

(2022) 07 SHI CK 0023

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4418 Of 2022

Lalit Sain

APPELLANT

Vs

Himachal Pradesh State Cooperative Bank Ltd

RESPONDENT

Date of Decision : 13-07-2022

Acts Referred:

Citation : (2022) 07 SHI CK 0023

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Dr. Lalit Kumar Sharma, Sushant Vir Singh

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

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

i. That by way of writ of certiorari the impugned transfer order dated 13.06.2022 Annexure P-11 may kindly be set aside and quashed and the respondents may be directed to permit the petitioner to discharge his duty as Sr. Manager at Branch Office Shilaroo till his retirement which is due in the month of August, 2024.

ii. That a writ of mandamus may kindly be issued against the respondents who may be directed to decide the representation dated 23.06.2022 Annexure P-13 forthwith and in alternative the respondent may be directed to consider the case of the petitioner for his adjustment against either of vacant post of Sr. Manager Branch Office Dhalli, Chhota Shimla or in Head Office, Shimla.

2. It needs to be noticed that the petitioner is currently posted in officer grade as Senior Manager, which obviously is a restricted and a limited cadre and, therefore, there could only be a very limited places/offices where the petitioner can be transferred.

3. That apart, the petitioner all throughout his service, save and except a brief period w.e.f. 04.10.1995 to 29.12.1996, when he was posted at Pooh as Executive Assistant, has remained posted throughout his service at District Shimla, even though the respondents-Bank has its branches in seven (7) Districts out of twelve (12) Districts of Himachal Pradesh.

4. The incumbency of the petitioner is as under:-

Employee Code: 670

Address

Employee Name: LALIT SAIN

VILL-GALU, P.O. FAGU, TEHSIL- THEOG, DISTT-SHIMLA HP

Designation

Branch

Joining Date

DOR-31.08.2024

APPRENTICE 1

CHOTA SHIMLA

18-07-1998

EXE ASSISTANT

CHOTA SHIMLA

21-07-1989

EXE ASSISTANT

DHALLI

25-06-1993

EXE ASSISTANT

POOH

04-10-1995

EXE ASSISTANT

THEOG

30-12-1996

EXE ASSISTANT

HEAD OFFICE

06-12-2005

ASSISTANT MANAGER

THEOG

29-05-2007

ASSISTANT MANAGER

DHALLI

01-08-2012

MANAGER

KHOLI GHAT

22-01-2014

MANAGER

CHOPAL

10-04-2015

MANAGER

HEAD OFFICE

15-06-2016

SR MANAGER

CHOTA SHMLA

22-06-2020

SR MANAGER

SHILAROO

11-11-2021

5. Learned counsel for the petitioner would then try to take advantage of the Transfer Policy as framed by the respondents-Bank vide Circular No. 155/2015, wherein it has envisaged that ordinarily "the stay of an officer in one branch office or section will be three years" whereas the petitioner has completed only seven (7) months.

6. We , however, find no merit in this contention for more than one reasons.

Firstly, it cannot be disputed that a transfer is an incident of service and, therefore, normally no exception to the same can be taken.

Secondly, whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service, which again is the sole

prerogative of the employer unless vitiated by malafides or extraneous reasons.

Thirdly, an employee has no fundamental right or for that matter vested right to claim transfer or posting. Fourthly, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting.

Fifthly, individual convenience of persons who are employed in the service is subject to the overarching needs of the administration and;

sixthly, the policies which stipulate for a tenure are requirement of the administration.

7. This is so held by the Hon'ble Supreme Court in a fairly recent judgment in S. K. Nausad Rahaman and others vs. Union of India and others, AIR 2022 SC 1494.

8. Learned counsel for the petitioner would then attack the order of transfer on the ground that various persons have been permitted by the respondents to stay at the stations of their choice and it is only the petitioner who has been singled out.

9. Even this contention is without merit. It would be noticed that there are no allegations of malafide and if at all the allegations of the petitioner are to be considered, then the same can at best be termed to be an act of favouritism. But for that also there has to be a specific allegation as to who favoured whom and for what reasons. The stay of an employee, at a given station, for a long time beyond the period of three years cannot lead to an inference of favouritism, unless there is material to substantiate the same.

10. That apart, as observed by the Hon'ble Supreme Court in Nausad's case (*supra*) whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service, and an employee, therefore, has no fundamental right or for that matter vested right to claim transfer or posting of his choice.

11. The petitioner has been accommodated throughout his service by posting him in District Shimla alone and even now has been accommodated by posting him at Rohru, which again falls in District Shimla.

12. In view of the aforesaid discussion and for the reasons stated above, we find no merit in this petition and the same is accordingly dismissed. Parties are left to bear their own costs.