
(2020) 10 SHI CK 0152
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4504 Of 2019

Ram Lal	Vs	APPELLANT
State Of Himachal Pradesh And Others		RESPONDENT

Date of Decision : 15-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Himachal Pradesh Police Act, 2007 — Section 56, 56(i)

Citation : (2020) 10 SHI CK 0152

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

Bench : Division Bench

Advocate : P.P. Chauhan, Ashok Sharma, Vinod Thakur, Shiv Pal Manhans,
Seema Sharma, Bhupinder Thakur, Yudhbir Singh Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Aggrieved by the order of transfer, the petitioner has filed the instant petition for grant of the following reliefs:

"(a) to issue a writ of certiorari or direction in nature thereof, quashing the impugned order dated 28.12.2019 being Annexure P-1 of the writ petition, as unconstitutional and illegal and contrary to the law;

(b) to issue a writ of mandamus, appropriate writ, order or direction in nature thereof, directing the respondents to permit the petitioner to complete his normal tenure at present place of posting.

(c) to issue an appropriate writ, order or direction in nature thereof to give full justice to the petitioner in the circumstances of the case and may pass such further writ, order or orders as this Hon'ble Court may deem fit, proper, just and expedient in the circumstances of the case."

2. The petitioner was initially appointed as a constable on 22.12.1986 in the

Police Department. Later on, he was approved for promotion as Sub Inspector and was transferred on promotion from Kullu District to Lahaul and Spiti District vide order dated 06.09.2018. However, vide order dated 22.10.2018, the petitioner was adjusted in State CID. Subsequently, the petitioner was further adjusted from State CID to State Narcotic Control Cell and Field Unit, Kullu (SNCC & FU) vide order dated 17.11.2018. Now, the petitioner vide order dated 28.12.2019 has been transferred from State CID Unit Kullu to Una District.

3. It is contended by learned counsel for the petitioner that there was no administrative exigency or public interest involved in transferring the petitioner, but the same is a colourable exercise of powers and the transfer has been effected for an oblique motive. As a matter of fact, the wife of the petitioner is a Pradhan of Gram Panchayat, Kotli and due to nature of her functioning, the local politicians are annoyed with her and have managed the impugned transfer of the petitioner on the basis of D.O. letter.

4. On the other hand, Shri Ashok Sharma, learned Advocate General, would submit that the transfer of the petitioner has been effected by the State Police Establishment Committee constituted under Section 56(i) of H.P. Police Act in the police headquarter with the prior approval of the competent authority.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. It is trite that transfer is an incidence of service and as long as the authority acts keeping in view the administrative exigency and taking into consideration the public interest as the paramount consideration, it has unfettered powers to effect transfer subject of course to certain disciplines. Once it is admitted that the petitioner is State government employee and holds a transferable post then he is liable to be transferred from one place to the other within the District in case it is a District cadre post and throughout the State in case he holds a State cadre post. A government servant holding a transferable post has no vested right to remain posted at one place or the other and courts should not ordinarily interfere with the orders of transfer instead affected party should approach the higher authorities in the department. Who should be transferred where and in what manner is for the appropriate authority to decide. The courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to "proper place". It is for the administration to take appropriate decision.

7. Even the 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 redressal 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. Even if, the order of transfer is made in transgression of administrative guidelines, the same cannot be interfered with as it does not confer any legally enforceable rights unless the same is shown to have been vitiated by mala fides or made in violation of any statutory provision. The government is the best judge to decide how to distribute and utilize the services of its employees.

8. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations without any factual background foundation or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as on the basis of complaints. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. An order of transfer is to satisfy the test of Articles 14 and 16 of the Constitution otherwise the same will be treated as arbitrary.

9. Judicial review of the order of transfer is permissible when the order is made on irrelevant consideration. Even when the order of transfer which otherwise appears to be innocuous on its face is passed on extraneous consideration then the Court is competent to go into the matter to find out the real foundation of transfer. The Court is competent to ascertain whether the order of transfer passed is bonafide or as a measure of punishment.

10. 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 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.
11. Learned counsel for the petitioner would contend that the issue in question is squarely covered by a decision of a learned Division Bench of this Court in CWP No.3026 of 2019 titled 'Man Singh versus State of H.P. and others, decided on 23.10.2019, wherein under identical circumstances the order of transfer on the basis of D.O. Note was quashed and set aside by this Court.
12. We have gone through the said judgment and found that the facts therein were not disputed. The petitioner therein had been transferred for having reprimanded two constables posted in State CID Unit at Kullu. They brought these facts to the notice of a local politician, who thereafter procured D.O. Note

and the same in turn had resulted in order of transfer, whereas, this is not the fact situation obtaining in the present case.

13. The mere fact that the wife of the petitioner is working as a Pradhan does not lead to any inference that there would be local politicians, who would not be happy with the working style of the wife of the petitioner and thus have got transferred the petitioner.

14. We are rather of the considered opinion that being a public representative, that too, an elected one, the wife of the petitioner would have far and more greater voice and would be in a better position than an ordinary citizen to get things done.

15. In order to satisfy ourselves regarding the transfer of the petitioner being in administrative exigency and public interest, we in the instant case, called for the original records of the Police Establishment Committee (PEC) and find that in some of the cases including that of the petitioner, names have been received from the Office of the Chief Minister to consider them for transfer. All those names were placed before the High Power Committee headed by the Director General of Police, Himachal Pradesh, comprising of four other Officers in the rank of Inspector General of Police.

16. The Committee held its meeting on 20.12.2019 wherein they considered about 38 police officials for transfer in different ranks and the name of the petitioner figures at Serial No. 5. The proceedings reveal that in many of the cases, the PEC did not agree with the request made by the Office of the Chief Minister, whereas, in some of the cases it recommended the transfers. Thus, it cannot be said that there was no application of mind by the Committee.

17. The facts of this case are quite similar to those in CWP No. 2246 of 2018 titled Piar Chand versus State of H.P. and others which was decided by this Court on 13.12.2018 by passing the following orders:

"4. The primary contention of the petitioner is that he has been transferred from State CID Wing on the recommendation made by the Office of Hon'ble Chief Minister, Himachal Pradesh as may be seen from the contents of Annexure R1 and it being contrary to the mandate of the provisions of Section 56 of Himachal Pradesh Police Act, 2007, the impugned transfer order is unsustainable. Secondly, it is urged that the petitioner is entitled to complete normal tenure of at least three years of service being posted in State CID.

5. The respondents have filed their written statement, inter alia, pleading that the State CID is a sensitive and specialized organization which provides critical inputs to the Government and having regard to the sensitivity involved in the nature of duties, it is the prerogative of the employer as to which officer is to be transferred or kept in the State CID Wing keeping in view his/her suitability. It is further explained that in terms of the provisions of Section 56 of the Himachal Pradesh Police Act, 2007, Police Establishment Committee has been constituted

and the said Committee in its meeting held on 20.1.2018 recommended the petitioner's transfer from State CID to 1st IRBn.

6. We have heard learned counsel for the parties and have also gone through the records.

7. Annexure R1 is a tabulated form of details of various police officials whose names were received from the office of Chief Minister, Himachal Pradesh to be considered for transfer. All these names were placed before a High Power Committee headed by the Director General of Police, Himachal Pradesh comprising of four other Officers of the Rank of Inspector Generals of Police. It is revealed that the aforesaid Committee in its meeting held on 20.1.2018 considered about 77 police officials for transfer in different ranks and the name of the petitioner was placed at Sr. No. 47. It was also noticed that petitioner was in State CID/IRBn for the last over 13 years, hence the Committee has recommended his transfer.

8. The proceedings would reveal that in so many cases the Committee did not agree with the request made by the office of Chief Minister, whereas in some of the cases it recommended the transfer. There was thus independent application of mind by the Committee. No motive has been attributed to the Members of the Committee who are otherwise senior-most/senior functionaries of the Police Department. They are the best persons to shortlist the police officials who are best suited to serve in a sensitive organization like State CID.

9. The petitioner cannot claim his continuation in State CID as a matter of right, his posting in CID/IRBn or in the field police is an incidence of service and violates no condition of service.

10. The reliance placed by the petitioner on a Division Bench of this Court in *Amir Chand Versus State of Himachal Pradesh*, 2013 (2) Him L.R. (DB), 648 is also misplaced, as there are no recommendations by any specific politician to oust the petitioner from State CID Organization. Various requests which might have been received from different quarters in the office of Chief Minister were simply forwarded to the Police Establishment Committee for mere consideration. The final decision was taken by the Committee and not by the office of Hon'ble Chief Minister. Therefore, the principles evolved in this regard in *Amir Chand's* case (*Supra*) to avoid victimization of employees on political consideration is absolutely alien in the present case. Therefore, no case is made out for interference with the transfer order. This order however shall not preclude the petitioner from representing the competent authority for sympathetic consideration of his posting at any other place including in District, Hamirpur keeping in view the administrative interest and discipline of the Force read with Section 56 of the Himachal Pradesh Police Act, 2007."

18. As observed in *Piar Chand's* case (*supra*), no motive can be attributed to the members of the Committee, who are otherwise senior most and senior functionaries of the Police Department. They are the best persons to shortlist the

police officials who are best suited to serve in the organization and where.

19. In view of the aforesaid discussion, we find no merit in this writ petition and the same is accordingly dismissed, so also the pending application, if any.