

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

CWP-14775-2020 (O&M)

Date of decision: September 28, 2020

Anil Sharma

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Bal, Senior Advocate with
Mr. Sewa Singh, Advocate
for the petitioner.

Mr. Vikas Mohan Gupta, Additional A.G., Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for issuance of a writ in the nature of certiorari for quashing the impugned order dated 7.9.2020 (Annexure P-1) qua the petitioner vide which he has been transferred from his present place of posting against the transfer policy dated 23.4.2018 (Annexure P-2) and secondly on the ground that the same is malafide at the instance of respondent No.2-Chief Soil Conservator of Soils.

Learned Senior counsel has argued that the date of birth of the petitioner is 1.9.1963 and on attaining the age of superannuation, the petitioner is to retire on 31.8.2021, i.e. within a period of less than one year. Learned Senior counsel has referred

to the policy regarding general transfers and postings in respect of government employees of the State/Public undertakings, which reads as under :-

“1.1. (c) Group A and Group B Officers shall not be transferred before 2 years. But under administrative conditions or because of personal serious problem of the officers, an officer could be transfer before 02 years. But such transfer of Group A Officer shall be made with the prior approval of the personnel department. Transfer of Group B Officer could be made with the approval of the competent authority of the department by recording special reasons.

Special Case

2(a)(v) Such employees who have less than 02 years to retire.”

Learned Senior counsel has further argued that the petitioner has given a legal notice (Annexure P-6) for seeking his promotion to the post of Chief Conservator of Soil as he has acquired the requisite two years’ experience for being considered to the said post and has also filed CWP-12348-2020, in which notice of motion is issued and the case is now fixed for 6.10.2020 for final disposal.

Learned Senior counsel has further submitted that on account of the said fact, some disciplinary proceedings were initiated

against the petitioner for non-completion of files and then an advisory was issued to him on 3.8.2020 that the petitioner should dispose of the pending work as Conservator of Soil, SAS Nagar and ensure to inform the Chief Conservator of Soil in this regard. Learned Senior counsel has further submitted that on account of pursuing his legal remedy, respondent No.2 in a malafide manner has got the transfer of the petitioner vide impugned order dated 7.9.2020.

Learned Senior counsel has further argued that one Mohinder Singh, Conservator of Soils, at serial No.1 in the transfer order dated 7.9.2020 stands transferred from Jalandhar to SAS Nagar, Mohali against the petitioner and visa-versa, the petitioner is transferred to Jalandhar. Learned Senior counsel has further submitted that Mohinder Singh is shown to be transferred on his request which is contrary to the request made by him that he wants to stay at Jalandhar. Learned Senior counsel further submits that the petitioner is wrongly shown to be transferred on administrative grounds.

Learned Senior counsel has further argued that there is an endorsement in the impugned order at serial No.1 that the order be communicated to the Chief Conservator of Soils with reference to his single file No.62 dated 28.8.2020, which pertains to the petitioner

vide which the aforesaid advisory was issued. It is further argued on both counts that the petitioner has left less than one year service as he is going to retire on 31.8.2020 and his transfer is malafide, the same be cancelled.

Learned Senior Counsel has referred **2007 Volume II Recent Services Judgments Page 433, Sandeep Kaur Vs. State of Punjab**, wherein, the transfer of an employee was quashed on the ground that the employee has undergone two heart surgeries and his transfer was malafide.

Reply by way of affidavit of Joint Secretary, Government of Punjab, Department of Agriculture and Farmers' Welfare is filed and is placed on record.

It is stated in the affidavit that the petitioner has joined the department on 5.9.1989 and out of his approximate 31 years of service, the petitioner remained posted in Mohali Division/Sub-Division for a period of 29 years approximately. The details of his postings at Mohali for 29 years are given in para 2 of the affidavit. It is further stated that under the same transfer policy, regarding 'Tenure' at para 1.1(a) reads as under :-

1.1 (a) Group A and Group B Officers shall be entitled to remain posted in one district for a maximum period of 15 years. But this condition shall

not apply to the Officers working in District Cadre and Head Office.”

It is, thus, submitted that since the petitioner is having a stay in Mohali about 29 years, he is being rightly transferred. It is further stated that the transfer of the petitioner was on administrative ground, in view of the advisory given by the government on 3.8.2020 regarding showing laxity in the work and considering his conduct. The said advisory was issued much before filing of the aforesaid CWP-12348-2020. It is justified that on that account, on administrative exigencies the petitioner has been transferred and he is trying to mix the two issues, i.e. his promotion and transfer. It is further stated in the reply that there is no malafide while issuing the transfer order which relates to 21 officers and all the officers have joined their new place of posting. Even respondent No.1 has joined at Mohali on 14.9.2020 in place of the petitioner. It is further stated that in case of *inter se* transfers, there is no requirement of relieving, as once joining is submitted by respondent No.1, who has taken the charge, the petitioner stands relieved. It is further submitted that the impugned transfer order dated 7.9.2020 was not issued by respondent No.2 as the competent authority is the Additional Chief Secretary (Development), Department of Agriculture and Farmers’ Welfare, Punjab. In the reply, certain observations were made with regard to the case of the petitioner seeking

promotion, however, those were not considered necessary in the present petition as the same is subject matter of CWP-12348 -2020 and this Court is only considering the validity of the transfer order. It is further submitted that even in case of clause 1.1.(c), read with clause 1.1(a) and clause 2(a)(v), wherein an employee is retiring within a period of less than two years, due to administrative reasons, if transfer/posting is not possible to have been made as per above, the competent authority will not be bound to take action as per this clause. Thus, the transfer of the petitioner is an exception to the said clause .

After hearing the counsel for the parties and keeping in view the facts and circumstances of the case, the present petition is liable to be dismissed for the following reasons :-

- (i) As per the policy dated 23.4.2018, it is provided that the tenure of the Group A and B Officer in one district shall not be more than 15 years, whereas the petitioner remained posted in SAS Nagar, Mohali for a period of 29 years out of his 31 years of service;
- (ii) So far the case of the petitioner under Clause 1.1(c) is concerned, the respondents have given a valid reason that on administrative reasons the petitioner stands transferred. Certain actions taken against the petitioner, while issuing the advisory is sufficient to transfer the petitioner to the present place of posting;

- (iii) From a bare perusal of the petition and the reply by way of affidavit, it is apparent that there is no malafide on the part of respondent No.2, who is Chief Conservator of Soils and is not the competent authority, to issue the transfer order'
- (iv) It is now well settled that the transfer policies are issued only for the administrative purposes and no employee can ask for the implementation of the same as a matter of right.
- (v) The facts and circumstances of the case are entirely distinguishable from **Sandeep Kaur's case (supra)**. The petitioner in the said case was able to prove malafide while ordering her transfer and the Court also considered her medical grounds. But In the present petition, nothing is mentioned that the petitioner is suffering from any medical disability and as observed above, the petitioner has failed to prove any malafide.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

September 28, 2020
satish

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No