

(2011) 11 SHI CK 0181
In the High Court Of Himachal Pradesh
Case No : CWP No. 3777 of 2011-D

Sh. Rajinder Kumar Negi

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Citation : (2011) 11 SHI CK 0181

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J,

1. The petitioner was transferred in terms of order dated 16th May, 2011 (Annexure P-1) from Civil Hospital, Theog to DDU Zonal Hospital, Shimla with TTA. In terms of the very same order, private respondent, Dr. Anita Bhatnagar, who was under transfer from DDU Zonal Hospital, Shimla to Civil Hospital, Junga (Shimla) was adjusted at Civil Hospital, Theog with TTA.

2. It is clear from Annexure P-1 that Dr. Anita Bhatnagar was adjusted at Theog on her request. Pursuant to Annexure P-1, petitioner also joined at DDU Zonal Hospital, Shimla on 20th May, 2011.

3. However, prior to said date, order of transfer dated 16th May, 2011, qua the petitioner and private respondent, was modified and transfer cancelled. This was vide notification dated 19th May, 2011. Perhaps, this notification was not formally communicated to the petitioner or petitioner was not made aware of the same at the time of his joining at DDU Zonal Hospital, Shimla and it is for this reason that his joining was accepted.

4. Feeling aggrieved by the impugned order dated 19th May, 2011, petitioner approached this Court and on 26th May, 2011, this Court passed the following interim order:-

Mr. R.K. Sharma, learned Senior Additional Advocate General, accepts notices on

behalf of respondent No.1. Separate notice be issued to respondent No.2 returnable after four weeks. Steps be taken within a week from today.

In reference to order dated 16.5.2011 (Annexure P-1), the petitioner has been ordered to be transferred from Civil Hospital, Theog to DDU Zonal Hospital, Shimla. However, after four days of his joining, a subsequent order dated 19.5.2011 was passed. In these facts and circumstances, in the interest of justice impugned order dated 19.5.2011 is stayed qua the petitioner.

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The same is still in operation.

5. Private respondent Dr. Anita Bhatnagar stands served in the present petition which is evident from the Office report dated 08.11.2011. None appeared on her behalf on 09.11.2011, when the matter was adjourned for today. Even, today none has entered appearance on her behalf. It is thus apparent that she has chosen not to contest the present petition. Hence, she is proceeded exparte.

6. In the petition, it is specifically pleaded that Smt. Anita Bhatnagar has been working at Shimla w.e.f. 1995. The State has not denied the same. It is also on record that petitioner has served in hard/tribal/difficult area for more than four years. Posting of an employee is the sole prerogative of the State. There is no dispute on this preposition of law.

7. However, in the instant case, as is apparent from the material placed on record, it appears that the State has passed the impugned order only to accommodate private respondent Dr. Anita Bhatnagar and without any administrative exigency. The explanation furnished by the State is that present respondent has a physically handicapped child but, however, no details or particulars thereof have been placed on record. What is the nature and the extent of disability is not on record. Also age of the child and as to whether the child needs urgent medical attention at Shimla alone is not clear. It appears that Smt. Anita Bhatnagar has been managing her posting at the station of her choice since the year, 1995. Theog is not a distant place from Shimla. It is just 35 Kilometers. She can conveniently join there. Neither from the impugned order nor from the record, State has explained the administrative exigency or the public interest involved in passing the impugned order. Posting of an employee at a particular station of his choice is not his right. Transfer of an employee is exigency of service condition.

8. As such, the impugned order dated 19th May, 2011 is quashed. Petitioner is already serving at DDU Zonal Hospital, Shimla pursuant to interim order dated 26th May, 2011, passed by this Court.

9. In view of the aforesaid, the petition stands disposed of so also the pending application(s), if any.