

Sr. No.211

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

**CWP-9042 of 2020 (O&M)
DATE OF DECISION : 24.09.2020**

Anil Garg

...Petitioner

Versus

State of Punjab & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Namit Gautam, Advocate,
for the petitioner.

Mr. Vikas Mohan Gupta, DAG Punjab.

Mr. Salil Sablok, Advocate
For respondent No.3.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

1. Impugned here is an order dated 26.06.2020(Annexure P-3) by virtue of which petitioner has been transferred from Patiala to Bhatinda vice respondent No.3, who has been transferred to Patiala.

2. Ordinarily, this court would refrain to interfere in a matter of transfer, being part of routine administration/service exigency, unless case of patent illegality/extreme hardship and/or malafide or favouritism is made out.

3. Petitioner pleads that he joined the Health Department as Medical Officer on 27.07.1989. He was transferred to Patiala on 21.12.2017 and his retirement is due on 30.09.2021. However, in gross violation of Government

transfer Policies, *inter alia*, Annexures P-4 and P-5, which, *dehors* existence of any exceptional circumstance or administrative exigency, bar transfer of an employee before completion of three years of posting at a station. However, petitioner has been transferred to Bathinda, that too, when he is now having just about a year (policy protects less than two years) of service left before his superannuation in September, 2021.

5. In writ petition, it has been specifically stated (para No. 16) that respondent No.3 has remained posted at Patiala for more than two decades before his last transfer to Bhatinda. And yet, to extend undue benefit to him, petitioner has been uprooted in gross violation of transfer Policies. The impugned order lacks any administrative exigency, rather reflects favouritism, pleads the petitioner.

6. In the reply filed by official respondents it has been averred that pursuant to the impugned order, the petitioner stood relieved on 30.06.2020. Respondent No.3 joined at Patiala on the same very day. The petitioner, however, took leave for 29.06.2020 to 02.07.2020 vide email dated 03.07.2020. He concealed the factum of having been relieved on 30.06.2020, when interim order dated 02.07.2020 was passed by this court, staying the operation of impugned transfer order. This position was thus not brought forth. Not annexures P/4 & P/5, but R-3/1 is the transfer policy dated 23.04.2018 applicable herein, is the stand taken. Per R-3/1, a Group A and B employee can be transferred before completion of two years on administrative reasons by recording special reason. The petitioner has been transferred after a stay of about two and a half years at Patiala. As such, there is no illegality in the impugned order. Dismissal of the petition is thus sought.

7. Respondent No.3, inter alia, also pleads in his reply that petitioner cannot seek shield of Policies dated 13.04.2007 and 11.04.2017 (Annexures P-4 and P-5) as the transfer of the petitioner is governed by policy (Annexure R-3/1). Respondent no.3 also objects to maintainability of the petition on the ground of concealment. It is stated that the petitioner concealed his relieving on 30.06.2020 and joining of respondent NO.3 at Patiala on the same day. Writ petition is sought to be dismissed on the ground of concealment alone. Much has been said on the work and conduct of petitioner while discharging his duties, all that is though not the stand taken in the reply filed by the employer i.e. respondents No.1/2 and hence, the same is not being referred to, neither is it relevant anyways, qua the lis in hand.

8. I have heard learned counsel for the parties and have gone through the pleadings/record herein.

9. Factually, it emerges that respondent No.3 has remained posted at or within territory of Patiala, for over two decades, on one post or the other. Perusal of transfer policy dated 23.04.2018, Annexure R-3/1, filed and relied by the State, would reveal that transfer of the petitioner seems to be in gross violation thereof. Neither has it been shown that any administrative exigency warranted transfer of the petitioner, before completion of three years period of his posting at Patiala, nor any special reasons recorded, to deny the petitioner benefit of transfer protection, owing to his impending retirement about 1 year and 3 months away. Reliance placed on **Meghmala & Ors. Vs. G. Narasimha Reddy & Ors. SLP(C) Nos. 14447-14448 of 2007**, to that extent, is misplaced.

10. Learned counsel for respondent No.3 has also relied upon Division Bench judgment of this Court in **Union of India & Anr. Vs. The Central Administrative Tribunal, Chandigarh & Anr.** CWP No. 18210 of

2016, decided on 29.09.2016 and **Roshan Vs. State of Haryana & Ors.**, CWP No. 14950 of 2013, decided by Coordinate Bench of this Court on 16.07.2013.

11. Having considered the rival submissions of learned counsel representing respective parties, I am of the opinion that impugned transfer order dated 26.06.2020(Annexure P-3) is not sustainable and is liable to be set aside.

12. Policy dated 23.04.2018, R-3/1, as relied by learned State counsel reads as under:-

“The employees of Group A and Group B will not be transferred before two years. But, the transfer can be made prior to two years due to administrative reasons and in view of the serious personal problems of the officials. But such transfer of the official of Group A will be made with the prior approval of the personnel Department. Such transfer of the official of the Group B will be made by the competent authority after recording special reasons for such transfer.”

Confronted with aforesaid, the argument, canvassed by learned State counsel as well as learned counsel for respondent No.3, that above government policy is merely directory in nature and not mandatory, is totally misconceived. While said argument, in abstract, may sound correct, but not when tested herein on the touchstone of equity, balance of convenience and principles of justice. Policy may not be mandatory, but most definitely it provides the guidelines to be followed ordinarily by the administrative superiors. Sometimes, implementation thereof, in strict letter, may not be possible but it would not mean, that the spirit of administrative transparency envisaged therein is to be eroded altogether.

13. Also, Policies *ibid* do not prohibit but merely stipulate special reasons to be recorded in certain transfer cases. In the case in hand, interestingly,

respondent No.3 had remained posted at Patiala for more than two decades before he was transferred to Bathinda. Notwithstanding, in short span he is brought back to Patiala from Bhatinda vice the petitioner. No specific contrary averment has been made in the reply to petitioner, to controvert the same.

14. Admittedly, even in the impugned order, no special reasons have been assigned for transferring petitioner who had then about a year and three months of service left nor any administrative exigency borne out to bring respondent No.3 back to Patiala, who had remained posted at the very station for more than two decades. In reply to petition it is neither pleaded nor otherwise shown that before passing impugned order(Annexure P-3) any prior approval of Personnel Department was taken, and/or, there existed special reasons warranting transfer of petitioner vice respondent No.3. These may not be *sine qua non*, if the policy is merely directory, as contended, but at-least some reasons ought to be recorded for non compliance thereof. Why then waste time and energy in drafting and circulating such policies, if without any plausible reasons they are to be completely disregarded. Reason herein is clear as the daylight and not far to seek. Favouritism, it is. While on the other hand, equity is also loaded in favour of the petitioner, who has now, about a year left prior to his retirement. In the premise, the case law cited, as aforesaid, has no applicability in the case in hand.

15. In the parting, the argument of learned counsel for respondent No.3 that petition is not maintainable as the petitioner has indulged in concealment of the applicable policy, is being noticed on his insistence, but only to be rejected. In course of arguments, conceded case of both sides, since has been, that transfer policy R-3/1 *ibid*, filed/relied by State is the applicable one. Petitioner being one leave, his relieving by the Department, behind his

back, on 30.06.2020, could not have been conveyed/known to him. There is thus, no concealment either.

16. As an up shot of the discussion above, the present writ petition is allowed. Impugned transfer order dated 26.06.2020 (Annexure P-3) is set aside. Official respondents No.1 and 2 are directed to allow the petitioner to continue at Patiala, as before i.e. prior to passing of the impugned transfer order. It is, however, made clear that official respondents are not precluded from passing any fresh orders, provided any administrative exigency is made out in terms of the transfer policy governing the service conditions, in the spirit of transparency of administration.

17. Since the main writ petition has been decided, pending applications, if any, shall also stand disposed of.

September 24, 2020
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No