

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

CWP No.13598 of 2014

Date of Decision:21.09.2015

Naresh Kumar

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sarju Puri, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This writ petition has been filed against a transfer order inter alia on the ground that the petitioner has been transferred frequently within a short span of one year and the present impugned transfer order has been passed, it is said, at the behest of the 3rd respondent pulling strings to displace the petitioner and her success has resulted in his transfer from Patiala to Muktsar a station more than 200 Kms distant.

The petitioner is a District Programme Officer in the Department of Social Security, Women & Child Development, Punjab. Though the petitioner approached this Court in the year 2014 praying for interim stay of transfer prior to being relieved from Patiala but was not able to secure a favourable order. The matter thus remains pending disposal which if dragged on will serve hardly any useful purpose since time is of the essence in matters of transfers and posting while delay defeats equity by the passing day.

Today, Mr. Nagpal learned AAG, Punjab has filed the reply of the State in Court which is taken on record and a copy of which has been supplied to the learned counsel for the petitioner.

On a consideration of the totality of circumstances, it would be more efficacious to relegate the petitioner to avail his remedy before the competent administrative authority to take a decision on his representation, which remedy the petitioner did not resort to before he approached this Court. In view of ruling in **Shilpi Bose (Mrs.) v. State of Bihar**, AIR 1991 SC 532, where Court has been guided not to ordinarily entertain transfer petitions directly when the administrative remedy has not been availed for the redressal of the grievance felt by sudden dislocation.

Instead of spending further time on this petition and keeping the rights, if any, of the petitioner in a flux, it would I think serve the ends of justice better if this matter is relegated to the competent authority to take a fresh decision after hearing the petitioner and if necessary the 3rd respondent on the propriety and fairness of the impugned transfer order and whether the interchange was based on any of the grounds pleaded in this petition and projected sufficient to warrant cancellation.

Moreover, it deserves to be seen whether the transfers were made in genuine public interest and in the exigencies of administration and were not in colourable exercise of the power to transfer. This means an examination of whether the transfers of parties at either stations vice each other was absolutely necessary on account of some special skills possessed by each of them which has special significance to at the

respective stations to enrich job related work or was the order arbitrarily passed out of the hat.

It may well be that the transferring authority was not fully apprised of the adversity the petitioner may face since his wife and school going children I am told are settled at Patiala and the transfer may cause undue hardship to him. The hardship element of both the parties needs to be consciously weighed in the scales of justice held in the first instance by the hand of the administrator.

A direction is therefore issued that the petitioner would have the option of submitting a comprehensive representation or he may request the administrator to treat writ petition as a representation in order to save the time. In case the request is made either way, this Court has no doubt that the same will be entertained and final orders can be passed thereon in accordance with law and as per rules and in terms of the policy of transfer. The petitioner would exercise his option by 23.9.2015 in the office of the competent authority and thereafter, the request would be taken up, the petitioner called for hearing and the same be considered, dealt with and finally decided within a period of 14 days from the date of submission of the representation by passing a speaking order. In case the 3rd respondent is to be heard she may be granted an opportunity simultaneously within the same time frame. Both the parties will have the right to approach this Court if they still feel aggrieved by the final order.

With these directions, the petition stands disposed of.

21.09.2015
monika

(RAJIV NARAIN RAINA)
JUDGE