
(2018) 08 P&H CK 0123

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No.1100 of 2018(O&M)

Rajit Kumar Sharma

APPELLANT

Vs

Avrinder Singh and others

RESPONDENT

Date of Decision : 10-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 08 P&H CK 0123

Hon'ble Judges : KRISHNA MURARI, CJ;ARUN PALLI, J

Bench : Division Bench

Advocate : Akshay Bhan, Animesh Sharma, Sameer Sachdeva

Final Decision : Dismissed

Judgement

1. This intra-court appeal under clause X of the Letters Patent has been filed by the appellant challenging an interim order dated 10.07.2018 passed by

the learned single Judge in CWP No.16592 of 2018 staying the effect and operation of the order transferring respondent No.1.

2. Facts, in brief, relevant for the purposes of the case can be summarised as under.

3. Respondent No.1 was holding the charge of Deputy Chief Engineer/Enforcement, Jalandhar. Vide order dated 07.07.2018, impugned in the writ

petition, the respondent's service was transferred from his place of posting at Jalandhar to Patiala as Deputy Chief Engineer /Information

Technology and the appellant who was holding the said post at Patiala was transferred in his place to Jalandhar. Respondent No.1 challenged the

transfer order by filing aforesaid writ petition mainly on the ground that impugned order of transfer is in violation of clause (c) of the transfer policy

framed by the State Government for the year 2018-19. The learned single Judge,

vide order impugned in this appeal, stayed the effect and operation of the transfer order till the next date of hearing.

4. Learned counsel for the appellant vehemently contends that the stay order has been obtained by misleading the court by placing the proposed transfer policy on record misrepresenting it to be the actual transfer policy in force. It is pointed out that even till date the Annual Posting, Transfer and Placement Policy has not come into operation after being finalized and respondent No.1/petitioner misled the court by placing a proposed policy and succeeded in obtaining the impugned interim order. It is also submitted that though the appellant has joined the services at transferred place on 09.07.2018 but again this fact was not disclosed to the learned single Judge who was misled to pass the impugned order on 10.07.2018.

5. To support the contention, attention of the court has been drawn to Annexure A-1 which is a proposed transfer policy circulated along with letter dated 03.05.2018 inviting suggestions and objections to the proposed policy. Learned counsel for the appellant contends that respondent -petitioner manipulated this document attached as Annexure P/2 to the writ petition by removing the first page of the document which was a letter dated 03.05.2018 inviting objections to the proposed transfer policy and only annexed the proposed policy by writing over it by hand that it was a transfer policy. It is vehemently submitted that the proposed transfer policy is not yet finalized but still it was placed before the learned single Judge by removing the first page misleading him to believe that it was the policy which was in force and, thus, the impugned interim order was obtained.

6. In reply, learned counsel for respondent No.1/petitioner does not deny the fact that letter dated 03.05.2018 appended with the proposed transfer policy inviting objections was not a part of the writ petition. He further submits that the words "Transfer Policy 2018-19" were written over the document filed along with writ petition only for the purpose of clarity. It is vehemently contended that since respondent No.1 is due to retire in December 2018, thus, there was no justification to uproot him from his present place of posting at the fag end of his service career.

7. Be that as it may, undoubtedly, respondent No.1/petitioner may have deserved an indulgence from this court while exercising equitable jurisdiction conferred by Article 226 of the Constitution of India once it was found that he is

being displaced at the fag end of his service career and this aspect probably led the learned single Judge to pass the impugned interim order relying upon clause (c) of the policy which provides that the employees due to retire within next two years may be allowed to continue at the same station. However, the learned single Judge, as a matter of fact, was misled by the respondent No.1/petitioner to read the proposed policy as the actual policy in force. The respondent/petitioner deliberately misled the court by removing the first page which was a letter inviting objections to the proposed transfer policy underneath the same. Thus, there was a deliberate misrepresentation by the respondent/petitioner before the learned single Judge by misrepresenting the proposed annual transfer policy to be the transfer policy.

8. There is no manner of doubt that the concealment made by the respondent/petitioner by removing the first page and misrepresenting the proposed policy to be the actual policy in force was deliberate to mislead the court. This disentitles him from any indulgence by this Court. It is well settled that a litigant invoking the equitable jurisdiction of this Court must come with clean hands.

9. In view of the fact that the petitioner has succeeded in obtaining the impugned interim order from the learned single Judge by deliberately concealing the fact and misleading the court, the stay order is not liable to continue any further and accordingly stands set aside and appeal accordingly stands allowed. There also does not appear to be any justification for the writ petition pending before the learned single Judge to continue and the same also accordingly stands dismissed.

10. The conduct of the respondent/petitioner herein has been such that he is liable to be saddled with heavy exemplary costs not only for his deliberate attempt to mislead the court but also to deter such litigants in future. Initially, we proposed to impose a heavy cost of Rs.1 lakh upon the respondent/petitioner but on much persuasion of Shri Sameer Sachdeva, learned counsel appearing on his behalf, we reduce the cost to Rs.10,000/- which shall be deposited by the respondent/petitioner with Advocatesâ?? benevolent fund of Bar Council within one month from today and a receipt of the same shall be produced by him before the Registrar General of this Court. In case the requisite receipt is not produced before the Registrar

General within one month, after expiry of the said period, the Registrar General shall forward a copy of this order to Collector of the concerned district

to realise the said amount from respondent/petitioner as arrears of land revenue. The amount so realised shall be deposited with the Advocatesâ??

benevolent fund of Bar Council.

11. With the aforesaid discussion and observations the appeal stands allowed and writ petition bearing CWP No. 16592 of 2018 out of which this

appeal arises stands dismissed. Let a copy of this order be placed on the record of the writ petition.