

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

(Proceedings conducted through video conferencing)

CWP No.22542 of 2020(O&M)

Date of decision: 23.12.2020

Kapil Kumar Punia

.....Petitioner

VERSUS

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate for the petitioner.

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

REKHA MITTAL, J.

By invoking Article 226 of the Constitution of India, the petitioner prays for issuance of writ of certiorari quashing transfer order dated 12.12.2020 vide which the petitioner was transferred from Deputy District Education Officer (in short 'DEEO'), Nuh (Mewat) to Principal, District Elementary Educaiton Officer (in short 'DIET'), Tejli (Yamunanagar).

Counsel for the petitioner has challenged the order impugned primarily on three counts. It is argued that that the petitioner was posted at Nuh (Mewat) vide order dated 21.08.2018 (Annexure P-1). He was transferred as Principal, DIET, Pali (Faridabad) vide order dated 8/16.10.2020 (Annexure P-2). Vide order dated 20/21.10.2020, order (Annexure P-2) was cancelled. Vide order impugned, the petitioner has been transferred as Principal, DIET, Tejli (Yamunanagar) and respondent No.2 was transferred from DEEO Yamunanagar to DEEO Nuh (Mewat). It

is argued that as per policy issued by the Government of Haryana, no officer can be transferred before expiry of three years of posting at a particular station. For this purpose, reference has been made to letter dated 07.04.1989 (Annexure P-7) wherein, in para (ii), it has been maintained that in the interest of efficiency of work, minimum period for continuously serving on post shall normally be three years. Employee should not be transferred from a post earlier unless it is essential to do so on exceptional grounds of public interest.

The second submission made by counsel is that earlier order of transfer (Annexure P-2) was cancelled vide order dated 20/21.10.2020 (Annexure P-3), therefore, there was no occasion for transfer of the petitioner within a period of two months from issuance of earlier order of transfer, which was later cancelled.

Another submission made by counsel is that Anoop Singh, respondent No.2, remained posted in District Nuh (Mewat) for a period of 6 years and was transferred to Yamunanagar just two months before his transfer again to Nuh (Mewat) as District Elementary Education Officer, Nuh (Mewat). It is argued that respondent No.2 has been transferred to Nuh (Mewat), his home District, against instructions issued by State of Haryana.

I have heard the counsel for the petitioner, perused the paper book particularly the documents annexed to the petition.

Before advertng to submissions made by counsel for the petitioner, it is pertinent to note that ordinarily this Court would not interfere in transfer orders made by authorities in exercise of their administrative jurisdiction. Equally true is that if the transfer is actuated by

mala fide, substantially proved on record, the same may be set aside in exercise of jurisdiction under Article 226 of the Constitution of India.

Reverting to the case at hand, petitioner has not alleged any mala fide against the authority involved in the process of transfer of petitioner from Nuh to Yamunanagar. The petitioner got posting to Nuh (Mewat) in August, 2018, transfer order dated 08/16/10.2020 in respect of his transfer to District Institute of Educational Training, Pali (Faridabad) was cancelled within a few days of the said transfer. Meaning thereby, the petitioner remained working at Nuh (Mewat) for a period of two years and approximately four months. The instructions pressed into service do not owe their origin to a statute or to say that the same are not statutory in nature. Even as per the instructions, there is no complete bar of transferring an employee prior to three years. 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 submissions made by counsel for the petitioner with regard to violation of administrative instruction to challenge his transfer are examined in the light of aforesaid observations, the petitioner is not entitled to seek indulgence of this Court for quashing order of transfer merely because the same has been made in transgression of administrative guidelines.

The contention with regard to transfer of respondent No.2 after two months of his previous transfer or posting to his home town is not meritorious, as counsel for the petitioner has failed to point out any statutory instructions or law or judicial precedence that creates a complete bar against transfer of an employee to his home town.

For the foregoing reasons, I do not find any merit and the petition is dismissed in limine.

DECEMBER 23, 2020
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no