

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

CWP No.9170 of 2015

Date of Decision: 20.07.2015

D.S. Sangwan

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the 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. Ashish Aggarwal, Sr. Advocate
with Mr. Sanjeev Kodan, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

Ms. Dimple, Advocate
for respondent No.3.

DAYA CHAUDHARY, J.

The present petition has been filed for issuance of a writ in the nature of *certiorari* for quashing the impugned order of transfer dated 01.05.2015 (Annexure P-6), whereby, the petitioner has been transferred from Government Polytechnic Jhajjar to Government Polytechnic, Sirsa.

Learned senior counsel for the petitioner submits that the petitioner has been transferred due to *mala fide* intention of the respondent No.3 i.e Principal as a false information has been furnished that a criminal case is pending against the petitioner, whereas, he has already been acquitted of the charge by the trial Court and even the appeal filed against the said judgment of acquittal has been dismissed. Learned counsel also

submits that even the claim of the petitioner for ACP was delayed by respondent No.3. Although, nothing has been mentioned in the transfer order but through the information sought under the Right to Information Act, the petitioner came to know that a false information has been furnished by respondent No.3 and on the basis of that information, the petitioner has been transferred. He further submits that the petitioner had also made a representation but still, the same was not considered. Learned counsel also submits that intentionally, it was mentioned in the information submitted by respondent No.3 that one FIR No.229 dated 07.08.2014 is pending against the petitioner, whereas, the said FIR was registered on 07.08.2004 and in that case, the petitioner was acquitted of the charge by the trial Court on 03.12.2013. However, no FIR was registered against the petitioner on 07.08.2014.

In pursuance of information furnished by respondent No.3, it was observed by respondent No.1 that since the criminal case has been registered against the petitioner, he should have been behind bars and should be placed under suspension. A proposal was also sought to be put up vide PUC dated 02.09.2014, which is annexed as Annexure P-3. Learned counsel also submits that on the basis of that PUC, the headquarters of the petitioner was shifted from Government Polytechnic, Jhajjar to Government Polytechnic, Sirsa for a period of four months. Learned counsel further submits that the impugned transfer order is not only *mala fide* but against the principles of natural justice, arbitrary as well as discriminatory and the same is liable to be dismissed.

Learned counsel for the respondent-State submits that the transfer order has been passed on administrative ground and the same cannot be said to be *mala fide* in any manner. He also submits that the result of the petitioner was not satisfactory and he is also having a longer

stay at the present place of posting.

Learned counsel appearing on behalf of respondent No.3 submits that no order was passed by respondent No.3 and wrong allegations of *mala fide* have been levelled against him. The petitioner is also facing disciplinary proceedings and he was issued warnings vide order dated 08/10.04.2009. A vigilance inquiry was also conducted against the petitioner while he was working as Sports Officer, Jhajjar. Learned counsel for respondent No.3 also submits that FIR number was correctly mentioned but there was a typographical mistake in the year as it was mentioned as 07.08.2014 in place of 07.08.2004.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

Undisputedly, the transfer of a government servant from one place to another is an ordinary incident of service. It is a normal feature unless it is with *mala fide* intention or with some ulterior motive or has been passed by misusing the power. In case, the power is exercised *mala fide* then obviously, the order of transfer is liable to be struck down. It has been held by Hon'ble the Apex Court in case ***Union of India and others vs S.L. Abbas 1995(4) SCT 455*** that unless the order of transfer is violated with *mala fides* or is made in violation of the statutory provision, the Court should not interfere.

Similarly, it has also been held in various judgments that an employee has no choice in matter of posting. A specific stand has been taken by respondent No.3 that he has no role in the transfer, whereas, in the record, which has been produced in the Court, a note was put up, wherein, it has been mentioned that the Principal Government Polytechnic, Jhajjar has informed vide Memo dated 02.09.2014 that FIR No.229 dated

07.08.2014 was registered against the petitioner and the result of the petitioner is very poor. It has also been mentioned therein that a proposal was put up that the said officer be transferred from Jhajjar. On the basis of said note, the petitioner was transferred for four months from Jhajjar to Sirsa. On completion of four months' period, the petitioner joined at Government Polytechnic, Jhajjar on 14.01.2015. However, again a proposal was made, wherein, it was mentioned that keeping in view the poor result of the petitioner, the matter is to be considered as FIR No.229 dated 07.08.2014 under Sections 323, 325, 506/34 IPC is also registered against him, whereas, on perusal of judgment of the trial Court, it appears that the petitioner has already been acquitted of the charges on 03.12.2013. Even the appeal filed by the complainant has been dismissed on 01.10.2014 and the judgment of the trial Court has been upheld.

FIR No.229 was registered on 07.08.2004 but it has been mentioned as 07.08.2014. It cannot be said to be a typographical mistake as not only the difference of year is there but the status of that FIR has also been wrongly mentioned. It has been shown to be pending, whereas, the petitioner has already been acquitted of the charges and even the appeal against the judgment of acquittal has been dismissed.

Respondent no.3 is not taking a fair stand as in the written statement, it has been mentioned that inadvertently, the year has been mentioned as 2014 in stead of 2004 but in the proposal note, not only the date is mentioned but the status has been shown to be pending. A stand has been taken in the written statement that the result of the petitioner is very poor as in subject – Communication Skills (taught in Ceramic Engineering), he has secured 9.4%, whereas, the overall result of his class for other subjects is also very poor. The result of Chemistry is 9.4%, Physics 0%, ED 6.3%, Mathematics 9.4%. However, in case of 0% result

also, no action has been suggested by the Principal.

In the replication filed by learned counsel for the petitioner, it has been mentioned that the result of the petitioner in Electrical Engineering Class is 77.4% but that is not mentioned in the written statement. On 14.01.2015, respondent No.2 has asked respondent No.3 regarding the status report of the FIR so that the action can be taken against the petitioner. However, respondent No.3 did not supply actual information with regard to said FIR as on 14.01.2015, neither the FIR nor the appeal was pending against the petitioner before any Court of law.

From the facts as mentioned above, it is apparent that the petitioner has been transferred on the basis of the note put up by respondent No.3, wherein, the wrong facts have been mentioned, not only with regard to pendency of FIR/criminal proceedings but with regard to result also. The result of only one subject has been reflected but not of the other subjects. Moreover, the results of other teachers were also worst but still, the case of the present petitioner has been recommended for transfer. Even in the written statement filed before this Court, respondent No.3 has made all the efforts to project the petitioner as the transfer is not on complaint basis but on administrative ground.

Accordingly, this petition is allowed and the impugned transfer order dated 01.05.2015 (Annexure P-6) is quashed.

However, it is clarified that in case, any complaint is pending against the petitioner then the respondents are at liberty to take action in accordance with law.

20.07.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE