

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24082 of 2015

Date of Decision: 17.11.2015

Amrik Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Ms. Gurjeet Kaur, Advocate,
for the petitioner.

Mr. Manu K. Bhandari, Advocate,
for the caveator/R-5.

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

RAJIV NARAIN RAINA, J.

1. Heard Ms. Gurjeet Kaur, learned counsel for the petitioner and Mr. Manu K.Bhandari, learned counsel appearing for caveator/R-5 on the validity of the transfer order (Annexure P-3) which is only a relevant extract produced in the paper-book.

2. Mr. Bhandari points out that ten officials belonging to the Jail Department have been transferred from one Jail to the other by the common administrative order. The transfer order has been passed towards efficient performance of service in the Jail Department and is evidently based on administrative exigencies and reasons which cannot be pried open by Court unless it smacks of malafides. The impugned transfer order is dated June 30, 2015. On June 30, 2015 R-5 [caveator] was transferred by the same order to

Sub Jail, Sri Muktsar Sahib. That is when CWP No.15480 of 2015 was filed in this Court by one Kulwant Singh of the Jail Department wherein this Court passed an order on September 30, 2015 rendering the writ petition infructuous as the orders of transfer were withdrawn by the Government. The writ petition has been cited in para.9 of the present petition.

3. The present impugned order has been passed on November 05, 2015 by way of which the petitioner has been transferred from Sub Jail, Moga to Sub Jail Fazilka against a vacant post which itself shows administrative exigency as it is not vice any third party/official.

4. The petitioner claims to have made a representation (Annexure P-4) to the State Government on November 09, 2015.

5. Mr. Bhandari submits that his client has joined the place of posting on November 07, 2015 and is in position and discharging duties at Sub Jail Moga from where the petitioner has been transferred to Sub Jail Fazilka.

6. It is the petitioner's case that this transfer is contrary to the transfer policy dated June 08, 2015 which provision has been breached. The action of the Department is castigated on the touchstone of para.4 of the policy which requires that cases of approval regarding transfer beyond June 30, 2015 (the cut off date) shall not be sent directly to the Chief Minister by any Administrative Department at their own level and it shall be ensured by the concerned Administrative Secretaries that cases be sent for approval to the Chief Minister route only through the Personnel Department. In para.9 of the petition the petitioner claims that this procedure has been violated inasmuch as the Personnel Department was not brought into the picture

before the transfer was ordered. Except for a bald statement, no documentary evidence has been placed on record to indicate that the procedure was breached. There is an presumption that the State Government carries on its work according to the procedure prescribed and in the due course of business. Like every presumption it is rebuttable but no refutation evidence has been placed on record for this Court to act upon. There is material referred to that there has been a breach of the procedure which renders the transfer void. Even if the procedure is breached it will not automatically nullify the transfer and posting orders involving ten persons who have joined their places of transfer. In view of the law laid down in **Union of India vs. S.L. Abbas**, AIR 1993 SC 2444 interference in such circumstances is not called for when mala fides have not been alleged or proved to a substantial degree demanding Court interference. The restrictions placed by the Supreme Court in *S.L. Abbas* case apply to this case while examining and reviewing the order of the administrator.

7. In view of the facts and circumstances obtaining, no interference is warranted in the transfer order and the petition is accordingly dismissed. However, it will be open to the petitioner to pursue his statutory administrative remedies against the transfer order, if any available, and to that end nothing said in this order will be viewed as an expression of opinion on the merits of the case other than what has been said on the point of maintainability of a writ petition against the transfer order.

(RAJIV NARAIN RAINA)
JUDGE

17.11.2015

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