

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(110)

CWP-28504-2022

Date of Decision : December 12, 2022

Shamsher

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vineet Kumar Jakhar, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, the prayer of the petitioner is for quashing of the order dated 20.09.2022 (Annexure P-6) by which, the representation of the petitioner for re-considering the transfer of the petitioner as effected vide order dated 06.09.2022 (Annexure P-3), has been rejected.

Learned counsel for the petitioner argues that the grievance of the petitioner is that the transfer of the petitioner was not in consonance with the transfer policy for the reason that though the petitioner's spouse was suffering from a chronic disease but the said chronic disease was not made part of the transfer policy to give the benefit to the employees concerned while effecting the transfers. Another grievance of the petitioner is that the present transfer was mid term transfer, which is effecting the family circumstances of the petitioner qua the children, who are already studying,

who will be uprooted by the said transfer.

Learned counsel for the petitioner submits that the rejection of the representation of the petitioner made against the transfer order dated 06.09.2022 (Annexure P-3) has been done with mala fide intention so as to protect the authorities of the School from the contempt proceedings initiated by the petitioner against them, hence, the transfer of the petitioner as effected vide order dated 06.09.2022 (Annexure P-3) as well as the order rejecting the representation dated 20.09.2022 (Annexure P-6) may kindly be quashed.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

The first and foremost question which needs to be decided is whether, the transfer effected vide order dated 06.09.2022 (Annexure P-3) is justiciable or not keeping in view the facts and circumstances which arise in the present case.

The grievance, which the petitioner had raised in his earlier writ petition i.e. CWP No.17560 of 2022 was that the ailment being suffered by the spouse of the petitioner has not been given benefit for at the time of transfer though the same was also chronic in nature.

It is a conceded position that in the said petition, there was no challenge to the provisions of the transfer policy for not including the ailment being suffered by the spouse of the petitioner as a chronic disease and after the passing of order in the said petition, the petitioner again approached this Court by filing CWP No.21556 of 2022 challenging the transfer policy on the ground that a particular disease though chronic as per the Department of Health Government of Haryana, has not been included in

the list of chronic diseases as made part of the transfer policy.

It may be noticed here that the said writ petition was disposed on 19.09.2022 and the stand taken therein by the respondents was that keeping in view the purpose for which the ailment is to be taken in account for, there could be difference in list of chronic disease operated by two different Departments and for the purpose of transfer which diseases are to be given consideration falls under the domain of the employer.

This Court directed the respondent-Department therein to re-visit the said issue for future transfer and in case, found feasible, parity with regard to the chronic diseases for the grant of medical reimbursement and for effecting the transfers be considered.

No interference was done with regard to the policy in question for the present year.

In the present case, it is the wife of the petitioner, who is suffering from the said chronic disease and not the petitioner himself, who is the employee of the Department. The transfer policy is not justiciable in nature keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.1243 of 2022 titled as S.K Nausad Rahaman and others vs. Union of India and others, decided on 10.03.2022.*** The relevant paragraphs of this judgment are as under:-

“23. While analyzing the rival submissions, certain basic precepts of service jurisprudence must be borne in mind.

24. First and foremost, transfer in an All India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting

of their choice.

25. Second, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration.

26. Third, policies which stipulate that the posting of spouses should be preferably, and to the extent practicable, at the same station are subject to the ART D requirement of the administration. In this context, Justice JS Verma (as the learned Chief Justice then was) speaking for a three-judge Bench of this Court in [Bank of India v. Jagjit Singh Mehta](#) 24 held :

“5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the

incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. [...] No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.

27. The above principle was cited with approval in *Union of India v. SL Abbas* ²⁵ where the Court held that transfer is an incident of service:

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

28. Fourth, norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in:

- (i) A law enacted by the competent legislature;*
- (ii) Rules made under the proviso to Article 309 of the Constitution; and*
- (iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States.*

Fifth, where there is a conflict between executive instructions and rules framed under Article 309, the rules must prevail. In the event of a conflict between the rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules.

29. Sixth, a policy decision taken in terms of the power conferred under Article 73 of the Constitution on the Union and Article 162 on the States is subservient to the recruitment rules that have been framed under a legislative enactment or the rules under the proviso to Article 309 of the Constitution.”

Further, a Division Bench of this Court in **LPA No.247 of 2020 titled as Nisha vs. State of Haryana, decided on 24.02.2020** has reiterated the view with respect to non-justiciability of transfer policy. The relevant paragraphs of this judgment are as under:-

“ 6. It is also submitted by learned counsel for the appellant that the impugned orders of transfer are in violation of the transfer policy and that the appellant was forcibly asked to participate in the transfer drive, even though she did not fall within the parameters of voluntary deemed vacancy, as prescribed in the transfer policy.

7. It is to be noted that in view of the law laid down by the Supreme Court in the cases of Mrs. Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 Supreme Court 532; Union of India and others Vs. S.L Abbas, AIR 1993 Supreme Court 2444, and National Hydroelectric Power Corporation

Ltd. Vs. Shri Bhagwan and another, AIR 2001 Supreme Court 3309, transfer policy is not enforceable and an order of transfer in violation thereof cannot be assailed on that ground. It is also evident that learned Single Judge has dismissed the petition, granting liberty to the petitioner to avail of the remedies available to her under letter dated 27.8.2019.

8. In the circumstances, we find no reason to entertain the appeal or to set aside the orders of transfer, which are alleged to be in violation of the transfer Policy. Consequently, the appeal is dismissed. Since the main appeal itself has been dismissed, no orders are required to be passed in CM-652-LPA-2020, for adducing additional evidence.”

That being so, the petitioner cannot raise any grievance with regard to the transfer order dated 06.09.2022 (Annexure P-3).

Further, learned counsel for the petitioner concedes before this Court that the petitioner has already stayed for more than five years at the present place of posting. That being so, the maximum period provided for stay at a particular station is five years. Once the petitioner has crossed the said period, the petitioner cannot claim to continue in the said station even on medical grounds of his spouse.

The petitioner has alleged mala fide against respondent No.2 while issuing order dated 20.09.2022 (Annexure P-6) to contend that the same has only been done to save the Principal, who had relieved the petitioner despite an interim order in favour of the petitioner for which the petitioner had already initiated contempt proceedings against the Principal concerned.

From the perusal of the order passed on representation, it comes out that the grounds given by the petitioner have been considered while

rejecting the claim. Merely that the order was passed and presented before the Court started hearing the contempt proceedings, cannot in any way be inferred to mean that the said order is malicious and has been passed with a mala fide intention.

Nothing has been placed on record as to why, respondent No.2 will pass any order with malicious intent against the petitioner. That being so, the mala fide intent being invoked by the petitioner in the present petition so as to justify the filing of the present petition, is not made out in the facts and circumstances of the present case.

Keeping in view the above, no ground is made out for interference.

Accordingly, the writ petition is dismissed.

December 12, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes