

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

**CWP No.12871 of 2017**

**Date of decision:13.07.2017**

Jasdev Singh

....Petitioner

Versus

State of Haryana & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr.Rakesh Bakshi, Advocate, for the petitioner.

**G.S. SANDHAWALIA, J. (Oral)**

The petitioner, who was employed, as Clerk and now stands promoted as Auditor, challenges the transfer order dated 07.01.2015 (Annexure P-4) whereby he was transferred from Municipal Corporation, Ambala to Ambala Circle and the departmental proceedings whereby he has been charge-sheeted on 16.06.2016 (Annexure P-15) on account of the fact that he was willfully absent from duty and had not joined despite several reminders.

Counsel for the petitioner has vehemently submitted that the petitioner being handicapped has been put in a field job and therefore, is not able to attend his duties and accordingly, prays that the present writ petition be allowed and directions be also issued to pay the salary of the petitioner which had been withheld since January, 2015.

At the first blush, the argument seems attractive. However, a perusal of the paperbook would go on to show that initially on 12.01.2015, a suit for declaration was filed by the petitioner, whereby he challenged the said transfer order, which was dismissed on 11.04.2017 (Annexure P-7) by holding that though the petitioner was handicapped and permanently disabled but that did not mean that he cannot be transferred from Ambala to the field job in Ambala Circle.

It is to be noticed that in the meantime, the departmental proceedings had also been initiated, since the petitioner chose not to join at the place of posting but was also was refusing to take the notices issued to him at the address mentioned in the House Rent Allowance Certificate, which were received back with the remarks that there was no such person residing there.

Thereafter, an appeal came to be filed before the Addl.District Judge, Ambala, which was also dismissed on 25.01.2017 (Annexure P-8) by noticing that on an earlier occasion, the plaintiff had been transferred from Gharaunda and now, he was transferred in Ambala Circle itself. RSA-1347-2017 came to be filed before this Court, which now stands withdrawn vide order dated 03.05.2017 (Annexure P-11).

It is the case of the petitioner that the Co-ordinate Bench has granted permission and liberty to agitate the case, afresh, since the appeal was allowed to be withdrawn. Counsel has referred to the application, CM-5856-C-2017 that permission was to withdraw the plaint and therefore, once the application had been allowed, the present writ petition was maintainable on the same cause of action.

In the opinion of this Court, the said argument raised is unpalatable. The petitioner had taken his due chance before the Civil Court and findings have been recorded against him and the Courts below have not accepted his stance that his transfer is in violation of any policy. The petitioner, thereafter, filed a Regular Second Appeal and for the reasons best known to him, has withdrawn the same. Once the petitioner has

chosen a specific remedy, he cannot be allowed to change tracks in midstream and to seek his remedy in different Courts, once it has been refused by a particular Court, as it would amount to forum shopping. If this is permitted, it would lead to no end of litigation.

Resultantly, this Court is not impressed with the argument that the petitioner can challenge his transfer order, afresh, by way of a writ petition once having opted for his remedy before the Civil Court and having not been successful. Even otherwise, the subsequent action of challenge to the departmental proceedings on account of absence, would not lie before this Court and it is for the petitioner to file his reply and it is for the Department concerned to consider the same. The writ Court cannot be converted into an extension counter of consideration of the departmental proceedings.

In such circumstances, finding no merit in the present writ petition, the same is, hereby, dismissed in limine.

13.07.2017  
Sailesh

(G.S. SANDHAWALIA)  
JUDGE

*Whether speaking/reasoned:* Yes/No

*Whether Reportable:* Yes/No