

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

(Proceedings conducted through video conferencing)

CWP No.21475 of 2020(O&M)

Date of decision: 17.12.2020

Gajender Singh

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gaurav Mohunta, Advocate for the petitioner.

Mr. S.S. Pannu, DAG, Haryana.

REKHA MITTAL, J. (Oral)

Challenge in the present petition has been directed against order dated 20.11.2020 (Annexure P-1) whereby the petitioner has been transferred from Government College, Bawal to Government College Bissar Akbarpur (Nuh) on administrative grounds, in violation of instructions dated 18.11.2020 (Annexure P-2).

Counsel for the petitioner would argue that Government of Haryana in the Department of General Administration issued instructions dated 18.11.2020 to say that transfer of a government employee of any Department/Board/Corporation/University etc. (other than of AIS/HCS Officers) within the same or different station or from one department/office to another issued by the competent authority shall not be valid, if the same have not been issued through HRMS software. He would argue that as per these instructions, the transferee will not join at the new station/office without transfer order being issued on HRMS software by the competent authority. It is vehemently argued that it is admitted position of the case that transfer of the petitioner has not been made through HRMS software,

as such, the order impugned cannot be allowed to sustain and may be set aside.

Another submission made by counsel is that the petitioner made complaint against Sh. N.K. Kansal, Ex.CDC, Government College Bawal with regard to appointment of extension lecturers in the aforesaid college, copy whereof is Annexure P-3. It is argued that on the basis of complaint made by the petitioner, an officer was appointed by the Director General, Higher Education, Panchkula who was scheduled to visit the College on 22.10.2020 vide office order dated 21.10.2020 (Annexure P-6); the petitioner along with others mentioned in the said order were required to remain present for defence. It is argued that the petitioner has been transferred from the College at Bawal with a mala fide intention as he had made complaint against Sh. N.K. Kansal, Retired Principal (CDC Government College, Bawal).

Counsel for the petitioner, in response to a query if Sh. N.K. Kansal could possibly have any role to play in his transfer from Government College, Bawal could not say anything much less substantial. The transfer order has been made by the Principal Secretary to Government of Haryana, Higher Education Department, Chandigarh. The petitioner has not alleged any mala fide against the said authority. I would hasten to add that the petitioner joined at Government College, Bawal in the year 2017 and he has been transferred after about 3 years of his joining the said College. In the given scenario, the petitioner has failed to substantiate his plea that his transfer vide order impugned is the result of mala fide and liable to be set aside.

This brings the Court to contention of the petitioner in respect of violation of instructions dated 18.11.2020. Indisputably, the said

instructions are not statutory in nature and the same are merely administrative. Hon'ble the Supreme Court in **State of U.P. and others vs. Gobardhan Lal, AIR 2004 SC 2165** while dealing with the question of transfer of Sh. Gobardhan Lal as District Supply Officer, Meerut to head office of Food Commissioner at Lucknow has held in paras 7 and 8, quoted thus:-

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no

infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

When the case is examined in the light of aforesaid observations, the petitioner cannot seek indulgence of this Court for quashing order of his transfer merely because the same has been made in transgression of administrative guidelines.

No other point has been raised.

For the foregoing reasons, finding no merit, the petition is dismissed leaving the parties to bear their own costs.

DECEMBER 17, 2020	(REKHA MITTAL)
‘D. Gulati’	JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no