

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

CWP-4655-2016

Date of decision-03.04.2019

Parveen Rani

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Randeep Singh, Advocate
for the petitioner(s).

Ms. Kanica Sachdeva, A.A.G., Punjab
for respondent Nos.1, 3 & 4.

Mr. Anil Kumar Sharma, Advocate
for respondent No.2.

JITENDRA CHAUHAN, J.

This petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ of Certiorari quashing the impugned order dated 26.02.2016 (Annexure P-1) passed by respondent No.2 whereby the petitioner has been transferred from Block Shutrana, District Patiala to Block Khiyalan Kalan, District Mansa contrary to the condition that appointment of the petitioner is non transferable as per appointment letter dated 11.04.2008 (Annexure P-2).

Learned counsel for the petitioner submits that as per appointment letter dated 11.04.2008 (Annexure P-2) the petitioner is working on a consolidated salary of ₹8000/- on contract basis. The said appointment letter shows that it was for the post of Accountant-cum-cashier

at Shutrana and as per Clause 6 the same was not transferable. He further states that vide impugned order dated 26.02.2016 (Annexure P-1) the petitioner has been transferred to Block Khiyalan Kalan District Mansa against a vacant post whereas the charge which was held by the petitioner has been handed over to Accountant-cum-Cashier Block Bhadson, District Patiala as additional charge.

On the other hand, learned counsel for respondent No.2 states that no doubt in view of clause 6 of the appointment letter (Annexure P-2) the appointment of the petitioner is non-transferable. However, he has drawn the attention of this Court to clause 14 of the appointment letter, which reads as under:-

“14. Terms and conditions & remuneration for this contractual post are liable to change as per guidelines/directions issued by State Mission Director/ State Health Society from time to time and will be applicable accordingly.”

Learned counsel for respondent No.2 further contends that vide memo No.NHM/PB/15/MHR/010415-37 dated 30.07.2015 (Annexure R-1) a conscious decision was taken that extension of contractual employees shall be as per modified terms and conditions contained in order No.NHM/PB/15/MHR/009983-010008 dated 23.07.2015. The relevant portion of the memo dated 30.07.2015 (Annexure R-1) is as under:-

“Clause 12. All the posts under National Health Mission Punjab are transferable, in public interest and also on administrative grounds as per policy of Government of Punjab/National Health Mission Punjab.”

Counsel further submits that a complaint was received against the petitioner (Annexure R-2) and enquiry was marked to the District Programmer Officer, who submitted the report to the Civil Surgeon. It finds mention in the report that the petitioner is running a Gold Scheme during office hours and pressurized the staff to invest money in the Scheme. On the basis of enquiry report, Civil Surgeon, Patiala has recommended transfer of the petitioner. Although, a show cause notice dated 26.02.2016 was issued to explain her position but the petitioner has not submitted any reply to it.

Learned counsel for the petitioner submits that the allegations made against the petitioner in the complaint dated 16.02.2016 (Annexure R-2) have been proved to be false and baseless in departmental enquiry vide report (Annexure R-3). The Civil Surgeon, Patiala has given his report dated 23.02.2016 (Annexure R-4) without considering the departmental enquiry report (Annexure R-3).

Heard.

No doubt, the departmental enquiry report dated 18.02.2016 (Annexure R-3) and enquiry report dated 23.02.2016 (Annexure R-4) are not in consonance with each other inasmuch as the petitioner was exonerated in the departmental enquiry whereas respondent No.4-Civil Surgeon has recommended the transfer of the petitioner on the basis of news published in the news paper.

Be that as it may, considering the fact that the impugned order (Annexure P-1) was passed in public interest by the competent authority and a conjoint reading of Clause 14 of the appointment letter (Annexure P-2) and Clause 12 of the memo dated 30.07.2015 (Annexure R-1) makes it crystal clear that the post of the petitioner is transferable in public interest.

The plea of the petitioner that the post is non-transferable is not tenable.

The petitioner has also tried to take benefit of transfer policy dated 08.10.2009 (Annexure P-4) which reads as under:-

"No.N.R.H.M./P/09/10292-10311

dated 08.10.2009

To

All Civil Surgeons of Punjab

Subject: Transfer policy for employees working on contract basis under N.R.H.M.

With regard to employees appointed on contract basis in State Headquarter or District Level under N.R.H.M., a decision was taken that their transfer cannot be done because they have been appointed at the place of their own choice. However, applications from some employees have been received for transfer and due to reasons given by employees in their applications the transfer of employees deserves to be made. Therefore, the department has framed a transfer policy regarding transfer of employees working on contract basis. All the transfer shall be made on the basis of this policy.

- 1. Transfer shall be made only once in the month of April/May or at the time of making general transfer by Punjab Government. Mission Director shall constitute a committee, which shall take into consideration the aspect that after one transfer there shall be no transfer thereafter.*
- 2. The transfer of employees working under N.R.H.M. Shall be made once during their whole service period as per request made in application. It is, therefore, necessary to prepare a separate file of each employee showing all the particulars related to service period of employee.*
- 3. The transfer of employees working under N.R.H.M. Shall be made only against vacant post and transfer shall not be made against the transfer policy. It is therefore, made clear that no employee shall be transferred and transfer shall be made only against vacant post.*

4. *Transfer out of district shall be made by Mission Director, N.R.H.M. Headquarter. The transfer shall be made as under:-*

- i. Mutual transfer of employees shall be made as per request made in application.*
- ii. In case of marriage of any employee, the transfer of employee (wife/husband) to other district shall be made only against vacant post of employee (wife/husband).*
- iii. The transfer of widow/disabled or employee who is facing extreme difficulty shall be made only against the vacant post either in the same district or in other district as per request made in the application.*

5. *Transfer within district:-*

- i. Mutual transfer of both the employees shall be made on the basis of their request made in the application.*
- ii. In case of employee is facing extreme difficulty or his transfer is reasonable, then also transfer shall be made against vacant post as per his request after taking prior approval of the State Headquarter.*

There would be a little chance of transfer and interest of the State could be considered. Transfer shall be done only once in a year so as to avoid any obstruction/difficulty in the work of the Government.

Sd. 06/10/2009

*Secretary
Health and Family Welfare, Punjab”.*

However, the Court feels that the transfer policy (Annexure P-4) would not further the case of the petitioner in the light of Clause 12 of memo dated 30.07.2015 (Annexure R-1).

Further, in '**State of M.P. and another. vs. S.S. Kourav and Ors., 1995 AIR 1056, 1995 SCC (3) 270**', paragraph 4 of the judgment

reads as under:-

'The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation....'

In view of the above, the impugned order (Annexure P-1) does not suffer from any illegality or perversity.

Consequently, the instant petition is hereby dismissed.

03.04.2019

ps-I

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No