

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 15338 of 2020

Date of Decision: 24.9.2020

Sunita Kalyan

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sushil Saini, Advocate
for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari seeking quashing of the impugned transfer order dated 25.8.2020 (Annexure P-4) vide which the petitioner was transferred from District Bureau, Employment Generation and Training, Jalandhar to the Head Office and the order dated 16.9.2020 (Annexure P-8), vide which the representation filed by her against the order dated 25.8.2020, was dismissed while drawing the conclusion that the transfer of the petitioner has been made due to *bona fide* administrative reasons in the public interest and cannot be cancelled.

Learned counsel for the petitioner submits that the petitioner has been performing her duty as Deputy Director at District Bureau Employment Generation and Training Office, Jalandhar. Learned counsel further submits that vide order dated 12.7.2019, the petitioner was

transferred from Jalandhar to Bathinda, which is more than 150 kilometers away from Jalandhar. The petitioner approached this Court by way of CWP No. 20043 of 2019 and vide order dated 23.7.2019, the transfer order dated 12.7.2019 was ordered to be kept in abeyance, till the representation of the petitioner was decided. Ultimately, vide order dated 19.8.2019 (Annexure P-3), the transfer order was cancelled by the Secretary to the Government of Punjab. He further submits that now again vide impugned order dated 25.8.2020, the petitioner has been transferred from Jalandhar to Head Office at Chandigarh without considering the fact that she is to retire in January 2023 and she is to look after her ailing widowed mother, who is a cancer patient and her husband is posted at Chandigarh.

It is further submitted that the petitioner belongs to Group-B employees, who cannot be transferred before the expiry of two years' period, as per the Transfer Policy dated 23.4.2018 (Annexure P-5). He further submits that the petitioner had moved a representation dated 25.8.2020 (Annexure P-6) and when the said representation was not decided, she preferred a Civil Writ Petition No. 13293 of 2020 which was disposed of vide order dated 1.9.2020 with a direction to decide the representation of the petitioner dated 25.8.2020 and till then the transfer order dated 25.8.2020 was ordered to be kept in abeyance. Learned counsel also submits that the Secretary, Govt. of Punjab, Department of Employment Generation and Training-respondent No. 1 vide order dated 16.9.2020 (Annexure P-8) rejected the representation of the petitioner.

Learned counsel for the petitioner has further submitted that the home town of respondent No. 3-Jaswant Rai is at Jalandhar and the department has wrongly transferred him to his home town at Jalandhar.

I have heard the learned counsel for the petitioner at length and have also taken into consideration the difficulties being faced by the petitioner. After going through the impugned order dated 16.9.2020, passed by respondent No. 1-this Court is not inclined to interfere in the said order as out of five posts of Deputy Director at the Headquarters, only one Deputy Director has been looking after the affairs of the department and four posts are lying vacant. The working of the department has been declared as that of an essential department during the period of COVID-19. Moreover, the husband of the petitioner is also posted at Chandigarh (His department has not been mentioned in the present writ petition).

The abstract from the impugned order dated 16.9.2020 (Annexure P-9) reads as under:-

“There are two Deputy Directors currently in service who are senior to applicant/petitioner. At Sr. No. 4 in the seniority list, Smt. Minakshi Sharma, is a person with disability, who has a stay on her transfer from the Hon'ble High Court. The other Deputy Director Shri Anurag Gupta, who is at Sr. No. 6 is suffering from cancer and has been transferred from Headquarters to District Bureau of Employment and Enterprises, Patiala at his home town on medical grounds. The posting of only one Deputy Director against sanctioned strength of five (5) posts at the headquarters is seriously hampering the functioning of the department especially during the period of COVID-19 pandemic, when the services of the department have been declared as essential department by Government of Punjab

Special administrative circumstances have been created due to a large vacancy position at the Directorate (HQ). The petitioner/applicant is the next senior most Deputy Director as per the seniority list whose services in the field have been commendable as evident from the supporting documents given

with her representation. A competent senior officer is required to handle the office work at the headquarters. The difference of time taken to travel between Ludhiana and Jalandhar and Ludhiana and Chandigarh (HQ) is not very much and the applicant being a group A officer is also entitled for Government accommodation at Chandigarh.”

The transfer of an employee is an element of service and the employer, while effecting such transfer has to take in consideration the administrative exigencies for such transfer. From a perusal of the order dated 16.9.2020, it could be made out that the petitioner being one of the senior most Deputy Directors, her services are required at the Headquarters. Thus, such discretion of administrative exigencies, exercised by the employer, cannot be found fault with.

Keeping in view the above, I do not find any merits in the present petition and the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

September 24, 2020
Gurpreet

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