

CWP-11147-2022 (O&M)

Date of decision: 07.02.2023

Parminder Singh

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Madhav Pokhrel, Advocate for the petitioner

Mr. Teevar Sharma, AAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioner challenges the correctness of his transfer order from the Chandigarh office to the office of Civil Surgeon, Ludhiana. He claims that the order dated 17.05.2022, while transferring him, has been passed by the Director, Department of Health and Family Welfare, Punjab, whereas the power vests only with the State Government. He further contends that the transfer order is in violation of the relevant transfer policy.

2. On the other hand, the learned counsel representing the respondents has stated that though the petitioner was performing the duties of State Mass Media and Information Officer, however, he, primarily, holds the post of District Mass Media and Information Officer. It is submitted that there are only two posts of the State Mass Media Officer at the Chandigarh Office and since the regular promoted candidate has become available, therefore, the petitioner has been transferred to the office at Ludhiana. It has further been pointed out that vide order dated

09.05.2011, the competent authority had delegated the power of transfer to the Director, Health and Family Welfare, Punjab, Chandigarh.

3. With regard to the argument of the infringement of the transfer policy, it may be noted that such policy is only for the guidance of the Government officials. These policies, unless made a part of the statute, cannot be enforced in view of the judgments passed in **Chief General Manager (Telecom) N.E. Telecom Circle and Another v. Shri Rajendra CH. Bhattacharjee and Others (1995) 2 SCC 532**. In **State of U.P. and Others v. Gobardhan Lal (2004) 11 SCC 402**, wherein the Supreme Court, while setting aside the judgment passed by the High Court, has observed as under:-

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured

emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

4. As regards the argument of the learned counsel representing the petitioner with respect to the competency of the Director to order such transfer, it is evident on the reading of the order dated 09.05.2011 (Annexure R-1) that the Government had has delegated the powers to effect transfers upon the Director, Health and Family Welfare, Punjab.

5. Learned counsel representing the petitioner further contends that no such instructions can be issued in violation of the service rules. However, on a Court question, he admits that there is no bar/prohibition on the State Government to delegate such powers.

6. In view of the aforesaid facts, no ground to issue the writ, as prayed for, is made out.

7. Hence, dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

07.02.2023

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

(ANIL KSHETARPAL)
JUDGE