

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

CWP-26752-2016 (O&M)

Date of decision: September 07, 2022

Mahender Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. B.R. Rana, Senior Advocate with
Mr. Jangjit Singh Dahiya, Advocate and
Ms. Nayandeep Rana, 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 Certiorari for quashing impugned order dated 04.10.2016 (Annexure P-5) passed by respondent No.2 whereby respondent No.7 has been ordered to be transferred from Panchkula to Panipat and order dated 06.12.2016 (Annexure P-7) passed by respondent No.3-Collector Panipat ordering respondent No.7 to join at Madlauda as Girdawar Kanungo.

2. Pledged case is that petitioner joined as Revenue Patwari in Panipat Kanungo Circle, District Karnal (now in District Panipat) on 18.06.1997. Petitioner qualified the examination of Kanungo and he is entitled to be promoted as such because all other Patwaris senior to him have already been promoted as Kanungo. One post of Kanungo became vacant because of promotion of Rajesh Kumar son of Om Parkash, Field Kanungo as Office Kanungo vide order dated 06.12.2016. Respondent No.7-Balwan Singh was posted as Patwari in the District Panipat in the month of June-1997. Respondent

No.7 was transferred to District Panchkula as a Patwari and thereby he lost his lien and seniority in District Panipat. Respondent No.7 qualified the examination of Kanungo and when a vacancy for the post of Kanungo became available, he was promoted as such. Thereafter, upon a request made by respondent No.7 to respondent No.2-Director General, Land Records, Haryana, he (respondent No.7) was transferred to Panipat vide order dated 09.06.2015 (Annexure P-2). Since no vacancy of Kanungo was available in District Panipat, joining report of respondent No.7 was not accepted by the Deputy Commissioner, Panipat vide order dated 02.07.2015 (Annexure P-4). Respondent No.7 preferred CWP-14722-2015 in order to pressurize respondents to permit him to join as Kanungo in Panipat District. Thereafter, respondent No.2 passed impugned order dated 04.10.2016 (Annexure P-5) transferring one Balwan Singh Kanungo, Panchkula to Panipat against Rajesh Kumar Kanungo and Rajesh Kumar Kanungo was transferred to Sonipat District. Rajesh Kumar preferred CWP-21166-2016 before this Court and vide order dated 06.10.2016 (Annexure P-6), operation of order dated 04.10.2016 was stayed till further orders. Thereafter, respondent No.3 vide order dated 06.12.2016 (Annexure P-7), ordered the posting of respondent No.7 at Madlauda, District Panipat.

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

4. Record of the case reveals that respondent No.7 was earlier transferred by the Director General, Land Records vide an order dated 04.10.2016 (Annexure P-5) from Panchkula to Panipat vice one Sh. Rajesh Kumar, who was in-turn transferred from Panipat to Sonipat. Aggrieved said Rajesh Kumar approached this Court by way of CWP-21166-2016 challenging

the aforesaid transfer order dated 04.10.2016, wherein, following order dated 06.10.2016 was passed by Rajiv Narain Raina, J. (as he then was in this Court):

“An inter-district transfer is possible in the rank of Kanungo on exigencies of administration or in public interest by an administrative order but a transfer cannot ordinarily be not made vice each other. Rule 12 may support the first proposition but the impugned transfer order has not been passed either in public interest or in exigencies of administration and Mr. BS Rana, learned Senior counsel submits that the transfer is the result of manipulation by private respondent (R-8). The dispute has arisen between the petitioner and the private respondent with respect to the impugned transfer as a result of both the Patwaris belonging to District Panipat where both were in line of promotion as Kanungos. The 8th respondent, it is pleaded and pressed, was able to engineer his transfer to Panchkula, where it happened that no incumbent Patwari had qualified the Kanungo examination and therefore, accepted the position with the administration that in case he [the 8th respondent] is transferred to his desired Panchkula he would surrender his accrued seniority in Panipat and his name may be placed at the end of list of Kanungos in the migrating District i.e. Panchkula. Having secured a transfer to Panchkula, Mr. Rana says that he has engineered his way back to Panipat in the rank of Kanungo, which has caused the displacement of the petitioner to Sonapat. It is urged that the petitioner has been made a victim of the game played out by the 8th respondent. Mr. Rana submits that the 8th respondent is already litigating in this Court in CWP No.14722 of 2015, in which the petitioner is impleaded as respondent.

Notice of motion, returnable by 19.12.2016.

Notice re: stay as well.

In the meanwhile, the impugned order dated 4.10.2016 (Annex P-1) shall remain stayed till further orders.

To be listed and heard with CWP No.14722 of 2015.”

5. *Apropos* above order, operation of transfer order dated 04.10.2016 throughout remained stayed during pendency of the writ proceedings instituted by aforesaid Rajesh Kumar. Subsequently, it transpires that very transfer order dated 04.10.2016 passed by the Director General, Land Records was withdrawn which rendered the writ proceedings instituted by Rajesh Kumar, as infructuous. What thus, emerges is that transfer order having been withdrawn is non-existent as on today. Notwithstanding, it is rather intriguing that vide another impugned order dated 06.12.2016 (Annexure P-7) passed by respondent No.3-Collector,

Panipat which is assailed in the instant writ proceedings, respondent No.7 was directed to join in Madlauda, District Panipat as Kanungo, which is a tehsil within the administrative jurisdiction of the Collector at Panipat. Learned counsels are *ad idem* that as per Rule 12 of the Haryana Kanungos Service (Group C) Rules, 1981, Collector is empowered only within the District to depute services of Kanungo anywhere under his jurisdiction. For ready reference, aforesaid Rule is reproduced herein below:

- “12(1) *A member of the Service shall be liable to serve at any place under the order of-*
- (i) the Collector anywhere within the District; or*
 - (ii) the Director anywhere within the State, or*
 - (iii) the Government anywhere within India under the administrative control of Haryana Government*
- (2) A member of the Service may also be deputed to serve under-*
- (i) a company, an association or a body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the State Government, a municipal corporation or a local authority within the State of Haryana;*
 - (ii) the Central Government or a company, an association or a body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government, or;*
 - (iii) any other State Government, an international organization, an autonomous body not controlled by the Government or a private body:*
- Provided that no member of Service shall be deputed to the Central or any other State Government or any organization or body, referred to in clause (ii) or clause (iii) except with his consent.”*

6. Perusal of the aforesaid Rule reflects that no doubt Collector is empowered to place the services of a Kanungo anywhere within his jurisdiction. Yet, what remains unaddressed is as to by virtue of which order, services of respondent No.7 came to be placed at the disposal of Collector, Panipat since by virtue of the earlier order of withdrawal of transfer, he continues to be in Panchkula. No explanation is coming forth. Neither any fresh orders have been

placed on record or referred passed by the competent authority i.e., Director General, Land Records by virtue of which respondent No.7 can claim to have been transferred again from Panchkula to Panipat after withdrawal of the earlier order.

7. In the premise, impugned order dated 06.12.2016 (Annexure P-7) passed by Collector, Panipat is clearly without jurisdiction and is accordingly, set aside.

8. Writ petition is allowed.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 07, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No