

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

CWP No.27701 of 2017 (O&M)

Date of Decision: 08.12.2017

Major Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sunny Singla, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

C.M. No.17781 of 2017

This application has been moved for placing on record the charge sheet and the affidavit.

C.M is allowed. Charge sheet and the affidavit are taken on record.

C.M. No.17782 of 2017

This application has been moved under Order 1 Rule 10 read with Section 151 of Civil Procedure Code to implead Amandeep Kaur wife of Jagtar Singh, resident of Village Hissowal, District Ludhiana as party respondent.

Civil Misc. Application is allowed. Amandeep Kaur wife of Jagtar Singh resident of Village Hissowal, District Ludhiana is hereby impleaded as respondent No.6.

Amended Memo of Parties attached with the application is taken on record.

CWP No.27701 of 2017

Petitioner has approached this Court by way of filing the present petition for quashing of impugned transfer orders dated 04.10.2017 (Annexure P-6), 27.10.2017 (Annexure P-7) and also the clarification letter dated 28.11.2017 (Annexure P-8), whereby, the petitioner has been transferred from GPS Adda Jangpur (Ludhiana) to GPS Hayatpur, Block Mangat-3 (Ludhiana) contrary to terms and conditions of transfer policy dated 11.04.2017.

A further prayer has also been made for staying the operation of impugned transfer orders and clarification letter as mentioned above.

Learned counsel for the petitioner submits that the petitioner has frequently been transferred within a short period and the impugned transfer orders are contrary to the policy framed by the State Government. It is a couple case as wife of the petitioner is also in service. The impugned transfer orders have been passed in an impunitive manner, whereas, the transfer orders cannot be passed by way of punishment as has been held in the judgment of Hon'ble the Apex Court in ***Somesh Tiwari vs Union of India 2009(2) SCC 592***.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned transfer orders and other documents available on the file.

On perusal of averments made in the petition, it appears that the petitioner was initially appointed as ETT Teacher on 08.01.2002. He was transferred vide order dated 19.06.2016 from Rudka Kalan to Adda Jangpur.

Thereafter, he was transferred from GPS Adda Jangpur to GPS Sehjomajra.

The petitioner, being aggrieved by transfer order dated 05.05.2017, filed ***CWP No.10853 of 2017*** before this Court which was disposed of vide order dated 18.05.2017 with a direction to the respondent authorities to decide his representation. Said transfer orders were cancelled by the respondent on 22.05.2017. Thereafter, he was transferred to Hayatpur, Block Mangat-3 vide order dated 04/27.10.2017 on administrative grounds.

A perusal of order dated 18.05.2017 shows that ***CWP No.10853 of 2017*** filed by the petitioner was disposed of with a direction to the respondent to decide the representation. On the basis of said directions, the transfer orders of the petitioner were cancelled and order dated 04/27.10.2017 was passed on administrative grounds as certain allegations were proved during enquiry. The petitioner was transferred from GPS Adda Jangpur (Ludhiana) to GPS Hayatpur, Block Mangat-3 (Ludhiana). Thereafter, a letter of clarification was issued on 28.11.2017 stating therein that GPS Jangpur may be read as GPS Adda Jangpur. It cannot be said that frequent transfer orders were passed as earlier orders were cancelled by considering the representation of the petitioner. The judgment cited by learned counsel for the petitioner is not applicable in the facts and circumstances of the present case as the same is based on totally different facts. The observation part made therein has been read which is stated to be not applicable.

It is a settled law in various judgments of Hon'ble the Apex Court as well as of this Court that no government employee has any legal right to be posted forever at any one particular place and transfer is not only an incident but a condition to service which is necessary in the public

interest and for efficiency in administration. Moreover, it is prerogative of the competent authority to post and transfer its employees at the appropriate place in the public interest and administrative exigencies. The order of transfer is normally not interfered with unless it is an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer or discriminatory and arbitrary as has been held in judgment of Division Bench of this Court in case ***Davinder Pal Singh vs Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others 2016(2) SCT 770.***

Same view has been taken in another judgment of Hon'ble the Apex Court in case ***National Hydroelectric Power Corporation Limited vs (i) Shri Bhagwan (ii) Shiv Parkash 2002(1) SCT 236.***

Similarly, in another judgment of Hon'ble the Apex Court in case ***Union of India and others vs Sri Janardhan Debanath and another 2004(1) SCT 819***, it has been held that it is the prerogative of competent authority alone to make posting and transfer of its employees at the appropriate place to maintain discipline, decency and decorum of the public service in the public interest and administrative exigencies.

Same ratio of law has been laid down in another judgment of Hon'ble the Apex Court in case ***B. Varadha Rao vs State of Karnatka AIR 1986 SC 1955.***

It is settled principle of law that in the administrative matters like transfer etc. the scope of judicial review is very limited. The Hon'ble Supreme Court in case ***Mohd. Masood Ahmad v. State of U.P. & Ors. 2007 (4) S.C.T. 397*** has laid down as under :-

*“7. The scope of judicial review of transfer under
Article 226 of the Constitution of India has been settled*

*by the Supreme Court in **Rajendra Rao v. Union of India**, 1993(2) SCT 65 : (1993)1 SCC 148 : (AIR 1993 SC 1236), **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan**, 2002(1) SCT 236: (2001)8 SCC 574: (AIR 2001 SC 3309), **State Bank of India v. Anjan Sanyal**, 2001(2) SCT 817: (2001) 5 SCC 508: (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in **Vijay Pal Singh v. State of U.P.**, 1998(1) SCT 723: (1997)3 ESC 1668: (1998) AII LJ 70) and **Onkarnath Tiwari v. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow**, (1997) 3 ESC 1866: (1998 AII LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.”*

The Hon'ble Supreme Court in case **Union of India v. S.L. Abbas** 1995(4) S.C.T. 455, has laid down certain guidelines for transfer of the Government employees stating that it does not confer any legal and enforceable right to challenge the transfer if the guidelines are not followed. The Court cannot interfere in the transfer order unless it is vitiated by mala fide or some statutory provisions are violated. In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, the guidelines issued by the respondents does not confer any legal and enforceable right upon the petitioner to challenge the order of transfer simply on the ground that those guidelines have been violated.

The Hon'ble Supreme Court in case ***State of Punjab and others***

v. Joginder Singh Dhatt, 1995(4) S.C.T. 225 has laid down as under :-

“3. We have heard learned counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused.”

Hon'ble the Apex Court in ***S.L. Abbas's*** case (supra) held to the following effect :-

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer of vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines, however, do not confer upon the Government employee a legally enforceable right.”

In ***State of U.P v. Gobardhan Lal 2004(2) SCT 368***, Hon'ble

Supreme Court held that no Government servant can contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. The administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving of denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service. The order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable right unless shown to be vitiated by mala fides or is made in violation of any statutory provision.

A Full Bench of this Court in ***Jagir Singh Kanungo v. The State of Punjab through the Secretary Vigilance, Punjab, Chandigarh, 1993(2) SCT 128***, has the occasion to interpret the guidelines issued by the State of Punjab for conclusion of the inquiry proceedings in a time bound manner. It was held that if the enquiry proceedings are not completed within the aforesaid period, no right accrues to the employee to approach the Court of law for enforcement of those guidelines. It was held to the following effect:-

“.....If the State government have issued certain guidelines for the guidance of the various departments or the disciplinary authorities to impress upon them the

necessity of finalising the departmental proceedings expeditiously or even within a fixed period, it does not mean that after the expiry of that period, a right in law accrues to the employee to approach the Court of law for the enforcement of those guidelines.....”

No doubt, while ordering the transfer, the concerned authority must keep in mind the guidelines issued by the State Government. Similarly, in case, any person makes any representation with respect to his/her transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. However, said guidelines does not confer upon the Government employee a legally enforceable right.

The observations made in judgment ***Bank of India vs Jagjit Singh Mehta 1992(1) SCT 161*** are relevant and the same are reproduced as under :-

*“ There can be no doubt that **ordinarily and as far as practicable** the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and*

be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places....No doubt the guideline requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.” (Emphasis added).”

In the present case also, the earlier transfer orders were cancelled and thereafter, the last transfer order was passed on administrative grounds. Nothing has been brought to the notice of this Court as to how the impugned transfer order has been passed with *mala fide* intention or in violation of statutory provisions or having been passed by an authority not competent to pass such an order.

Accordingly, keeping in view the aforesaid discussion and law

position as discussed above, I do not find any illegality in the impugned order of transfer and the present petition, being devoid of any merit, is hereby dismissed.

08.12.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No