

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. : 6589 of 2022

Reserved on : 24.03.2023

Decided on : 28.03.2023

Anjul 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 Yes

For the petitioner	:Mr. N.K. Thakur, Sr. Advocate with Mr. Karan Veer Singh, Advocate.
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For respondents No. 1& 2	: Mr. Arsh Rattan, Deputy Advocate General.
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For respondent No. 3	: Mr. Deven Khanna, Advocate.
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Satyen Vaidya, Judge

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

- i) *That the Hon'ble Court may issue a writ in the
nature of certiorari quashing and setting aside*

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

the impugned order of cancellation a dated 12.09.2022 having no. 42395-21283/2022 issued by the Addl. Director health Services, Himachal Pradesh (Annexure P-6).

- ii) That the Hon'ble Court may kindly issue a writ of mandamus directing the respondents to give effect and implement the order of transfer dated 31.08.2022 (Annexure P-1).*

2. Petitioner is working as Pharmacist in the Department of Health, Government of H.P. since his appointment on 28.05.2019. His first place of posting was P.H.C. Gah-Ghori under Jhandutta Block in District Bilaspur, H.P. Since then petitioner is posted at the same place.

3. Petitioner was ordered to be transferred from P.H.C. Gah-Ghori to C.H.C. Barthin, District Bilaspur, H.P., vide transfer order dated 31.08.2022 vice respondent No. 3. It was specifically mentioned in transfer order dated 31.08.2022 that petitioner would be relieved only after respondent No. 3 joined at his place. On 12.09.2022, the order of transfer dated 31.08.2022, was cancelled and petitioner was ordered to continue at P.H.C. Gah-Ghori.

4. Petitioner has approached this Court with the allegations that the cancellation of his transfer is *malafide* with a purpose to give benefit to respondent No. 3. The said respondent had managed the cancellation of his transfer to P.H.C. Gah-Ghori by procuring a D.O. Note. His further grievance is that P.H.C Gah-Ghori falls in Gram Panchayat Papola, which is declared as a Backward Panchayat and thus, the petitioner has a right to seek his transfer to a softer station on completion of tenure of three years.

5. On the other hand, respondents have contested the claim of the petitioner. As per respondents No. 1 and 2, petitioner cannot have any grievance with respect to cancellation of transfer order dated 31.08.2022, on the basis of D.O. Note as the petitioner himself had secured the said transfer order, on the basis of a D.O. Note. It is further submitted that the P.H.C. Gah-Ghori does not fall within difficult/tribal/hard/ most difficult areas, so

as to entitle the petitioner to seek his transfer after three years as a matter of right.

6. We have heard learned counsel for the parties and have also gone through the record of the case carefully.

7. Respondents No. 1 and 2 have placed on record a D.O. Note, dated 16.08.2022, issued by the Office of Hon'ble Chief Minister, recommending the transfer of the petitioner from P.H.C. Gah-Ghori to C.H.C. Barthin vice respondent No. 3. Confronted with this, petitioner has not been able to contradict the factual position. Thus, petitioner himself was a recipient of D.O. Note and his transfer from P.H.C. Gah-Ghori to C.H.C. Barthin was effected only on such basis. That being so, the petitioner is not entitled to any relief.

8. A Co-ordinate Bench of this Court in **CWP No. 3195 of 2021** titled as **Bhup Singh vs. State of H.P and another**, decided on 30.06.2021 has held as under:-

“2. The main grievance of the petitioner is that his transfer has been effected on the basis of D.O. note. The record, which has been produced pursuant to our directions, reveals that the petitioner himself is the beneficiary of the D.O. note, therefore, in such circumstances, he is not entitled to any relief in terms of the repeated judgments rendered by this Court.

3. Reference in this regard can conveniently be made to the judgment rendered by this Court in CWP No. 1387 of 2021, titled as Parveen Kumar vs. State of H. P. and Ors., decided on 31.03.2021, wherein it was observed as under:-

“13. Indeed, transfer is an incidence of service and government employees are supposed to be transferred and posted anywhere in the State . The transfers of the petitioner and that of respondent No. 4 are effected after the approval of the competent authority. The petitioner, earlier managed his posting at GSSS Nabahi, Mandi, and now he has been transferred from Nabahi, after completion of his normal tenure, so he has no right to say that transfer of respondent No. 4, effected on the basis of D.O. Note, is illegal and bad in the eyes of law. In fact, transfer of the petitioner has no tinge of malafides, neither without public interest nor vitiated, being against the settled Transfer Policy, as transfer is an incidence of service. Moreover in Sanjeev Sood vs. State of Himachal Pradesh and

others, CWP No. 4208 of 2020, decided on 22.12.2020, this Court has held as under:

“9. This Court in CWP No. 4063 of 2019, titled Smt. Anita Rana and Anr vs. State of Himachal Pradesh and others, decided on 31.12.2019, has specifically held that a recipient /beneficiary of DO note cannot approach this Court ventilating the grievance that he /she has been transferred on the basis of DO Note. It would be apposite to refer to the relevant observations made by a Coordinate Bench in order dated 31.12.2019, which reads as under:-

“We have heard this matter for some time and also perused the record produced by the office of respondent No. 2. It is seen from the record that on the D.O. Note, the transfer of petitioner No. 1 has been proposed to be cancelled. Meaning thereby that she is also recipient of D.O. Note, hence not justified in ventilating the grievances that she has been transferred on the basis of D.O. note. Therefore, the writ petition qua her deserves to be dismissed and is accordingly dismissed leaving it open to her to make a representation either for cancellation of her transfer or adjustment at some suitable place, if so advised.”

10. Since it is apparent that the petitioner, on earlier occasions, got himself posted at stations of choice on the basis of UO Notes, petition praying therein for quashment of impugned order is not maintainable at all. However, having taken note of the fact that both, petitioner and respondent No.3, have been repeatedly exerting political pressure to get themselves posted at stations of their choice, we dispose of this petition by directing respondents to transfer both, petitioner and respondent No.3, to some other places in the State, especially where both of them have not served till date, within two weeks.”

9. The contention of the petitioner that he has served a hard area for three years also deserves to be rejected for the reason that petitioner has not been able to show that P.H.C. Gah-Ghori falls in any of the difficult/tribal/hard/ most difficult areas as defined in “*Comprehensive Guiding Principles-2013*” for regulating the transfer of State Government employees.

10. In light of above discussion, petitioner has failed to make out a case for interference by this Court, under Article 226 of the Constitution of India.

11. In result, petition fails and is, accordingly, dismissed, so also the pending miscellaneous application(s), if any.

(Sabina)
Acting Chief Justice

(Satyen Vaidya)
Judge

28th March, 2023
(sushma)