IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.5792 of 2020.

Date of Decision : 22nd December, 2020.

Dr. Ashok Kumar Saini **...Petitioner.**

Versus

State of H.P. & another **...Respondents.**

Coram:

The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice
The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?[1]

For the petitioner : Ms. Shilpa Sood, Advocate.

For the respondents : Mr. Ashok Sharma, A.G with Mr. Adarsh Sharma and Ms. Ritta Goswami, Addl. A.Gs.

COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE

Anoop Chitkara, Judge (oral).

Challenging transfer to Pangi in District Chamba, which is a tribal area, the petitioner, who is a Class-I employee and appointed as Assistant Director with the Directorate of Animal Husbandry has come up before this Court because he is to take care of his old and ailing father-in-law as well as mother-in-law and also because as per Clause 12.1 of the transfer policy, an employee, who has less than five years to superannuate, should not be posted in tribal/difficult/hard and remote areas.

2. We have heard learned counsel for the parties.

3. Ms. Shilpa Sood, learned counsel for the petitioner submits that the petitioner is presently aged about 55 years and has less than 5 years to superannuate. She further states that Clause 12.1 provides of the Comprehensive Guiding Principles-2013 for regulating the transfer of State Government employees, states that all employees during their entire period of service shall have to serve at least a

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

single tenure in tribal/difficult/hard areas and remote/rural areas. She further states that this clause does not apply to those employees, who have less than five years to superannuate. Despite that, the petitioner is willing to serve in any such tribal/hard area, which has road connectivity, so that in case of emergent medical needs, he can attend to his aged and ailing father-in-law and mother-in-law, who are wholly dependent on him.

4. When this matter was taken up on 16.12.2020, the possibility of the petitioner being posted at Reckong Peo cropped up. On this, learned Additional Advocate General sought time to have instructions in this regard. Today, Ms. Ritta Goswami, learned Additional Advocate General, on instructions, submits that the department can't post the petitioner at Reckong Peo.

5. Mr. Ashok Sharma learned Advocate General submits that as far as transfers are concerned, the Comprehensive Guiding Principles apply only to Class-III and Class-IV employees and not to Class-II and Class-I employees. He further submits that the benefit of clause 12.1 and 16.1 cannot be extended to Class-I and Class-II officers.

6. We have gone through the Comprehensive Guiding Principles-2013 for regulating the transfer of State Government employees issued vide Office Memorandum dated 10.7.2013. Clause 3 of this policy deals with top-level officers including IAS. Similarly, clause 5.1 to 5.4 does not state that it applies to any class of employees. It is only clause 5.5, which states that in case of Class-III and Class-IV officials likely to retire within two years, as far as possible, should be posted in the convenient places/stations, subject to vacancy. Clause 6 restricts professionals like doctors. Clause 10 of the policy states that the normal tenure/stay of an officer/official at one station shall be three years, which will not apply to the officers of IAS/HPAS/HPPS/HPFS, other allied services, and all Class-I and II officers. It further mentions the maximum stay with respect to a certain category of employees. Clause 12 deals with the posting of employees in tribal/difficult/remote/hard areas. Clause 12.1 of the policy is extracted as follows:-

> "All the Departments will ensure that all employees during their entire period of service will serve for at least single tenure in the

> Tribal/Difficult/Hard areas and remote/rural areas. In order to earn their promotion, service in such areas will be mandatory. This would be subject to adequate number of posts being available in such areas. However, this will not apply to those employees who have less than 5 (Five) years to superannuate. This stipulation is to be incorporated in R&P Rules wherever applicable. A common provision to this effect has been devised by the Department of Personnel after having obtained the approval of competent authority. No Government employee can claim his transfer or posting as a matter of right. It will be the discretion of the State Government to post/transfer any employee anywhere in the State keeping in view of the administrative exigencies/convenience."

7. Clause 16 of the policy stipulates tenure and age limit for posting in difficult/tribal/hard/most difficult areas etc. It states that as far as possible, efforts will be made not to post officers/officials in difficult/tribal/hard/remote areas, who have crossed the age of 55 years, but this will not apply in case of promotions.

8. If there can be an upper age limit for posting an employee above 55 years of age in tribal/hard/difficult areas, then there cannot be discretion to exclude Class-I and II employees and extending such benefits only to Class-III and IV employees. What this classification implies is as if employees, who are holding posts of Class-III and IV have frail health and weak stamina in comparison to employees, who are holding Class-II and Class-I posts. The ground reality maybe the opposite, and a Class-I officer may not have class-I health and stamina. The State Government cannot discriminate by excluding this benefit from any category of employees. However, it would be a different matter if an employee volunteer to opt like the present case.

9. Consequently, this petition is disposed of with liberty to the petitioner to make a representation to the concerned competent authority for his posting in a non-tribal/hard area or in such a tribal/hard area, which is connected by road and approachable to him to take care of his old and ailing father-in-law and mother-in-law. Petitioner to make such representation within one week from today. The respondents to decide the representation of the petitioner within one week from its receipt and till then, the petitioner shall not be compelled to join and he shall also be

permitted to avail the leave of a kind. It is desirable that there is an interaction with the petitioner in this regard. It is clarified that the incumbents already posted in such place must have completed their normal tenure of posting and they are eligible to be transferred in accordance with the transfer policy.

10. Accordingly, this petition stands allowed to the extent mention above. All pending application(s), if any, are closed.

(L. Narayana Swamy)
Chief Justice.

22nd December, 2020
(*mamta*)

(Anoop Chitkara)
Judge