

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. : 1755 of 2023

Decided on : 04.04.2023

Raj Kumar

....Petitioner.

Versus

State of Himachal Pradesh and Ors.

...Respondents.

Coram

Hon'ble Ms. Justice Sabina, Acting Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹

For the petitioner :Ms. Rekha Bansal, Advocate.

For respondents No. 1& 2 : Mr. Rakesh Dhaulta, Additional
Advocate General.

Satyen Vaidya, Judge

Heard.

2. By way of instant petition, petitioner has
prayed for following substantive reliefs;-

- i) *That in view of the facts and circumstances mentioned hereinabove in this writ petition, the writ petition may kindly be allowed and*

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

the impugned order dated 31.03.2023 contained in Annexure P-1 may kindly be quashed and set aside.

- ii) That the respondent No. 2 may kindly be ordered to be dealt with in accordance with contempt of Court Act for violating the judgments passed by this Hon'ble Courts in the case of Vipender Kalta Versus State of H.P. and ors.*

3. Petitioner has taken exception to impugned transfer order, dated 31.03.2023, Annexure P-1, on the ground that the same has been effected on the basis of a D.O Note issued by respondent No.3, who has nothing to do with the administrative department of the petitioner. Respondent No. 3 has acted as an extra constitutional authority and merely on his asking, petitioner has been transferred. The proposal to transfer the petitioner was not mooted at the level of administrative department.

4. The official respondents have produced the record of the transfer of petitioner. The allegation of the petitioner that impugned transfer order has been issued on the recommendations of respondent No. 3 is substantiated.

5. It is not disputed that respondent No. 3 is neither an elected representative nor has anything to do with the administration of Department of Education in the State. The transfer of petitioner ordered, vide impugned office order, dated 31.03.2023, Annexure P-1, clearly is in teeth of judgment passed by a Division Bench of this Court, in which one of us (Satyen Vaidya, J. was a Member), in CWP No. 2862 of 2021, titled as **Vipender Kalta Vs. State of H.P and ors., decided on 20.07.2021**, in which it has been held as under:-

“28. The citizens have a fundamental right to good governance, which is possible only if government servants are politically neutral and are not transferred or otherwise victimized at the instance of a political party or politician.

29. It is only when the Court notices gross irregularities being committed by the government in the matters of transfer, it becomes necessary for the court to interfere. Therefore, its time to turn the search light on the State Government and remind it that the transfer policy should not be taken lightly and or made a mockery or a tool to trans

government employees on the whims and fancies of the politicians.

30. *The Government as an ideal employer has a bounden duty to strictly safeguard the interest of its employees against the machinations of politicians. The public servants need to discharge their functions without fear or favour and they need not to toe the line drawn by the politicians.*

31. *If such transfer is allowed to take effect, it would embolden the other political cadre and influential local level politicians of all hues to seek the transfer of unfavourable and upright government officials from their pocket boroughs and to see that they are posted in somewhere else. This would demoralize the government servants and may inspire them to amend their ways in such a way of pleasing each and every one whoever come under the banner of some political party. If the government machinery has to serve well the people, their functioning and official routines are to be insulated against the extraneous influences. (Refer **Akash Sharma vs. State of U.P., 2007(4) AWC 2899).***

32. *The Hon'ble Supreme Court as also this Court and various other High Courts have held in certain cases that it would be permissible for the administrative authority to consider recommendations of the MLAs or MPs or Ministers concerned, that too, in case they have received complaints regarding the working of the government servants seeking their transfer, however even then the final decision in this regard has to be taken by the administrative department as the politician cannot don the rule of administration.*

33. *Even otherwise, upholding such kind of transfers would mean compromising with the rule of law, which is a basic feature of the Constitution, which permeates the whole of the constitutional fabric and is an integral part of the constitutional structure.*

34. *Rule of law contemplates governance of laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being.*

35. *Since the recommendations to transfer the petitioner had been mooted by an extra constitutional authority, who has no role in the*

functioning and business or the administration therefore, the impugned transfer of the petitioner on the basis of such recommendations cannot be sustained and is accordingly quashed.”

6. Thus, the impugned transfer order, dated 31.03.2023, Annexure P-1, cannot be sustained.

7. Learned Additional Advocate General representing respondents No. 1 and 2 has further submitted that petitioner himself has been beneficiary of a D.O. Note in the past. A copy of U.O. Note No. 197497 issued from the office of Hon’ble Chief Minister, Himachal Pradesh, has been produced on record, whereby petitioner was transferred from Govt. Sen. Sec. School Kot Hatli, District Mandi, H.P. to Govt. Sen. Sec. School Samaila, District Mandi, H.P. vice Sh. Arun Kumar, on mutual basis. The copy of U.O. Note placed on record also reveals that petitioner as well as Sh. Arun Kumar had consented for their mutual transfer. Thus, petitioner cannot be denied the relief in the instant case as the earlier U.O. Note, as detailed above, was on the basis of mutual

consent of the incumbents concerned. Moreover, the impugned transfer order, *prima facie* appears to have been issued for *mala fide* reasons as vide U.O. Note dated 22.02.2023 issued from the office of Hon'ble Chief Minister, a specific direction has been issued to transfer petitioner from Govt. Sen. Sec. School, Samaila, District Mandi, H.P. to any school in District Shimla, H.P. It cannot be said to be an act of administrative exigency or public interest.

8. In light of above discussion, the petition is allowed. Office order dated, 31.03.2023, Annexure P-1, is ordered to be quashed and set-aside.

9. Accordingly, the petition is disposed of, so also the pending miscellaneous application(s), if any.

(Sabina)
Acting Chief Justice

(Satyen Vaidya)
Judge

4th April, 2023
(sushma)