

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

**CWP No. 11400 of 2017
Date of Decision: 04.05.2018**

Bhagwan Singh

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present: Mr. Saurabh Goel, Advocate for the petitioner.
Ms. Shruti Jain Goyal, AAG Haryana.
Mr. Jasbir Mor, Advocate for respondent No.5.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner has not demonstrated any right to a particular place of posting. Both the petitioner and respondent No.5 are Cleaners in the Department of Information, Public Relations & Languages Department, Haryana. The 5th respondent was posted to Hisar after spending several years at Rewari. The petitioner made a request to the Department to transfer him to Hisar where he had served for 8 years. His request was accepted. However, the 5th respondent approached the higher officials (District Information and Public Relations Officer, Rewari) and flouted the order dated 05.05.2017 i.e. one day after the impugned transfer order was passed. The District Information & Public Relations Officer wrote to the Director General, Information, Public Relations and Languages Department, Haryana that the case of respondent No.5 should be considered favourably being 100% deaf and

dumb. Keeping in view the transfer policy of the Government on persons with disability and in the matter of posting and transfers policy, the request of respondent No.5 was accepted by the Government and the order transferring the petitioner dated 16.05.2017 was cancelled.

2. Against this order, the petitioner has approached this Court seeking a writ in the nature of certiorari to quash the order. As a result of the order, the petitioner would be posted to Rewari while the 5th respondent to Hisar. The petitioner says that he had complied with the transfer order and joined Hisar. While the 5th respondent was prevaricating and did not join the place of posting, and, therefore his act should be seen in violation of the order of the transferring authority.

3. When this petition came up for hearing on 23.05.2017, this Court while issuing notice of motion, stayed the operation of the petitioner's cancellation of transfer order dated 16.05.2017 till the next date of hearing, i.e. 09.08.2017. The stay was continuing till the next date of hearing, till the application for vacation of stay was filed by the 5th respondent. That is how this matter has come up for hearing today with the consent of the parties and is taken up for final disposal.

4. During the pendency of the petition, the Director General, Information, Public Relations and Languages Department, Haryana in deference to the interim stay order of this Court, has in continuation of office order dated 16.05.2017, transferred the 5th respondent to Rewari while the petitioner has been ordered to remain in the office of the

District Information, Public Relations and Languages Department, Haryana keeping in view the stay orders dated 23.05.2017 passed by this Court in the present petition. The order is not on record and has been produced by the petitioner, a copy of which is retained on record. The tone and tenor of the order leaves no manner of doubt that it has been passed because of the *ad interim* stay order of this Court and for no other reason including no attention paid to public interest and exigencies of administration. It is a supervening event, and, therefore it can be taken into consideration while deciding the petition today.

5. Heard learned counsel for the parties and perused the material placed on record including the orders of transfer and posting.

6. In my view, the earlier cancellation order dated 16.05.2017 is not an order passed arbitrarily or whimsically since no bias or ill will has been imputed against any of the officers of the Department including the Director to pass the order of cancellation. In absence of *malafides* a transfer order is normally not open to challenge unless it suffers from any of the vices explained by the Courts. The subsequent order dated 23.01.2017 endorsed on 31.07.2017 is generated not on free will of the Director General, Information, Public Relations and Languages Department, Haryana but in view of the interim orders passed by this Court staying the transfer of the petitioner. I see no reason why the interim order should continue to the prejudice of the 5th respondent who has a superior right to place of posting being deaf and

dumb person. The petitioner claims to be suffering from partial hearing impairment but he has not placed any material on record to prove the assertion. But as far as 5th respondent is concerned, there can be no doubt as to his disability. If the Director thinks it fit, he may get the petitioner and the 5th respondent medically checked up for their levels of impairment and comparative hardship and decide who is worse off keeping in hand the policy on transfers and policy on disability law.

7. With these observations, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

04.05.2018

kv

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*