

CWP-15800-2018 (O&M)

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

**CWP-15800-2018 (O&M)
Date of decision : 18.07.2019**

Samrat Singh

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amandeep Vashishth, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Karan Singh, Advocate
for respondent No.6.

AMIT RAWAL, J. (ORAL)

It is a classic case, where the respondents passed the impugned orders dated 08.05.2017 and 09.05.2017 (Annexures P-10 & P-11), whereby transfer orders dated 17.04.2017 (Annexure P-8), adjusting respondent No.6-Mamtesh Rani and petitioner-Samrat Singh against each other, has been cancelled, in essence, the petitioner has been adjusted at CHC Ballah and Mamtesh Rani at CHC Indri.

Learned counsel for the petitioner submitted that the Ministry of Health and Family Welfare, Government of India, sponsored a scheme i.e. RCH/RKSK (Reproductive Child and Health Programme/Rashtriya Kishor Swasthya Karyakram). Under the aforementioned scheme, many posts including Adolescent Health Counselors (AHCs), were sought to be filled on contractual basis in the Government Hospital, Dispensaries and

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Health Centres in the State of Haryana. The aforementioned posts were controlled by respondent No.3/Mission Director, National Health Mission, Panchkula. The scheme was promulgated to implement various schemes regarding health etc. Vide appointment letter dated 20.02.2014 (Annexure P-1), petitioner was appointed as Adolescent Health Counselor and allotted Community Health Centre, Indri and vide order dated 12.03.2014 (Annexure P-2), directed to report the office of Senior Medical Officer, Indri. However, in the year 2015, vide letter/order dated 16.09.2015 (Annexure P-3) issued by respondent No.3, services of Adolescent Health Counselors were withdrawn. Prior to that, there were two posts at Indri. Many persons, being affected, approached this Court through various writ petitions and vide order dated 17.02.2016, on the basis of the undertaking given by the State Counsel, the said writ petitions, under the interim order, till 31.03.2016, were allowed to continue in the aforementioned scheme,. Vide order dated 01.04.2016 (Annexure P-5), petitioner was again engaged, on contractual basis, for the post of Adolescent Health Counselor, with place of posting CHC Indri. The contract was also renewed, vide letter dated 07.10.2016 (Annexure P-6). Respondent No.6, who was appointed by mistake, at the time of renewal of the contract for the scheme from 01.04.2017 to 31.03.2018, vide order dated 17.04.2017 (Annexure P-8), was assigned the placing of posting at CHC Indri and was correctly removed from CHC Indri to Ballah. However, she assailed the aforementioned transfer order, in CWP No.8946 of 2017 and vide order dated 28.04.2017, direction was issued to the respondents to decide representation of respondent No.6, by passing a speaking order. The respondents, vide speaking order dated 08.05.2017 (Annexure P-10),

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cancelled order dated 17.04.2017 (Annexure P8) and vide order dated 09.05.2017 (Annexure P-11), transferred the petitioner at CHC Ballah, whereas respondent No.6 at Indri. In fact, the aforementioned transfers were against order dated 30.05.2017 of Mission Director, National Health Mission, Panchkula. Though the appointments were on a contract, but the employee could not be transferred at any other programme apart from the facility programme except for certain exigencies and if at all, any transfer order is passed, the same may be cancelled. In view of the directions dated 30.05.2017, the Civil Surgeon, Karnal, vide order dated 04.07.2017 (Annexure P-13), cancelled the deputation order of the Staff Nurses, working under National Health Mission (NHM). The petitioner submitted representation dated 25.07.2017 (Annexure P-14), pointing out to the Civil Surgeon, with regard to the direction/instructions of Mission Director, National health Mission, Panchkula as well as implementation. Writ petition bearing No.18952 of 2017 was filed, but the same was dismissed as withdrawn with liberty to challenge order dated 08.05.2017. Many representations have been made, but no action has been taken so far.

In response to the notice, written statement has been filed on behalf of respondent Nos.1 to 5. On going through the contents of the written statement, issuance of directions/instructions dated 30.05.2017, passing of appointment orders, withdrawal of certain posts, have not been denied. The pith and substance of the written statement is that the respondents, in terms of directions contained in order dated 28.04.2017, cancelled transfer order of respondent No.6 and the petitioner was placed at Ballah, whereas respondent No.6 at Indri.

Similar is the stand of Mr. Karan Singh, learned counsel for

respondent No.6.

I have heard learned counsel for parties and appraised paper book.

Noticing the facts as well as the documents, order dated 08.05.2017 (Annexure P-10) has not been passed in tandem with the directions and order of Mission Director, National Health Mission, dated 30.05.2017 (Annexure P-12), whereas there is complete bar for transferring the employees working under various schemes promulgated by NHM and in case, any transfer order is passed, the same is required to be cancelled. Though an attempt was made that the aforementioned directions/instructions do not impose a complete ban for transfer and by relying upon condition No.4 of the same, which did not prevent the Department from causing temporary change of posting, in case of some dire need. Terms and conditions imposed in letter dated 30.05.2017 (Annexure P-12), which reads as under, do not manifest alleged mindset of respondents:-

- "1. The staff should only be placed in the facility/programme for which approval has been accorded by M.D., NHM, Haryana.*
- 2. No employee should be transferred/deputed in any other programme/facility apart from facility programme for which sanction has been accorded.*
- 3. If any employee has already been transferred/deputed in any other programme/facility, the order of transfer/deputation may immediately be canceled and employee be directed to report to parent facility.*
- 4. You are also to ensure if there is some dire need for the temporary change of posting in the conditions like facility not ready, additional manpower required for some campaign like*

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Mission Inderdhanush, Polo or disease outbreak, same may be forwarded for appropriate necessary approval to Head-quarter."

Since order canceling the transfer of respondent No.6 from Indri to Ballah is dated 08.05.2017, whereas the instructions dated 30.05.2017, I am of the view that implementation of the scheme require to be revisited afresh, particularly in view of the directions/order dated 30.05.2017 (Annexure P-12). Accordingly, respondent No.4-Civil Surgeon, General Hospital, Karnal, is directed to decide the case of the petitioner and respondent No.6, strictly in terms of the aforementioned instructions (Annexure P-12) by affording opportunity of hearing to the petitioner and respondent No.6, in accordance with law, within a period of one month from the date of receipt of certified copy of this order.

It is made clear that in case, the decision is not taken within the time frame, there shall be costs of ₹50,000/- to be paid to the petitioner. In case, the claim of the petitioner and respondent No.6 is to be rejected, then a well reasoned and speaking order be passed and conveyed to them.

With the aforesaid observations, the present writ petition is disposed of.

18.07.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No