

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.2972 of 2021

Date of Decision: 18.02.2021

Virender Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ankit Chahal, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G. Haryana
for respondent Nos.1 and 2.

ALKA SARIN, J.

The present civil writ petition has been filed to challenge the impugned order dated 27.01.2021 (Annexure P-1) whereby the petitioner has been transferred from Rohtak to Panchkula.

The facts in brief are that on 04.02.1991 the petitioner was appointed as a Clerk in the Department of Fisheries, Haryana. On 04.05.2007 the petitioner was promoted to the post of Accountant and transferred to the Headquarters at Panchkula. In May, 2017 the petitioner was transferred from the Headquarters at Panchkula to the office of the Deputy Director, Fisheries, Rohtak, where he worked as an Accountant. Vide impugned order dated 27.01.2021 (Annexure P-1) the petitioner has been transferred from Rohtak to the office of District Fisheries Officer, HQ, Panchkula as an Assistant, in the place of respondent No.3 who has by the same order been transferred to the office of the Deputy Director, Fisheries, Rohtak as Accountant. As per the impugned order, it is a vice-versa transfer on administrative grounds.

The counsel for the petitioner has contended that the transfer of the petitioner from Rohtak to Panchkula is illegal, arbitrary and

discriminatory as the transfer has been ordered under political pressure. According to learned counsel, respondent No.3 had got a recommendation from the Chief Minister, Haryana for his transfer from Panchkula to Rohtak and it was only because of this recommendation the impugned order was passed to benefit respondent No.3. In this regard the learned counsel has placed reliance upon a note dated 04.01.2021 (Annexure P-2) issued by the OSD to Chief Minister, Haryana. Learned counsel for the petitioner has further contended that his service record was without any adverse remarks and that he had been in service for 30 years. It is also submitted that the 70 years old mother of the petitioner has a knee injury and that the petitioner, being the only male member in the family, has to take care of his mother also.

Since advance copy of the civil writ petition had been supplied to the office of Advocate General, Haryana, Mr. Rajesh Gaur, Additional A.G. Haryana has put in appearance on behalf of respondent Nos.1 and 2. He submitted that the transfer was routine and ordered on administrative grounds and that there was no *mala fide* involved. He also submitted that the State Government, being employer of the petitioner, had the power to transfer him to any place of posting. The petitioner had not objected when he was transferred to Panchkula from Rohtak in 2007.

I have heard learned counsel for the parties. It is well settled 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. The exercise of jurisdiction by the High Court to interfere with the power of an employer to transfer an employee is very limited and can be exercised in case the transfer has been ordered without there being any jurisdiction with the

authority, which has passed the transfer order, or the transfer order suffers from *mala fide*, which has to be proved on the basis of specific averments made in the petition.

In the present case, none of the criteria, which may justify interference by this Court in the impugned order of transfer, have been made out. It is not the case of the petitioner that respondent No.2 who passed the impugned transfer order (Annexure P-1) had no power to do so. The allegation of *mala fide* made in the petition is towards respondent No.3 who has been transferred to Rohtak in place of the petitioner. Respondent No.3 has not passed the impugned transfer order (Annexure P-1). There are no *mala fides* alleged against any officer who may have ordered the transfer of the petitioner. Further, there is nothing in the petition which spells out any reason for respondent No.3 to harbour any *mala fides* against the petitioner. Mere general statements will not be sufficient for the purposes of indication of *mala fides*. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the passing of the impugned transfer order. In the present case there is none. It is also not the case of the petitioner that the office of the Chief Minister, Haryana has no power to recommend transfer of an employee in the Fisheries Department.

In the matter of “**Rajendra Singh vs. State of U.P. & ors.**” [(2009) 15 SCC 178] the Supreme Court *inter-alia* held that “A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see State of U.P. v. Gobardhan Lal, 2004(2) SCT 368 : (2004) 11 SCC 402]”.

In “**Prabodh Sagar vs. Punjab State Electricity Board&Ors.**”[(2000) 5 SCC 630] it was *inter-alia* held that “*Incidentally, be it noted that the expression 'mala fide' is not a meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances....There must be factual support pertaining to the allegations of mala fides, unfortunately there is none. Mere user of the word mala fide by the petitioner would not by itself make the petition entertainable*”.

In view of the discussion above and the settled proposition of law quoted, no ground is made out for this Court to exercise its writ jurisdiction to interfere with the impugned transfer order dated 27.01.2021 (Annexure P-1). Finding no merit in the civil writ petition, the same is dismissed.

Dismissed.

(ALKA SARIN)
JUDGE

18th February, 2021
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO