

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 17587 of 2016

Date of Decision: 29.8.2016

Pardeep Kadian

... Petitioner

Versus

State of Haryana and another

... Respondents

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

Present: Mr.Sajjan Singh, Advocate for the petitioner

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner is a widower. He is a Building Inspector in the municipality. His daughter is 13 years old and reads in the 7th Class in Delhi Public School, Sushant Lok, Gurgaon. She is his only child. His wife passed away in 2012. The petitioner has been transferred from Municipal Council, Sohna to Municipal Corporation, Sonipat. His grievance in this petition is that the impugned order has been passed transferring him to Sonipat against a vacant post, but no one has been posted in his place at Sohna. On these premises, he claims intervention by this Court by citing Clause (x) of the Policy of Transfer which deals with cases of genuine hardship faced by employees. However, the petitioner has not approached the transferring authority first and has approached this Court directly. In **Shilpi Bose and others vs. State of Bihar and others**, AIR 1991 SC 532, the Supreme Court has held that 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.

2. In view of the above, the petitioner is relegated to his remedy before the transferring authority in the first instance. He has not brought his

grievance to the notice of the transferring authority. In order to save petitioner's time, he is given the option of either filing a comprehensive representation or making a prayer before the transferring authority to treat this petition as a representation which request, if made, will be considered and decided by the competent authority and in case, the competent authority finds the request of the petitioner genuine, then he may take such measures as he deems fit in the matter of posting on considering the case in terms of Clause (x) supra. However, in case the transfer order is to stand, then the petitioner would be communicated brief reasons for the decision indicating as to what has weighed in the mind of the transferring authority. Needless to say, the petitioner would be heard before the final order is passed. Let the exercise be completed within 10 days from the date when the representation/copy of the writ petition is presented to the transferring authority for decision making. The petitioner would submit the representation or the copy of the writ petition within two days from the date of receipt of a certified copy of this order and the competent authority will decide the matter within the next 10 days thereafter and communicate the order to the petitioner. Till such time the decision is not taken, the petitioner will be allowed to travel to Gurgaon from Sonipat so that he can take care of his minor daughter.

3. With these observations and directions, this petition stands disposed of.

4. Copy of this order be given dasti under the signature of the Bench Secretary of this Court.

29.8.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No