

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12390 of 2015

Date of Decision: 28.03.2016

Rattan Lal

... Petitioner

Versus

The State of Punjab and others

... Respondents

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

Present: Mr. S.S. Kamboj, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

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

RAJIV NARAIN RAINA, J.

1. It has not been seriously disputed before me that the rules of business of the Punjab Government empower the Minister-in-charge to consider cases of posting and transfers in the Department of Technical Education of officers at the level of Principal/Assistant Director of ITIs but the transfer order in the present case was passed by the Director on June 05, 2015 against which the petitioner has approached this Court claiming that he has been transferred by an officer who had no jurisdiction to transfer him by by-passing the Minister-in-charge. Besides, it is complained that the transfer order has been issued after five months of his previous posting and, therefore, transfer is against the provisions of the transfer policy which ensure that posting will last for three years. The fact remains that in the case

of Principal/Assistant Director it is only the Minister who has to give his approval before transfer is ordered and, therefore, the impugned transfer order stands vitiated and deserves to be set aside. The challenge is to jurisdiction because the jurisdiction vested in the Minister alone.

2. However, in terms of the interim order passed previously, Mr. Harkesh Manuja, learned Additional AG, Punjab has produced the original record brought by Mewadin, Superintendent o/o the Director Technical Education and Industrial Training, Punjab. From the noting sheets produced before me it is amply borne out that the Minister has put his signatures of approval on June 23, 2015.

3. In these circumstances, the question is whether the act of the Minister amounts to ratification of the action of the Director, Industrial Training, Punjab and relates back to the order dated June 05, 2015. If the Minister-in-charge of the department has seen and approved the transfer orders but after the filing of the writ petition and during its pendency or even service of summons on the petition then there is ex post facto approval amounting to ratification. The Minister has dealt with the case and approved the transfer as at 'A' which gives the clearance for the transfer.

4. Notice of motion was issued on June 15, 2015 for June 29, 2015 and notice re.: stay was issued. Thereafter appearances have been put by the parties and pleadings are completed. No mala fides have been alleged against anyone in this case, that is, neither against the Director nor the Minister. The private respondent is Tejinder Singh represented by his learned counsel. The complaint against him is that he is two levels junior to the petitioner but has been given the additional charge of Principal of the

ITI. In the matter of grant of additional charge it is open to the Government to hand over additional charges according to the exigencies of administration and in the public interest which may justify such an action. It is at this stage that Mr. Manuja submits that the petitioner is embroiled in a criminal charge with respect to his duties and an FIR has been lodged against the petitioner. The petitioner stands charge-sheeted in a disciplinary proceeding in a case of embezzlement of public funds. It is not for this Court to make any comment on that since it is dealing with the limited issue of transfer and posting.

5. None of the actions of the respondents in this case are found flawed warranting interference but having regard to the fact that the transfer orders made even prior to the concurrence of the Minister-in-charge then in these special circumstances the Minister/Secretary of the department may give an opportunity of post decisional hearing where the petitioner can ventilate his grievance. The Minister/Secretary may look into the grouse but would neither be expected to nor are they bound to pass a detailed speaking order in consideration or re-consideration of the transfer order except to inform the petitioner in a few words or in a gist the reason thereof. This is for the reason that the Director had no independent power to transfer an officer at the level of the petitioner.

6. The petition stands disposed of as above.

(RAJIV NARAIN RAINA)
JUDGE

28.03.2016
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