Thakur, Yudhvir Singh Thakur, Vinod Chauhan

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

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

â??i) That appropriate writ order or direction may very kindly be issued and the impugned order dated 18.11.2020 (Annexure P-1) is liable to be

quashed and set aside, with further direction to the respondents to allow the petitioner to perform his duties at Government Senior Secondary School

Jaree, District Kullu, H.P., in the interest of law and justice.â??

2. It is not in dispute that the petitioner has been transferred on the basis of a D.O. note, therefore, transfer order is liable to be set aside on this

ground alone, in view of the judgment rendered by this Court in CWP No. 801 of 2013, titled Sanjay Kumar versus State of H.P and ors. and the

connected matters, decided on 5.07.2013.

3. However, at this stage, learned counsel for respondent No.3 would argue that since the petitioner has completed his normal tenure of service at the given station, therefore, the mere fact that transfer of the petitioner has been preempted or prompted by D.O. note would not furnish him a cause of action to assail the order of transfer. In support of his submissions, strong reliance is placed on a judgment rendered by this Court in CWP No. 2026 of 2019, titled Kirpa Ram Vs State of H.P. and ors., decided on 21.11.2019, wherein vide para-2, it was observed as under:-

“It is not in dispute that the petitioner has completed his normal tenure of service at the given station. Therefore, the mere fact that the transfer of the petitioner has been preempted or prompted by D.O note would not furnish a cause of action to the petitioner to challenge the order of transfer when his tenure of service at the given station has already been completed.”

4. Obviously, there can be no quarrel with the judgment aforesaid, but it needs to be noticed that after passing of the aforesaid direction, the entire world including our country and the State are facing COVID-19 pandemic. It is on account of this pandemic that the State Government itself has imposed a complete ban on general transfers vide order dated 23rd July, 2020 and thereafter vide notification dated 19th November, 2020.

5. Now, the transfers can be made only:-

- (i) to fill up vacant posts in tribal/difficult/hard areas;
- (ii) to fill up vacancies arising out of retirements, promotions and creation of new posts;
- (iii) transfers necessitated on account of disciplinary matters, vigilance cases, criminal proceedings etc.;
- (iv) in cases involving administrative grounds and exigencies.

6. The case of the petitioner does not fall under any one of the eventualities as contemplated above and, therefore, the order of transfer cannot be sustained and is liable to be set aside.

7. Learned counsel for respondent No.3 would, however, contend that it is only on account of compelling circumstances that respondent No.3 was compelled to seek transfer. Even this contention is without any merit because in case respondent No.3 was facing certain personal difficulties, then he ought to have approached his employer, rather than procuring D.O. note, who thereafter was required to consider and decide such representation.

8. As regards, the personal hardship of respondent No.3, it is more than settled that the Courts are extremely slow to interfere directly in personal

hardship cases, the clear implication of the almost consistent directions given in the cases that the transferee could make a representation to the competent authority.

9. Reference in this regard can conveniently be made to the judgment of the Honâ??ble Supreme Court in Rajendra Roy vs. Union of India and

Another (1993) 1 SCC 148, wherein it was observed as under:-

7. â?¦...The appellant has not made by representation about personal hardship to the department. As such there was no occasion for the department to

consider such representation. This appeal, therefore, fails and is dismissed but we make no order as to costs. It is, however, made clear that the

appellant will be free to make representation to the concerned department about personal hardship, if any, being suffered by the appellant in view of

the impugned order. It is reasonable expected that if such representation is made, the same should be considered by the department as expeditiously

as practicable.

10. Consequently, the present petition is allowed and the impugned office order dated 18.11.2020 (Annexure P-1) is quashed and set aside. However,

respondent No.3 is also permitted to make a representation and in case the same is made within two weeks from today, respondents No.1 and 2 shall

consider and decide the same within a period of four weeks thereafter. Pending application(s), if any, also stands disposed of.