IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 4025 of 2020
Decided on : 30.12.2020

Krashan Chand — Petitioner.

Versus

State of H.P & others — Respondents.

Coram:

Hon'ble Mr. Justice Sureshwar Thakur, Judge.
Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?[1] *Yes.*

For the petitioner: Mr. Prem Paul Chauhan, Advocate.

For the respondents: Mr. J.S Guleria, Dy. A.G for respondents No.1 and 2.

Mr. Sanjeev Bhushan, Sr. Advocate with Mr. Rajesh Kumar, Advocate, for respondent No.3.

Mr. Vivek Singh Attri, Advocate for respondent No.4.

(Through video conferencing).

Sureshwar Thakur, Judge (Oral)

The transfer order borne in Annexure P-1, was made, on 11.7.2019. However, a challenge thereto is thrown, through the extant petition being instituted in the Registry of this Court, rather on, 21.9.2020. Consequently, an immense delay of more than a year has

[1] Whether reporters of the local papers may be allowed to see the judgment?

elapsed, since the making of the transfer order, borne in Annexure P-1, and, the institution of the instant petition before this Court.

2. The afore immense delay, when becomes combined, with the uncontroverted factum, of all the concerned public officers/officials hence joining at the station(s) concerned, obviously fillips an inference, that the writ petitioner has openly accepted the afore transfer order, and, thereupon, the embargo of estoppel, arising from his waiving and abandoning right(s), if any, to cast a challenge thereon, rather bars his belated endevour.

3. Be that as it may, the learned counsel, for the writ petitioner, in the rejoinder furnished, to the reply to the writ petition, , as furnished by co-respondent No.3, has reproduced certain paragraphs of verdict(s) recorded by Courts of law, and as become borne in 1994(2) SCC 416, 995 SCC (L&S) 1243 and 2004(1) LHLJ 652, (a) wherein, an expostulation of law is enshrined, for enabling the writ Court, to, upon any order of transfer being *void ab initio*, to invalidate it. However, the reproduced portions of judgments(supra) in the rejoinder, does not enable this Court, to fix the apt *ratio decidendi,* as the apt portions thereof, do not graphically display, that alike the factual matrix prevailing hereat, in as much as, the afore delay

creating the afore obstacles, in the endevour of the writ petitioner, and, also the hereat purported illegality, in the initial order of transfer, hence comprised in its emanating without the approval, of the highest executive authority(ies), and, thereupon it acquiring, a, minimal taint of voidness, also becoming embodied therein (a) rather also the afore becomes neither clearly encapsulated in the reproduced paragraphs, of the verdicts (supra), hence in the rejoinder (b) nor obviously thereupon the afore judgments are available for recoursing by the learned counsel for the petitioner, for his belittling the estopping effects, of, the apposite elongated delay besides also of his hence therethroughs rather waiving and abandoning his rights, to, cast any challenge thereon.

4. Consequently, reliance, if any, thereon is heavily misplaced. Contrarily the writ petitioner, had been serving, at the previous station concerned, for an elongated period for more than 10 years, and, thereupon he holds no indefeasible right to continue staying, thereat, an untenable endevour whereof, is, strived through, the, extant petition.

5. In aftermath the making of the transfer order is both just and necessary, and, does not erode rights, if any, of the writ petitioner.

6. In addition the afore prolonged duration or period of stay of the writ petitioner, at the station concerned, and, also his prolonged delay, in his making a challenge to the transfer order, when as afore-stated creates obstacles, of, waivers and abandonment(s), besides when exigency(s) of public service, and, efficiency of administration, when also are deemed to be therethrough hence subserved, rather conspicuously from the afore prolonged duration, of time, occurring since the making, of, the transfer order, and, a challenge being thrown thereagainst, thereupon also it is deemed to be made in public interest.

7. In view of the above, there is no merit in the petition, and, the same is accordingly dismissed alongwith all pending applications.

(Sureshwar Thakur),
Judge.

30th December, 2020
(priti)

(Sandeep Sharma),
Judge.