

(2020) 09 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3311 Of 2020

Ghanshyam Dass

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 09 SHI CK 0037

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

Bench : Division Bench

Advocate : Mohit Thakur, Pawan Gautam, Ashok Sharma, Ranjan Sharma, Vinod Thakur, Desh Raj, Seema Sharma

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

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

"(a) To set aside and quash the impugned Transfer Order dated 26th August, 2020 (Annexure P-1) at Serial No.2 qua the petitioner on the grounds that the petitioner is having less than nine months for retirement, is having personal family circumstances(Disabled Child and aged father and mother), has been transferred to a place which is more than 65 Kms and that too during ban on transfers(Annexure P-3) and on other grounds as detailed.

(b) To issue writ in the nature of Mandamus directing the respondents to allow the petitioner to continue at the present station till the date of retirement i.e. 31.03.2021 or posting of the petitioner may be allowed at some suitable station keeping in view the short date of retirement of the petitioner as per the clause 5.5 of the Transfer Policy."

2. The petitioner, who is posted as Kanungo at Baruna, Tehsil Nalagarh, District

Solan,H.P., has been ordered to be transferred to Diggai, Tehsil Ram Shahar, District Solan, vide order dated 26.08.2020, which is around 65 kilometres away from the present place of posting.

3. The transfer has been challenged mainly on two grounds; firstly that the petitioner has less than nine months to retire and secondly the transfer has been effected during ban period i.e. 23rd July 2020.

4. We have heard the learned counsel for the petitioner and the learned Advocate General representing the respondents-State.

5. As regards the first contention, no doubt, certain privileges and safeguards have been extended to the employees, who are nearing retirement, under the transfer policy. However, even the administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redressal but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. Even if, the order of transfer is made in transgression of administrative guidelines, the same cannot be interfered with as it does not confer any legally enforceable rights unless the same is shown to have been vitiated by mala fides or made in violation of any statutory provision. The government is the best judge to decide how to distribute and utilize the services of its employees.

6. It is trite that transfer is an incidence of service and as long as the authority acts keeping in view the administrative exigency and taking into consideration the public interest as the paramount consideration, it has unfettered powers to effect transfer subject of course to certain disciplines. Once it is admitted that the petitioner is State government employee and holds a transferable post then he is liable to be transferred from one place to the other within the District in case it is a District cadre post and throughout the State in case he holds a State cadre post. A government servant holding a transferable post has no vested right to remain posted at one place or the other and courts should not ordinarily interfere with the orders of transfer instead affected party should approach the higher authorities in the department. Who should be transferred where and in what manner is for the appropriate authority to decide. The courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to "proper place". It is for the administration to take appropriate decision.

7. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations without any factual background foundation or for achieving an alien purpose or an oblique motive it would amount to mala fide

and colourable exercise of power. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as on the basis of complaints. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. 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.

8. Judicial review of the order of transfer is permissible when the order is made on irrelevant consideration. 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 as a measure of punishment.

9. The law regarding interference by Court in transfer/posting of an employee, as observed above, is well settled and came up before the Hon'ble Supreme Court in E.P. Royappa vs. State of Tamil Nadu, (1974) 4 SCC 3; B. Varadha Rao vs. State of Karnataka, (1986) 4 SCC 131; Union of India and others vs. H.N. Kirtania, (1989) 3 SCC 445; Shilpi Bose (Mrs.) and others vs. State of Bihar and others, 1991 Supp (2) SCC 659; Union of India and others vs. S.L. Abbas, (1993) 4 SCC 357; Chief General Manager (Telecom) N.E. Telecom Circle and another vs. Rajendra CH. Bhattacharjee and others, (1995) 2 SCC 532; State of M.P. and another vs. S.S. Kourav and others, (1995) 3 SCC 270; Union of India and others vs. Ganesh Dass Singh, 1995 Supp. (3) SCC 214; Abani Kanta Ray vs. State of Orissa and others, 1995 Supp. (4) SCC 169; National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan and Shiv Prakash, (2001) 8 SCC 574; Public Services Tribunal Bar Association vs. State of U.P. and another, (2003) 4 SCC 104; Union of India and others Vs. Janardhan Debanath and another, (2004) 4 SCC 245; State of U.P. vs. Siya Ram, (2004) 7 SCC 405; State of U.P. and others vs. Gobardhan Lal, (2004) 11 SCC 402; Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others, (2004) 12 SCC 299; Somesh Tiwari vs. Union of India and others, (2009) 2 SCC 592; Union of India and others vs. Muralidhara Menon and another, (2009) 9 SCC 304; Rajendra Singh and others vs. State of Uttar Pradesh and others, (2009) 15 SCC 178; and State of Haryana and others vs. Kashmir Singh and another, (2010) 13 SCC 306 and the conclusion may be summarised as under:-

1. Transfer is a condition of service.
2. It does not adversely affect the status or emoluments or seniority of the employee.
3. The employee has no vested right to get a posting at a particular place or choose to serve at a particular place for a particular time.
4. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.

5. Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

6. There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.

7. In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.

8. The person against whom allegations of malafide is made should be impleaded as a party by name.

9. Transfer policy or guidelines issued by the State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Department personnel.

10. The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.

11. If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.

10. As regards the second contention regarding the transfer having been effected during the ban period, we again do not find any merit in such contention. Even though, the Government of Himachal Pradesh did impose a ban on transfers on 20th July, 2019 and thereafter vide instructions issued on 23rd July, 2020, but there was no complete prohibition imposed on transfers, as would be evident from the contents of the instructions, more particularly, para-4 thereof, which reads as under:

"4. Hence, it has been decided by the Government to impose complete ban on transfers. Accordingly, no transfers or adjustments shall be ordered by any Department/ Board/ Corporation/ Universities etc. during the ban period except in the rarest of the rare cases i.e. only on extreme medical grounds or on administrative exigencies that too with the prior approval of the Hon'ble Chief Minister through the concerned Minister-in-Charge in accordance with the Comprehensive Guiding Principles dated 10.7.2013."

11. Apart from the above, the respondents have issued fresh instructions regarding the transfer of Officers/Officials dated 18.08.2020, which read as under:

"In supersession of this Department instruction of even number dated 29.01.2009 as well as other instructions issued regarding transfer/posting of Kanungo and Patwari in their Home Sub-Division/Home Kanungo Circle/Home

Patwar Circles (if any), henceforth, the following provision be strictly adhered while transfer and posting of the Kanungos and Patwaris:-

1. No Patwaris will be posted in their Home Patwar Circle or adjoining Patwar circle except in tribal area.

2. No Kanungo will be posted in their Home Tehsil/Sub-Tehsil excepting tribal areas. Official belonging to the tribal area will not be posted in their Home Kanungo Circle.

3. In addition to the above; Henceforth, neither any Kanungo nor any Patwari will be posted for more than 03 year as well as within 08 Km radius of boundary of following administrative clusters and that too once in their service period, in public interest:

1. Urban Center.

2. Nagar Panchayat/Parishad.

3. Municipal Corporation/Council.

4. Industrial Area.

The above instructions be adhered strictly and any incumbent who fulfill above criteria be transferred for his place of posting with immediate effect in public interest and compliance in this behalf be sent to this Department within 05 day itself as per proforma given below."

12. It is in pursuant to these instructions that the petitioner was ordered to be transferred as he could not be posted in his Home Tehsil/Sub-Tehsil.

13. In view of the aforesaid discussion, we find no merit in this writ petition and the same is dismissed, leaving the parties to bear their own costs. Pending application(s), if any, also stand disposed of.