

(2022) 12 SHI CK 0036

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 7205 Of 2022

Dr. Richa Salwan

APPELLANT

Vs

Dr. Yashwant Singh Parmar University Of Horticulture And
Forestry And Others

RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 12 SHI CK 0036

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Avinash Jaryal

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following substantive relief:-

"That appropriate writ, order or direction may very kindly be issued and impugned order (Annexure P-3) dated 11.10.2022 may very kindly be quashed and set aside, with further directions to the respondents to allow the petitioner to continue serving in the College of Horticulture and Forestry, Neri, District Hamirpur, in the interest of law and justice."

2. The respondent-University advertised various posts of Assistant Professor in the year 2018 and the petitioner was appointed as Assistant Professor (Microbiology) and thereafter posted in the College of Horticulture and Forestry, Neri, District Hamirpur initially on contract basis on 05.11.2018 and after completion of the requisite period, her services were regularized from 01.01.2022.

3. On the other hand, respondent Nos. 2 and 3 are working with the respondent-University on contract basis and appointed as such in the year 2021. Respondent

No.2 after her appointment was posted in Government College of Horticulture and Forestry, Thunag, District Mandi, against a vacant post. But, the fact of the matter is that respondent No.2 worked at Thunag only for four months and thereafter vide order dated 01.01.2022 was sent on deputation in the department of Basic Sciences in the University main campus at Nauni. Here also, it needs to be noticed that even though this deputation was only for two months, however, she continued serving at Nauni. Whereas, respondent No.3, who too was appointed on contract basis in the year 2021 was posted in the department of Basic Sciences at Nauni, Solan.

4. According to the petitioner, it was simply in order to accommodate both respondent Nos. 2 and 3, respondent-University issued an order dated 11.10.2022 whereby respondent No.2, who had been working without any post in the main campus at Nauni and her salary was being drawn from College of Horticulture and Forestry, Thunag, has now actually been retained at the main campus at Nauni, whereas, respondent No.3 has conveniently been adjusted at College of Horticulture and Forestry, Neri, District Hamirpur.

5. It is the specific case of the petitioner that the order of transfer has neither been passed in administrative exigency nor in public interest, but simply, in order to accommodate respondent Nos. 2 and 3 and the same is nothing but an act of favouritism in favour of respondent Nos. 2 and 3.

6. None has appeared on behalf of private respondents despite service.

7. As regards respondent-University, it has sought to justify its action by claiming that as per terms and conditions of appointment order and regularization orders of the petitioner issued from time to time, she is liable to be posted anywhere in the territorial jurisdiction of the University and has, therefore, rightly been transferred to the College of Horticulture and Forestry, Thunag, District Mandi, H.P. The respondent-University has further relied upon the provisions contained in statute 3.1(2)(iv) which reads as under:-

"to transfer personnel from one post to another or to transfer posts from one scheme to another in the interest of the University without adversely affecting the service conditions; and Sr. No.3 of the schedule of delegation of administrative powers approved by the Board of Management"

8. As regards respondent No.2, the University has tried to justify its action by claiming that the posting of the said respondent to the main campus was on the ground that presently classes of B.Sc. (Horticulture) and B.Sc. (Forestry) are running in the College and there is only one course related to Microbiology being taught to the students. Whereas, besides B.Sc. (Horticulture) and B.Sc. (Forestry), full fledged courses related to Microbiology to the postgraduate students are taught in the main campus. Since, there was only one teacher to teach the said courses in the main campus, therefore, the teaching work was suffering badly. Therefore, respondent No.2 was initially transferred to the main campus for a period of two months vide order dated 01.01.2022, however, the

said transfer/deputation was cancelled on 13.01.2022. But, thereafter, keeping in view the exigency of teaching work in the main campus, respondent No.2 was deputed in the main campus for a period of six months vide order dated 01.02.2022 which was later extended to another period of six months vide order dated 20.07.2022.

9. Similarly, respondent No.3 was appointed to the post of Assistant Professor (Microbiology) vide office order dated 30.01.2021 and posted in the department of Basic Sciences, main campus and joined as such on 02.03.2021. It is claimed that it is only an assumption of the petitioner that this was a maladjustment of respondent No.2, whereas, the teaching load at the main campus is suffering more than the one at Thunag.

10. We have heard the learned counsel for the parties and have gone through the material placed on record.

11. The law with regard to transfer of an employee is more than settled. Who is to be transferred and when is to be transferred is the sole prerogative of the employer. The Court can interfere only in case there is violation of any statutory rules or when the act is malafide and the orders have been passed for extraneous considerations.

12. No doubt, the administrative transfers are the prerogative of the department concerned and the competent authorities are the best persons to assess and act accordingly. However, the competent authorities have to act in the interest of public and in the event of any illegality or some personal motive, then alone, the employee can approach the Court of law for appropriate remedy. In other words, if an order of transfer is issued with a malafide intention or in violation of the statutory provisions, then a writ petition can be entertained.

13. The power of transfer must be exercised only bonafidely and reasonably which should be exercised in public interest. If the exercise of power is based on extraneous consideration, without any factual background, foundation or for achieving an alien purpose or an oblique motive, it would amount to malafide and colourable exercise of power. A transfer is mala fide when it is made not for a professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons, cannot be sustained.

14. For, it is more than settled that the basic principle of rule of law and good administration, that even administrative actions should be just and proper. An order of transfer is to satisfy the test of Articles 14 and 16 of the Constitution otherwise the same will be treated as arbitrary. Judicial review of the order of transfer is permissible when the order is made on irrelevant considerations. Even when the order of transfer which otherwise appears to be innocuous on its face is passed on extraneous consideration, then the Court is competent to go into the matter to find out the real foundation of transfer. The Court is competent to ascertain whether the order of transfer passed is bonafide or not.

15. It is not in dispute that the Government had newly opened a College of Horticulture and Forestry at Thunag, District Mandi and in order to fill- up the posts there had issued advertisement and thereafter pursuant to the said advertisement made appointments at Thunag including the one of respondent No.2. But, the fact of the matter is that immediately after four months of her appointment which was for the College at Thunag, respondent No. 2 was called back to the main campus and was never sent back to Thunag which is relatively a backward area as compared to the main campus at Nauni.

16. We have no hesitation to conclude that it is only with a view to illegally accommodate respondent No.2, who for some strange reasons happened to be a blue-eyed.

17. The respondent-University has gone out of the way to accommodate respondent No.2 and eventually ended up in discriminating the petitioner by posting her at Thunag for extraneous consideration or else there had been no reason why respondent No.2 was called back shortly within four months of her appointment to the main campus that too only for a period of two months, as is evident from the order dated 01.01.2022. Even though the transfer/ deputation was cancelled vide order dated 13.01.2022, yet respondent No.2 was deputed in the Basic Sciences (Main Campus) initially for a period of six months vide order dated 01.02.2022 which again was thereafter extended for another period of six months. What thereafter necessitated the transfer of the petitioner against respondent No.2, whose appointment was for Thunag and then to transfer the petitioner to Thunag, is not forthcoming.

18. The entire exercise undertaken by respondent No.1 was to accommodate respondent No.2 out of way and thereby discriminating the petitioner which smacks not only of an arbitrariness, but also malafides in the action of respondent No.1. The entire exercise as undertaken by respondent No.1 in accommodating respondent No.2 is based on extraneous consideration and has been done with a malafide intention.

19. In view of the aforesaid discussion and for the reasons stated above, we find merit in this petition and the same is accordingly allowed. The impugned order of transfer dated 11.10.2022 (Annexure P-3) is quashed and set aside.

20. Pending application(s), if any, also stands disposed of.