
(2012) 06 SHI CK 0147
In the High Court Of Himachal Pradesh
Case No : CWP No. 11123 of 2011-C

Sarvind Kumar Chauhan and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:

Citation : (2012) 06 SHI CK 0147

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : H.S. Rana and Mr. Amrinder Singh Rana in both the petitions, for the Appellant; Ramesh Thakur, Asstt. Advocate General in both the petitions, for the Respondent

Judgement

Justice Sanjay Karol, J.—Both these petitions were directed to be listed together vide order dated 19.12.2011. The issue involved is same and pleadings almost identical. Hence they are being heard and disposed of together. For the purpose of deciding the matter, pleadings of CWP No. 11123 of 2011 are being referred to hereinafter. Petitioners have prayed for the following relief:-

i) That the order of transfer annexure P-1, may very kindly be quashed and set aside as the same has been made on political grounds.

2. Annexure P-1 is the impugned order of transfer dated 7.12.2011 whereby, amongst others, petitioners stand transferred from Baddi to 2nd IRB (near Dharamshala), 3rd IRB (Pandoh near Mandi) and 4th IRB (Jungleberi, Hamirpur).

3. Petitioners being sixteen in number were serving as Constables/Head Constables in the Police District Baddi, Administrative District Solan, H.P.

4. Challenge to the transfer, as is so argued, is on the following grounds:-

1. Transfer is in mid academic session.

2. It is politically motivated, inasmuch as candidate of the ruling party was

defeated in the elections, result of which was declared on 4.12.2011 and transfer was effected immediately thereafter i.e. on 7.12.2011.

3. There is no basis, foundation or justifiable reason for effecting such transfers.

4. Transfer is by way of punishment.

5. At the threshold it be only noticed that allegations of malice, in fact or law, political bias/motive/considerations are vague and unspecific in nature. In fact, in my considered view, petition which is telegraphic in nature, does not substantiate any of the aforesaid points.

6. For better appreciation and ready reference, relevant portion of the petition is extracted as under:-

1. That the petitioners are the citizen of India and more particularly residents of the place mentioned in the title above. Since grave injustice has been done by the respondents to the petitioners, hence, petitioners are entitled to file and maintain the writ petition in this Hon"ble Court.

2 That the respondents No. 1 is the State of Himachal Pradesh and respondents No. 2 to 3 are the officials of respondent No. 1, hence, all are amenable to the writ jurisdiction of this Hon"ble Court.

3. That the facts as are necessary for the adjudication of this writ petition are that the petitioners are serving in Police department as Constable and Head Constable as shown in the transfer orders and were posted at Police District Baddi, which was created on 01/01/2009.

4. That recently by-election was held at Nalagarh constituency in Solan district and at Renuka constituency in Sirmaur district.

5. That in Nalagarh constituency the candidate of the ruling party in the State was defeated and the candidate of the opposition party was declared elected on 04/12/2011.

6. That on 07/12/2011 the orders of various constable and head constable only pertaining to Sirmaur and Baddi were made that too to the battalions.

7. That the transfer orders as per annexure -A has been made totally on political grounds as is apparent from the orders itself that the transfers had been made only in those district where the by-election were held.

8. That these petitioners were either voters in Nalagarh constituency or their relatives were voters and due to defeat of the ruling party candidate the petitioners have been victimized on the political grounds.

9. That otherwise also the petitioners are experienced person in the police department and has remained on important position in their services and their transfer to battalion at this stage is clear indication to the employee of the state to help a particular party in the coming elections.

10. That it is also not out of place to mention here that the petitioners have already served in battalion and these transfer to battalion has been made just to pressurize the petitioners and other employees of the state to support a particular party being government employees.

11. That the transfer orders of the petitioners have been made during the mid-session of the education and children of all the petitioners are studying in schools and their education will be totally disturbed if the present transfer orders are implemented.

12. That the transfer orders are totally discriminatory and are made on the pick and choose basis as in the entire state only the persons belonging to the area of 2 constituencies where the by-elections were held are picked up for transfers.

13. That the respondents are bent (sic) upon to relieve the petitioners immediately from their respective places of posting in case the transfer order are not stayed the petitioners are likely to suffer irreparable loss and suffer mental agony.

14. That the transfer orders copy annexed as Annexure P-1, are totally wrong, illegal, discriminatory and are liable to be quashed.

7. Operation of Annexure P-1, qua the petitioners was stayed till further orders by the Court on 15.12.2011/19.12.2011, when it was observed that no request was made by the petitioners for being posted outside Baddi nor was there anything on record to show on what basis the A.D.G.P., Police Headquarters had forwarded the names of the petitioners, for being transferred out in terms of the impugned order.

8. Now Mr. Somesh Goel, Addl. Director General of Police has filed his personal affidavit dated 10.1.2012, clearly stating that he being the head of the police headquarters in the State, remains in touch with the subordinate officers and particularly the Superintendents of each District of the State. On the information received on telephone, which was subsequently reduced into writing by the Superintendent of Police, it came to his knowledge that petitioners were indulging in the business of transport through their family members. In fact, names of all the police officials who were having two or more vehicles, being plied at Baddi either in their name or in the name(s) of their family member(s), were conveyed to him confidentially. As such a decision was taken at the highest level to transfer out such persons in public interest. In the meeting convened by the Police Establishment Committee on 22.10.2011, names of the petitioners and other police officials were considered and recommended for being transferred out of Baddi. Such proposal for approval was sent to the competent authority on 5.11.2011, which was accorded on 12.11.2011. The same was received in the office of the A.D.G.P. only on 17.11.2011. Formal orders of transfer could not be issued and communicated to the petitioners as by this time by-elections for the assembly constituency in question stood declared by the State Election Commission and code of conduct was in force. It was only on 7.12.2011 when

results of the elections were declared and code of conduct for transfers lifted that formal orders were issued on 7.12.2011.

9. Hence doubt in the mind of the Court that transfer was without any justifiable grounds stands fully answered and cleared.

10. Significantly petitioners in the rejoinder do not specifically dispute/refute the fact that either they or their family members do not own any vehicles which are being used for the purposes of public transport in Baddi. In this factual backdrop, contentions raised by the petitioners cannot be said to be legally sustainable or action of the respondents to be arbitrary, whimsical, capricious or illegal.

11. The Apex Court in *Airports Authority of India Vs. Rajeev Ratan Pandey and Others*, has reiterated its earlier view taken in *State of U.P. and Others Vs. Gobardhan Lal*, to the effect that while dealing with the matter of transfer, allegations of mala fides must inspire confidence of the Court and such allegations are not to be entertained on the mere asking of the petitioner or on consideration borne out of conjectures or surmises and except for strong and convincing reasons no interference against the order of transfer should be made. It stood emphasized that burden of proving mala fides, which is heavy, is on the person levelling such allegations. Mere assertion or bald statement is not enough to discharge the heavy burden which law imposes upon the petitioner. Also such burden must be supported by requisite materials.

12. Now in the instant case, except for the bald, vague and unspecific assertions about political victimization, there is nothing on record to substantiate the apprehension or plea of transfer on such grounds. It is not shown that either the petitioners or their family members are in fact registered voters of Nalagarh assembly constituency. It is also not averred by the petitioners that either they or their family members had in fact cast their votes during the elections held in December, 2011. Plea that transfer is actuated out of malice, based on political considerations, is thus without any substance.

13. The Apex Court in *Mohd. Masood Ahmad Vs. State of U.P. and Others*, has held that transfer is an exigency of service and an administrative decision. Interference by the Courts with such orders of transfer should be "only in very rare cases", 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. The Court further held that:

even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. It is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official, the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case. In the present case, there is no infirmity in the impugned

transfer order.

14. It also cannot be said that transfer is by way of punishment. There is nothing on record to substantiate this plea. It is a sheer coincidence that order of transfer was issued immediately after declaration of result of the by-elections of the assembly constituency. Respondents have specifically pleaded and, in my considered view, justified initiation of action of transferring out the petitioners, which was prior to declaration of result of the elections.

15. It is true that transfer was effected in the month of December, 2011 which is mid-academic session. But then there is nothing on record to show that children of any one of the petitioners are actually studying in school/ college at Baddi. Thus the challenge on this ground is also not based on material facts and particulars. Be that as it may be, this ground no longer survives as the academic session came to an end in the month of March, 2012 itself and now a new session has begun and in any event children of the petitioners can easily take admission in the ensuing academic session, anywhere at the place of their transfer. Significantly petitioners have not been transferred to a remote corner of the State. Dharamshala, Mandi and Hamirpur are district headquarters where there are good schools and colleges both in public and private sector.

16. Transfer and placement of an employee is the sole prerogative of the employer.

17. Mr. H. S. Rana, learned counsel, has placed on record service particulars of all the petitioners which would reveal that during most of their service tenure, petitioners continued to remain posted in and around their native place of residence.

18. The Apex Court in Registrar General, High Court of The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others, while reiterating its earlier view taken in N.K. Singh Vs. Union of India and others, State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, and Rajeiv Ratan Pandey (supra) has held that in a case of transfer of a government employee scope of judicial review is limited as Courts do not substitute their own decision in the matter of transfer.

19. I may also add that plea of malice also needs to be rejected on the ground that necessary persons have not been impleaded as parties in the present petitions.

20. As such, I am of the considered view that there is no merit in the present petitions and transfer of the petitioners stands sufficiently explained on sustainable grounds and no illegality or infirmity can be found with the action of the respondents. For all the aforesaid reasons, present petitions are dismissed with cost quantified at Rs. 1000/- (rupees one thousand) each. Interim order dated 15.12.2011 and 19.12.2011 are vacated and petitioners are directed to immediately report at the places of their transfer.

Both the petitions stand disposed of, so also the pending application(s), if any.