
(2020) 10 SHI CK 0076
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2720 Of 2020

Pankaj Gautam

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 09-10-2020

Acts Referred:

Citation : (2020) 10 SHI CK 0076

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

Bench : Division Bench

Advocate : Shikha Chauhan, Vinod Thakur, Vikas Rathroe, Shiv Pal Manhans, Bhupinder Thakur, Seema Sharma, Yudhbir Singh Thakur

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner is serving as Junior Basic Teacher in District Bilaspur in the respondent Education Department. Vide office order dated 24.07.2020, he has been transferred from GPS Thar- Manal E/B Sadar, District Bilaspur to GPCS Bhater, E/B Swarghat, District Bilaspur, H.P., which is impugned in the instant writ petition.

2. Learned counsel for the petitioner argued that the impugned transfer order has been issued merely on the basis of D.O. note issued by MLA Sadar, District Bilaspur, H.P. She has further contended that the transfer order has been issued in contravention of the instructions issued by the respondent-State on 23.07.2020 whereby a complete ban on transfers has been imposed by the State Government. Under these instructions during the ban period, transfers can be ordered only in rarest of 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 comprehensive guiding principles dated 10.07.2013. Learned counsel also submitted that father of petitioner is suffering from Parkinson's disease and

needs his son (petitioner) around him.

Learned Additional Advocate General on the strength of reply filed by the respondents, submitted that the petitioner had completed his normal tenure at his present place of posting. His transfer was ordered against a vacant post in GPCS Bhater in public interest. He further contended that it is entirely for the employer to decide when, where and at what point of time a public servant is to be transferred from his present place of posting.

3. We have also gone through the record made available by the respondents. What emerges from the record is that the MLA Sadar, District Bilaspur requested the Competent Authority to transfer four employees serving in District Bilaspur, including the petitioner. The petitioner was sought to be posted in GPCS Bhater against a vacancy in larger public interest. This request was approved by Competent Authority Hon'ble the Chief Minister on 18.07.2020. The matter was thereafter examined by the Administrative Department. It was found that petitioner was posted in GPS Thar-Manal w.e.f. 19.03.2016 and as such had completed almost four years of service at the place. The respondents also ascertained that GPCS Bhater was a single teacher school with 36 students having a vacancy of Junior Basic Teacher, therefore, in larger public interest, respondent-Administrative Department acceded to the proposal and eventually impugned transfer order was issued on 24.07.2020.

The process for transferring the petitioner had been initiated prior to the issuance of instructions dated 23.07.2020. It was only the final order of transfer that was passed on 24.07.2020 after examination of the case by the Administrative Department. Vide impugned order, petitioner has been transferred against a single teacher school with 36 students, with vacancy of a Junior Basic Teacher. The transfer of the petitioner to the said school against a vacant post of the teacher cannot be said to be in violation of law or the policy guidelines. Rather, such transfer is in public interest. 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.

4. This Court in CWP No. 1924 of 2020, titled as John Gupta Vs. State of H.P. and others, decided on 22.07.2020, while dealing with the issue of transfer on the recommendation of Member of Legislative Assembly, held as under :-

"13. Further, the transfer of the petitioner on the recommendation of the MLA in the given facts and circumstances by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official, the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case.

This was so held by the Hon'ble Supreme Court in Mohd. Masood Ahmad vs. State of U.P. and others (2007) 8 SCC 150, wherein it was observed as under :-

"8. Learned counsel for the appellant submitted that the impugned transfer order of the appellant from Muzaffarnagar to Mawana, District Meerut was made at the instance of an MLA. On the other hand, it has been stated in the counter affidavit filed on behalf of respondent Nos. 1 & 2 that the appellant has been transferred due to complaints against him. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an M.P. or MLA would be vitiated. It all depends on the facts & circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order."

14. Though a recommendation by a peoples representative requesting for a particular course of action in the realm of administrative functioning may not per se constitute an unauthorized or unwarranted interference or cause vitiation provided the consequential steps are taken by the authority of administration alone, the nature of action then to be drawn by the administrative department would be contingent on the attending facts. It is only when the contextual facts demonstrate servile subjugation of an administrative authority to the dictates of an outside entity in power by meekly abdicating his dominion, the resultant order or decision would be impeachable as antithetical to the foundational precepts of governmental functioning. The facts and circumstances of each case will, therefore, have to be evaluated."

5. The law regarding interference by the Court in transfer/posting of the employee was expounded by this Court in CWP No. 2225 of 2020, titled as Puran Chand Vs. State of H.P. and others, relevant paragraph whereof is reproduced hereinafter :-

"8. 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 :: Downloaded on - 23/09/2020 15:18:46 :: CIS

High Court of H.P. 6 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."

In the backdrop of facts of the case viz-a-viz legal position, the impugned transfer order cannot be said to be suffering from any illegality. We find no merit

in this writ petition and the same is accordingly dismissed. The pending applications, if any also stand dismissed.