IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 4053 of 2020

Decided on: 30th December, 2020

Mehar Dass ....Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

[1] *Whether approved for reporting?*

For the petitioner: Mr. Vinay Sharma, Advocate.

For the respondents: Mr. Ashok Sharma, Advocate General, with Mr. Vinod Thakur, Mr. Vikas Rathor Additional Advocates General, Ms. Seema Sharma, Mr. Bhupinder Thakur and Mr. Yudhvir Singh Thakur, Deputy Advocates General, for respondents No. 1 to 3.

Mr. Manohar Lal Sharma, Advocate, for respondent No.4.

Through Video Conferencing

Tarlok Singh Chauhan, Judge *(Oral)*

Aggrieved by the order of transfer, petitioner has filed the instant petition for grant of following

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[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

substantive reliefs:-

> *"i) Issue a writ of certiorari to quash Annexure P-1. i.e. impugned transfer order dated 24-09-2020.*
> *ii) Issue a writ of mandamus directing the Respondent authorities not to implement Annexure P-1, i.e. impugned transfer order dated 24-09-2020.*
> *iii) Issue a writ of mandamus directing the respondent authorities to allow the petitioner to continue at HPPWD Sub-Division Nirmand till the age of retirement in the interest of justice."*

2. It is not in dispute that the petitioner has been transferred on the basis of a D.O. note, therefore, transfer order is liable to be set aside on this ground alone, in view of the judgment rendered by this Court in ***CWP No. 801 of 2013, titled Sanjay Kumar versus State of H.P and ors. and the connected matters***, decided on 5.07.2013.

3. However, at this stage, learned counsel for respondent No.4 would argue that since the petitioner has completed his normal tenure of service at the given station, therefore, the mere fact that transfer of the petitioner has been preempted or prompted by D.O. note would not furnish him a cause of action to assail the order of transfer. In support of his submissions, strong

reliance is placed on a judgment rendered by this Court in ***CWP No. 2026 of 2019, titled Kirpa Ram Vs State of H.P. and ors., decided on 21.11.2019***, wherein vide para-2, it was observed as under:-

> *"It is not in dispute that the petitioner has completed his normal tenure of service at the given station. Therefore, the mere fact that the transfer of the petitioner has been preempted or prompted by D.O note would not furnish a cause of action to the petitioner to challenge the order of transfer when his tenure of service at the given station has already been completed."*

4. Obviously, there can be no quarrel with the judgment aforesaid, but it needs to be noticed that after passing of the aforesaid direction, the entire world including our country and the State are facing COVID-19 pandemic. It is on account of this pandemic that the State Government itself has imposed a complete ban on general transfers vide order dated 23rd July, 2020 and thereafter vide notification dated 19th November, 2020.

5. Now, the transfers can be made only:-

(i) to fill up vacant posts in tribal/difficult/hard areas;

(ii) to fill up vacancies arising out of retirements, promotions and creation of new posts;

(iii) transfers necessitated on account of disciplinary matters, vigilance cases, criminal proceedings etc.;

(iv) in cases involving administrative grounds and exigencies.

6. The case of the petitioner does not fall under any one of the eventualities as contemplated above and, therefore, the order of transfer cannot be sustained and is liable to be set aside.

7. Consequently, the present petition is allowed and the impugned notification dated 24.09.2020 (Annexure P/1) is quashed and set aside. Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

December 30, 2020
(Gaurav)