

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(217)

CWP No. 9743 of 2021

Date of Decision : 16.06.2021

Satpal

...Petitioner

Versus

State of Haryana and others

...Respondents

(through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manoj Makkar, Advocate for the petitioner.

Mr. Narinder Singh Behgal, Assistant Advocate General,
Haryana.

Harsimran Singh Sethi J. (Oral)

The present writ petition has been filed seeking quashing of order dated 07.05.2021 (Annexure P-10) by which the objections raised in respect of his posting upon promotion have not been accepted and the representation of the petitioner has been rejected. The further challenge is to the order dated 08.05.2021 by which the petitioner was relieved from Government Senior Secondary School Behlba, District Rohtak (2647) so as to join Government Girls Middle School, Manethi, District Rewari.

The facts as stated in the present writ petition are that the petitioner was appointed initially on contractual/ad-hoc basis as TGT/Master (Mathematics) on 30.12.1997. Thereafter, the petitioner was regularly selected in the year 2006 and posted at Government Senior

Secondary School Behlba, District Rohtak (2647). While in service, the petitioner participated in the Direct Commission Course conducted by the National Cadet Corps (hereinafter referred to as 'NCC') from 10.06.2013 to 07.09.2013 for being designated as Associate NCC Officer (hereinafter referred to as 'ANOs'). This course was undertaken after the NCC Commission granted the approval to the petitioner on 08.04.2013.

In the year 2019, the petitioner was transferred from Government Senior Secondary School Behlba, District Rohtak (2647) to Government Senior Secondary School Bansawa (3451) Block Kathura, District Sonapat. While being in the said school, the petitioner was having the charge of Associate NCC Officer. The said transfer was challenged by the petitioner by filing CWP No. 28800 of 2019 wherein petitioner got an interim order and he continued to serve at Government Senior Secondary School Behlba, District Rohtak (2647).

The next promotion from the post of TGT/Master is to that of Elementary School Head Master. Petitioner was promoted on the said post on 09.11.2020 w.e.f. 24.08.2019 but the posting after promotion was not done by the department immediately due to various impediments including the pending litigation. Ultimately, the Elementary School Head Masters, who were promoted in the year 2020, were posted to the various stations vide order dated 26.04.2021 (Annexure P-7). In the said order, the petitioner was also posted at Govt. Girls Middle School, Manethi, District Rewari (2583). Along with the petitioner about 1100 Elementary School Head Masters were promoted in the year 2020 and were posted at different Stations. The petitioner represented against the said posting by filing a

Officers, if they are not willing to participate in the transfer drive, should not be transferred and as the petitioner is Associate NCC Officer and has not given his consent for transfer, he cannot be transferred, especially to a school, which does not have an NCC Unit. Ultimately, the petitioner filed a Writ petition being CWP No. 9414 of 2021 seeking quashing of the order dated 26.04.2021 (Annexure P-7) posting the petitioner on promotion at Govt. Girls Middle School, Manethi, District Rewari (2583).

The said writ petition was disposed of by this Court giving direction to the Director General, Elementary Education, Haryana to look into the grievance of the petitioner and dispose of his representation dated 28.04.2021 within a specified period by taking into account the prevalent Transfer Policy.

In pursuance to the direction given by this Court, the Director Elementary Education passed an order on 07.05.2021 (Annexure P-10) deciding the representation dated 28.04.2021 filed by the petitioner by which the petitioner had raised objection to his posting at Govt. Girls Middle School, Manethi, District Rewari. The representation filed by the petitioner did not find favour with the authorities and the same was rejected on the ground that his was not a case of the transfer but of posting upon promotion and, therefore, the Transfer Policy dated 29.06.2016 (Annexure P-3), which is being relied upon by the petitioner is not applicable. After rejecting the representation of the petitioner on 07.05.2021 (Annexure P-10), the petitioner was relieved from Government Senior Secondary School Behlba, District Rohtak (2647) on 08.05.2021 (Annexure P-11) so as to join at Govt. Girls Middle School, Manethi, District Rewari (2583). The order

dated 07.05.2021 (Annexure P-10) rejecting the representation as well as

order dated 08.05.2021 (Annexure P-11) relieving the petitioner to join the promoted place of posting are under challenge in the present writ petition.

Learned counsel for the petitioner argues that at Govt. Girls Middle School, Manethi, District Rewari (2583), there is no NCC Unit and, therefore, petitioner cannot be posted at Govt. Girls Middle School, Manethi, District Rewari (2583). In support of the argument, learned counsel for the petitioner relies upon an order passed by the Ministry of Defence, Govt. of India dated 04.04.2019 (Annexure P-2), wherein, it has been stated that the Associate NCC Officers (ANOs) should be posted, where there is a NCC Unit so that the ANOs are not wasted out.

Upon notice of motion, the respondents have filed the reply, in which they have taken a plea that posting of the petitioner at Govt. Girls Middle School, Manethi, District Rewari (2583) is after he has been promoted as Elementary School Head Master and, therefore, he has been posted wherever the post has been found available keeping in view the Administrative Exigencies as approximately 1100 Elementary School Head Masters were posted vide order dated 26.04.2021 (Annexure P-7) after their promotions.

During the proceeding today, learned State counsel informed this Court that he has received a letter from the Director Elementary Education, Haryana dated 16.06.2021, wherein, it has been stated that the post of Elementary School Head Masters are lying vacant at 3 places, where NCC Unit is there but no NCC Officer is posted and the petitioner can be accommodated there. In the said letter, the following three schools are mentioned :-

1. *GSSS Sabapur (240) District Yamuna Nagar.*

2. *GSSS Rambag Road (7), Ambala Cantt., District Ambala*
3. *GSSS Boh (18) District Ambala Cantt., District Ambala.*

The said proposal was put to learned counsel for the petitioner but the learned counsel insisted that the petitioner wants to continue at Government Senior Secondary School Behlba, District Rohtak (2647) only, where there is an NCC Unit and, therefore, he should not be transferred out of the said school. Learned counsel declined to accept the offer of posting the petitioner at the above mentioned three Stations, where NCC Units were available and the petitioner could be accommodated on a promoted post of Elementary School Head Master.

The question, which arises for consideration before this Court is whether, the petitioner has any right to claim posting at a particular place of his choice or he is liable to serve anywhere in the State of Haryana keeping in view the Rules governing the service. Further question is whether, the present case is of a posting upon promotion and whether the Transfer Policy will be applicable in the facts and circumstances of the present case and whether the guidelines which have been issued by the Govt. of India vide Annexure P-2, will confer any right upon the petitioner to continue to serve at a particular Station or the Education Department, which is the employer of the petitioner, in Administrative Exigencies, has right to post the petitioner even where there is no NCC Unit as envisaged under the rules governing the service.

From the facts, which have been narrated hereinbefore, it is clear that after the petitioner was appointed regularly in the year 2006, he is continuously serving at Government Senior Secondary School Behlba, District Rohtak (2647). For the last approximately 15 years, petitioner is

serving at the said school. The conduct of the petitioner shows that he wants to continue at the said school and raising grievance in respect of posting order dated 26.04.2021 (Annexure P-7) by placing reliance upon the letter dated 04.04.2019 (Annexure P-2) issued by the Govt. of India that ANOs should be posted at the school, where NCC Unit exists is a mere camouflage. This fact is proven as the petitioner has declined the offer of the respondent-department to join the school where the NCC Unit exists even on the promoted post of Elementary School Head Master and is adamant to continue at Government Senior Secondary School Behlba, District Rohtak (2647), where he is serving for the last 15 years.

It is conceded between the parties that as per the Rules governing the service, petitioner is liable to serve throughout the State of Haryana, wherever the post on which he is working, exists. The Service Rules will have preference over the guidelines issued. Once, the Service Rules envisage that the petitioner can be posted anywhere in the State of Haryana, the employer i.e. Education Department will be well within its right to post the petitioner anywhere in the State of Haryana and the guidelines cannot create impediment within the powers of the State of Haryana to post the petitioner even where no NCC Unit exists, if the administrative exigencies demand the same. Therefore, the petitioner cannot claim to continue to serve at a particular place of his choice, where he is serving for the last 15 years so as to challenge the Administrative decision of the respondent-department to post the petitioner at Govt. Girls Middle School, Manethi, District Rewari (2583) upon his promotion by placing reliance upon guidelines issued by the Govt. of India (Annexure P-

Further, the present case is not a case of transfer but is a case of posting upon promotion. Not only the petitioner but 1100 employees have been posted upon promotion to various stations. The exercise of powers by the respondent-School is an administrative act and the posting of a particular person at a particular Station is within the domain of the Employer and cannot be interfered with unless and until, the said act is a result of mala fide, if writ large. As the present case is of posting upon promotion, the reliance being placed upon Transfer Policy dated 29.06.2016 (Annexure P-3) by the petitioner to raise grievance against the order dated 26.04.2021 (Annexure P-7) by treating the order dated 26.04.2021 (Annexure P-7) as a transfer order, is totally misplaced and cannot be accepted. Therefore, in the present case, the said Transfer Policy is not applicable.

Further, the guidelines dated 04.04.2019 (Annexure P-2), which are being relied upon by the petitioner, according to which, the States were directed by the Union of India to the effect that ANOs be posted at the School where the NCC Unit exists, will not confer any right upon the petitioner so as to challenge his posting upon promotion. It is a settled principle of law that guidelines are not justifiable and does not confer any justiciable right. This Court while deciding CWP No. 24075 of 2017, titled as ***Neha Sood Vs. State of Punjab***, on 25.10.2017, held that the transfer is an incident of service and violation of Transfer Policy/Instructions does not confer any right as Transfer Policy/Guidelines do not vest enforceable right in an employee. The relevant paragraphs 9 of the said judgment are as under :-

“9. Transfer is an incidence of service. Matters of

*transfer/posting are best left to the judgment of the employer. Orders of transfer would be open to challenge only if the same have been passed in violation of statutory provision or are vitiated by malafides. Terms and conditions contained in a transfer policy/guidelines do not vest an enforceable right in an employee. A reference in this regard may be made to the decision of Hon'ble Apex Court in the case of **Union of India Vs. S.L.Abbas, 1995 (4) SCT 455.***

In the present case, the petitioner is trying to enforce the Guidelines dated 04.04.2019 (Annexure P-2) so as to impugn his posting upon promotion, which is not permissible as the same does not confer enforceable right upon the petitioner.

Further, it is a settled principle of law that interference in the transfer by the Court should be minimum and can only be resorted to where the said transfer is patently without jurisdiction or a result of mala fide. Hon'ble Supreme Court of India while deciding Civil Appeal No. 1236 of 2020 titled as ***Union of India and another Vs. Deepak Niranjana Nath Pandit***, on 07.02.2020, held that the Courts including the High Court cannot take recourse to extraordinary jurisdiction under Article 226 of Constitution of India for passing an injunction order with regard to the transfers as the High Court has no right to dictate to the employer as to where the employee should be posted. The relevant paragraph No. 4 of the said judgment is as under :-

“4. 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.”

In the present case, though, the petitioner was given an option for posting at three Schools, where the NCC Unit is available in the promoted cadre of Elementary School Head Master but the petitioner declined to accept the said offer and remained adamant that he is entitled to continue at Government Senior Secondary School Behlba, District Rohtak (2647), where the petitioner is serving for the last about 15 years. This shows the conduct as well as true intention, which cannot be accepted.

This Court, keeping in view the facts and circumstances noticed above, hold that no interference is called for in respect of the order dated

26.04.2021 (Annexure P-7) by which the petitioner has been posted to Govt. Girls Middle School, Manethi, District Rewari (2583) and also the order dated 07.05.2021 (Annexure P-10) rejecting the representation as well as order dated 08.05.2021 relieving him to join at Govt. Girls Middle School, Manethi, District Rewari (2583).

Consequently, the writ petition is dismissed with no order as to costs.

June 16, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes