
(2009) 04 SHI CK 0025
In the High Court Of Himachal Pradesh

Satya Prakash Awasthi	Vs	APPELLANT
State of H.P. and Another		RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Citation : (2009) 1 ShimLC 530

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—Respondent No. 2 is not present despite service. Reply has been filed on behalf of respondent No. 1.

2. Petitioner has been in the service of respondent No. 1 as Tehsildar for the last several years. He is due to retire on 31.7.2009, on attaining the age of superannuation. He was posted at Manali in April, 2007. He has yet not completed his normal tenure of three years at Manali. He has been transferred vide impugned order dated 24.2.2009, Annexure P-I, from Manali to Kangra as Tehsildar (Recovery). The transfer order which affects 35 Tehsildars reads that the transfers/adjustments have been ordered in pursuance of the instructions issued by the Election Commission of India.

3. Petitioner has challenged his transfer pleading that only four months time is left for his retirement and he should not be disturbed. His plea is that otherwise also Government's own transfer policy says that a person about to retire should not be disturbed.

4. Respondent No. 1 has filed reply in which it is stated that there are instructions of the Election Commission that a person, connected with elections, directly or indirectly, should not be allowed to continue in the present district of posting, after announcement of general election to the House of People, if;

(a) she/he is posted in her/his home district;

(b) she/he has completed three years in that District during the last four years or would be completing three years on or before 31.5.2009.

The aforesaid instructions, however, do not apply to an officer, who is due to retire, within coming six months.

5. In the present case, admittedly, the petitioner belongs to Kangra District while Manali, where he is presently posted, falls in Kullu District. So, the first direction of the Election Commission does not apply in his case. Second direction also does not apply, because he has been at Manali only for the last two years. That apart, he has only four months' time left to retire.

6. In the reply it is also stated that the petitioner has been transferred on administrative grounds and that he having been posted in his home District, there is no illegality, arbitrariness or malafide in his transfer from Manali to Kangra. The transfer order, as already noticed, does not say that the transfer of the petitioner is on administrative ground or to accommodate him in his home District. The order records that transfers have been made in pursuance of Election Commission instructions.

7. Otherwise also, respondent No. 1 could have posted the petitioner in his home District, because of his impending retirement, only if he had approached for the same, as per transfer policy of the Government. When the petitioner is not prepared to go to his home District and he considers the present place of his posting more comfortable and convenient, respondents should not thrust transfer upon him, on the plea that he is being sent to his home District, particularly when he has not completed his normal tenure at the present place.

8. In view of the above stated position, we allow the present writ petition and quash and set aside the transfer of the petitioner from the post of Tehsildar, Manali to the post of Tehsildar (Recovery), Kangra.