
(2019) 12 SHI CK 0056

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1237 Of 2019

Rajneesh Kanwar

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Citation : (2019) 12 SHI CK 0056

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : K.B. Khajuria, Vinod Thakur, Bhupinder Thakur, Svaneel Jaswal, Narender Thakur, Divya Sood, Ram Lal Thakur

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The petitioner joined the respondent department as TGT (NM) in the year, 2006 and thereafter served in various places in the State. On 08.04.2019, he was deputed as BRCC and posted at Block Bijhar, District Hamirpur, and he was required to join within a period of 15 days but he did not do so and rather made a representation to respondent No. 2 informing him that he was not in a position to join the deputation as BRCC at Block Bijhar, District Hamirpur due to his adverse family circumstances.

2. In the meanwhile, it appears that vide order dated 20.03.2019, respondent No. 4 came to be transferred to GSSS Sohari, District Hamirpur, however, the transfer order was conditional to the extent that his joining would be only subject to the relieving of the petitioner on appointment as BRCC as is evident from the relevant portion of the order, which reads as under:-

"In view of the above facts the request of Sh. Kewal Krishan, TGT (NM) is considered sympathetically and he is hereby transferred from GHS, Shahdhar, District Shimla to GSSS, Sohari, District Hamirpur, against vacancy subject to relieving of present incumbent on appointment as BRCC without TTA and with JT.

Accordingly his representation is decided."

3. On 29.05.2019, respondent No. 4 was relieved from the place he was serving I.e. GHS, Shahdhar, District Shimla and directed to join at GSSS, Sohari, District Hamirpur, in place of the petitioner. The Principal of GSSS, Sohari appeared to have relieved the petitioner on 30.05.2019 and thereafter permitted respondent No. 4 to join at his place, constraining the petitioner to file the instant petition, wherein he sought the following substantive reliefs:-

"A. That this writ petition may kindly be allowed and impugned order dated 31.05.2019 passed by the learned Tribunal in OA No. 2240/2019 may kindly be quashed and set aside.

B. That the impugned order of relieving dated 30.05.2019 may kindly be quashed and set aside and the petitioner may kindly be allowed to continue at GSSS, sohari, District Hamirpur."

4. The officials-respondents No. 1 to 3 have filed their reply wherein they have justified their order dated 20.03.2019 on the ground that the same was conditional, as is evident from the following averments:-

'On the perusal of the record, it was found that the said Sh. Kewal Krishan had been working at GHS Shahdhar, District Shimla for last four years and had completed his normal tenure of three years at his present place of posting. However, the post of TGT (NM) was not lying vacant in GSSS Bhoranj. Hence, he was transferred to GSSS Sohari vide Annexure P-4 20.03.2019 against vacancy subject to relieving of the present incumbent (the petitioner in the present writ petition) on appointment as BRCC. As such, the action of the replying respondent in issuing Annexure P-4 is just, legal and fair and deserves to be upheld, in the interest of justice and fair play."

5. As regards private respondent No. 4, he has contested the case by raising various preliminary objections. One of main objections is that no relief can be granted to the petitioner since he has not questioned the order of the transfer of the replying respondents.

We have heard learned counsel for the parties and have gone through the records of the case.

6. It is more than settled that no person can be sent on deputation without his consent and, therefore, the petitioner under no circumstance can be compelled to join as BRCC, at Block Bijhar, District Hamirpur.

7. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry

period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. (Refer:- State of Punjab & others vs. Inder Singh & others (1997) 8 SCC 372).

8. The issue came up before the Hon'ble three judges Bench of the Hon'ble Supreme Court in Umapati Choudhary vs. State of Bihar and another (1999) 4 SCC 659, wherein it was observed as under:-

"8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not."

9. Record also reveals that even though the order of transfer of respondent No. 4 was effected on 20.03.2019, however, the same was conditional and subject to relieving of the present incumbent on appointment as BRCC at Block Bijhar, District Hamipur. Additionally, it was also borne out from the record that the petitioner himself has made a request on 14.05.2019 whereby he had expressed his inability to join on deputation as BRCC at Block Bijhar, District Hamirpur due to his adverse family circumstances.

10. Once that be so, obviously, then the Principal of GSSS, Sohari could not have relieved the petitioner and thereafter accept the joining report of respondent No. 4. More importantly, even in terms of the policy of deputation, the incumbent is/ was required to report for duty at the place of deputation within a period of 15 days.

11. Accordingly, we find merit in this petition. Consequently, the same is allowed and the impugned order dated 31.05.2019 passed by the learned Tribunal in OA No. 2240 of 2019 whereby the petition filed by the petitioner for the same relief came to be dismissed, is set aside. Resultantly, the relieving order dated 30.05.2019 is also quashed and the petitioner is permitted to continue at GSSS, Sohari, District Hamirpur.

12. However, it needs to be clarified that since respondent No. 4 was transferred on his request, he shall be at liberty to make a request to the respondents to transfer him to any five stations of his choice and upon such request the follow

up action will be taken within two weeks.

13. It also needs to be clarified that we have only quashed the transfer of the petitioner in the peculiar facts and circumstances of the case, however, this does not mean that the petitioner cannot be transferred, if so permissible under the policy of transfer.

14. The petition is disposed of in the aforesaid terms, leaving the parties to bear their own costs.