

CWP-7622-2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7622-2019 (O&M)

Date of Decision: 18th September, 2019

Manjit Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana
for respondents No.1 to 3.

Mr. Amit Jhanji, Advocate
for respondent No.4.

AUGUSTINE GEORGE MASIH, J.

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Prayer in this application is for permission to implead applicant – Rajesh Kumar son of Satbir Singh resident of Killa Mohalla, Bahadurgarh, District Jhajjar, as intervener – respondent No.4 to the writ petition, in the light of the fact that he is directly affected by the challenge to the order of transfer dated 07.03.2019 (Annexure P-4), as the applicant has been transferred in place of the petitioner in the office of the Secretary, Regional Transport Authority at Bahadurgarh, but because of the stay granted by this Court of the said impugned order on 20.03.2019, he is suffering.

Notice of the application.

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On the asking of the Court, Mr. Sanjiv Gupta, learned counsel for the non-applicant/petitioner accepts notice and states that he has no objection to the prayer made in the present application.

In view of the above, the present application is allowed. Applicant – Rajesh Kumar son of Satbir Singh resident of Killa Mohalla, Bahadurgarh, District Jhajjar, is impleaded as respondent No.4 to the writ petition. Amended memo of parties appended along with the application is taken on record. Registry is directed to place the same at appropriate stage of the case.

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Challenge in this writ petition is to the order of transfer of the petitioner – Manjit Singh, dated 07.03.2019 (Annexure P-4) from the office of the Secretary, Regional Transport Authority, Jhajjar at Bahadurgarh, to the office of Secretary, Regional Transport Authority, Jind, passed by the Transport Commissioner, Haryana. Vide this very order, newly impleaded respondent No.4 – Rajesh Kumar has been transferred to the office of the Secretary, Regional Transport Authority, Jhajjar at Bahadurgarh, where the petitioner was posted prior to passing of the said order.

2. In compliance with the order dated 12.09.2019 passed by this Court, replication along with certain orders has been filed by the learned counsel for the petitioner in Court today, which is taken on record.

3. The basic contention of the learned counsel for the petitioner is that the petitioner has been transferred for the second time within a period of two years in violation of the transfer policy of the State of Haryana, dated 06.10.2004 (Annexure P-1). Referring to the said transfer policy, counsel

has asserted that an employee is not to be transferred out of his current place of posting before he has completed two years at the post. Since the petitioner was appointed on this post on 21.06.2018, he should not have been transferred vide the impugned order dated 07.03.2019 (Annexure P-4). His assertion is that because it is mid-term transfer, study of his children, who are school going, would be adversely affected and grave injustice has been caused by frequent mid-term transfers.

4. Argument has also been raised that the petitioner is suffering from some heart disease, for which, he is taking medication from Bahadurgarh as also from Shri Ganga Ram Hospital, New Delhi, but the said aspect is not pleaded in the writ petition. Another contention which has been made is that the persons, having longer stay at Jhajjar, have been allowed to continue, whereas, the petitioner has been transferred. He, thus, contends that the impugned order cannot sustain and deserves to be set aside.

5. On the other hand, learned counsel for the State has submitted that the transfer of the petitioner is based upon the administrative exigencies. He contends that the transfer policy of the Government of Haryana, dated 06.10.2004 (Annexure P-1) was only for the year 2004-05. In any case, he asserts that the said policy was only guidelines and it does not confer any right upon an employee to continue at one place on posting. The Government has full discretion for transferring an employee from one place to another in the administrative circumstances and no employee has any right either fundamental or statutory to be posted at a place of his choice. The administrative exigencies have also been spelt-out in para 3 of

the short affidavit, which has been filed, according to which, it was found that the conduct of the petitioner was not conducive to the office atmosphere as many oral complaints were received against him by the Secretary, Regional Transport Authority, Charkhi Dadri. Copy of letter dated 15.05.2018 (Annexure R-2) has also been attached in this regard. Prayer has, thus, been made for dismissal of the writ petition.

6. Learned counsel for respondent No.4, apart from supporting the arguments as has been raised by the learned counsel for the State, has relied upon the judgment of this Court in **CWP No.7038 of 2019**, titled as '**Deepak Sharma Vs. State of Haryana & others**', decided on 21.05.2019, wherein, this Court, while considering the policy of year 2004-05, dated 06.10.2004 (Annexure P-1), on which reliance has been placed by the counsel for the petitioner to contend that the impugned order is in violation of transfer policy, has held that these policies/instructions are only guidelines and do not confer any statutory right upon an employee to continue at a place of posting and mere departure from the transfer policy would not be sufficient to vitiate the ground for transfer. Administrative exigencies and public interest would have precedence over such policies. Reliance has further been placed upon the judgments passed by this Court in other cases as well, where it has been held that the employee is not vested with any right or immunity from transfer on the basis of the guidelines for transfer. His assertion is that no *mala fides* have been alleged against any authority.

7. Reference has also been placed upon the Supreme Court judgment in **Union of India Vs. S.L. Abbas** 1995 (4) SCT 455, where it has

been held that the guidelines issued by the Government for transfer of an employee do not confer any legal and enforceable right to challenge the transfer, if the guidelines are not followed. Similar reliance has been placed upon the judgments of the Supreme Court in **State of Punjab & others Vs. Joginder Singh Dhatt** 1995 (4) SCT 225, and **Rajendra Singh Vs. State of U.P. & others** 2009 (15) SCC 178, wherein, the Hon'ble Supreme Court has reiterated the said principle. Prayer has, thus, been made for dismissal of the writ petition.

8. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings but do not find myself in agreement with the submissions of the counsel for the petitioner.

9. Transfer of the petitioner in the present case vide impugned order dated 07.03.2019 (Annexure P-4) is based upon administrative exigencies, as has been spelt-out and substantiated by the respondents on the basis of the letter dated 15.05.2018 (Annexure R-2), which is a communication from the office of the Secretary, Regional Transport Authority, Charkhi Dadri, wherein, the said authority has mentioned that he had received oral complaints against the petitioner, which he had got enquired at the personal level and have been found to be correct, because of which, the atmosphere of the office was likely to be adversely effected. Therefore, for smooth running of the working of the office, it was required that he be relieved from the duty and transferred.

10. That apart, there are no *mala fides* alleged against any official except for asserting that persons who have longer stay at Jhajjar and have

been retained, whereas, the petitioner has been transferred. Assertion with regard to violation of transfer policy, dated 06.10.2004 (Annexure P-1), which are only guidelines as it indicates that normally an employee be not transferred out of his current place of posting before completing two years at the post but in these very guidelines, it is also mentioned that except for compelling administrative reasons. Therefore, these guidelines are not absolute. In the present case, in any case, administrative reasons have been pointed out, which would justify the transfer of the petitioner.

11. The judgments on which reliance has been placed by the learned counsel for respondent No.4 go a long way to lay down the broad principles for the Courts to follow.

12. Settled principle of law as per the judgments relied on is that the transfer is an incident of service and no employee has an inherent or indefeasible right for continuing on a post unless contrary thereto is found in the terms of appointment or the statutory rules. Transfer is an incident inherent in terms of an appointment of an employee unless a specific indication to the contrary is mentioned in the terms of appointment or the statutory rules. A Government servant has no vested right to be posted at a place of his choice nor can he insist that he must be posted at one place or the other. It is the discretion of the employer to decide when, where and at what point of time, a public servant is to be transferred. Transfer policies, which are in the form of guidelines, are only for the administrative authorities in the matter of regulating transfers, that do not confer any indefeasible right on him to enforce the same unless he is able to demonstrate total injustice, being violative of principle of justice and/or

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laced with *mala fides* to point out some situation, where the Court may chose to interfere. Normally the Court should not interfere in the order of transfer and should refrain itself from such endeavours as it is for the employer to run his own house, as per his discretion and for the best interest of his institution, for which, he would know the capability as well as the capacity of an employee and would be the best judge to know as to how long and at which place his services can be utilized the most.

13. As regards the contention of the learned counsel for the petitioner that the petitioner is suffering from medical ailments, suffice it to say that there is no pleading or mention thereto in the writ petition and this plea is being sought to be projected at the stage of filing of the replication, which appears to be an after thought only to avoid his transfer.

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

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In the light of the dismissal of the main writ petition, no orders are required to be passed in the present application for vacation of stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

18th September, 2019
Harish

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes