

*(Through Video Conferencing)*CWP No.2366 of 2021
Date of Decision: 11.02.2021

Sandeep Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHIPresent: Mr. S.K. Malik, Advocate,
for the petitioner.Ms. Rajni Gupta, Addl. Advocate General, Haryana.
(keeping in view the advance copy given.)Mr. D.S. Nalwa, Advocate,
for respondent Nos.2 to 4.
(keeping in view the advance copy given.)**HARSIMRAN SINGH SETHI, J. (ORAL)**

The present petition has been filed, challenging the order of transfer dated 27.01.2021 (Annexure P-16) by which, the petitioner has been transferred from HPHC Division, Panchkula to HPHC Division, Faridabad; with a further prayer that the show cause notice, which has been issued on 27.01.2021 be also set aside.

The petitioner, in the present writ petition has stated that the transfer order of the petitioner is liable to be set aside as the same is passed in violation of the provisions of the transfer policy of the year 2020. Learned counsel for the petitioner argues that the petitioner was posted at Panchkula only in the year 2019 and he is yet to complete the minimum required period of three years at Panchkula and therefore, the transfer of the petitioner from HPHC Division, Panchkula to HPHC Division, Faridabad is

contrary to the said transfer policy.

The transfer policy, violation of which is being alleged, appended as Annexure P-18, shows that the same is only applicable where the cadre strength of a post is more than 500 sanctioned posts and above. Learned counsel for the petitioner concedes that the cadre strength of the post on which the petitioner is working is not beyond 500 sanctioned post. That being so, the reliance being placed by learned counsel for the petitioner on the transfer policy dated 13.02.2020 (Annexure P-18) to challenge the transfer order dated 27.01.2021 (Annexure P-16) is totally misplaced and cannot be accepted as the same is not applicable in his case.

Learned counsel for the petitioner further submits that the said transfer is on account of *mala fide* intention of the respondents. A perusal of the averments made in the petition would show that no officer of the respondent/corporation has been impleaded by name to allege *mala fide*. In the absence of any pleading and naming a particular officer, who is prejudiced against the petitioner and is acting with *mala fide*, the said argument cannot be taken into account for consideration by this Court. In the present case, only a bald statement of *mala fide* has been made without naming any officer, who is acting in a *mala fide* manner against the petitioner. In the absence of the specific pleadings and the impleadment of the said officer against whom *mala fide* is alleged, the bald statement of the petitioner that the order suffers from *mala fide*, cannot be entertained and is accordingly rejected.

The Hon'ble Supreme Court of India while deciding ***Civil Appeal No.1236 of 2020***, titled as ***Union of India and another Vs. Deepak***

Niranjan Nath Pandit, decided on 07.02.2020 has held that it is within the domain of an employer to transfer an employee and no employee can claim continuance at a particular place of posting. Further, the Hon'ble Supreme Court of India has held that the High Court cannot dictate to the employer as to where an employee should be posted even during the period of suspension. The relevant paragraph of the said judgment is as under:-

“The High Court, in interfering with the order of transfer, has relied on two circumstances. Firstly, the High Court has noted that as a result of the stay on the order of transfer, the headquarters of the respondent will remain at Mumbai and even if he is to be suspended, his headquarters will continue to remain at Mumbai. The second reason, which has weighed with the High Court, is that the spouse of the respondent suffers from a cardiac ailment and is obtaining medical treatment in Mumbai. In our view, neither of these reasons can furnish a valid justification for the High Court to take recourse to its extraordinary jurisdiction under Article 226 of the Constitution in passing an order of injunction of this nature. Significantly, the High Court has not even found a *prima facie* case to the effect that the order of transfer was either *mala fide* or in breach of law. The High Court could not have dictated to the employer as to where the respondent should be posted during the period of suspension. Individual hardships are matters for the Union of India, as an employer, to take a dispassionate view. However, we are categorically of the view that the impugned order of the High Court interfering with the order of transfer was in excess of jurisdiction and an improper exercise of judicial power. We are constrained to observe that the impugned order has been passed in

breach of the settled principles and precedents which have consistently been enunciated and followed by this Court. The manner in which judicial power has been exercised by the High Court to stall a lawful order of transfer is disquieting. We express our disapproval.”

Keeping in view the above, the scope of interference with the power of an employer to transfer an employee by the High Court is very limited and can only be entertained in case the transfer has been ordered without there being any jurisdiction with the authority, which has passed the order or the transfer order suffers from *mala fide*, which has to be proved on the basis of the specific averments made in the petition. In the present case, none of the criteria, which justifies the interference by this Court in the order of transfer has been made out.

With regard to the claim of the petitioner in respect of the show cause notice dated 27.01.2021 (Annexure P-17), no interference is called for, at this stage, as only the explanation of the petitioner has been called for. No action has been taken so far, which causes prejudice to the petitioner in respect of the show cause notice. That being so, no interference is called for by this Court. In case, the petitioner is prejudiced in respect of any order passed by the respondent-authority in pursuance to show cause notice, the petitioner will be at liberty to avail the appropriate remedy for the redressal of the said grievance.

No ground for interference is made out.

At this stage, learned counsel for the petitioner submits that the son of the petitioner is undergoing J.E.E. Examination and therefore, the

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petitioner be not forced to join at the transferred place of posting at Faridabad before 28.02.2021.

Learned counsel for respondent Nos.2 to 4 submits that he has instructions that the petitioner will be given time upto 28.02.2021 to join the new place of posting.

The writ petition is dismissed in the above terms.

It is made clear that the respondents will be bound by their statement recorded above.

(HARSIMRAN SINGH SETHI)
JUDGE

11.02.2021
sandeep

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No