

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CWP No. 4761 of 2020

Date of Decision : 12.12.2022

Dilbag Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vijay Pal, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

In the present petition, the challenge is to the order dated 12.02.2020 (Annexure P-6) by which, the petitioner has been transferred from Govt. College Adampur, Hisar to Government College Palwal, Palwal.

Learned counsel for the petitioner argues that the petitioner, who is working as Assistant Professor and was posted at Government College Adampur, Hisar, has been transferred vide order dated 12.02.2020 (Annexure P-6) to Government College Palwal, Palwal and that too without any valid justification.

The first ground raised to challenge the transfer is that the petitioner is a regular employee and he has been transferred to a College where there is no sanctioned post of Geography hence, the petitioner's

transfer to a College where there does not exist a regular sanctioned post, is totally arbitrary and illegal.

The second argument of learned counsel for the petitioner to challenge the impugned order of transfer as noticed in the order issuing notice of motion is that merely by mentioning that the petitioner is being transferred against the workload on administrative ground, the said reason is not sufficient enough to transfer the petitioner from Hisar to Palwal.

Learned counsel for the petitioner submits that though, as per the respondents, now there are four regular sanctioned posts at Palwal but nothing has come on record to prove that there is no other teacher to discharge the duties of those four posts. Learned counsel for the petitioner further argues that even otherwise, an employee having a longer stay at a particular station should have been dislodged as compared to the petitioner and keeping in view the workload, the services of the petitioner are needed more in the present college than at Palwal that is the place of transfer.

Learned counsel for the petitioner contends that the transfer order has been passed with mala fide intention at the instance of respondent No. 4, who was the Ex-Principal of the College at Hisar where, the petitioner was discharging the duties, which fact is substantiated keeping in view the allegations, which have been duly depicted in para 10 of the writ petition. Learned counsel also raise a contention that the said transfer was mid-term transfer hence, it should not have been effected, especially when, the distance from present place of posting is more than 280 kms. Learned counsel for the petitioner argues that the respondents in their reply have submitted that there is a complaint against the petitioner hence, it can very

well be inferred from the same that the transfer of the petitioner is on the basis of the said complaint, which is impermissible. The last argument raised by learned counsel for the petitioner is that rather than appointing an Extension Lecturer at Palwal, the petitioner is being dis-lodged from the present place of posting, which is totally arbitrary and illegal.

The respondents have filed the reply, wherein, they have stated that as, Palwal College had just started working, there was no teacher in Geography and in the welfare of the students, the petitioner was transferred there so as to discharge the duties to teach the students there keeping in view the workload of the post and that is why the word “against workload on administrative ground” was mentioned in the transfer order. The second ground being taken by the respondents is that though, initially there was no sanctioned post at Government College Palwal, Palwal but, now there are four sanctioned posts against which the petitioner can duly discharge the duties as no regular employee is posted against those posts and only two Extension Lecturers are working against the sanctioned posts hence, the respondents are well within right right to transfer the petitioner to the said station.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The teachers in the Education Department are appointed so as to teach the students and the welfare of the students is paramount as compared to minor service disputes of the teachers, especially the transfer, which act is in the domain of the employer. In the present petition, the petitioner was transferred from Hisar to Palwal, in which college there was

no teacher at all but there were students to be taught. The petitioner raises a grievance that he cannot be transferred to a place where there is no sanctioned post allocated. Though, initially there might not be a regular sanctioned post at Palwal but during the pendency of this petition, regular sanctioned posts have already been allocated to the college at Palwal as respondents counsel has apprised this Court that there are four sanctioned posts now at Government College Palwal, Palwal and there is no regular teacher working there and out of four sanctioned posts, only two Extension Lecturers are working and petitioner is required to discharge the duties at Palwal keeping in view the workload at Palwal College hence, the petitioner cannot raise any grievance with regard to non-availability of regular sanctioned post at Palwal now.

The second objection being taken by learned counsel for the petitioner is that no justifiable reason has been given in the transfer order so as to effect the transfer of the petitioner from Hisar to Palwal. In the order itself, it is mentioned that the petitioner is being transferred keeping in view the workload at Government College Palwal, Palwal. It has gone unrebutted as of now that there are not enough teachers to teach the students at Government College Palwal, Palwal. Once, there was no teacher and the workload existed at Palwal, the respondents were well within their jurisdiction to send a teacher to teach the students for which purpose, they have been recruited. Therefore, once it is not disputed by the petitioner that there are students and the workload of the subject being taught by the petitioner exist in the collage at Palwal, the reason given in the impugned order that the petitioner is being transferred keeping in view workload, is a

well reasoned justification for the transfer of an employee from one place to another.

One of the contention of the petitioner is that if the workload existed at College at Palwal, same should have been met with the appointment of the Extension Lecturers rather than dislodging a regular employee. Decision how to meet the workload is in exclusive domain of the employer. Petitioner is in no position to dictate to the department as to how the colleges are to be administrated. It is for the employer to see as to whether, at a particular place, a regular employee needs to be posted or an Extension Lecturer needs to be appointed. Once, in the wisdom of the department, a regular employee, who is already teaching, will be good enough to teach the students at a particular station where there is enough workload, the petitioner or even this Court will not have a jurisdiction to substitute their opinion and that too without any valid reason.

Learned counsel for the petitioner submits that even as of now, there is nothing on record to show that there are no teachers at Palwal to teach the students. The respondents have placed on record a communication from the Principal, Government College Palwal dated 19.10.2022, wherein it has been mentioned that there are four sanctioned posts at College in Palwal and the workload of four teachers exists at Palwal. As per respondents, out of four teachers required at Palwal College, only two teachers and that too Extension Lecturers are working and, therefore, services of the petitioner are needed. Keeping in view the said fact, it is clear that services of the petitioner are very much needed at the College in Palwal to teach the students, therefore, the contention that whether the four

posts at Palwal are lying vacant or not so as to implement the order of transfer of the petitioner does not hold any ground.

With regard to the allegation of the petitioner that he has been transferred on the basis of the complaint, the same is also not correct. Nothing has been mentioned in the transfer order that the petitioner is being transferred on the basis of the complaint. It is only to rebut the contention of the petitioner that the work and conduct of the petitioner is such that he should not have been transferred that the respondents made a factual averment with regard to a complaint, which was received against the petitioner. That being so, once the said complaint has not been stated to have been taken into consideration while effecting the transfer, the assertion of the petitioner that the same is the very basis of transfer, is without any valid justification. Further, a dispute regarding transfer of an employee is not justiciable except in the case the same is due to mala fide or the same is being effected outside the cadre and was not within the jurisdiction of the authority concerned, who has effected the transfer.

The last argument, which has been raised by the petitioner is that he has been transferred at the instance of respondent No. 4, who was the Ex-Principal at his present place of posting and the said transfer is only due to a complaint. Mala fides are being attributed to respondent No. 4 to challenge the order of transfer.

Nothing has been placed on record to show that an Ex-Principal has any jurisdiction to transfer an employee from one place to another. Further, no correlating facts have been placed on record to show as to how, respondent No. 4 was able to manage the transfer of the petitioner so as to

allege the mala-fide against respondent No. 4 as the impugned order of transfer has been passed by Secretary of the department concerned. These days, it has become a fashion to challenge the transfer by alleging mala fides on one or the other so as to bring the said transfer under the purview of the Court. In the present case, the allegations being alleged by the petitioner are totally bald without there being any substance to support the same. Nothing has been placed on record as to how respondent No. 4 managed to get the petitioner transferred through respondent No. 1. If the allegations of the petitioner are to be treated as true, then even respondent No. 1 has to be attributed mala fide, which fact is missing in this petition.

Keeping in view the fact that a large number of petitions are being filed alleging mala-fide on one officer or the other, making them sitting ducks just to stall the transfer, said trend needs to be tackled with heavy hand so that an employee should think twice before alleging mala fide upon an officer in a routine manner. In the present case, the petitioner has alleged mala-fide against respondent No. 4 by filing an affidavit and he has not been able to support the said contention keeping in view the finding recorded hereinbefore. That being so, the petitioner needs to be penalized for making wrongful allegations against someone so as to damage their reputation.

It is a conceded position that from the last about 14 years, the petitioner is working at Hisar. The petitioner worked at Hisar while working as a Guest Faculty Lecturer and even since his regular appointment in the year 2015, the petitioner is working at Hisar. Even as per the transfer policy, the maximum stay of an employee at a particular station is five

years, which period the petitioner has crossed since long. That being so, no interference is called for by this Court in the facts and circumstances of the present case.

Keeping in view the above, the present petition is dismissed with a cost of ₹10,000/- to be deposited with Prabh Aasra (Unit of) u/o Universal Disabled Care Taker Social Welfare Society, (who are maintaining Orphans) in Bank A/c No. 014894600000970, SCO 151-152, Sector 9-C, Chandigarh or A/c No. 100035657241 of IndusInd Bank, Sector-54, Phase-II, Mohali Branch.

Dismissed.

December 12, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No