

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

CWP No.16765 of 2015

Date of Decision: **December 18, 2015**

Chander Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.H.C.Arora, Advocate for the petitioner.

Ms.Gaganpreet Kaur, AAG, Haryana.

Mr.Arun Sharma, Advocate for respondent No.3.

Mr.S.S.Dalal, Advocate for respondent No.4.

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HARINDER SINGH SIDHU, J.

By filing this petition, Chander Singh – petitioner has sought quashing of his transfer order dated 10.8.2015 (Annexure P-1), whereby, he has been transferred from Panchkula to Nuh and the consequential relieving order dated 10.8.2015 (Annexure P-4).

The petitioner joined the respondent – Haryana State Cooperative Agricultural Rural Development Bank as Peon on 1.7.1978. He was promoted as Clerk on 26.9.1989 and transferred to Karnal. Thereafter, he came to be posted as Assistant Manager at Head Office, Panchkula in 2001 and since then he has been working as such in the Accounts Section of the

Head Office of the respondent Bank. Now, vide the impugned order dated 10.8.2015 (Annexure P-1), he has been transferred to Nuh Branch of District Primary Cooperative Agricultural Rural Development Bank (DPCARDB), Gurgaon, purportedly on administrative grounds.

The petitioner has alleged that he and certain other employees belonging to Scheduled Castes and Backward Classes categories (the petitioner belongs to backward class) were being given discriminatory treatment and were being harassed at the instance of respondent No.3. One instance of discrimination qua the petitioner and other employees of the respondent Bank is that in the matter of fixation of petitioner's pay, he was given discriminatory treatment and one of his junior, Mahabir Singh, was allowed to draw higher pay. In these circumstances, the petitioner along with three other similarly situated Assistant Managers filed CWP No.9596 of 2013 (Sadhu Ram and others vs. State of Haryana and others) seeking issuance of a writ of mandamus for directing the respondents to allow the same pay to the petitioners, as was being allowed to their junior Mahabir Singh, who was drawing higher pay despite being junior. Vide order dated 24.3.2015, the said writ petition was admitted for regular hearing and is still pending adjudication.

It is further stated that another CWP No.16015 of 2010 (Vijay Kumar and others vs. State of Haryana) filed by the

petitioner and certain other similarly situated persons of the respondent – Bank has also been admitted by this Court for regular hearing vide order dated 19.2.2012. It is averred that in the past, the respondent No.3 has been utilizing every opportunity to humiliate the petitioner before the other employees who were his blue-eyed persons. Respondent No.3 called the petitioner to his cabin through Sh.Man Singh, Peon on 25.7.2015 at 11.15 A.M and humiliated him in the presence of the various officers/officials by reprimanding him on the pretext that one retired Manager Partap Singh Narwal was seen sitting with the petitioner. The petitioner was warned that in case the said retd. Manager again came to his seat the petitioner would have to face dire consequences.

The petitioner lodged complaint dated 28.7.2015 (Annexure P-2) with the Chief Secretary, Government of Haryana against respondent No.3 incorporating the aforesaid facts. It is alleged that the transfer order has been passed in retaliation for the petitioner having filed the aforesaid complaint.

It is further stated that the impugned order dated 10.8.2015 (Annexure P-1) cannot be treated as an administrative order issued in administrative exigencies. There were many Assistant Managers working in the Head Office of the respondent Bank at Panchkula, who have never been transferred from the Head Office during the last two decades or

more. The petitioner has also referred to seven Assistant Managers, who have been serving in the Head Office, Panchkula since 1982 to 1986 till date.

Upon notice, reply has been filed by respondent – Bank. The allegations of mala fide have been denied. It has been stated that the transfer order is an administrative act in accordance with Rules. Regarding the instances mentioned in the petition, it has been stated that out of seven names quoted by the petitioner, four Assistant Managers are women and the other three are male and their services are being utilized in Establishment Branch. So far as the Assistant Managers posted in the Accounts Branch, wherefrom the transfer of the petitioner has been ordered, the number of Assistant Managers was four including the petitioner. Two of them are the women and their husbands are stationed at Panchkula and being couple cases, their posting outside Panchkula will disturb their families; and the third one has been posted in the Accounts Branch from Kurukshetra only on 7.8.2014. It is also mentioned that the petitioner has remained posted in the Head Office from 23.7.1990, whereas, the other Assistant Managers have been posted after him. The stand of the petitioner that Assistant Managers working in the Head Office are not transferred, is also refuted. It is further stand of the respondent – Bank that transfers and postings are part of service and are made on the

need basis and viewing the utility and other relevant factors. It is also stated that the petitioner has been claiming promotion on higher post on the ground having higher qualification of Higher Diploma in Cooperative Management (C) from the Regional Institute Coop. Management, Chandigarh ignoring the provisions of Staff Service Rules and petitioner should be happy that he has been assigned the work of his taste and he has been considered to render his services at Nuh Branch, where the position of maintaining of accounts needs his service urgently.

The petitioner has filed replication to the written statement of the respondent – Bank stating that his son Rajesh Kumar, who is around 26 years of age is suffering 70% disability on account of mental retardation. He has also enclosed the certificate to the above effect issued by the Director, Social Welfare Department, Chandigarh Administration as Annexure P-5. It is also stated that the transfer of the petitioner to a far off place would cause great deal of harassment to the petitioner, as it would be very difficult for his mentally challenged son to adjust at new place in unknown/ new environment. The petitioner has also reiterated his submissions regarding the longer stay of other Assistant Managers. Regarding the higher qualification, it is stated that Mr.Jaspal Chaudhry, Mr.Tarsem Lal Sharma and Mr.Jaswinder Gir, who are male officers working as Assistant Managers, are also having the said qualification of Higher

Diploma in Coop. Management. It is further stated that these officers are aspirant for promotion and have longer stay at the present place of posting than the petitioner, so, any of them could be transferred instead of the petitioner.

The averments in the replication regarding the mental disability of the son of the petitioner have been sought to be disputed by the respondents, by stating that the ailment of his son is not to an extent as has been projected by the petitioner and it has been asserted that he is capable to moving about independently.

After the respondents had put in appearance, with a view to resolve the matter I had asked Sh. S.S.Dalal Ld. Counsel for the respondent Bank, to explore if the grievances of the petitioner could be redressed by posting him at some alternative place, but the endeavour was not successful. When, after the filing of the replication, Ld. Counsel for the petitioner raised the issue of the disability of the son of the petitioner, then again I had asked the respondents to see if the petitioner could be adjusted at some place closer to Panchkula, where his family including his son who is suffering from disability is residing. In response, the respondents had offered to post the petitioner at one of the four vacant stations, however, the same was not acceptable to the petitioner and he then prayed that the petition be decided on merits.

I have heard Learned counsel for the parties and gone through the paper-book.

The ground initially canvassed by the Ld. Counsel for the petitioner was that he is being victimized because he filed the complaint and hence the transfer is malafide.

Though, the transfer order has been passed on 10.8.2015, very soon after the complaint was made on 28.7.2015, or as the Ld. Counsel for the petitioner states the very next day after the comments of respondent No.3 were called in respect of the complaint, but in my view it would not be possible to assume that the transfer order is mala fide from this single circumstance.

Ld. Counsel then stated that the petitioner has a mentally challenged son Rajesh Kumar who is around 26 years and is suffering 70% disability on account of mental retardation. He urged that the transfer of the petitioner to a far off place would cause great deal of harassment to the petitioner and it would be difficult for his mentally challenged son to adjust in the new environment. The respondents had contested the claim of the petitioner that his son is in need of constant care. They relied on an affidavit of a neighbor of the petitioner that the son of the petitioner moves about independently without any supervision and goes to the Mandir and even visits the Market. CCTV footage was also produced to demonstrate that the

petitioner's son can move out of the house independently.

It is not for this Court to opine on the amount of care and attention that would be required by the son of the petitioner. All that can be said is that the petitioner has not placed on record any material to substantiate his claim that his son cannot move about independently and that he needs constant care and supervision which would necessitate the posting of the petitioner near Panchkula in the interest of his son. However, as noted above it was in view of the claim of the petitioner regarding the disability and needs of his son that I had asked the respondents to consider posting the petitioner at a place near Chandigarh. Though the respondents were more than cooperative, I have got the impression that the petitioner did not reciprocate.

The scope of interference by the Courts in transfer matters is extremely limited. It has been so settled by the Hon'ble Supreme Court through a long line of cases.

In **Shilpi Bose (Mrs) v. State of Bihar, 1991 Supp**

(2) SCC 659, the Hon'ble Supreme Court held as under:

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not

interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

The extent and scope of interference in transfers was explained in **State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402** as follows:

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of 407 administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in

violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

Once, it is not possible to infer that the transfer order is mala fide, or that it is in violation of statutory rules, nor is there any material on record other than the disability certificate, to show the compelling need and requirement in relation to the son of the petitioner, there is no option but to dismiss this petition.

Accordingly, this petition is dismissed.

It is, however, clarified that the dismissal of this petition would not preclude the petitioner from representing to the respondents with regard to his place of posting relying on the needs of his son by furnishing proper medical reports etc.

By the transfer order dated 10.8.2015 (Annexure P-1), the petitioner had been asked to join at his new place of posting immediately. The petitioner filed this writ petition on 12.8.2015 and notice of motion was issued on 14.08.2015.

Though, the transfer order was not stayed, the matter was

adjourned on a few occasions to explore if the petitioner could be adjusted at a suitable place nearer home, in view of the hardships pleaded by him. However, this was not successful and ultimately this petition has been dismissed on merits.

Thus, though the transfer order was not stayed, the petitioner did not join at his new place of posting. In these circumstances it is directed that the respondents will not take any disciplinary or other adverse action against the petitioner for not joining at the new place of posting during the pendency of this petition. It would, however, be open to the respondent – Authorities to regularise the aforesaid absence period, as per rules.

December 18, 2015

**(HARINDER SINGH SIDHU)
JUDGE**

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