

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

CWP No.22720 of 2018

Date of Decision:-12.09.2018

Daljinder Kaur.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vivek Salathia, Advocate for the Petitioner.

Mrs. Anu Chatrath Kapoor, Additional Advocate General,
Punjab.

JASWANT SINGH, J.(ORAL)

Petitioner-Daljinder Kaur who is working on the post of Principal at Government Senior Secondary School (Boys), Verka, Amritsar is aggrieved against her transfer order dated 28.08.2018 (Annuxre P-1) whereby she has been ordered to be transferred from the present posting to Government Senior Secondary School (Boys), Butala, Amritsar.

On the last date of hearing, learned Counsel for the petitioner had contended that the transfer of the petitioner has been affected on the basis of an alleged mutual request which, as per his contention, is factually incorrect, as petitioner had not made any such request. Consequently, before proceeding with the matter, it was deemed appropriate by this Court to verify from the State as to what is the factual position.

Today learned State Counsel has filed a short affidavit dated 12.9.2018 of Ms. Sushma Sharma, Assistant Director, Office of Director General School Education, Punjab whereby, she has categorically stated that the order of transfer Annexure P-1 is not on the basis of mutual consent and rather is a result of administrative requirement.

Upon this, learned Counsel for the petitioner has given up this argument and has argued on merits. It is argued that the petitioner has been transferred when the model code of conduct already stands introduced in the State of Punjab, owing to the elections of Zila Parishad/Panchayat Samiti which are scheduled to be held on 19.09.2018. It has further been argued that the instructions dated 3.7.2018 issued by the Government of Punjab (P-4) have fixed the period of transfers only upto 16.7.2018 and not beyond. In view of the fact that the transfer order has been passed on 28.08.2018, it is submitted that the same is against the Punjab Government policy as well as settled position of law that during the subsistence of model code of conduct, no transfer can be made.

On the other hand, learned Counsel for the respondent-State has argued by relying upon the affidavit dated 12.09.2018 that the petitioner has been transferred on administrative grounds, since a number of complaints are pending against the petitioner for inquiry. It is further submitted that there is no violation of the model code of conduct, as transfer order was issued on 20.08.2018 whereas the model code of conduct came into force on 29.08.2018 after 3 PM. In any case, it is submitted that a clarification was sought from the Election Commission, Punjab regarding the transfers made after the implementation of the said Model Code of Conduct. Upon this, the Election Commission, Punjab has clarified vide its letter dated 05.09.2018

(Annexure R-1) that such transfers can also be enforced. Thus, prayer has been made for dismissing the present transfer petition.

After hearing learned Counsel for the parties and perusing the paper book, this Court is of the opinion that the present petition is devoid of any merit and deserves to be dismissed.

Admittedly, the post of Principal comprises the State Cadre and they are liable to be posted anywhere in the State. In the present case, the transfer has been made from one place to another within the same District, more so after having remained posted for nearly three years at her previous place of posting. In any case, the State can always exercise its discretion to transfer an employee for valid reasons. This Court is of the opinion that until and unless it is shown that the order of transfer is result of malafides or extremely arbitrary, the Court cannot interfere in the day to day working of the State, especially in case of transfers. Further, as per the Policy letter dated 23.04.2018 (Annexure P-3) issued by the State Government. Group-'A' employees can be transferred after a period of two years and in any case cannot remained posted at one station for more than 5 years. Thus, it is seen that there is no violation of even the policy of the State Government by the Department concerned.

As far as the argument raised by learned Counsel for the petitioner regarding implementation of Model of Code of Conduct is concerned, same is also mis-conceived. It is seen that Department had transferred the petitioner before implementation of the Model Code of Conduct and in any case the election commission has already clarified vide Annexure R-1 that transfer orders issued even after the implementation of the Model Code of Conduct can be enforced. Similarly, the reliance of the

petitioner on letter Annexure P-3 to argue that transfers could only be made upto 16.7.2018, is also devoid of any merit. This letter refers to certain other instructions issued by the State Government, which have not been brought forth by the petitioner for consideration of this Court and in any case, it is not clear from the said letter as to in what context it was issued.

In view of the above, finding no merit in the present writ petition the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

September 12, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>