

(2021) 03 P&H CK 0154
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1927 Of 2021

Raman Sharma

APPELLANT

Vs

State Of Haryana & Others

RESPONDENT

Date of Decision : 12-03-2021

Acts Referred:

Haryana Municipal Corporation Employees (Recruitment And Conditions) Service Rules, 1998 — Rule 12
Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 03 P&H CK 0154

Hon'ble Judges : Alka Sarin, J

Bench : Single Bench

Advocate : Vikas Bahl, Aakrittee Raj, Lokesh Sinhal, Akshay Bhan, Amandeep Singh Nirman

Final Decision : Dismissed

Judgement

Alka Sarin, J

Heard through video conferencing.

The present writ petition under Articles 226/227 of the Constitution of India is directed inter alia against the impugned order dated 15.01.2021 (Annexure P-4) whereby the petitioner, working as Chief Engineer, Municipal Corporation, Gurugram, has been transferred to Municipal Corporation, Hisar and respondent No.3 has been transferred as Chief Engineer, Municipal Corporation, Gurugram.

The brief facts, relevant to the present lis, are that in 1983 the petitioner was appointed as a Junior Engineer in the Faridabad Complex Administration, Faridabad and was promoted as Assistant Engineer (Sub Divisional Officer) in 1987. In 2010, he was promoted as Executive Engineer. Vide order dated 27.09.2017 (Annexure P-1), the petitioner was promoted to the post of Superintending Engineer and was transferred from the Municipal Corporation, Faridabad to the Municipal Corporation, Yamuna Nagar. In 2018, the petitioner

was promoted as Chief Engineer. Vide order dated 22.10.2018 (Annexure P-2), the petitioner was transferred as Chief Engineer, Municipal Corporation, Karnal. Vide order dated 07/08.08.2019 (Annexure P-3), the petitioner was transferred from Municipal Corporation, Karnal to Municipal Corporation, Gurugram with additional charge of Municipal Corporation, Faridabad on a newly created post of Chief Engineer. By the same order (Annexure P-3), respondent No.3 was promoted as Chief Engineer and posted in the Municipal Corporation, Karnal in place of the petitioner. Vide order dated 15.01.2021 (Annexure P-4), the petitioner has been transferred from Chief Engineer, Municipal Corporation, Gurugram to Chief Engineer, Municipal Corporation, Hisar, on administrative grounds. By the same order (Annexure P-4), respondent No.3 has been transferred from Chief Engineer, Municipal Corporation, Sonipat to Chief Engineer, Municipal Corporation, Gurugram.

Learned Senior counsel appearing for the petitioner has contended that the impugned order (Annexure P-4) is illegal and arbitrary in as much as the petitioner has already been transferred three times in the last four years and the present transfer is just 1 year 5 months after the last transfer. He further submitted that the petitioner is due to retire in 1 year 9 months and therefore, no practical purpose will be served by posting him to Hisar for the remaining period of his service. Counsel for the petitioner further submitted that the impugned transfer would cause great hardship and suffering to the petitioner whose wife is suffering from certain health issues and needs constant support and care. He pressed into service medical prescriptions (Annexures P-5 and P-6) to support his stand. Learned Senior counsel contended that the impugned order (Annexure P-4) is a colourable exercise of power since the transfer of respondent No.3 as Chief Engineer, Municipal Corporation, Sonipat with Municipal Corporation, Faridabad in addition has already been stayed by this Court vide order dated 27.11.2020 (Annexure P-7) passed in CWP No.20361 of 2020 and thus the impugned transfer has been ordered only to accommodate respondent No.3. It has been contended that one Birender Kumar Kardam was Chief Engineer with Municipal Corporation, Faridabad. Vide order dated 22.11.2020 the said Birender Kumar Kardam was relieved of this charge and respondent No.3 was given this posting in addition to the post of Chief Engineer, Municipal Corporation, Sonipat which he already held. Birender Kumar Kardam challenged the order dated 22.11.2020 in this Court vide CWP No.20361 of 2020 in which this order stands stayed (Annexure P-7). According to the learned Senior counsel, respondent No.3 is the blue-eyed boy of the State Government and since his posting as Chief Engineer, Municipal Corporation, Faridabad was stayed by this Court, he (respondent No.3) was favoured and transferred to Municipal Corporation, Gurgaon and in this process the petitioner has been transferred to Municipal Corporation, Hisar. Lastly, the learned Senior counsel submitted that the petitioner has an unblemished service record and therefore the impugned transfer was for extraneous and mala fide reasons. The learned Senior counsel appearing for the petitioner has relied upon the decisions in 'N.S. Bhullar & Anr.

vs. The Punjab State Electricity Board & Ors.' [1991(1) SLR 378], 'Dr. (Mrs.) Pushpa Mehta vs. Rajasthan Civil Services Appellate Tribunal & Ors.' [2000(5) SLR 598 Raj.], 'Birender Singh Hooda vs. State of Haryana & Ors.' [2020 SCC Online P&H 220], 'Anil Garg vs. State of Punjab & Ors.' [2020(4) SCT 559], 'Rechlama T.S. vs. State of Rajasthan & Ors.' [2004 WLC 594 Raj.], 'Dr. Dev Parkash Chugh vs. State of Punjab & Ors.' [2005(4) SCT 726], 'Birender Kumar Kardam vs. State of Haryana & Ors.' [2017(1) SCT 384] and the interim orders dated 12.11.2020 and 19.11.2020 passed 'Rajesh Kumar & Ors. vs. State of Haryana & Ors.' [CM-11704-CWP-2020 in CWP-17718-2020].

Notice of motion was issued. Short reply dated 05.02.2021 was filed on behalf of respondent No.1. Respondent No.3 also filed a reply dated 11.02.2021. A short undated reply (attested on 03.03.2021) has been filed by respondent No.2. The petitioner has filed separate replications to the replies filed by respondent Nos.1 and 3. Respondent No.1 has also filed a rejoinder to the replication filed by the petitioner.

Respondent No.1 in it's short reply has submitted that transfer is an incidence in service and an employee can be transferred anywhere where his services are required in public interest and no employee can claim a place of posting of his own choice as a matter of right. It is further stated that it is for the employer to see where the services are required and that the transfer of the petitioner is on administrative grounds in public interest and also longer stay than other Chief Engineers in all Municipal Corporations. It is contended that an urgency has taken place in Faridabad due to extension of municipal limits and increase in work and there is a necessity to allow the Municipal Corporation, Faridabad to have another post of Chief Engineer and that earlier too there were two Chief Engineers in Municipal Corporation, Faridabad and due to urgency one post was transferred from Faridabad to Panipat. As such it had been decided that one post of Chief Engineer in Municipal Corporation, Faridabad be re-designated as Chief Engineer (Horticulture) and the post of Chief Engineer in Municipal Corporation, Sonipat be also transferred to Municipal Corporation, Faridabad and the second post at Municipal Corporation, Faridabad be designated as Chief Engineer (Works). Respondent No.1 in it's reply has further submitted that the petitioner belongs to the State Level Cadre of Service and is governed by the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998 and as per Rule 12, "A member of the service shall be liable to serve at any place, in any Municipal Corporation in the State of Haryana on being ordered so to do by the appointing authority or the State Government". It is also stated in the short reply that the petitioner has been relieved from Municipal Corporation, Gurugram on 15.01.2021 vide office order of even date and respondent No.3 has joined Municipal Corporation, Gurugram on 15.01.2021 after relieving from Municipal Corporation, Sonipat. Another Chief Engineer (Ramji Lal), who was also covered by the impugned order dated 15.01.2021 (Annexure P-4) has joined Municipal Corporation, Faridabad on 18.01.2021. As per the short reply dated 05.02.2021, the petitioner had not joined Municipal Corporation, Hisar till

04.02.2021. Regarding the illness of the petitioner's wife it is stated in the short reply that the prescriptions attached with the writ petition are from Ludhiana and Old Faridabad and that the petitioner had not brought his wife's illness to the notice of the Department prior to filing of the writ petition. The State counsel has also contended that there is no favouritism towards respondent No.3 and that the writ petition filed by Birender Kumar Kardam challenging the order dated 22.11.2020 is being contested. Learned State counsel has relied upon the decisions in 'Government of Andhra Pradesh vs. G. Venkata Ratnam' [(2008) 9 SCC 345] and 'Parminder Singh vs. Bharat Sanchar Nigam Ltd. & Anr.' [2016(3) SCT 823].

In his replication to the short reply filed by respondent No.1 the petitioner has denied that he has had a tenure longer than any other Chief Engineer in Municipal Corporation, Gurugram. The petitioner has contended that there was favouritism displayed by respondent No.1 towards respondent No.3 to benefit and accommodate him which smacked of mala fide and a colourable exercise of power. The petitioner has mentioned the service and posting of respondent No.3 and the pendency of CWP No.20361 of 2020 to further contend that the impugned transfer order (Annexure P-4) was mala fide. The fact that respondent No.3 joined the Municipal Corporation, Gurugram the same day when the impugned transfer order (Annexure P-3) was passed was also pointed out to contend that respondent No.3 was all along aware of the proceedings and the transfers had been ordered only to accommodate him. In the replication a new point regarding the experience of respondent No.3 to be transferred/deputed as Chief Engineer has also been raised.

Respondent No.1 in it's rejoinder to the replication filed by the petitioner has denied the allegations of mala fide and also stated that respondent No.3 has challenged the petitioner's promotion order in CWP No.21285 of 2018 which was still pending.

Respondent No.3 in his reply has stated that he has already been relieved from Municipal Corporation, Sonipat on 15.01.2021 and has since taken charge at Municipal Corporation, Gurugram. Respondent No.3 has also relied upon Rule 12 of the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998. It has also been contended by respondent No.3 that the petitioner is not even eligible to be appointed as Chief Engineer since he did not possess the requisite qualifications and that his eligibility to be appointed as a Chief Engineer was under challenge in CWP No.22459 of 2018 which was still pending. Reliance has also been placed upon the decision by the Supreme Court in 'Gujarat Electricity Board & Anr. vs. Atmaram Sungomal Poshani' [(1989) 2 SCC 602], 'Government of Andhra Pradesh vs. G. Venkata Ratnam' [(2008) 9 SCC 345], 'State of U.P. & Ors. vs. Gobardhan Lal' [(2004) 11 SCC 402] and 'Parveen Kumar vs. State of Punjab & Ors.' [2008(4) SCT 596] to contend that transfer of a Government servant from one place to the other is an incident of service and that no Government servant or employee has a legal right for being

posted at any particular place. Other averments made in the writ petition have been denied.

In his replication to the reply filed by respondent No.3 the petitioner has placed reliance upon Policy and Guidelines for Posting and Transfers dated 07.04.1989 (Annexure P-11) issued by the Chief Secretary, Government of Haryana. According to the petitioner, as per the said guidelines the minimum period for continuously serving on a post should normally be 3 years and that an employee should not be transferred from a post earlier than the stipulated 3 year period unless essential on exceptional grounds of public interest. However, the petitioner had completed only 1 year 5 months at his posting in Municipal Corporation, Gurugram without completing his 3 year period without recording any exceptional grounds in the impugned transfer order (Annexure P-4). Averments similar to those made by the petitioner in his replication to the short reply of respondent No.1 have also been made in his replication to the reply filed by respondent No.3.

Respondent No.2 in its short reply has stated that the petitioner has been relieved from Municipal Corporation, Gurugram on 15.01.2021 and respondent No.3 had joined the post on 15.01.2021. It has also been stated that as per the service rules the petitioner was required to maintain his Headquarter at Gurugram whereas, according to his own averments, he was residing in Faridabad. It has been stated that there was no record regarding the illness of the petitioner's wife available in the office of respondent No.2.

I have heard learned counsel for the parties. The law is well settled that it is within the domain of an employer to transfer an employee and no employee can claim continuance at a particular place of posting. The exercise of jurisdiction by the High Court to interfere with the power of an employer to transfer an employee is very limited and can be exercised in case the transfer has been ordered without there being any jurisdiction with the authority, which has passed the transfer order, or the transfer order suffers from mala fide, which has to be proved on the basis of specific averments made in the petition.

The present case does not disclose any justifiable reason for this Court to interfere in the impugned transfer order dated 15.01.2021 (Annexure P-4). There is no challenge in the writ petition to the power of respondent No.1 to order the transfer of the petitioner. There is also no averment that there has been any violation of any statutory rules. Though in the replication to the reply filed by respondent No.3 the petitioner has placed reliance upon Policy and Guidelines for Posting and Transfers dated 07.04.1989 (Annexure P-11), there is no reference to the same in the writ petition. Moreover, a Division Bench of this Court in 'Parveen Kumar vs. State of Punjab & Ors.' [2008(4) SCT 596] inter alia held that :

"The guidelines laid down by the State for the transfer of its employees from one place to another are for the guidance of officers and are not enforceable for the

purposes of assailing their transfer. These do not vest any immunity in an employee from transfer in Government service. Besides, transfer of an employee from one station to another is a normal feature and incidence of service which does not, in any manner, alter the conditions of his service. No Government servant can claim to remain at a particular post or a station of his choice".

Transfer is an exigency of service. The principle of law laid down in a catena of decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 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 orders, were not competent to pass the orders. These parameters, for this Court to interfere in the impugned transfer order (Annexure P-4), are not attracted in the present case and in fact none of these grounds are attracted in the present case. The petitioner is governed by the Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998 and Rule 12 thereof makes it patent that he is liable to serve at any place, in any Municipal Corporation in the State of Haryana, on being ordered so to do by the appointing authority or the State Government. This is not the first time that the petitioner is being transferred. As far the contention by the petitioner's counsel that the petitioner has already been transferred three times in the last four years and that the present transfer is just 1 year 5 months after the last transfer, suffice is it to say that the petitioner has served at other places for shorter periods without protest and demur. Another argument raised by the learned senior counsel for the petitioner is that the impugned transfer would cause great hardship and suffering to the petitioner whose wife is suffering from certain health issues and needs constant support and care. The petitioner in support of this contention has placed reliance upon medical prescriptions (Annexures P-5 and P-6). However, the transfer of the petitioner cannot be set aside on this count by the Court. It is for the employer to consider any personal inconvenience that a transfer may cause to an employee and/or his family and the Court cannot be guided by emotions.

In the matter of 'Gujarat Electricity Board & Anr. vs. Atmaram Sungomal Poshani' [(1989) 2 SCC 602] the Supreme Court inter-alia held that :

"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. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order".

In the matter of "Rajendra Singh vs. State of U.P. & Ors." [(2009) 15 SCC 178] the Supreme Court inter alia held that :

"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. v. Gobardhan Lal, 2004(2) SCT 368 : (2004) 11 SCC 402]".

In 'Shilpi Bose (Mrs.) & Ors. vs. State of Bihar & Ors.' [1991 Supp (2) SCC 659] the Apex Court held that :

"In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders".

In 'Parminder Singh vs. Bharat Sanchar Nigam Ltd. & Anr.' [2016(3) SCT 823] a Division Bench of this Court inter alia held that:

"It is a well settled proposition of law that transfer is an incidence of service. The Courts shall not interfere with the transfer of an employee which will affect adversely the effective administration by the employer. The employer is entitled to effect transfers in case of administrative exigencies and also in best public interest. Of course, if the transfer order was effected in violation of any mandatory statutory Rule or on the foundation of proved mala fide on the part of the employer, the question of challenging the transfer by an employee may arise. In case a transfer was effected in terms of the policies and executive instructions or orders, the Court shall not ordinarily interfere with the order of transfer. Of course, the employee may challenge the transfer on the ground that the service Rule prohibits such a transfer or that an incompetent Authority has effected transfer. As the transfer is a necessary concomitant of every service in case of administrative exigencies, the High Court should restrain itself from exercising its supervisory jurisdiction".

It is not the case of the petitioner that respondent No.1 who passed the impugned transfer order (Annexure P-4) had no power to do so. It is also not his case, as set-out in the writ petition, that his transfer is against the service rules which govern him. Though at the stage of filing the replication the petitioner put his reliance on the Policy and Guidelines for Posting and Transfers dated 07.04.1989 (Annexure P-11), there is no reference to the same in the writ petition. Even otherwise a Division Bench of this Court in Parveen Kumar's case (supra) has held that such guidelines are only for the guidance of officers and are not enforceable for the purposes of assailing the transfer and do not vest any immunity in an employee from transfer in Government service.

There are no specific allegations of malafide against any particular officer in the writ petition. There are no mala fides alleged against any officer who may have ordered the transfer of the petitioner. No officer against whom mala fide is alleged, or even assumed, has been impleaded by name. The pleadings by the petitioner only mention that the impugned transfer order (Annexure P-4) has been passed to favour respondent No.3 which is not the same as alleging mala fide. Further, there is nothing in the petition which spells out any reason for respondent No.3 to harbour any mala fide against the petitioner. Mere general statements will not be sufficient for the purposes of indication of malafides. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the passing of the impugned transfer order. In the present case there is none.

Further, merely because this Court has in CWP No.20361 of 2020 filed by Birender Kumar Kardam stayed the order dated 22.11.2020 whereby respondent No.3 was given additional charge as Chief Engineer, Municipal Corporation, Faridabad and after about two months he (respondent No.3) was transferred to Municipal Corporation, Gurgaon does not by itself show that the State Government has favoured respondent No.3.

The order dated 22.11.2020 (Annexure P-8) shows that respondent No.3 continued to retain the post of Chief Engineer, Municipal Corporation, Sonipat and was given additional charge of Chief Engineer, Municipal Corporation, Faridabad. However, now vide the impugned transfer order (Annexure P-4) respondent No.3 has been transferred as Chief Engineer to Municipal Corporation, Gurugram. He no longer holds the charge of Chief Engineer, Municipal Corporation, Sonipat. The sweep of the two orders i.e. the order dated 22.11.2020 (Annexure P-8) and the impugned transfer order (Annexure P-4) is different.

In "Prabodh Sagar vs. Punjab State Electricity Board & Ors." [(2000) 5 SCC 630] it was inter alia held that :

"Incidentally, be it noted that the expression 'mala fide' is not a meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides,

where it is alleged, depends upon its own facts and circumstances....There must be factual support pertaining to the allegations of mala fides, unfortunately there is none. Mere user of the word mala fide by the petitioner would not by itself make the petition entertainable".

The judgements cited by the Senior counsel appearing for the petitioner are distinguishable and not applicable to the facts and circumstances of the present case especially in view of the law settled by the Supreme Court. Some decisions by the Apex Court wherein the benchmarks have been laid for the High Courts to interfere in transfer matters have been referred to above.

In 'N.S. Bhullar & Anr. vs. The Punjab State Electricity Board & Ors.' [1991(1) SLR 378], the Division Bench found that the transfers had been made on the basis of some complaints and adverse remarks and that there did not seem to be any public interest in transferring the petitioners and the power to transfer seemed to have been used for collateral purposes to avoid disciplinary proceedings. The case of 'Dr. (Mrs.) Pushpa Mehta vs. Rajasthan Civil Services Appellate Tribunal &

Ors.' [2000(5) SLR 598 Raj.] arose from the decision given by the Rajasthan Civil Services Appellate Tribunal where, in the opinion of the Tribunal, the order of transfer was mala fide for the reasons that it has been passed in order to accommodate the appellant in place of the second respondent. Further, the second respondent therein was on the verge of retirement. However, in the present case no mala fides have been established by the petitioner nor any statutory provisions have been shown to be violated. The petitioner still has his service till 31.10.2022. The case of 'Birender Singh Hooda vs. State of Haryana & Ors.' [2020 SCC Online P&H 220] was decided on the first date of hearing without issuing any notice to the State and only the private-respondent, who was a caveator, appeared before the Court. The law settled on the point by the Supreme Court was not brought to the notice of the Court. In 'Anil Garg vs. State of Punjab & Ors.' [2020(4) SCT 559] the respondent no.3 had remained posted at Patiala for more than two decades and by the transfer order he was brought back to Patiala in place of the petitioner without any administrative exigency. In the present case respondent No.1 has in it's short reply spelt out the exigency for passing of the impugned transfer order (Annexure P-4). 'Rechlama T.S. vs. State of Rajasthan & Ors.' [2004 WLC 594 Raj.] was decided by relying upon the decision in Dr. (Mrs.) Pushpa Mehta's case (supra) which has already been distinguished above. In 'Dr. Dev Parkash Chugh vs. State of Punjab & Ors.' [2005(4) SCT 726] the Court was interpreting the transfer policy of the State of Punjab notified on 20.04.2005. No such transfer policy of the Government of Haryana has been referred to in the writ petition and it is only at the stage of filing the replication to the reply filed by respondent No.3 that the petitioner put his reliance on the Policy and Guidelines for Posting and Transfers dated 07.04.1989 (Annexure P-11). This policy has not even been relied upon by the petitioner in his replication filed to the short reply filed by respondent No.1.

The present case is also not a case where an employee has been singled out for adverse treatment. Therefore, the decision of the Division Bench of this Court relied upon by the Senior counsel for the petitioner is distinguishable on facts. The decision in 'Birender Kumar Kardam vs. State of Haryana & Ors.' [2017(1) SCT 384] operates against the petitioner as the transfer of the petitioner therein was upheld by this Court. The reliance upon certain interim orders passed by the Court in the matter of 'Rajesh Kumar & Ors. vs. State of Haryana & Ors.' is also misplaced since that case pertained to deployment/deputation of employees of one wing in the Transport Department to another wing of the Transport Department.

Respondent No.3 has questioned the petitioner's qualifications and eligibility for being promoted as Chief Engineer and a writ petition on this issue is already pending. Needless to say, this Court is not seized of any such dispute in the present writ petition wherein only the impugned transfer order (Annexure P-4) is under challenge. As such, this Court refrains from making any observations on this issue.

In view of the discussion above and the settled proposition of law quoted, no ground is made out for this Court to exercise its writ jurisdiction to interfere with the impugned transfer order dated 15.01.2021 (Annexure P-4). Finding no merit in the civil writ petition, the same is dismissed.

Dismissed.