
(2004) 05 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 304 of 2004

Shobh Ram

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 20-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 2 ShimLC 298

Hon'ble Judges : V.K. Gupta, C.J.;A.K. Goel, J

Bench : Division Bench

Advocate : Rajiv Sharma and Surinder Sharma, for the Appellant; M.S. Chandel, A.G. and C.B. Singh, Dy. A.G., for the Respondent

Judgement

V.K. Gupta, C.J.—The Petitioner had approached the Himachal Pradesh Administrative Tribunal by filing Original Application 472/2004, assailing the order dated 25.2.2004, issued by Respondent No. 2, whereby the Petitioner was transferred from Baghani Range, Paonta Forest Division to Wild Life Range, Dhameta, Wild Life Division, Hamirpur. The Petitioner obviously was simultaneously also insisting before the Tribunal for passing an order in the nature of grant of an interim relief for staying the implementation and operation of the aforesaid transfer order dated 25.2.2004.

2. The Tribunal, vide its order dated 23.4.2004, passed in OA No. 472/ 2004, and under challenge in this petition filed under Articles 226/227 of the Constitution, has granted three weeks time to the Respondents in the Original Application to file sur rejoinder. However, in so far as the Petitioner's prayer for stay of the operation of the impugned transfer order is concerned, the Tribunal has, by adopting a casual approach, merely made a passing observation that since the transfer was made with the prior approval of the competent authority and further since the Petitioner had been relieved with effect from 25.2.2004, no order, one way or the other could be passed by the Tribunal staying or refusing to stay the operation of the order of transfer.

3. We are not unmindful of the fact that the Petitioner indeed might actually have been relieved on 25.2.2004. That however should not have detracted the Tribunal by summarily refusing to consider the prayer of the Petitioner for grant of interim relief, of course on its merits and in accordance with law. We are saying so because apparently the Tribunal in the present case perhaps was unmindful of the established legal principles on the subject that it did not lose jurisdiction in considering the request of a Petitioner for staying the operation of a transfer order, even if the transfer order had stood implemented. If a person aggrieved of the issuance of a transfer order approaches a Court or a competent Tribunal assailing the same on grounds tenable under law, and if such a person even at the interim, or at an interlocutory stage fully satisfies and convinces the Court or the competent Tribunal that the transfer order was indeed passed in violation of law, the mere implementation of the transfer order or the fact that the aggrieved Petitioner had been relieved from the post from where he was transferred, those facts by themselves cannot be a ground for refusing to stay the operation of the impugned order or to keep it under suspension or in abeyance. We are not unmindful of the established constitutional position in Service Jurisprudence also that Courts normally do not interfere in the transfer orders lightly and unless a transfer order really suffers from such patent constitutional or legal defect as would warrant interference, its implementation or its operation is not disturbed by the Courts. But at the same time, we are also not oblivious of the established constitutional position that if a Petitioner convincingly satisfies the Court that the impugned transfer order did suffer patently on account of a defect either in law or otherwise and that, based on established constitutional parameters the interference of the Court indeed is warranted, merely because the order has been implemented or that the Petitioner has been relieved should not in normal circumstances inhibit the Court or the Tribunal in undoing the damage, or what in legal parlance is commonly known, in ordering the restoration of status - quo ante. Of course the passing of such an interim order has to be based on absolutely convincing reasons and on the basis of satisfaction of the Court/Tribunal to be recorded in writing supported by cogent reasons and grounds, as it should not, and cannot be done in a casual or light-hearted manner.

4. By the aforesaid observations undoubtedly it abundantly becomes clear that even though the jurisdiction is there to grant interim relief, with respect to transfer matters it has to be sparingly used and only on the basis of the established constitutional parameters.

5. In the present case however the Tribunal did not take note of the aforesaid aspects of the matter and in a casual manner has adjourned the proceedings for three weeks, thus depriving the Petitioner the advantage of obtaining an order from the Tribunal, one way or the other.

6. Based on the aforesaid observations, we send the Petitioner back to Tribunal with directions that the Tribunal shall dispose of, in the light of the aforesaid

observations made by us, the Petitioner's prayer for interim relief within two weeks from the date of communication of this order by the Petitioner and to do so, the Tribunal may prepone the date of hearing in the case. We direct the Respondents to produce the entire relevant record before the Tribunal once again for Tribunal's consideration and perusal because the record in this case perhaps might be of utmost relevance in finding out and deciding as to whether the impugned transfer order in fact suffered from any legal infirmity or not.

7. In making the aforesaid observations, we should not be construed to have expressed any opinion on the merits of the controversy between the parties.

8. Based on the aforesaid observations, the petition is disposed of. CMP 573 of 2004

Infructuous.