

(234) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.18216 of 2016
Date of decision: 15.05.2019

Amit Petitioner

Versus

State of Haryana and others Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Ashok Bhardwaj, Advocate for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana.
Mr. Win Koul, Advocate for
Mr. Amar Vivek, Advocate for respondent No.4.

B.S. WALIA, J. (ORAL)

[1] Prayer in the writ petition is for quashing of order Annexure P-4 dated 22.08.2016 as also order Annexure P-5 dated 27.08.2016 i.e. office order temporarily adjusting the petitioner at Safidon against vacancy on complaint basis / ordering the transfer of the petitioner, respectively.

[2] The order of transfer was challenged on the ground that it was based on a complaint without compliance with the principles of Natural Justice. Operation of order Annexure P-4 adjusting the petitioner temporarily at Safidon against vacancy on complaint basis was stayed on 02.09.2016 by this Court while issuing notice of motion for 04.10.2016.

[3] Learned counsel for the petitioner states that the orders Annexures P-4 and P-5 having been passed on the basis of a complaint as is evident from the impugned orders itself without compliance with the

principles of natural justice, the same are legally unsustainable, therefore, liable to be set aside as such.

[4] Learned Sr. DAG has conceded that admittedly there was no compliance with the principles of natural justice before passing the impugned orders Annexures P-4 & P-5.

[5] Learned counsel for the petitioner states that in the circumstances, the impugned orders i.e. Annexures P-4 and P-5 are legally unsustainable and liable to be set aside on this short ground alone.

[6] I have considered the submissions of learned counsel appearing for the parties. Admittedly, the petitioner was temporarily adjusted at Safidon that is a place other than the place of his posting on account of complaint Annexure P-1 without compliance with the principles of natural justice. In a case titled as N.S. Bhullar vs The Punjab State Electricity Board 1991 (1) SLR 378, Division Bench of this Court quashed the order of transfer of the petitioner therein on the ground that the same was based on allegations of mis-conduct without complying with the principles of natural justice. Relevant extract of the same is reproduced as under :

“14. In the present case, it would be seen that admittedly the transfers have been made on the basis of some complaints and adverse remarks. No enquiry has been held and simply on the basis of complaints and suspicion, the petitioners have been transferred; whereas the stage regarding those allegations is only that explanation has been called and the matter is pending final disposal. There does not seem to be any public interest in transferring the petitioners, but as noticed above, the power to transfer seems to have been used for collateral purposes to avoid disciplinary proceedings. Shri Mehar Singh has been

working at Ludhiana for the last more than six years. He is being retained in place of one of the petitioners and for the other just a fresher is being brought, but it is claimed on behalf of the Board that the posts to be manned by the petitioners are very important ones, but still a fresher is being brought in place of one of the petitioners.

15. As already observed in the beginning, the scope of interference by the High Court in such matters is very limited but where facts which are admitted are patent then the Court would certainly interfere it is comes to the conclusion that the administrative order was passed for a collateral purpose. We hold that the order of transfer, Annexure P-1, *qua* the petitioners was not straight and simple administrative order of routine transfer but was for collateral purpose and by way of punishment.”

[8] In the circumstances, impugned orders Annexure P-4 & P-5 are quashed. However, the respondents are at liberty to pass fresh orders of transfer if so warranted as per law in accordance with the policy applicable.

[9] Writ petition is allowed in the aforementioned terms.

15.05.2019
amit

(B.S. Walia)
Judge

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| 1. | Whether speaking/reasoned | : | Yes/No. |
| 2. | Whether reportable | : | Yes/No. |