

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 247 of 2020 (O&M)

Date of decision: 24.02.2020

Nisha

... Appellant

Versus

State of Haryana

... Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Sudhanshu Makkar, Advocate,
for the appellant.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This appeal has been filed by the appellant being aggrieved by an order dated 17.1.2020, passed by the learned Single Judge. The writ petition was filed by the petitioner being aggrieved by orders dated 22.8.2019 (Annexure P-2), and 13.9.2019 (Annexure P-5), by which the petitioner was transferred from Banarsi Dass Gupta Government Senior Secondary School, Manheru, Block Bhiwani, District Bhiwani to Government Senior Secondary School, Nanheri, Block Tohana, District Fatehabad, and subsequently, from Government Senior Secondary School, Nanheri, Block Tohana, District Fatehabad, to Government Senior

Secondary School, Karandi, Block Jakhal, District Fatehabad.

The petitioner, being aggrieved by the aforesaid transfers, had filed the writ petition on the ground that the impugned orders of transfer were in violation of the transfer policy as well as on the ground that the petitioner, being the only child, was required to look after her ailing father and was, therefore, required to stay at Bhiwani.

Learned counsel for the appellant submits that the appellant should have been treated as a person working against the voluntary deemed vacancy instead of involuntary deemed vacancy, as defined under the policy, and should have been permitted to continue at her place of posting for the regular tenure of three years. It is submitted that the impugned orders of transfer are in violation of the transfer policy, and therefore, the same be quashed. He further submits that the appellant was required to forcibly participate in the transfer drive, while treating her to be a person occupying an involuntary deemed vacancy, and in such circumstances, the impugned orders of transfer be quashed.

We have extensively heard the learned counsel for the appellant.

The learned Single Judge, while taking into consideration the provisions of the transfer policy, has held that the petitioner has been transferred in accordance with the transfer policy and that the petitioner, if aggrieved, could approach the authorities by filing a representation. The learned Single Judge, while deciding the petition, has taken into consideration the provisions of the transfer policy as well as the stand taken by the respondents in their return to the effect that transfers could be resorted to in public interest at any point of time in spite of regular tenure mentioned in the transfer policy and that a person, like the petitioner, who occupies a

temporary manual posting due to non availability of online transfer drive, has to be treated as a person working on a deemed vacancy for the purpose of transfer drive, and accordingly, the petitioner was required to participate in the drive, and has been transferred. The learned Single Judge, while taking the aforesaid aspect into consideration, has recorded a finding that contention of the petitioner regarding forcible participation in the transfer drive, is misplaced and misconceived. The learned Single Judge, after recording aforesaid finding, has also granted liberty to the petitioner to pursue the remedy, in accordance with law, in view of letter dated 27.8.2019.

It is also submitted by learned counsel for the appellant that the impugned orders of transfer are in violation of the transfer policy and that the appellant was forcibly asked to participate in the transfer drive, even though she did not fall within the parameters of voluntary deemed vacancy, as prescribed in the transfer policy.

It is to be noted that in view of the law laid down by the Supreme Court in the cases of **Mrs. Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 Supreme Court 532; Union of India and others Vs. S.L Abbas, AIR 1993 Supreme Court 2444, and National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and another, AIR 2001 Supreme Court 3309**, transfer policy is not enforceable and an order of transfer in violation thereof cannot be assailed on that ground. It is also evident that learned Single Judge has dismissed the petition, granting liberty to the petitioner to avail of the remedies available to her under letter dated 27.8.2019.

In the circumstances, we find no reason to entertain the appeal or to set aside the orders of transfer, which are alleged to be in violation of

the transfer Policy. Consequently, the appeal is dismissed. Since the main appeal itself has been dismissed, no orders are required to be passed in CM-652-LPA-2020, for adducing additional evidence.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 24, 2020
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: NO