

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

CWP No. 15407 of 2015.

Date of Decision: 13.02.2019.

Sat Pal Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Gaurav Sharma, Advocate for
Ms. Maninder Kaur, Advocate,
for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

JITENDRA CHAUHAN.J.

The petitioner seeks quashing of order dated 23.07.2015
(Annexure P-4) vide which he was transferred from Civil Hospital,
Sangrur to the office of Civil Surgeon, Bathinda.

It is contended that the petitioner is a Class-IV employee.
He has been serving the Department of Health and Family Welfare,
Punjab for the last more than 34 years. There has never been any
complaint against him during the entire service period. The petitioner
is a physically handicapped person to the extent of 60%. In pursuance
to order dated 21.10.2014, the petitioner was assigned duties on the
gate of Operation Theatre. On 12.07.2015 one Ms. Kulwinder Kaur
who is President of the Akali Women Wing (Urban) visited the
hospital and was going inside the operation theatre. Dr. Kirandeep
Sidhu Gynaecologist, Dr. Sanjiv Aggarwal, Eye Specialist, Dr.

Ramandeep, Gynaecologist, Staff Nurse Harpal Kaur, OT Assistant Gurcharan Singh and Staff Nurse Harinder Kaur were also present there. The petitioner requested Ms. Kulwinder Kaur to remove her shoes before entering the operation theatre. However, she got furious and threatened to get his services terminated. Thereafter, she made a written complaint to the Civil Surgeon, Sangrur against the petitioner. An inquiry was held. In the inquiry report (Annexure P-3), it was observed that Ms. Kulwinder Kaur misbehaved with the petitioner and threatened him. However, under the influence of Ms. Kulwinder Kaur, vide order dated 23.07.2015 passed by Director, Health and Family Welfare Punjab, the petitioner was transferred from District Sangrur to District Bathinda.

It is contended that against the post manned by the petitioner, no substitute has been provided. Mid-term transfer has been made on the asking of Ms. Kulwinder Kaur. It is further contended that as per Rule 12 of the Punjab State Employees (Class-IV) Service Rules, 1963, an employee can be transferred within the district only. In this regard, learned counsel relies upon judgment dated 24.05.2011 (Annexure P-7) wherein his earlier transfer from Sangrur to Ludhiana was quashed by this Court.

On the other hand, the State has sought to justify the transfer order on the ground that there are so many complaints against the petitioner. There is a complaint against the petitioner by Smt. Kulwinder Kaur and inquiry was conducted against the petitioner

regarding the said complaint.

Heard.

It is be to noticed that while filing written statement, the State has referred to the complaint moved by Kulwinder Kaur. The petitioner has already mentioned in his petition that on the basis of said complaint, an inquiry was conducted wherein vide inquiry report (Annexure P-3), it has been observed that Kulwinder Kaur was at fault. This Court is of the opinion that the petitioner while discharging his official duties refused entry to Kulwinder Kaur in the operation theatre with shoes. The petitioner was well within his right to do so. From the record, it appears that the petitioner has been transferred with *mala-fide*.

Moreover, in the judgment dated 24.05.2011 (Annexure P-7), it was held as under:-

“xx However, from the reading of the rule, it appears that various contingencies prescribed in the rules provide for transfer within the over all jurisdiction of the appointing authority on any post borne on the cadre of the service. The interpretation sought to be placed by the State does not seem to be based upon correct and true construction of rule 12. Under rule 3, all appointments to posts in the service shall be made by the Heads of Departments and Heads of Offices, as the case may be. In the present case, it is not disputed that the seniority of the petitioner is maintained at District level. Thus, apparently, it seems that the district authority is the

appointing authority of the petitioner. Be that as it may. Transfer of the petitioner beyond the jurisdiction of the appointing authority is impermissible in terms of Rule 12.”

In view of above, the present petition is allowed. The impugned order dated 23.07.2015 (Annexure P-4) is quashed. However, the State shall be at liberty to transfer the petitioner under the public interest.

13.02.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

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