
(2014) 04 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 23459 of 2013 (O&M)

Salinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 3 SCT 343

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Kapil Kakkar, Advocate for the Appellant; Anshul Gupta, Assistant Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—This order shall dispose of three petitions bearing CWP Nos. 23459, 23463 and 23561 of 2013, as common questions of law and facts are involved.

However, the facts have been extracted from C.W.P. No. 23459 of 2013.

The petitioner, who is working as Lecturer in Physical Education in Government Senior Secondary School, Multipurpose (Boys), Patiala, filed the present petition challenging the order dated 22.10.2013, whereby he was transferred to Government Senior Secondary School, Pabri (Patiala).

2. At the time of issuance of notice of motion, the following order was passed:

"The petitioner, who is serving as Lecturer, Physical Education under the Education Department, State of Punjab, has filed the instant writ petition impugning the order dated 22.10.2013 (Annexure P-3) to the extent that he has been transferred from Govt. Senior Secondary School, Multipurpose (Boys), Patiala to Govt. Senior Secondary School, Pabri (Patiala).

Learned counsel would refer to condition (d) contained in the impugned order

itself, which reads to the following effect:

"(d) In case the employee under transfer has not applied for transfer to the District Education Officer then the transfer be deemed cancelled."

The categorical assertions made in the petition is that the petitioner had not submitted any application to the District Education Officer seeking transfer and as such in the light of the afore-noticed condition (d), the impugned transfer of the petitioner would be deemed to be cancelled. Counsel argues that in spite thereof, respondent No. 3 is bent upon relieving the petitioner from the existing place of posting.

Notice of motion, returnable for 4.12.2013.

In the meanwhile, the petitioner shall be permitted to continue at Govt. Senior Secondary School, Multipurpose (Boys), Patiala till the next date of hearing.

It is, however, made clear that if the assertion of the petitioner to the effect that he had not submitted any application to the District Education Officer seeking transfer is found to be false, he shall be burdened with costs of Rs. 25,000/-."

3. A perusal of the aforesaid order shows that in case the statement made by learned counsel for the petitioner is found to be incorrect, the petitioner shall be burdened with costs of Rs. 25,000/-.

4. Learned counsel for the petitioner submitted that vide order dated 9.11.2011, the petitioner was transferred from Government Senior Secondary School, Lang (Patiala) to Government Senior Secondary School, Multipurpose (Boys), Patiala against demand post. He joined his new place of posting. The justification for the post, on which the petitioner was transferred in Government Senior Secondary School, Multipurpose (Boys), Patiala, was sought on the ground that the Principal of the aforesaid school, vide letter dated 14.1.2013 to the District Education Officer (S), Patiala, stated that considering the strength of the students and new rationalization policy of the department, the number of teachers required were three, whereas there was only one sanctioned post and the petitioner was working on post against the demand raised by the school. It was submitted that as there was requirement, the petitioner should have been allowed to continue on that post.

5. At the time of issuance of notice of motion, learned counsel for the petitioner had referred to condition (d) in the order of transfer, which provided that in case the employee under transfer had not applied for transfer to the District Education Officer, then the transfer shall be deemed cancelled. Along with the reply filed by the State, letter dated 29.8.2013 has been annexed, vide which the petitioner had given his option for transfer to three different schools. The aforesaid letter was addressed to the Circle Education Officer.

6. Learned counsel for the petitioner sought to explain his statement by stating that the petitioner had not made any request to the District Education Officer.

The request made to the Circle Education Officer was in different context, hence, the statement made by him at the time of issuance of notice of motion was not incorrect. Considering the aforesaid factual matrix and the explanation given by the counsel for the petitioner that the petitioner had not made a request to the District Education Officer, whereas it was made to the Circle Education Officer, which is higher authority, seeking transfer, in my opinion, the petitioner tried to play smart with the court. He had not stated correct facts at the time of notice of motion, wherein while recording his statement, even interim stay was granted. The petitioner was not straight forward. He did not disclose correct and complete facts. It is not even mentioned in the petition that the petitioner made a request to the Circle Education Officer for his transfer.

7. In State of Maharashtra Vs. Digambar, while dealing with exercise of power by the High Court under Article 226 of the Constitution, Hon"ble the Supreme Court observed that a person's entitlement for relief, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

8. The same view was reiterated by Hon"ble the Supreme Court in Civil Appeal No. 1941 of 2014--Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu, decided on 10.2.2014. In view of the aforesaid enunciation of law, coupled with the facts of the case, the writ petitions are dismissed. This Court had already assessed costs to be imposed on the petitioners in case the statement made by their counsel was found to be incorrect, which were quantified at Rs. 25,000/- each. The aforesaid amount be deposited within one month with the Education Department.