

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

CWP-23569-2022 (O&M)

Date of Decision: 14.10.2022

Mukesh Gupta

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Varun Gupta, Advocate
for the petitioner.

Mr. Pankaj Middha, Addl.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for setting aside order dated 11.10.2022 (Annexure P-6) whereby the petitioner has been transferred from Public Health Engineering Division No.3, Narnaul (now Ateli) to Public Health Engineering Division, Punhana, District Mewat.

2. Petitioner is working as Deputy Superintendent and by the impugned order he has been transferred as aforesaid.

3. Learned counsel for the petitioner would vehemently argue that as per Clause 19.4 of the Manual on Model Code of Conduct, issued in March-2019, there is complete ban on transfer of officials connected with election. Any transfer order qua which the process even would have begin prior to the date of pronouncement of Model Code of Conduct, but actually not culminated, cannot be implemented. Clause 19.4 of the Manual on Model Code of Conduct is as under:-

“19.4. Ban on Transfers of Officials Connected with Election:

19.4.1 With announcement of election, the Election Commission directs that there shall be a total ban on the transfer of all officers/officials connected with the conduct of the election. These include but are not restricted to:

- (i) The Chief Electoral Officer and Additional/Joint/Deputy Chief Electoral Officers;*
- (ii) Divisional Election Commissioners;*
- (iii) The District Election Officers, Returning Officers, Assistant Returning Officers and other Revenue Officers connected with the conduct of elections;*
- (iv) Officers of the Police Department connected with the management of elections like Range IGs and DIGS, Senior Superintendents of Police and Superintendents of Police, Sub-divisional level Police Officers like Deputy Superintendents of Police and other Police officers who are deputed to the Election Commission under Section 28A of the Representation of the People Act, 1951;*
- (v) The transfer orders issued in respect of the above categories of officers prior to the date of announcement but not implemented till the time when Model Code came into effect should not be given effect to without obtaining specific permission from the Election Commission.*
- (vi) In those cases where transfer of an officer is considered necessary on account of administrative exigencies, the State Government may, with full justification, approach the Election Commission for prior clearance.*
- (vii) No appointments or promotions in Government/Public Undertakings shall be made during this period, without prior clearance of the Election Commission.*
- (viii) This ban shall be effective till the completion of the election process.*

4. In the instant case, the learned counsel for the petitioner points out, Model Code of Conduct came into force on 07.10.2022 (Annexure P-4), for conducting General elections of the Panchayati Raj institutions in the State of Haryana. Notwithstanding, the petitioner vide impugned order dated 11.10.2022 (Annexure P-6) has been transferred as aforesaid and, therefore, the said order being illegal and in flagrant violation of the Election Commission order dated 07.10.2022 is liable to be set aside and cannot be implemented, is the argument.

5. From perusal of the noting during the course of hearing as has been conveyed from the office of the Engineer-in-Chief to the Additional Chief

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Secretary to the Govt. of Haryana, Public Health Engineering Department, Chandigarh, copy whereof is taken on record as **Annexure 'A'**, it is clearly borne out that the proposal of transfer in question began sometime on 29.09.2022 i.e. way before the pronouncement of Model Code of Conduct. The entire process was dealt right up to the top office of the State, which culminated on 06.10.2022 i.e. prior to the announcement of the Election Commission order dated 07.10.2022 banning the transfers subject to the specific permission from the Election Commission where the Model Code came into effect. The transfer was decided prior to the date of announcement but formal orders were neither issued nor implemented.

6. In the premise, it is expected from the official respondents not to implement the impugned transfer order of the petitioner without taking prior clearance/permission from the Election Commission.

7. Disposed of accordingly.

8. Pending civil miscellaneous application, if any, also stands disposed of.

(ARUN MONGA)
JUDGE

October 14, 2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No