
(2012) 07 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : CWP No. 5506 of 2012-A

Khub Singh Chandel

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Citation : (2012) 07 SHI CK 0025

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : B.S. Thakur, for the Appellant; Vivek Thakur, Additional Advocate General with Mr. Vikas Rathore, D.A.G., for the Respondent

Judgement

Deepak Gupta, J.—This is the second round of litigation. Prior to this, the petitioner had filed CWP No. 2052 of 2012, wherein he had challenged the transfer order, whereby he had been transferred from Government High School Parsada Hawani to Government Middle School Drumman, u/c Government Senior Secondary School, Baroti. A Division Bench of this Court disposed of the writ petition with the following observations:

6. The petitioner is likely to complete his normal stay of three years at Govt. High School, Prasada Hawani in the month of July, 2012. The wife of the petitioner is also working as Language Teacher and presently posted as such in Govt. Sr. Sec. School, Morla, Distt. Mandi, which according to learned counsel representing the petitioner is nearby to Prasada Hawani. The Govt. High School, Hukal where the petitioner was transferred vide office order No. 3335136 dated 21.3.2012 though has not been implemented by the respondentsstate is also stated to be situated nearby the place of posting of his wife. A direction has thus been sought to be issued to the respondentsstate either to implement the order whereby the petitioner was transferred to Govt. High School, Hukal or permit him to continue at his present place of posting i.e. Govt. High School, Prasada Hawani. However, no such direction can be issued in this writ petition because the petitioner has already completed almost all normal stay at Govt. High School,

Prasada Hawani and as regards Hukal though he was ordered to be transferred there, however the order so issued has not been implemented and even one Sh. Rajinder Singh is presently working as Drawing Master in the said school. Irrespective of what has been said hereinabove, we, however, find the present a fit case where the petitioner, in all fairness and ends of justice, deserves to be adjusted either at Govt. Sr. Sec. School, Morla, Distt. Mandi where his wife is also posted as Language Teacher or in any other school nearby to Morla.

7. With the above observations, this writ petition stands disposed of, however, with liberty reserved to the petitioner to make a representation to the 2nd respondent within a week from today for his adjustment either at Govt. Sr. Sec. School, Morla or in any other school situated nearby along with a copy of this judgment and the 2nd respondent shall take a decision on the representation, if so made by the petitioner positively, within two weeks from the date of receipt thereof after affording an opportunity of being heard to the petitioner. In the meanwhile, the petitioner may not be compelled to join duties at Govt. Middle School, Drumman, his new place of posting and allow to avail leave of the kind due.

The Director (Elementary Education), Shimla, pursuant to these directions heard the petitioner and came to a conclusion that the post of Drawing Master is not lying vacant at Government Senior Secondary, Longni, District Mandi. He also held that since the petitioner had joined at Government Middle School, Drumman, u/c Government Senior Secondary School Baroti, where he had been transferred, it was not administratively feasible to accede to the request of the petitioner.

2. At the outset, we may mention that as far as second part of the order is concerned, the Director has gone beyond the scope of the order passed by this Court. This Court, after hearing the parties and considering the problems of the petitioner, including the fact that his wife was posted at Government Middle School, Morla, had directed the competent authority, i.e. respondent No.2 to consider the request and adjust him if such a vacancy was available.

3. The mere fact that the petitioner, in compliance to the earlier transfer order, had joined at Government Middle School, Drumman, does not mean that the order of this Court is wiped out. In fact, we have been repeatedly observing that normally we will not grant stay orders in transfer matters, but the State cannot turn round and say that if an employee obeys the transfer order, he has no right to challenge the same. Even if he has joined the place of posting, he is fully within his right to challenge the order of transfer and if this Court comes to the conclusion that the transfer order is illegal for any reason, then there is no problem in quashing the same.

4. We also find that the observation of respondent No.2 that the post of Drawing Master is not lying vacant in Government Senior Secondary School, Longni, District Mandi, appears to be incorrect. The petitioner has produced before us a

certificate issued by the Principal, Government Senior Secondary School Longni, District Mandi, H.P. wherein it is clearly certified that one post of Drawing Master is lying vacant w.e.f. 30th June, 2012 till date. Probably, respondent No.2 was not apprised by the Department that one post of Drawing Master was to fall vacant on 30th June, 2012 in the said school. Therefore, we quash the transfer order, Annexure P3 and direct that the petitioner be posted at Government Senior Secondary School, Longni, District Mandi, H.P. With the aforesaid observations, the writ petition stands disposed of. All pending application(s), if any, are also disposed of.