

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

CWP-14284-2020 (O&M)
Date of decision : 24.11.2020

Navdeep Sehrawat

...Petitioner

Versus

The Rohtak Cooperative Milk Procedures Union Limited (VITA) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. B.S. Patwalia, Advocate for the petitioner.

Mr. B.R. Mahajan, Advocate General Haryana with
Mr. Deepak Balyan, Advocate for the respondents.

Mr. Chirag Kundu, Advocate for respondent No.3.

ANIL KSHETARPAL, J.

This writ petition under Article 226/227 of the Constitution of India has been filed with the following substantive prayers:-

“i) to issue an appropriate writ, order or direction including a writ in the nature of Certiorari quashing the transfer order dated 7.9.2020 (Annexure P-7) vide which the petitioner who is working as Manager (Admn.) is transferred from Milk Plant, Rohtak to Sale Depot, Delhi and the said transfer being against the rules and also not possible as the post of Manager Admin i.e. the post of Petitioner is holding is only a single post in the Head Quarter and not in any Field Office i.e delhi also the order being passed due to legal malafide of the respondents.

ii). to issue an appropriate writ, order or direction

including a writ in the nature of Certiorari quashing the charge sheet dated 4.8.2020 (Annexure P-5) as the same has been issued by an authority who since had already left charge and had no jurisdiction to issue the same and the said charge sheet being issued in a completely arbitrary manner against the 1988 rules ”

The petitioner was absorbed in the services of the Rohtak Milk Producers Union on 03.08.2018 against a vacant post of Manager (Administration) w.e.f. 02.08.2018. Previously, the petitioner was working as a Labour Welfare Officer in Chaudhary Devi Lal Cooperative Sugar Mill, Gohana. The services of the petitioner and other employees of the Milk Producers Union and employees of Haryana Dairy Development Cooperation Federation Limited are regulated by the Haryana Dairy Cooperative Staff Service Rules, 1988. Rule 20 thereof provide as under:-

“20.Transfer

20.1: A person in the service of the Federation or a Union shall be liable to serve in the State of Haryana or even outside the State where the Federation or Union operates or intends to operate its activities. A member or the service of the Federation or that of Union, may be deputed to serve other dairy cooperative in the country

Provided that lending of service to other institutions shall atleast be on equivalent post and the period of deputation shall not exceed 5 years after which the employee shall revert back to his parent institution.

20.2: The Managing Director of the Federation in case of employees in the service of Federation and Chief Executive Officer in case of employees in the service of a union, shall be competent to make transfers.

Provided that employee of the Federation shall not be

transferable to a Union(s) or an employee of a union shall not be transferable to the Federation or any other union except whose services are lent on deputation.

Provided further that the employees of the Federation in Group D shall not be transferable from their unit of allocation to the other.

Provided further that the Managing Director of the Federation shall be competent to post or transfer Chief Executive Officer and Assistant Accounts Officer of a Union.

20.3: The management may require an employee to hold an additional charge or officiate in two or more posts in addition to the post held by him.”

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.

Learned counsel for the petitioner has contended that the order of transfer of the petitioner from Rohtak to New Delhi is illegal and arbitrary as the petitioner was appointed on the post of Manager (Administration) which is a single member cadre and there is no post of Manager (Administration) in the field. He further contended that the petitioner has been posted at a Depot, New Delhi which does not have a turnover of Rs.5 crores, the minimum requirement for posting a Manager. He further contended that the charge-sheet was issued on 04.08.2020 under the signatures of Chief Executive Officer who had ceased to hold the charge as a new incumbent had joined by that time.

On the other hand, learned Advocate General Haryana while drawing attention of the Court to Rule 20 has submitted that the petitioner was holding a transferable post and he could be transferred even outside the State. Hence, he contended that the transfer of the petitioner is in interest of

the administration. He further contended that the petitioner has not been issued charge-sheet only by respondent No.3 against whom mala fide has been alleged, however, it was on the directions of the Managing Director of the Federation. He drew attention of the Court to the documents Annexure R-3, R-2 and R-1 in this regard. He further submitted that the petitioner was directed to look after Marketing Division vide letter dated 10.05.2019 and, therefore, the petitioner is not correct in claiming that he is required to be posted only as Manager (Administration). He further drew attention of the Court to document Annexure R-4 dated 30.04.2020 whereby the petitioner was entrusted with the work of procurement of the milk. Hence, he submitted that there is no substance in the petition.

This Court has critically analyzed the arguments of learned counsel for the parties. Rule 20 no doubt enables the employer to post any employee even outside the State where the Federation or the Union operates or intend to operate its activities. The petitioner has been posted approximately 70 KMs away from his previous place of posting. It is not in dispute that the Federation and the Union both operate in Delhi and have a Sale Depot.

Still further, the petitioner has been posted out of Rohtak because of disciplinary proceedings initiated against him. It was on 04.08.2020, the Managing Director directed Chief Executive Officer, Milk Union Rohtak to reinstate the petitioner while revoking suspension and post him outside Rohtak. The C.O. was also advised to get a detailed enquiry conducted into the allegations against the petitioner. However, no action thereon was taken by the C.O. and the petitioner was permitted to join as

Administrative Incharge of Haryana Milk Plant, Rohtak. Thereafter, on 14.08.2020, Managing Director once again wrote a letter to the Chief Executive Officer expressing displeasure on non-compliance of the directions issued. Still no action was taken, therefore, Managing Director directed that the petitioner be posted on sanctioned vacant post of Manager Marketing in Sales Depot at Delhi.

In these circumstances, mala fide alleged against respondent No.3 does not find corroboration from the record. In the present case, the disciplinary proceedings have been initiated against the petitioner. In these circumstances, certain freedom has to be given to the employer with regard to transfer and posting. The petitioner has not been posted at far away place. Hence, this Court does not find it appropriate to interfere in the order of transfer and posting.

Next aspect pressed by the learned counsel for the petitioner is with respect to the statement of charges of charge-sheet was signed by Officer who had ceased to hold the post of Chief Executive Officer as new incumbent had joined. It is not in dispute that subsequently, the previous Chief Executive Officer, who had signed the statement of allegations, had rejoined on the post of Chief Executive Officer. Still further, as noticed above, the disciplinary proceedings have been initiated by keeping the Managing Director in loop. The statement of allegations against the petitioner was issued when Managing Director had directed the CEO to get a detailed enquiry conducted. In these circumstances, at this stage, this Court does not find it appropriate to interfere.

Keeping in view the aforesaid discussions, the writ petition is

disposed of while directing the respondents to conclude the departmental enquiry pending against the petitioner within a period of four months positively. This Court has not expressed any opinion on the merits of the controversy involved and the Enquiry Officer is expected to independently appraise the material brought on record and submit his report.

With these observations, the writ petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid order.

24.11.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No