

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

LPA-420-2023 (O&M)

Date of decision:- 20.04.2023

Dr. Kapil Sharma

...Appellant(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: **HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE**
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Amit Jhanji, Senior Advocate,
with Mr. Amitabh Tewari, Advocate,
Mr. Shashank Shekhar, Advocate,
and Mr. Shivam Sharma, Advocate,
for the appellant.

Mr. Arjun Sheoran, Deputy Advocate General, Punjab,
for respondent No. 1.

Mr. Harchand Singh Batth, Advocate,
for the caveator – respondent No. 2.

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RAVI SHANKER JHA, C.J. (ORAL)

This appeal is directed against the judgement and order dated 14.03.2023 passed by the learned Single Judge dismissing the writ petition filed by the petitioner (appellant herein) praying for quashing the transfer order dated 16.07.2021 (Annexure P-1) by which he had been transferred by respondent No. 2 from the University School of Applied Management, Patiala to University School of Business Studies, Guru Kashi Campus, Talwandi Sabo.

2. Learned senior counsel for the appellant submits that the order dated 16.07.2021 has been passed by respondent No. 2 - University by way of punishment and, therefore in view of the law laid down by the Supreme Court in *Somesh Tiwari Vs Union of India and others* (2009) 2 SCC 592, the same deserves to be quashed. Learned senior counsel for the appellant, in support of his submission, has taken this Court through the statement made by respondent No. 2 – University in paragraph 11 of their reply. He further submits that the learned Single Judge has not appreciated this aspect properly and, therefore, the impugned order passed by the learned Single Judge deserves to be set aside.

3. We have carefully considered the arguments advanced by learned senior counsel for the appellant as well as the averments and stand of respondent No. 2 - University in their return.

4. From a perusal of paragraphs 2 and 3 as well as 11 of the reply filed by respondent No. 2 – University, it is evident that the authorities on the one hand stated that the order of transfer was based on administrative exigency, while on the other hand, they stated that a complaint was received against the petitioner and in such circumstances and in view of the report of the committee constituted pursuant to the complaint, the petitioner had been transferred.

5. Learned counsel, appearing for respondent No. 2 – University, has stated before this Court and clarified that while the order of transfer has been passed purely in administrative exigency, however, the administrative exigency was triggered on account of a complaint filed against the appellant and the report of the committee. He has specifically clarified that as far as the allegations against the appellant in the complaint are concerned, no conclusive recording in that regard has been made by the authorities as a separate disciplinary proceeding has been instituted and is pending against him and is a subject matter of another writ petition filed by the petitioner i.e. CWP-2438-2022. He has clarified that till any conclusive finding is not recorded in the said writ petition or the matter is decided by this Court, the respondent No. 2 – University is not treating the appellant as a person guilty of the allegations made against him, moreso, as the disciplinary proceedings have been stayed by this Court vide order dated 09.02.2022 passed in CWP-2438-2022. He has further clarified that in such circumstances, while the transfer of the appellant was triggered on account of the complaint received against him, but it was purely based on administrative exigency. He points out the fact, which is not even disputed by learned senior counsel for the appellant, that the order dated 16.07.2021 was stayed by this Court vide order dated 09.02.2022 passed in CWP-2438-2022 and remained operative till 14.03.2023 and, therefore, the appellant has already worked at Patiala since 2011.

6. We have heard learned counsel for the parties at length and having perused the record of the case as well as the judgement of the Supreme Court in *Somesh Tiwari* (supra), we are of the considered opinion, that the finding recorded by the learned Single Judge, while dismissing the writ petition, cannot be found fault with.

The finding of the learned Single Judge is to the following effect:-

“Learned counsel for the petitioner in not in position to dispute the fact that as per the terms and conditions of appointment of the

petitioner, he was appointed at University School of Business Studies, Guru Kashi Campus, Talwandi Sabo. The appointment was non-transferable. He was transferred to Punjab University Regional Centre for Information Technology and Management, Mohali on his request on medical grounds.

In the background of these facts while exercising writ jurisdiction under Article 226/227 of the Constitution of India, this Court cannot hold that the employer has no right to transfer the employee back to his initial posting in terms of terms and conditions of the appointment only for the reason that the disciplinary proceedings have been initiated against the employee. Pendency of disciplinary proceedings will have their own fate. Ratio of law laid down in *Somesh Tiwari*’s case (supra) will have no bearing in the present case as the transfer in the present case is not being resorted to as a measure of punishment but only as per the terms and conditions of the appointment.”

7. In the circumstances, finding no illegality or infirmity in the conclusion recorded by the learned Single, we dismiss the appeal by taking the aforesaid categorical statement made by learned counsel for respondent No. 2 – University on record.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

20.04.2023
Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No