

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

CWP-22356-2014 (O&M)

Date of decision: May 18, 2022

Rajbir Singh

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Deepak Sonak, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of Mandamus/ Certiorari for quashing an order dated 31.03.2014 (Annexure P-14) whereby his claim to higher seniority has been rejected. Further prayer has been made for directing the respondents to grant the petitioner seniority in District Kaithal from the date of his original appointment and further promote him to the next higher post from the date his juniors have been promoted, along with all consequential benefits including seniority, pay fixation, salary and the arrears arising therefrom.

2. Petitioner was appointed as Patwari in the respondent-Department on 27.12.1985 in District Jind and he joined as such. Subsequently, petitioner was transferred to District Kurukshetra vide order dated 07.06.1989 (Annexure P-2). Petitioner pleads that he never made any request for his transfer from Jind to Kurukshetra and same was done for administrative reasons. In 1989, District Kurukshetra was divided into two

Districts, namely Kurukshetra and Kaithal. At the same time, options were sought from Patwaris working in District Kurukshetra in case they wanted to remain in Kurukshetra or wanted to go to Kaithal. 29 persons were transferred to District Kaithal including juniors to the petitioner. Petitioner had also opted for District Kaithal. He kept submitting several following representations for his transfer to District Kaithal. Petitioner then made a mutual transfer request, which was accepted and he was finally transferred from District Kurukshetra to District Kaithal vide order dated 30.05.1997 (Annexure P-9). When respondents prepared a seniority list of Patwaris working in the District Kaithal, name of the petitioner did not find mention therein. However, names of other persons who were posted alongwith petitioner in District Jind, were there, including those junior to the petitioner by virtue of their transfer to District Kaithal. Later, petitioner then submitted representation, which was rejected vide order/ letter dated 31.03.2014 (Annexure P-14), impugned herein.

3. I have heard learned counsel for the parties and perused the record.

4. To be noted that petitioner at the first instance had requested for being allocated District Kaithal instead of District Kurukshetra but was instead sent to Kurukshetra in 1989. Ever since, he had been consistently requesting for sending him to Kaithal, which, concededly, was not acceded to. Finally, as is borne out from his own application dated 28.05.1996 (Annexure P-6), he once again made an earnest request that since 1989, he has been requesting for his allocation in Kaithal and he once again pleaded illness of his mother and, specifically stated that in case his request is

accepted, he would be satisfied as per option earlier exercised by him. Pursuant thereto, petitioner was allocated Kaithal in 1997 vide letter dated 30.05.1997 (Annexure P-9) on mutual basis, which was accepted by the petitioner without any demur or prejudice. It is only when seniority was circulated in the year 2002, wherein, petitioner's seniority was reckoned in District Kaithal w.e.f. the date he joined there. He represented against the same claiming that his seniority be reckoned from 1989 by counting his period of service in District Kurukshetra. In this background, impugned order dated 31.03.2014 (Annexure P-14) has rightly been so passed. Since petitioner had himself opted for change of his District from Kurukshetra to Kaithal, his seniority has to be counted in the District of Kaithal and he cannot be given benefit of his earlier posting at Kurukshetra. I therefore do not find any substance in the argument canvassed to the contrary by the learned counsel for the petitioner.

5. In this context, reference may be had to a Division Bench judgment dated 16.11.1995 in CWP-16376-1995 titled '**Sushila Devi Vs. State of Punjab and others**', whereby my learned Brothers R.S. Mongia, and K.K. Srivastava, JJ (as they then were) spoke thus:-

"3. Since the seniority of the C.V. teachers is kept district-wise, therefore, the transfer of a C & V teacher outside the District cannot be permissible unless the incumbent himself/ herself opts for being transferred from one District to another, whereby he/she may lose the seniority and her date of appointment in that District would necessarily be taken the date on which he/she joins. As observed above, in the present case, the petitioner has not given any consent/ option of being transferred outside District Amritsar. The respondents can post the petitioner anywhere in District Amritsar."

6. Applying the analogy of the afore-stated principle in converse, it thus, emerges that when change of District cadre takes place at the request of an official, then he loses seniority of previous District cadre.

7. In the premise, the request of the petitioner for seniority was rightly rejected. As regards the contention that he is entitled to seniority on parity with similarly situated persons who were also sent to Kaithal along with the petitioner, the same is also rejected on the same analogy as above, since none of them had made request for Kaithal. It is but natural to assume that they were sent against their wishes on administrative grounds.

8. Confronted with aforesaid, learned counsel for the petitioner argues that petitioner like other similarly situated persons never made request for Kaithal. The same flies on the face on the requests having been made in 1989 onwards and lastly in year 1996, stating that his mother was since ill, he should be sent to Kaithal. The argument of learned counsel is completely *de hors* the facts of the case.

9. As an upshot of the above discussion, no grounds for interference on any count are made out, as enumerated above.

10. Dismissed.

(ARUN MONGA)
JUDGE

May 18, 2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No