

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

C.W.P.No. 8591 of 2020

Date of Decision:- 26.08.2020

Savita

....Petitioner

vs.

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate,
for the petitioner.

Mr. Amit Aggarwal, DAG, Haryana.

Mr. Kamaldeep Sehra, Advocate,
for respondent No.3.

SUDHIR MITTAL, J.

The petitioner is aggrieved because her transfer from Government College, Jind to Government College Panchkula has been cancelled.

The petitioner has been working on the post of Associate Professor (Political Science) in Government College, Jind since 10.07.2014. Her husband and children reside in Panchkula along with her father-in-law. The father-in-law is stated to be a cancer patient and the petitioner is statedly suffering from osteo-arthritis. Thus, she requested for her transfer to a Government College in Panchkula or a nearby place. Her request was accepted and transfer order dated 16.06.2020 was issued. Respondent No. 3

was ordered to be transferred to Government College, Jind against the post vacated by the petitioner. However, the said transfer order was cancelled vide order dated 18.06.2020. This has led to the filing of the present writ petition.

Upon being put on notice, the State of Haryana and respondent No.3 have filed their respective short written statements. The petitioner has filed a counter to the short written statement filed on behalf of respondent No.3.

On behalf of the State of Haryana, it has been pleaded that although the post held by the petitioner is transferable in nature, no employee has a right to seek a transfer. The transfer order of the petitioner was cancelled as upon representation made by respondent No.3, it was found that his transfer to Jind was not justified. He is not the longest serving teacher in Government College Panchkula and, thus, his transfer to Jind was incorrect and unjust. The policy of transfer applicable to employees of the State of Haryana annexed as Annexure P-2, is however admitted.

In the short written statement filed on behalf of respondent No. 3, it has been pleaded that the transfer of the petitioner was actuated on account of political considerations and deserved to be cancelled.

As mentioned herein-above, a counter to the short written statement filed on behalf of respondent No.3, has been filed by the petitioner. Along with the counter, a document dated 13.02.2019 has been annexed as Annexure P-6 and one dated 14.02.2019 has been annexed as Annexure P-7. Document Annexure P-6 is an earlier transfer order of respondent No.3 which was cancelled vide order Annexure P-7. On the basis of these orders, it has been submitted that respondent No. 3 is a well-

connected person and is able to stay on in Panchkula on account of his connections.

Learned senior counsel for the petitioner has argued that order dated 18.06.2020 cancelling the order of transfer dated 16.06.2020 so far as the petitioner is concerned, is vitiated on account of malafides. Once the Competent Authority had found that the petitioner had a genuine ground to seek transfer, the order of transfer could not have been cancelled unless strong and cogent reasons were brought to the notice of the Competent Authority. The record does not indicate that any such strong or cogent reasons existed to justify passing of the impugned order dated 18.06.2020. On the contrary, the record indicates that the said order is malafide and has been passed only on account of the fact that respondent No. 3 has been able to manipulate the concerned authorities. Orders Annexure P-6 and Annexure P-7 established beyond doubt that respondent No. 3 is very well connected and is managing to stay on in Panchkula by utilising his connections. He has been posted at Panchkula since 02.11.2002 and this further goes to establish his approach in the concerned quarters.

Learned State counsel supports the impugned order dated 18.06.2020 and argues that an order transferring an employee or cancelling a transfer order is purely administrative in nature. Such an order is not open to challenge unless some procedural illegality is pointed out. No such illegality has either been pleaded or argued and, thus, the order dated 18.06.2020 does not call for any interference. Further, the policy of transfer annexed as Annexure P-2 is not applicable to College employees and thus the petitioner cannot draw any sustenance from the said policy. The writ petition is without merit and deserves to be dismissed

Learned counsel for respondent No. 3 has argued that one Ms. Preeti Nath has been working in Government College Panchkula since the year 1987 and is the longest serving Associate Professor in the said institution. Respondent No. 3 has been serving only since the year 2002 and, thus, his transfer vide order dated 16.06.2020 was not justified. A mistake had been made and the same has been corrected vide the impugned order. Thus, the said order is legal and does not deserve to be set aside.

From the pleadings of the parties and the arguments raised on their behalf, it is apparent that the post held by the petitioner is transferable in nature. It is also apparent that the Competent Authority found request for transfer to Panchkula to be justified. The Transfer Policy Annexure P-2 has been admitted. Thus, the questions which need to be answered are (a) whether the request of Respondent No. 3 to cancel order of transfer dated 16.06.2020 so far as he was concerned, was justified only on account of the fact that he did not have the longest tenure in Government College Panchkula and (b) whether the State is justified in arguing that although Transfer Policy Annexure P-2 is applicable in the present case, the terms thereof do not apply to employees of Government Colleges.

The record as it stands does not support the contention of learned counsel for respondent No.3 that one Ms. Preeti Nath has been working in Government College, Panchkula since the year 1987. Thus, his oral argument cannot be accepted. Assuming that in fact there is another employee who has had a longer tenure than respondent No. 3, it cannot justify the cancellation order dated 18.06.2020. There is no denial of the fact that respondent No. 3 has been serving in Government College Panchkula since 02.11.2002 and has spent about 20 years in the said College. The

request of the petitioner having been found genuine, the Competent Authority directed the transfer of respondent No. 3 in place of the petitioner. On finding that there was an employee who had served longer in the College, passing of a cancellation order should not have been the natural outcome. As a result of the cancellation order, the petitioner has been made to suffer without taking into consideration the fact that the transfer in the first instance was necessitated on account of her genuine difficulties. After the petitioner was made to join at Government College, Panchkula, remedial steps, if any, could have been taken. As things stand, it is apparent that respondent No. 3 has good connections in the Department and is able to get his transfer orders cancelled in no time.

For decision of the second issue, it is necessary to reproduce Clause (iii) of the Policy Annexure P-2.

“(iii) The maximum period for continuously serving on a post shall normally be five years. This maximum period shall not be applicable in respect of the employees who are working in Colleges, Schools and laboratories including employees working in Industrial/Technical Training Institutions. This maximum period of five years shall also not apply to Government employees both gazetted and non-gazetted who are due to retire within the next two years and they may be allowed to continue on their present posts till retirement.”

The aforementioned clause states that maximum period of 5 years shall not be applicable in respect of employees working in Colleges, Schools and Laboratories. This implies that the stipulation of maximum continuous service on a post for 5 years is not enforceable so far as college

employees are concerned. It does not bar transfer of a college employee who has served in excess of 5 years on a particular post. An employee cannot seek his transfer on the ground that he has served continuously on a post for 5 years or more. He also cannot seek directions for transfer of another employee who has served for 5 years or more. However, the Competent Authority can transfer an employee who has served continuously for 5 years or more if administrative exigency so requires. In the instant case, the competent Authority found that the petitioner deserved to be transferred to Panchkula and accordingly ordered transfer of respondent No. 3 to replace her in Government College, Jind. Thus, there is no illegality in the transfer order and the argument raised to the contrary is rejected.

For the aforementioned reasons, the writ petition is allowed and impugned order dated 18.06.2020 (Annexure P-4) is quashed. The transfer order dated 16.06.2020 (Annexure P-3) be given immediate effect to.

August 26, 2020
poonam

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned **Yes**

Whether reportable **Yes**