
(2022) 05 SHI CK 0085
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.2656 Of 2022

Tej Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 27-05-2022

Acts Referred:

Citation : (2022) 05 SHI CK 0085

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Anup Rattan, Ashok Sharma, Shiv Pal Manhans, Vinod Thakur,
Bhupinder Thakur, Yudhvir Singh Thakur, Rajat Chauhan

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

- 1 . Aggrieved by the order of transfer, the petitioner has filed the instant petition.
2. The record reveals that the transfer of the petitioner is solely on the basis of D.O. Note No.382912 issued by the local MLA, whereby he has recommended the transfer of the petitioner outside district Chamba. Obviously, in such circumstances the order of transfer cannot sustain. After all, call for the transfer has to be taken by the administrative department and not by the local politician even if such politician belongs to the area in question.
3. Reference in this regard can be made by this Court in CWP No.5751/2021, titled Pomila Vs State of H.P. & Ors. decided on 08.10.2021. Relevant portion of the order reads as under:-

"21. As observed by this Court, the Members of the Legislative Assembly or the Minister concerned have right to make recommendations, but these recommendations cannot be taken to be the final word. The underlying principle for transfer is public interest or administrative exigency, which is conspicuously absent in the present case.

22. As held by this Court in Amir Chand's case (*supra*), we live in a democracy and our elected representatives under the Constitution are to work in the legislature and not as administrators. They cannot start interfering in the administration or the working of the Executive. It is they (Administrative Heads) who are the best judges to decide how the department has to be administered and which employee should be transferred to which place. The politicians cannot don the role of administration.

23. It was further held that the elected representatives cannot have a right to claim that a particular employee should be posted at a particular station. The choice has to be made by administrative head i.e. Executive and not by the legislators. Where an employee is to be posted must be decided by the administration. It is for the officers to show their independence by ensuring that they do not order transfers merely on the asking of an MLA or Minister. They can always send back a proposal showing why the same cannot be accepted.

24. Lastly, it is held that whenever any transfer is ordered not by the departments but on the recommendations of a Minister or MLA, then before ordering the transfer, the views of the administrative department must be ascertained and only after ascertaining the views of the administrative department, the transfer may be ordered if approved by the administrative department, meaning thereby the views of the administrative department have essentially to be sought in the matters of transfer. What follows is that the views of the administrative department must reflect subjective satisfaction and conscious application of mind that the transfer is essential on account of administrative exigency and/or public interest or that the transfer of employee is necessary for the effective utilization of his/her services.

25. Adverting to the present case, the order of transfer cannot withstand judicial scrutiny as the same does not show that the petitioner has been transferred on account of administrative exigency and/or public interest. The record further does not reveal that the transfer has been effected for the efficient utilization of the services of the petitioner and she has been transferred merely on the basis of the recommendations made by the political executive."

4. In the given facts and circumstances of the case, the action of the respondents cannot be countenanced and sustained. Accordingly, the impugned transfer order dated 30.03.2022 (Annexure P-4) is quashed and set aside, leaving the parties to bear their own costs.

5. With these observations, the writ petition is disposed of, so also pending miscellaneous application(s), if any.