

(2020) 09 SHI CK 0398
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 3727 Of 2020

Rajesh Gupta

APPELLANT

Vs

HPSEBL & Another

RESPONDENT

Date of Decision : 25-09-2020

Acts Referred:

Citation : (2020) 09 SHI CK 0398

Hon'ble Judges : L. Narayana Swamy, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Manohar Lal Sharma, Lakshay Thakur

Final Decision : Disposed Of

Judgement

L. Narayana Swamy , CJ

1. Respondents have filed the reply, which is taken on record.
2. The petitioner by way of this writ petition has challenged the impugned transfer order dated 03.09.2020 (Annexure P -8) whereby he has been transferred from Operation Circle, HPSEB Ltd. Solan to P& T Division HPSEB Ltd, Kangra. On earlier occasion, the petitioner had approached this Court by filing CWP No.2768 of 2020, which was disposed of on 10.08.2020, directing the respondents to decide the representation of the petitioner in the light of the transfer policy occupying the field.
3. In compliance to the said order, the representation filed by the petitioner was considered and rejected vide order dated 27.08.2020. Hence, the present writ petition.
4. Learned counsel for the petitioner submits that the impugned transfer has been made on the basis of a complaint made against the petitioner. He further submits that when on the basis of some allegations or complaint, if a person like the petitioner is transferred, it amounts to transfer as punishment. When a transfer order is made on the basis of the complaint, then it should have been

preceded by an inquiry by providing an opportunity of hearing. In support of his submission, learned counsel relied upon paragraph-16 of the judgment delivered by Hon'ble Supreme Court in Somesh Tiwari vs. Union of India and others, (2009) 2 SCC 592. Learned counsel for the petitioner further submits that in the reply filed by the respondents, it has been stated that no charges have been proved against the petitioner and the inquiry initiated on the basis of complaint has ended up in exoneration of the petitioner. Accordingly, the learned counsel for the petitioner prays that the writ petition may be allowed and impugned order of transfer be set aside.

5. On the other hand, learned counsel for the respondents submits that the transfer of the petitioner has been effected primarily on the basis of the fact that he has completed the normal tenure by serving for more than 10 years in the present place of posting and also complaint has been received from the staff of the same department for non-cooperation.

6. We have heard learned counsel for the parties and gone through the record. Earlier also the petitioner had approached this Court in a routine manner which was disposed of by directing the respondents to consider his pending representation and as per directions issued by this Court, the same was considered and rejected by the respondents. In the rejection order which was passed pursuant to the directions issued by this Court, it has been referred that the petitioner has completed his tenure of 17 years in the present place of posting. Consequently, he is bound to be transferred.

7. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer which is ordinarily an incident of service should not be interfered with, unless it is found arbitrary, mala fide etc. on the part of the authority. The petitioner has not raised any such ground, however, remotely we found that there is some arbitrariness on the part of the respondents. In the rejection order dated 27.08.2020, it is referred that complaint was made against the petitioner by the Staff, which was ultimately ended in exoneration of the petitioner. But one thing remains that the petitioner has completed his tenure and the transfer itself is an incident of service. Accordingly, we do not find any reason to interfere in the present petition and dispose of the same by directing the petitioner to report to the transferred place.

8. Pending application(s), if any, also stand(s) disposed of.