

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-65-2021 (O&M)

Date of decision: 24.03.2021

(PROCEEDINGS THROUGH V.C.)

State of Haryana and another

..... Appellants

Versus

Anil Sheoran and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

PRESENT: Ms. Shubhra Singh, Addl. A.G., Haryana,
for the appellants.

Mr. R.K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate for respondent No. 1.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-174-LPA-2021

Prayer made in this application is for condonation of delay of
6 days in filing the present appeal.

For the reasons mentioned in the application which is duly
supported by an affidavit of Sh. Virbhan Singh Tanwar, IFS, Principal
Chief Conservator of Forests, Panchkula, Haryana, the present
application is allowed. Delay of 6 days in filing the appeal stands
condoned.

LPA-65-2021 (O&M)

Challenge in this appeal is to the order dated 22.01.2020,

passed in writ petition filed by Anil Sheoran-respondent No. 1 herein, challenging the order dated 06.01.2020 (Annexure P-5), vide which respondent No. 1-petitioner-Anil Sheoran, had been transferred from Panchkula to Ambala and Rakesh Kumar-respondent No. 2 herein, had been retained at Panchkula, rendering the order dated 13.12.2019 (Annexure P-1) inoperative qua the petitioner.

The said writ petition has been allowed by the learned Single Judge by coming to a conclusion that respondent No.1-petitioner has rightly been transferred from Kaithal Range to Panchkula and the transfer order of respondent No. 2-Rakesh Kumar has been wrongly cancelled for keeping him at Panchkula.

It is the contention of learned counsel for the appellant-State that the transfer of an employee is the prerogative of the employer and the Court normally should not interfere in the said aspect. It is an incident of service especially, when an employee is working on a transferable post. No employee has a right to be retained at a particular station or being posted thereon and, therefore, on this principle itself, the order passed by the learned Single Judge, cannot be sustained. That apart, it is asserted that the policy instructions on which the reliance has been placed were applicable for the particular year i.e. 2004-05 and the same did not have any application in the subsequent years and, therefore, the same could not have been pressed into service for giving the benefit to the respondent No. 1-petitioner-Anil Sheoran. Assertion has also been made that the transfer order of respondent No. 2-Rakesh Kumar, vide which he was transferred from Panchkula to Ambala had been cancelled on sympathetic

ground and, therefore, there was justifiable reason for continuing respondent No. 2-Rakesh Kumar at Panchkula. Therefore, the judgment passed by learned Single Judge, dated 22.01.2020 cannot sustain and deserves to be set aside.

We have considered the submissions made by learned counsel for the appellant-State, but do not find ourselves in agreement with the said submissions. There is no dispute with regard to the proposition that transfer is an incident of service and it is the prerogative of the employer to appoint/post an employee on a particular post at a particular station and the Court should not normally interfere in such matters. But it cannot be said that the Court is totally divested of the authority of interference while exercising its power of judicial review in administrative actions of the Government.

In the present case, the learned Single Judge, has rightly taken the facts, aspects and circumstances of the case into consideration while passing the judgment dated 22.01.2020. It is apparent that the petitioner had completed two years span of posting at Kaithal when he was transferred to Panchkula vide order dated 13.12.2019 (Annexure P-1). On the other hand, respondent No. 2-Rakesh Kumar had been working and continuing at Panchkula for more than three years and six months when he was transferred to Ambala, as he had been posted at Panchkula since 11.05.2016. Although, the State in the reply filed to the writ petition has submitted that the transfer order of Rakesh Kumar-respondent No. 2 herein, had been cancelled on sympathetic grounds and had been retained in Panchkula, but no such ground/reason has been spelt

out in the written statement which has been filed. This Court has nothing more to say on this aspect, except to observe that where reasons are not assigned, when required to disclose for making a particular decision, may be sympathetic, the said action of the authority would be nothing less than being arbitrary. Present is, thus, a case where arbitrarily transfer order of respondent No. 2-Rakesh Kumar has been cancelled only to retain him at Panchkula. The judgment, therefore, passed by the learned Single Bench dated 22.01.2020, cannot be said to be in any manner not sustainable.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

In view of the dismissal of the main case, all pending civil miscellaneous applications stand disposed of, as infructuous.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

March 24, 2021
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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No