

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.13544 of 2010 (O&M)
Date of decision: 30.07.2015.**

Ravinder Kumar

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Manoj Chahal, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondents – State.

Daya Chaudhary, J.

The present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing of impugned orders dated 05.05.2010 (Annexure P-9) and 10.05.2010 (Annexure P-10), whereby, the period from 03.12.2009 to 23.02.2010 has been treated as leave of the kind due and thereafter, the claim of the petitioner has been rejected. A further prayer has also been made for issuance of direction to respondents to release the salary of 23.07.2009 and of the period 03.12.2009 to 23.02.2010 along with interest.

As per the case of the petitioner, he was working as

Science Master in Govt. High School, Nigana Kalan, District Bhiwani and was thereafter, promoted as lecturer in English on 21.07.2009. After his promotion, he was posted at Govt. Senior Secondary School, Manheru (Bhiwani) against vacant post and he was relieved from his earlier school on 23.07.2009 (F.N.). On the same day in the afternoon, when he reached to join his duties, he was not allowed to join as no post of English Lecturer was lying vacant. The matter was reported to the District Education Officer, Bhiwani on the same day i.e., 23.07.2009. An application was also made requesting the District Education Officer, Bhiwani to allow him to join his duties. A letter was also written by respondent No.3 to respondent No.2 for adjustment of the petitioner as the post against which he was transferred, was not vacant. The petitioner was adjusted by respondent No.2 in Mundhal Khurd (Bhiwani) vide order dated 31.08.2009. The petitioner went to join there but still he was not allowed to join there also as there was no vacant post. The petitioner again approached the concerned District Education Officer on that very day and submitted a copy of relieving order as well as the joining report and requested to adjust him in the office of respondent No.3. The petitioner remained on road and was not allowed to join anywhere due to non-availability of vacant post. Thereafter, he filed CWP No.2870 of 2010 for issuance of direction to respondents to allow him to join his duties and to release the salary. A direction was issued vide order dated 18.02.2010 by this Court to take decision on the legal notice. Thereafter, the petitioner

was transferred from Govt. Senior Secondary School, Mundhal Khurd to Govt. Senior Secondary School, Leghan and he joined there.

The grievance of the petitioner is that he remained on road for a period from 24.07.2009 to 02.12.2009, excluding one day i.e., 23.07.2009 and for the period from 03.12.2009 to 23.02.2010 which was treated as leave of the kind due on the ground that he remained willfully absent during this period.

Learned counsel for the petitioner submits that the petitioner was harassed by transferring him to the places where even posts were not vacant. Immediately, on finding that there was no vacant post, he reported to the District Education Officer but still he was not posted/transferred at a place where post was lying vacant. Learned counsel further submits that there was no fault on the part of the petitioner and no reason was there to remain absent. It was due to the conduct of the respondents that the petitioner was not posted at a place where post was vacant. It is also the argument of learned counsel for the petitioner that the petitioner was transferred at the instance of respondent No.3. Moreover, respondents No.2 and 3 were well aware about the status of the vacant post. Learned counsel for the petitioner also submits that the petitioner has not only been harassed by transferring him at places where no post was vacant but his salary for the date 23.07.2009 and for the period from 03.12.2009 to 23.02.2010 was not paid by treating that period as leave of the kind due.

Learned State counsel submits that the petitioner remained willfully absent from his duties as no efforts were made by him. Neither he made any representation nor he informed the respondents regarding his place of posting. In spite of sending communication through peon, no response was received from the petitioner. It may not be the fault of the respondents in any manner but because of the conduct of the petitioner, the said period has been treated as absence period and the same has been considered as leave of the kind due.

After hearing arguments of learned counsel for the parties and on perusal of the documents available on the file, it is apparent that the petitioner was ordered to join his duties at three different places where no post was lying vacant. A written communication was sent by the respondents at a place, which does not even belong to the petitioner and the same was received back with the report that the petitioner refused to accept the communication.

Although it is submitted by learned State counsel that the address mentioned in the communication was of the place near the petitioner's residence only but nowhere in the report of the Peon, who went to deliver the letter, it has been mentioned that the address of the petitioner was different. Simply it has been mentioned that somebody met him in the street, who told him with regard to house of the petitioner. Neither the name of said person has been mentioned nor the number of the house is mentioned in the report. Moreover, the

respondent-authorities must be aware where the posts are vacant but in the case of the petitioner, every time, he was sent to a station where no post was vacant. The frequent transfer of the petitioner at a place where no post was found to be vacant, appears to be mala-fide. It has not been proved from any document on the file that the petitioner did not report to the concerned authorities regarding his going to that place and also the fact that post was vacant.

Admittedly, vide order dated 05.05.2010, the period from 24.07.2009 to 02.12.2009 excluding one day i.e., 23.07.2009 and the period from 03.12.2009 to 23.02.2010 was treated as leave of the kind due stating therein that the petitioner remained willfully absent for the aforesaid period as he did not join his place of posting. It has not been proved on record that the petitioner was informed regarding his transfer at Govt. Senior Secondary School, Achina as the same was never conveyed to him. The petitioner made request for his adjustment against any vacant post or to allow him to join in the office of respondent No.3 but every time, it was told that the case regarding adjustment has been sent to respondent No.2. There is no such order except order dated 05.05.2010. Even order dated 03.12.2009 vide which, the petitioner was adjusted to Govt. Senior Secondary School, Achina was not conveyed to him, which is clear from order dated 22.02.2010, vide which, he was transferred from Govt. Senior Secondary School, Mundal Khurd to Govt. Senior Secondary School, Leghan. In case, the petitioner was transferred/adjusted to Govt.

Senior Secondary School, Achina then the transfer order should have been made from Govt. Senior Secondary School, Achina to Govt. Senior Secondary School, Leghan and not from Govt. Senior Secondary School, Mundal Khurd.

The petitioner was harassed by the respondents for a period of eight months as he remained on road without having any place of posting. One Shankar Lal was also transferred vide order dated 15.07.2008 but he was not relieved inspite of the order passed by the Head Office. The petitioner while approaching respondent No.2 on 17.11.2009 collected the list of vacant posts, which were total six in number but inspite of that, he was not posted at a place where posts were lying vacant. Subsequently, said Shankar Lal was also relieved just to show the bona-fide.

It is apparent from the facts as mentioned above that there was no fault on the part of the petitioner and the petitioner has been harassed by sending him at different places where post was not vacant. The absence from duty cannot be attributed to the petitioner in any manner and as such, the present writ petition is allowed and the petitioner is held entitled to the salary for the period, he has been treated as absent from his duties and the respondents are directed to release the salary and to regularize the petitioner for that period.

30.07.2015
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(DAYA CHAUDHARY)
JUDGE