
(2013) 05 SHI CK 0084
In the High Court Of Himachal Pradesh
Case No : CWP No. 244 of 2013-E

Rajesh Verma

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Constitution of India, 1950 — Article 309
Himachal Pradesh Police Act, 2007 — Section 17, 56(1)(iv)

Citation : (2013) LabIC 3704

Hon'ble Judges : Surinder Singh, J; R.B. Misra, J

Bench : Division Bench

Advocate : R.K. Sharma and Mr. Lovneesh Kanwar, for the Appellant; Shrawan Dogra, Advocate General and Mr. M.A. Khan, A.A.G. and Mr. Vikram Thakur, D.A.G. for Respondents No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The petitioner has challenged his transfer order dated 7.1.2013 (Annexure P-4), whereby, he has been transferred from the post of Superintendent of Police (Communication & Technical Services), Shimla to Superintendent of Police (LR/Tech), PTC (Police Training College), Daroh, along with 16 other police officers of IPS/cadre. The petitioner has also prayed that he may be allowed to continue as Superintendent of Police (Communication & Technical Services), Shimla. Brief facts, necessary for adjudication of the writ petition, are that the petitioner, possessing degree of B.E. (Electronics), was selected to the post of Deputy Superintendent of Police (Wireless) on 26.10.1999, in reference to open selection conducted by H.P. Public Service Commission (in short called "Commission"), in the year 1999. Thereafter, the petitioner was promoted as Additional Superintendent of Police (Wireless) on 10.5.2003 and Superintendent of Police (Communication & Technical Services) Himachal Pradesh on 28.2.2009 (Annexure P-1) on that post he remained on probation for a period of two years and was confirmed to the said post on 15.12.2011, since then, the petitioner is working at Shimla. According to the

petitioner, the prescribed technical qualification to the post of Superintendent of Police (Telecom) is M.Sc. (Physics) or B.E. in Electronics/Telecom Engineering or equivalent.

2. Following submissions have mainly been made for and on behalf of the petitioner:-

(a) In the Civil List of Police, of 1.4.2011, sanctioned strength of officers of the Indian Police Services, Principal, PTC Daroh, has been shown at Sr. No. 15 and sanctioned strength of Officers of the Himachal Pradesh Police has been shown in one of the annexure therein.

(b) The post held by the petitioner, is reflected in a separate list issued on 1.4.2011.

(c) Chapter-14 of Police Telecommunication & Wireless System (Annexure P-5) dealing with the powers, duties and responsibilities of SP (Communication) provides that he shall exercise all administrative and disciplinary powers in accordance with various rules in respect of his charge.

(d) Clause 624 provides investigation of computer crime and Chapter 12 deals the subject of Forensic Science Laboratory (called FSL hereinafter).

(e) The Police Department of Himachal Pradesh has issued a Calendar of Courses for 2012 - 13 indicating that Course on Cyber Crime Investigation in PTC Daroh was conducted for three days w.e.f. 9.5.2012 to 11.5.2012 and three days for 23.7.2012 to 25.7.2012.

(f) Chapter 28 of Model Police Manual provides that qualified employee possessing M.Sc. (IT) working on regular basis is engaged in Police Department for working at PTC, Daroh, who had to impart training to the police personnel from the rank of Constable to Deputy Superintendent of Police. In addition to that, the guest faculty is also engaged by the Police Academy and guest from the office of Deputy Director, "F.S.L." are invited to address and impart training to police personnel on cyber crime. The guest faculties are also invited from N.I.T. Hamirpur to impart training to the police personnel on cyber crime and such set up is being used since last three years at PTC Daroh.

(g) The cyber crime or its study or functioning has nothing to do with the field of communication and technical services and since the cyber crime is totally different field, as such, the petitioner cannot be transferred to PTC, Daroh.

3. It has also been argued for the petitioner:-

(a) The provisions of Section 56(1)(iv) of Himachal Pradesh Police Act, 2007 (for short called "Act 2007") provides that proposals for transfers and postings of Gazetted Officers are to be made on the recommendation of a State Police Establishment Committee comprising of Director General of Police (as head of the Committee) and four other senior Police officers (not below the rank of Inspector General of Police), however, dehors such provisions of "Act 2007", the impugned

transfer order of the petitioner has been made, as such, the same is illegal. For convenience, the provisions of Section 56(1)(iv) of the "Act 2007" is reproduced as below:-

56. Police Establishment Committees.

(1) There shall be a State Police Establishment Committee headed by the Director General of Police and comprising four senior police officers not below rank of Inspector General of Police, nominated by the Director General of Police. The State Police Establishment Committee shall be responsible to -

(i) xxxx

(ii) xxxx

(iii) xxxx

(iv) recommend proposals for postings and transfers of Gazetted Police Officers to the State Government subject to provisions of this Act and relevant rules; and

(iv) xxxx

(b) The State Police Establishment Committee has not recommended the transfer of the petitioner, therefore, the transfer of the petitioner is not in consonance to the provisions of Section 56(1)(iv) of "Act 2007".

(c) The petitioner has no knowledge of cyber crime and the petitioner's transfer has been effected by complaint not known to him, by way of punitive measure and by way of degradation, *moreso*, when the petitioner is not qualified for imparting training at PTC, Daroh.

(d) The impugned transfer has not been made to the cadre post, rather has been made out of cadre, contrary to the judgment in *Dashrati Khan versus State of Uttrakhand*, 2009(6) SLR 82 (SB).

4. (a) In reference the judgment of Punjab & Haryana High Court in *Ranjit Singh & Others versus State of Punjab & Others*, 2003(2) SLR 539, it has been submitted that the transfer of an employee Executive Clerical Wing to General Duty Constables Cadre was deprecated.

(b) In reference to judgment of Supreme Court in *Tejshree Ghag Vs. Prakash Parashuram Patil and Others etc. etc.*, it has been submitted that transfer order cannot be affected after changing the terms and conditions of the employment. Relevant paragraphs have been quoted as below:-

12. The terms and conditions of their service, thus, unless altered expressly, would be governed by the rules which were in existence at the time when the impugned orders were passed. It is true that the State has the power to alter the terms and conditions of service even with retrospective effect by making rule framed under proviso appended to Article 309 of the Constitution of India, but it is also well-settled that the rules so made ordinarily should state so expressly.

15. The orders of transfer were passed by Authority in purported exercise of its executive power. Executive power can be exercised only in terms of the extant rules. It is well-settled that where executive order results in civil consequences, principles of natural justice are required to be complied with prior thereto. It is not a case where an order of transfer was passed by way of change of place of employment within an organization simpliciter. An order of transfer ordinarily should be in terms of the existing rules. Transfer may even be incidental to the conditions of service, but thereby nobody can be deprived of his existing right. Existence of a power and exercise thereof are two different concepts. An Executive power in absence of any statutory rules cannot be exercised which would result in civil or penal consequences. Such exercise of power must, moreover, be bona fide. It cannot be done for unauthorized purpose. An Executive order passed for unauthorized purpose would amount to malice in law. An order of transfer cannot prejudicially affect the status of an employee. If orders of transfer substantially affect the status of an employee, the same would be violative of the conditions of service and, thus, illegal. Transfers must be made to an equivalent post. [See *Ramadhar Pandey Vs. State of U.P. and Others*, *Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra*, and *P.C. Wadhwa Vs. Union of India (UOI) and Another*,

(c) The High Court of Allahabad (SB) in *Arun Kumar Pathak Vs. State of U.P. and Others*, had kept in abeyance the transfer order made on the ground that an employee of the U.P. Police Department cannot be transferred unless his case for transfer has been examined by the Police Establishment Board and in absence of such approval, transfer order was not be declared illegal or void ab-initio but was to be kept in abeyance.

5. On the other hand, learned Advocate General, has argued that by the impugned transfer order in question, power of the petitioner is not mitigated or reduced. The petitioner has neither vested right to remain posted at one place of choice nor can he insist to be posted at a particular place. The service benefits, status, seniority, pay scale of the petitioner has been protected and it is the employer who is best judge as in what manner the capability of an employee has to be utilized. After finding the petitioner a suitable person, he has been transferred, as such, no objection of any mala-fide could be attributed against anyone. The petitioner is unnecessary apprehending that such work would be derived from him at the place of his transfer for which the petitioner is not capable. Since the petitioner's service was required at the training centre, therefore, in the betterment of administration, the petitioner being a suitable person has been transferred to PTC Daroh. According to the State/respondent, the post held by the petitioner is neither of IPS cadre nor the petitioner, while working in the technical wing, is governed by Section 56(1)(iv) of "Act 2007", rather the petitioner's case may be referable to Section 17 of said "Act 2007". For convenience, Section 17 of "Act 2007" is being reproduced as below:-

17. Organization of Technical and Support services:

(1) The State Government shall create and effectively maintain a Directorate of Forensic Science dedicated to providing independent forensic reports to the Police which shall be comprised of a Forensic Science Laboratory at the State level, a Regional Forensic Science Laboratory for every Police Range and a Mobile Forensic Science Unit for every Police District, with appropriate equipment and scientific manpower, in accordance with the guidelines laid down by the Directorate of Forensic Science or the Bureau of Police Research and Development.

(2) There shall be a Directorate of Police Communications and Technical Services for the purpose of providing reliable and dedicated communications, informatics and other technical support at all levels of the Police Organization which shall be headed by an officer not below the rank of Deputy Inspector General of Police with as many Superintendents of Police and Deputy Superintendents of Police, to assist him, as deemed necessary.

(3) xxxx

6. Learned Advocate General of State of H.P. has also made following submissions:-

(a) As per the decision of Supreme Court in State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, has submitted that the Courts or Tribunals are not appellate forums to decide the transfers of officers made on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. Para-4 is extracted as below:-

4. It is contended for the respondent that the respondent had already worked at Jagdalpur from 1982 to 1989 and when he was transferred to Bhopal, there was no justification to transfer him again to Jagdalpur. We cannot appreciate these grounds. The Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.

(b) In view of judgment of Supreme Court in Laxmi Narain Mehar Vs. Union of India and others, the transfer of experienced officer, made in administrative exigencies, are not to be interfered with. In State of U.P. and Others Vs. Gobardhan Lal, the Supreme Court in Paragraph-7 has observed as below:-

7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

Similar view has been reiterated by the Hon'ble Supreme Court in *State of U.P. and Others Vs. Siya Ram and Another*, and *Major General J.K. Bansal Vs. Union of India (UOI) and Others*,

(c) In *Rajendra Singh Vs. State of U.P. and Others*, , the Supreme Court in Paragraph-8 has observed as below:-

8. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see *State of U.P. and Others Vs. Gobardhan Lal*,

(d) The transfer cannot be assailed on the ground of violation of transfer policy. In *Airports Authority of India Vs. Rajeev Ratan Pandey and Others*, the Supreme Court, in Paragraphs-10 and 11, has observed as below:-

10. In the writ petition, the transfer order has been assailed by the present Respondent No. 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not, even find any contravention of transfer policy in transferring the Respondent No. 1 from Lucknow to Calicut. In a

matter of transfer of a government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.

11. In the present case, High Court fell into a grave error in staying the transfer order which, if allowed to stand, may cause prejudice to the administrative functioning of the appellant.

(e) In Registrar General, High Court of The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others, the Supreme Court has observed that in transfer matters of a government employee, scope of judicial review is limited.

7. We also note that the issue of transfer and posting has been considered time and again by Hon"ble Supreme Court and law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. The employee does not have any vested right to be posted at a particular place (vide B. Varadha Rao Vs. State of Karnataka and Others, ; Mrs. Shilpi Bose and others Vs. State of Bihar and others, ; Union of India and another Vs. N.P. Thomas, Union of India and Others Vs. S.L. Abbas, Rajendra Roy Vs. Union of India (UOI) and Another, ; Ramadhar Pandey Vs. State of U.P. and Others, ; N.K. Singh Vs. Union of India and others, Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, State of Uttar Pradesh v. Dr. D.N. Prasad Union of India and Ors. v. Ganesh Dass Singh . Abani Kanta Ray Vs. State of Orissa and Others, ; Laxmi Narain Mehar Vs. Union of India and others, State of U.P. and Others Vs. Ashok Kumar Saxena and Another Etc., ; National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, ; Public Services Tribunal Bar Association Vs. State of U.P. and Another, Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, State of U.P. and Others Vs. Siya Ram and Another, Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, S.C. Saxena versus Union of India & Ors., (2006) 9 SCC 583; Mohd. Masood Ahmad Vs. State of U.P. and Others, Tejshree Ghag Vs. Prakash Parashuram Patil and Others etc. etc., and Somesh Tiwari Vs. Union of India (UOI) and Others,

8. An employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency. In Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , the Supreme Court has observed as under:-

Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any

particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration.

In *Union of India and Others Vs. H.N. Kirtania*, the Hon''ble Supreme Court has observed as under:-

Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala-fide.

In *Union of India versus S.I. Abbas (supra)*, the Hon''ble Supreme Court has observed that the Government instructions on transfer are mere guidelines without any statutory force and the Court or Tribunal cannot interfere with the order of transfer unless the said order is alleged to have been passed by malice or where it is made in violation of the statutory provisions.

Similar view has been reiterated by the Supreme Court, in *Bank of India Vs. Jagjit Singh Mehta*, observing that the terms incorporated in the transfer policy for posting of both the spouses; if in service, at the same place, require to be considered by the authorities "along with exigencies of administration" and "without any detriment to the administrative need and claim of other employees".

In *State Bank of India Vs. Anjan Sanyal and Others*, Hon''ble Supreme Court has observed as under:-

4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala-fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

(Emphasis supplied)

In *S.C. Saxena versus Union of India & Ors.*, (2006) 9 SCC 583, the Hon''ble Supreme Court deprecated the practice of approaching the Court by the Government employees against transfer order rather joining at the transferred place.

In *The Government of A.P. Vs. G. Venkata Ratnam*, the Supreme Court has deprecated the view taken by the High Court interfering in transfer matter merely on the basis of some extraordinary achievements highlighted by the respondent - employee. It is not for the Court to consider where respondent would be more suited. Such an approach is rather unusual and strange as no employee can be permitted to choose his own place of posting.

9. The transfer policy does not create any legal right in favour of the employee. There must be a judicially enforceable legal right for the enforcement of which legal proceedings can be resorted to. The Court/Tribunal can enforce the

performance of a statutory duty by public bodies through its jurisdiction at the behest of a person, provided such person satisfies the Court that he/she has a legal right to insist on such performance. The existence of the said right is a condition precedent for invoking the Court's jurisdiction. (vide *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, *Mani Subrat Jain and Others Vs. State of Haryana and Others*, ; *State of Kerala Vs. Smt. A. Lakshmikutty and others*, ; *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, *Krishan Lal Vs. State of Jammu & Kashmir*, *State Bank of Patiala and others Vs. S.K. Sharma*, *Rajendra Singh Vs. State of Madhya Pradesh and others*, *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, ; *State of Punjab Vs. Raghubir Chand Sharma and Another*, and *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*,

10. The Supreme Court in *Sarvesh Kumar Awasthi versus U.P. Jal Nigam*, (2003) 11 SCC 740, has observed as under:-

In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

Transfer effected as a punitive measure is also not permissible. Whether a transfer is punitive or not is a question of fact, as held by the Supreme Court in *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another*, . It was permissible for the Court to go behind the order and find out it was punitive in nature.

11. The issue of "malus animus" was considered in *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, , wherein the Supreme Court has held that the High Court would be justified in refusing to carry on investigation into the allegation of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition and burden of establishing mala fide lies very heavily on the person who alleges it and there must be sufficient material to establish malus animus.

Similarly, in *E.P. Royappa Vs. State of Tamil Nadu and Another*, , the Hon'ble Supreme Court held that a transfer is mala fide when it is made not for professed purpose, such as normal course or in public or administrative interest or in the exigencies of service but for other purpose, that is to accommodate another person for undisclosed reasons. The Court further observed as under:-

Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it.....The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party,

particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status.....but because otherwise, functioning effectively would become difficult in a democracy.

The Hon''ble Supreme Court in Sukhwinder Pal Bipan Kumar and Others Vs. State of Punjab and Others, and Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, has made similar observations.

In M. Sankaranarayanan, IAS Vs. State of Karnataka and others, the Hon''ble Supreme Court observed that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established, but such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise or conjecture."

In N.K. Singh (supra), the Hon''ble Supreme Court has held that "the inference of mala fides should be drawn by reading in between the lines and taking into account the attendant circumstances."

A similar view has been reiterated in Major General J.K. Bansal Vs. Union of India (UOI) and Others, .

In Arvind Dattatraya Dhande Vs. State of Maharashtra and others, , the Supreme Court held as under:-

In view of the unimpeachable and eloquent testimony of the performance of the duties, it will be obvious that the transfer is not in public interest but is a case of victimization of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances, as stated earlier, the transfer of the appellant is nothing but mala fide exercise of the power to demoralize honest officers who would efficiently discharge the duties of a public office.

There has to be very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material. (Vide Kiran Gupta and Others Vs. State of U.P. and Others Etc., and Netai Bag and Others Vs. The State of West Bengal and Others,

In State of Punjab Vs. V.K. Khanna and Others, , the Hon''ble Supreme Court examined the issue of bias and mala fide, observing as under:-

Whereas fairness is synonymous with reasonableness-bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or ill will". One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There

must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a malafide move which results in the miscarriage of justice..... In almost all legal enquiries, "intention as distinguished from motive is the all important factor" and in common parlance a malicious act stands equated with an intentional act without just cause or excuse.

Similar view has been reiterated in M/s. Samant and Another Vs. Bombay Stock Exchange and Others,

In First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, and Jasvinder Singh and Others Vs. State of Jammu & Kashmir and Others, Hon"ble Supreme Court held that burden of proving mala fides is very heavy on the person who alleges it. Mere allegation is not enough. Party making such allegations is under a legal obligation to place the specific materials before the Court to substantiate the said allegations.

In case allegations of mala fide are made against any person he is to be impleaded by name, otherwise the allegations cannot be considered. (Vide State of Bihar and Another Vs. P.P. Sharma, IAS and Another, ; Dr. J.N. Banavalikar Vs. Municipal Corporation of Delhi and another, ; All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others, and I.K. Mishra Vs. Union of India and Others,

In Federation of Railway Officers Association and Others Vs. Union of India (UOI), , the Hon"ble Supreme Court has held that the allegation of mala fide has to be specifically made and the person against whom such allegations are made has to be impleaded and in his absence such allegations cannot be taken into consideration.

12. In view of the above, the legal position on the issue of transfer can be summarized 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 can choose to serve at a particular place for a particular tenure.
- 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 the Court/Tribunal 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 mala fides is established.

7) In case of mala fides, the employee has to make specific averments and should prove the same by adducing implacable evidence.

8) The person against whom allegation of mala fide is alleged is to 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 Departmental personnel.

10) The Court does not have a 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 this issues 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.

13. The issue of transfer of a low paid employee was considered by the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Shankar Lal and Ors, and after considering the provisions of the Madhya Pradesh Municipalities Act, 1961 the Court came to the conclusion that unless the statutory rules itself puts an embargo for transfer by a Class IV or low paid employee, there can be no bar to transfer the said employee. However, such a power should be exercised sparingly.

In B. Varadha Rao Vs. State of Karnataka and Others, , while dealing with the issue of transfer, Hon'ble Supreme Court considered various aspects and observed as under:-

One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralization. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer.

14. The Hon'ble Supreme Court in State of Haryana and Others Vs. Kashmir Singh and Another etc. etc., has observed that the Court should not interfere with purely administrative matters except where absolutely it is necessary on account of violation of any fundamental or other legal right.

15. We have heard learned counsel for the parties and have also perused the relevant records pertaining to the case. In view of the aforesaid analysis, made herein-above, we note that the impugned transfer order of the petitioner has been made in the betterment of administration and to derive best out of the petitioner. The impugned transfer has not been made by way of mala-fide or punishment. The petitioner, being a senior police officer, is expected to render services as desired by the State Government with faithfulness and should be ready to work with dedication and devotion to the suitable place where the petitioner has been posted by the State Government. We find force in the submissions of learned Advocate General advanced on behalf of the respondent - State that the petitioner's status and emoluments are not mitigated in any way. In the facts and circumstances, therefore, this Court finds no merit in the writ petition to quash the impugned transfer order made in public interest. The writ petition is accordingly dismissed. Interim stay, granted earlier, shall stand vacated. Pending application(s) shall also stand disposed of.