

---

**(2011) 06 SHI CK 0007**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Writ Petition No. 3509 of 2011**

Surjeet Kumar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

---

**Date of Decision : 20-06-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation : (2011) 3 ShimLC 512**

**Hon'ble Judges : Rajiv Sharma, J**

**Bench : Single Bench**

**Final Decision : Allowed**

---

## **Judgement**

Rajiv Sharma, J.—Petitioner was serving as Junior Basic Trained Teacher and was posted in Government Primary School, Ghumarwin-II on 25th June, 2007. Thereafter he was transferred from Government Primary School, Ghumarwin-II to Government Primary School, Kallari (Ghumarwin-I) on 22nd April, 2011. He joined his duties at Government Primary School, Kallari (Ghumarwin-I) on 22nd April, 2011 vide Annexure P-3. However, surprisingly, the petitioner has been again transferred vice respondent No. 5 from Government Primary School, Kallari (Ghumarwin-II) to Government Primary School, Arloh Chounta (Jhanduta). Mr. B.S. Thakur, learned Counsel for the petitioner has strenuously argued that issuing of Annexure P-1, dated 11th May, 2011 is illegal, arbitrary, unreasonable, thus violative of Articles 14 and 16 of the Constitution of India.

2. Mr. Vikas Rathore, learned Deputy Advocate General has vehemently argued that the petitioner has been transferred on the basis of rationalization. Mr. Ajay Mohan Goel, learned Counsel for respondent No. 5 has vehemently argued that his client has made a representation to respondent No. 2 to accommodate her at any of the five places, viz. GPS. Pahedwin (Khas), GPS, Kalri Tehsil Ghumarwin/GPS Pantehra, GPS Bumb or GPS, Kothi. He then argued that respondent No. 2 has directed/recommended to the respondent No. 3 to adjust respondent No. 5 at any of the five stations. Mr. Ajay Mohan Goel, learned Counsel for respondent

No. 5 has placed copy of this letter on record.

3. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

4. Petitioner has joined Government Primary School, Kallari, Ghumarwin-I on his transfer from Government Primary School, Ghumarwin-II on 22nd April, 2011. In case the respondent No. 5 was to be adjusted even under the rationalization scheme, the fact that the petitioner had already been transferred from GPS Ghumarwin-II to GPS, Kallari on 22nd April could not be over looked. In other words, there was no justification/necessity for the respondent-State to transfer the petitioner after 19 days from GPS, Kallari (Ghumarwin-I) to GPS, Arloh Chaunta (Jhanduta) vide Annexure P-1. It is within the domain of the employer to transfer an employee. However, the transfer should be made in a transparent and fair manner and the short stay of the employee(s) has to be taken into consideration. The power to transfer is coupled with duty to act in a just, fair and reasonable manner. Mr. Ajay Mohan Goel, learned Counsel for respondent No. 5 submits that the Director of Elementary Education has recommended to the Deputy Director of Elementary Education, Bilaspur that the respondent No. 5 be adjusted in any of the five schools mentioned in the communication. However, respondent No. 3 instead of complying with the recommendations made by respondent No. 2 has in fact transferred respondent No. 5 to Government Primary School, Kallari, which has resulted in the transfer of the petitioner to Government Primary School, Arloh Chaunta. The respondent No. 3 could not overlook/ defy the orders of respondent No. 2. The officers are bound to obey the orders in hierarchy to maintain rule of law. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexure P-I, dated 11th May, 2011 is quashed and set aside. However, it is made clear that respondent No. 3 shall post/adjust the respondent No. 5 in any of the stations as given in the communication/recommendation made by the Director of Elementary Education to him, within a period of two weeks from today. The pending application, if any, also stands disposed of. No costs.