
(2022) 09 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.5622 Of 2022

Manoj Kumar

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 12-09-2022

Acts Referred:

Citation : (2022) 09 SHI CK 0039

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

Bench : Division Bench

Advocate : Mukul Sood, Ashok Sharma, Rajinder Dogra, Vinod Thakur, Shiv Pal Manhans, Bhupinder Thakur, Rajat Chauhan, Sanjeev Bhushan, Rakesh Chauhan

Judgement

Tarlok Singh Chauhan, J

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

"Issue a writ of certiorari for quashing the transfer order dated 16.08.2022(Annexure P-1) issued by respondent No.2."

2. A perusal of the records goes to show that the transfer of the petitioner has been effected on the basis of the D.O. Note issued by the Member of Parliament. A perusal of the D.O. Note further goes to show that not only the petitioner has been recommended to be transferred, but even the station(s) to which he could be transferred is suggested in the D.O. Note. This amounts to encroachment of the jurisdiction and authority of the Administrative Authority and, therefore, clearly is not sustainable as the question as to who and where is to be posted is the sole discretion of the Administrative Authority.

3. Consequently, the impugned order of transfer cannot sustain and is accordingly quashed and set aside.

4. However, at this stage, learned counsel for respondent No.3 states that it is due to extreme hardship that he had approached the Member of Parliament for

his transfer. The father of respondent No.3 died on 09.06.2020 and after his death, it is he, who is required to take care not only of his mother, who is currently 71 years of age and suffering from multiple ailments, but also his daughter, who is 16 years of age and suffering from a rare disease i.e. Leukocytosis and currently under treatment from Kidney Hospital, Jalandhar.

5. It is more than settled that as regards the case of individual hardship, it is for the employer to decide the same and reference can conveniently be made to the judgment of the Hon'ble Supreme Court in *Rajendra Roy vs. Union Of India* and anr. (1993) 1 SCC 148.

6. In the given facts and circumstances of the case, we deem it appropriate to dispose of this petition by directing respondent No.2 to consider the reply filed by respondent No.3 before this Court as a representation on his behalf and thereafter decide the same sympathetically taking into consideration the adverse family circumstances mentioned supra in which respondent No.3 is placed and take a decision thereupon within a period of 10 days from today and, if possible, order the transfer and posting of respondent No.3 to anyone of the following stations:-

“(1). GSSS Ghanari, District Una.

(2). GSSS Gugdehar (Una).

(3). GMS Amb u/c GSSS Amb, Una.

(4). GSSS Chowki Maniyar, Una.”

Ordered accordingly.

7. The petition is disposed of in the aforesaid terms, so also the pending application, if any.

8. However, before parting, it is made clear that this order is being passed in the peculiar facts and circumstances of the instant case and shall not be treated as a precedent in future.

9. For compliance, to come up on 27.09.2022.