

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

LPA No.407 of 2020 (O & M)
In CWP No.8740 of 2020
Date of Decision: July 06, 2020

Jitender Malik

..... APPELLANT

VERSUS

State of Haryana

..... RESPONDENT(S)

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CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

. . .

PRESENT: - Mr. Ravinder Malik (Ravi), Advocate, for the appellant.

Mr. Ankur Mittal, Additional Advocate General,
Haryana.

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Sant Parkash, J

This appeal has been preferred by the appellant – petitioner, Jitender Malik, against judgment dated 30.06.2020, whereby the writ petition filed by him seeking quashing of his transfer order dated 19.06.2020, has been dismissed.

The petitioner was appointed as Assistant District Attorney in the Prosecution Department, Haryana on 23.07.2013 and was posted at Panipat. Vide order dated 14.10.2016, the appellant was transferred from the office of District Attorney, Panipat to the office of District Attorney, Jind, in compliance of which, he relinquished the charge on 03.11.2016 (Annexure P-1) and joined at Jind on 04.11.2016 (Annexure P-2). He was again transferred from Jind to the office of District Attorney, Panipat vide order dated 15.06.2019 and he joined at Panipat on 19.06.2019 (Annexure P-4).

However, after a year, he was again transferred vide order dated 19.06.2020 (Annexure P-5), impugned in the writ petition, from the office of District Attorney, Panipat to the office of District Town Planner (Enforcement), Gurugram.

Aggrieved by the aforesaid order of his transfer, the appellant approached this Court through CWP No.8740 of 2020, which was dismissed vide impugned judgment dated 30.06.2020.

Learned counsel for the appellant has contended that impugned judgment has been passed by the learned Single Judge without appreciating the pleadings and material evidence placed on record and as such, the impugned judgment is liable to be set aside. No plausible explanation is forthcoming in transferring the appellant which is in violation of Clause 2 of Online Transfer Policy dated 15.11.2018 as the petitioner has not completed five years' tenure at Panipat.

Learned State counsel has prayed for dismissal of the instant appeal submitting that the judgment rendered by the learned Single is in consonance with the settled cannons of law. Clause 2 of the aforesaid policy is not worded to say that there would be no transfer before five years, in as much as, it provides that there shall be a compulsory transfer on completion of five years.

We have heard learned counsel for the parties and with their assistance, have gone through the record.

So far as Clause 2 of Online Transfer Policy dated 15.11.2018 is concerned, the contention of learned counsel for the appellant - petitioner does not find favour as it stipulates a compulsory transfer on completion of 5 years' stay/tenure at a particular office/station. It nowhere

states that a person cannot be transferred before completion of five years.

Clause 2 of the aforesaid policy is reproduced hereunder:-

“2. BASIC PRINCIPLES:

Unless protected under a provision of this policy, every Law Officer completing 5 years stay/tenure at a particular office/station of the State shall be compulsory transferred.”

In view of the above, we do not find any merit in the instant appeal, also in view of the fact that transfer being an incidence of service, appellant has already joined the place of new posting.

However, learned counsel for the appellant contends that as per the provision contained in Clause xx of Transfer Policy dated 15.11.2018, the appellant - petitioner had moved a representation dated 23.06.2020 for cancellation of transfer order dated 19.06.2020 (Annexure P-7), which has not been decided.

The aforesaid contention of learned counsel appears to be logically sound and thus, the respondent authorities are directed to consider and decide the aforesaid representation of the appellant within 15 days of receipt of a certified copy of this order, considering the factual aspects stated therein.

The appeals stands disposed of accordingly.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

July 06, 2020

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Whether Speaking/ Reasoned:

Whether Reportable:

Yes/ No

Yes/ No