

(2022) 05 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2230 Of 2022

Sanjeev Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Citation : (2022) 05 SHI CK 0011

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

Bench : Division Bench

Advocate : Kulwant Chauhan, Ashok Sharma, Rajinder Dogra, Vinod Thakur, Shiv Pal Manhans, Bhupinder Thakur, Yudhbir Singh Thakur

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

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

"I. That the writ in the nature of certiorari with the directions to the respondents to quash and set-aside transfer order dated 05.04.2022 (Annexure P-1) as being contrary to transfer policy.

II. That the writ in the nature of mandamus may kindly be issued with the directions to the respondent to post petitioner to some other nearby station by taking into consideration his adverse family circumstances in view of Annexure P-2."

2. On 18.04.2022, this Court passed the following order:-

"CWP No. 2230/2022 & CMP No.4059/2022.

Issue notice. Mr. Bhupinder Thakur, learned Deputy Advocate General, appears and waives service of notice on behalf of respondents No.1 and 2. Dasti notice be issued to respondent No.3 returnable for 2nd May, 2022, on taking steps within

two days. Reply be filed within two weeks. List on 2nd May, 2022, when records relating to DO No.382766 dated 25.3.2022, be produced for our perusal. In the meanwhile, the respondents are restrained from taking any coercive steps to compel the petitioner to join at the transferred station.

Copy dasti."

3. Records of transfer as produced by the official-respondents go to indicate that it is solely at the behest of the local MLA that the petitioner along with hosts of other persons has been ordered to be transferred.

4. What is more surprising is that even the stations of these persons along with request for condonation of short stay has been made in the recommendations.

5. It is more than settled that transfer is the sole prerogative of the Administrative Department and the politicians cannot don the role of the Administrative Authority.

6. Reference in this regard can be made to a judgment rendered by this Court in CWP No. 2862 of 2021, titled Vipender Kalta vs. State of H.P. and others, decided on 20.07.2021, wherein it was held as under:-

"32. The Hon'ble Supreme Court as also this Court and various other High Courts have held in certain cases that it would be permissible for the administrative authority to consider recommendations of the MLAs or MPs or Ministers concerned, that too, in case they have received complaints regarding the working of the government servants seeking their transfer, however even then the final decision in this regard has to be taken by the administrative department as the politician cannot don the rule of administration.

33. Even otherwise, upholding such kind of transfers would mean compromising with the rule of law, which is a basic feature of the Constitution, which permeates the whole of the constitutional fabric and is an integral part of the constitutional structure."

7. Since, transfer of the petitioner has been ordered to be effected at the behest of the local MLA and without there being independent application of mind by the administrative department, the impugned order of transfer is not sustainable.

8. Consequently, the instant petition is allowed and the impugned order of transfer dated 05.04.2022 (Annexure P-1) is quashed and set aside.

9. However, since the petitioner has completed his normal tenure of service at the present place of posting, it goes without saying that in case the official-respondents decide to transfer the petitioner in administrative exigencies and public interest, then this order shall not come in their way while doing so.

10. Pending applications, if any, also stand disposed of.