

CWP-8584-2021 (O&M)

Through Video Conference

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

**CWP-8584-2021 (O&M).
Decided on: April 22, 2021.**

Lakhwinder Pal Singh Gill

.. Petitioner

VERSUS

State of Punjab and others

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

PRESENT

**Mr.G.S.Kaura, Advocate,
for the petitioner.**

Mr.Pawan Sharda, Sr. DAG, Punjab.

**Mr.Vikas Bahl, Sr. Advocate, assisted by
Mr.Om Parkash Sharma, Advocate,
for respondent No.3.**

JASGURPREET SINGH PURI, J.

The present writ petition has been filed under Article 226 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing of the order dated 7.4.2021 (Annexure P-6) passed by the Additional Chief Secretary cum FCR, Punjab, against the transfer of the petitioner.

The learned counsel for the petitioner has submitted that the

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petitioner was promoted as Tehsildar and was posted as Sub Registrar, Jalandhar II, vide order dated 17.12.2019 (Annexure P-1). He submitted that thereafter due to political pressure, the petitioner was transferred vide Annexure P-2 on 20.8.2020, from his original place of posting i.e. Jalandhar – II. Thereafter, when the posting orders came vide Annexure P-3 dated 8.9.2021, respondent No.3 namely Parveen Kumar was posted as Sub Registrar, Jalandhar - II in place of the petitioner. Thereafter, these transfer orders were stayed by the State Government itself vide Annexures P-4 and P-5. However, now vide impugned order Annexure P-6 dated 7.4.2021, the petitioner has been transferred from the original place of posting i.e. Jalandhar – II to some other place and in his place respondent No.3 has been posted.

Learned counsel for the petitioner has further submitted that no place of posting was given to the petitioner and in his place aforesaid Parveenm Kumar – respondent No.3 has been posted vide impugned order Annexure P-6. Learned counsel for the petitioner has made two fold submissions. Firstly that the transfer of the petitioner is mala fide and it was against the transfer policy (Annexure P-7) which shows that persons whose retirement is within 2 years should not be transferred. So far as petitioner is concerned, he is due to attain the age of superannuation on 30.9.2021 and therefore, he has prayed for setting aside the transfer order (Annexure P-6) and secondly, his transfer was by way of malafide intentions on the part of respondents.

On the other hand, Mr.Pawan Sharda, learned Sr. DAG,

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Punjab, has submitted that he has received the advance copy of the writ petition and has submitted that the orders Annexures P-2 and P-3, were not implemented in view of the letters Annexures P-4 and P-5 which was a policy decision taken by the State of Punjab in view of Covid – 19 situation and therefore, the reason for not giving effect to Annexures P-2 and P-3 was also the decision of the State Government not to give effect to the transfers made upto 31.3.2021. While referring to order Annexure P-5, the learned State counsel has submitted that it was directed that in view of the Covid – 19 situation, the transfers and postings shall be subject to a complete ban upto 31.3.2021 and it was only in unavoidable situation, the administrative department needs to be transferred then the approval of the Chief Minister should be ensured. He has further submitted that so far as policy Annexure P-7 is concerned, the case of the petitioner would not be covered under the policy in view of the fact that the petitioner has not been transferred out from the city and he has been transferred as Tehsildar PWD Jalandhar. So far as policy Annexure P-7, is concerned, the same would be applicable where the employees who are scheduled to be retiring within two years are not to be put to inconvenience by transferring them out from the present place of posting. However, in the present case the petitioner who was posted as Sub Registrar, Jalandhar – II, has been transferred to the post of Tehsildar PWD, Jalandhar and therefore, there is no violation of any policy of the State Government.

Mr.Vikas Bahl, learned Senior Counsel assisted by
Mr.Om Parkash Sharma, Advocate, has caused appearance on behalf of

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respondent No.3. The learned Senior Counsel has submitted that the petitioner has misled the Court by stating in paras 4 and 5 of the petition that the petitioner has not been allotted any place of posting. The learned Senior Counsel has further placed on record copy of the posting order of the petitioner dated 12.4.2021, the joining order of the petitioner as well as the joining order of respondent No.3 of the even date i.e. 12.4.2021 through E-mail since the matter is being heard through video conference. The vernacular print outs of above three documents dated 12.4.2021, are hereby ordered to be taken on record by placing on record the same as Mark- X, Mark – Y and Mark – Z. The learned Senior counsel has submitted that the present petition has been filed on 19.4.2021 by stating that the petitioner has not been given any place of posting whereas the posting has already been given to the petitioner on 12.4.2021 and the petitioner has himself submitted his joining report on 12.4.2021 which was prior to the filing of the present writ petition and as such, the present writ petition is liable to be dismissed on this score alone. He has further submitted that the allegations contained in the writ petition are totally vague and frivolous and therefore, cannot be gone into. He has further submitted that so far as transfer policy Annexure P-7, is concerned the same would not come into the way of the transfer of the petitioner in view of the fact that the petitioner has not been shifted outside the city.

I have heard the learned counsel for the parties.

It is settled law that the transfer is an incident of service.

Ordinarily, the Courts should not interfere in the transfer matters unless the

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action can be shown to be vitiated by *ex facie* arbitrariness or mala fide intentions or contrary to law. In the present case, the petitioner has not been able to show any sound reasoning as to why the action of the official respondents is liable to be vitiated. So far as the transfer policy is concerned, there is substance in the argument raised by the learned State counsel as well as by the learned counsel appearing on behalf of private respondent No.3 that there is no violation of the transfer policy. The petitioner has been transferred from the post of Sub Registrar, Jalandhar – II to the post of Tehsildar PWD, Jalandhar which is in the same city. Therefore, the fact that the petitioner is scheduled to retire on 30.9.2021 i.e. within two years cannot be said to be in violation of the transfer policy because he has not been shifted outside the same city. So far as the allegation of *mala fide* is concerned, a reading of the averments made in the writ petition would show that same are absolutely vague in nature. The written response from the private respondents would be required only when there are specific allegations of *mala fide* whereas the petitioner himself has not stated the correct position in the writ petition itself and has rather stated that he was not given the place of posting because of political interference. This allegation has been negated by the documents submitted by the learned Senior Counsel for respondent No.3 that the petitioner himself has joined the new place of posting on 12.4.2021 which was prior to the filing of the present petition. To a query put to the learned counsel for the petitioner in this regard, he has submitted that, in fact, it was an inadvertent mistake because he had earlier also filed a petition prior to 12.4.2021 which

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could not, however, be listed because of objections raised by the Registry of this Court and therefore, the averments made in the present petition are result of inadvertent typing mistake.

Be that as it may, even it is an inadvertent typing mistake, the learned counsel for the petitioner has not been able to show any element of illegality or arbitrariness in the impugned order.

In view of above position, this Court is not inclined to interfere in the impugned transfer order dated 7.4.2021 (Annexure P-6) transferring the petitioner and therefore, the present petition is hereby dismissed.

There shall be no order as to costs.

April 22, 2021.
raj arora

JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No