

(2019) 09 SHI CK 0036

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2205 Of 2019

Ramjan Mohmmad

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Citation : (2019) 09 SHI CK 0036

Hon'ble Judges : Dharam Chand Chaudhary, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Ashok Sharma, Ritta Goswami, Adarsh Sharma, Ashwani Sharma

Final Decision : Disposed Off

Judgement

Jyotsna Rewal Dua, J

1. Petitioner has challenged his transfer order dated 31.08.2019 (Annexue P -8) vide which he has been transferred from Kheri I.P.H Sub Division Nahan to LWSS, Shirguldhar, I&PH Sub Division, Jamta under Nahan Division.

2. This is second round of litigation pertaining to transfer of petitioner.

Facts pertaining to first round:-

2(i) On 11.07.2019 vide Annexure P-1 issued by the Executive Engineer, IPH Division, Nahan, the petitioner working as a Pump Operator in IPH Section Kheri under Division Nahan, was adjusted and sent to LWSS, Shirguldhar, Section Dadahu under IPH Sub Division, Jamta.

2(ii) The Assistant Engineer, IPH Sub Division, Nahan on 19.07.2019 (Annexure P-2), directed the petitioner to join his duties in IPH Sub Division, Jamta. The petitioner challenged this transfer order by filing CWP No.1639 of 2019. During pendency of this petition, a question arose as to whether the Executive Engineer was competent to make local adjustment of Pump Operators when appointing authority for the post was Superintending Engineer. Order passed on 30.07.2019

in CWP No. 1639/2019, is reproduced hereinafter:-

"Notice. Mr. Nand Lal Thakur, learned Additional Advocate General, takes notice for the respondents. He is directed to find out whether the Executing Engineer, I & PH Division, Nahan is competent to make local adjustments, by shifting persons working as Pump Operators, especially in the light of the allegation that the appointing authority for the post is Superintending Engineer."

On 31.07.2019, further direction was issued to State to find out the duration of temporary adjustment in normal circumstances.

2(iii) While the writ petition was pending, the Superintending Engineer, IPH, Circle Nahan, issued office order dated 20.08.2019 (Annexure P-6) and approved the transfer/adjustment of the petitioner ordered by the Executing Engineer on 11.07.2019 (Annexure P-1). This post-facto, ratification of transfer/adjustment of the petitioner by the competent authority was not approved by the Court, hence, vide judgment dated 21.08.2019, the writ petition was allowed and the impugned transfer order dated 11.07.2019 (Annexure P-1) was quashed and set aside. Paras No. 8 & 9 of this judgment are reproduced hereunder:-

"8. Once it is confirmed that the first Authority who passed the order of transfer did not have the authority to do so, a post facto ratification by a competent Authority may not be permissible. It is a different matter if the competent Authority has taken a call independently. But post facto ratification is not permissible once an order is found to be without jurisdiction.

9. Therefore, the writ petition is allowed. The impugned order is set aside."

Facts pertaining to second round of litigation :-

2(iv) The Superintending Engineer, IPH Circle, Nahan, issued fresh transfer order of the petitioner on 31.08.2019 (Annexure P-8) transferring him from Pump House Kheri I.P.H Sub Division Nahan to LWSS, Shirguldhar, I&PH Sub Division, Jamta, under Nahan Division

2(v) Aggrieved against his transfer effected on 31.08.2019, petitioner has preferred instant writ petition primarily on the ground that impugned transfer order has been issued on the basis of a D.O. Note No. 159372 issued by respondent No.5.

2(vi) In view of the allegations levelled in the writ petition in respect of transfer of the petitioner having been made solely on the basis of D.O. Note, we had called for and seen the record pertaining to transfer of the petitioner.

Record:-

3(i) As per record, the proposal to transfer the petitioner was moved by respondent No.5 on 01.08.2019 during the pendency of CWP No.1639/2019, which was approved by the office of Hon'ble Chief Minister on 22.08.2019(i.e. immediately after the disposal of CWP No.1639 of 2019).

3(ii) Record also reflects that on 22.08.2019, it was proposed to send the file containing approval of transfer of the petitioner to the Superintending Engineer Nahan for further necessary action in the matter.

3(iii) Record produced before us does not show that proposal of transfer of petitioner was either sent to or was examined by the Superintending Engineer Nahan. Rather, it appears that on 22.08.2019 itself, proposal was approved by Engineer-in-Chief (IPH) by observing that:- (i) petitioner is working as Pump Operator in IPH Sub Division Nahan w.e.f. 30.07.2007 and has completed his normal tenure there and (ii) 17 posts of Pump Operators are lying vacant in IPH Division Nahan, therefore, petitioner can be transferred from Nahan Sub Division to Jamta Sub Division in Nahan Division against vacancy.

3(iv) It is thereafter that impugned order (Annexure P-8) was issued by the Superintending Engineer, IPH Circle, Nahan.

3(v) In Sanjay Kumar vs. State of Himachal Pradesh and others (2013) 3 Shim.L.C 1373; Amir Chand vs. State of Himachal Pradesh, 2013(2) Him.L.R. (DB) 648 and in Ashok Kumar Attri vs. Himachal Pradesh Power Corporation Limited, 2013 (3) Shim.LC 159, it has been held that any proposal of an elected representative regarding transfer of an employee cannot be straightaway implemented. It has to be examined by the Head of the Department who has to take an independent decision on the same, uninfluenced by the proposal. The decision has to be taken in accordance with law and as per transfer policy.

4. In the instant case, the proposal of transfer of petitioner had originated from the elected representatives during the pendency of CWP No. 1639/2019. This proposal had not been examined by the Competent Authority i.e. Superintending Engineer IPH Division Nahan. The judgment passed in CWP No. 1639/2019 apparently has not been noticed while ordering impugned transfer of the petitioner.

In view of non-examination of the proposal of transfer of petitioner independently by the Competent Authority, impugned transfer order dated 31.08.2019 (Annexure P-8) is quashed and set aside. However, we leave it open to the Competent Authority to independently consider the matter of transfer of petitioner afresh in light of law laid down and in light of transfer policy. The writ petition is disposed of accordingly, so also the pending application(s), if any.