

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 11591 of 2021

Date of Decision: 14.03.2023

Bindu Prinja

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rahul Sharma, Advocate
for the petitioner(s).

Mr. Vikas Mohan Gupta, Additional Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. Reply to the writ petition has been filed with a copy, in advance, to the learned counsel representing the petitioner.
2. With the consent of the learned counsel representing the parties, the case is taken up on the board for final disposal.
3. The petitioner impugns her transfer from the Government Senior Secondary School, Dhar Kalan, District Pathankot, to the Government Senior Secondary School, Sidhwan, District Gurdaspur. The petitioner claims that the transfer order, being punitive in nature, could not be passed while giving it a colour of administrative exigencies of service.
4. The learned counsel representing the petitioner, while drawing the attention of the Court to the order dated 17.06.2021, submits that the aforesaid order has been passed on the basis of the inquiry report. Before

permitted to project her side of the story. While relying upon the judgment passed in *Somesh Tiwari v. Union of India and Others (2009) 2 SCC 592* the learned counsel submits that such order cannot be passed under the pretext of the administrative grounds. In the written statement filed by the State, it has been disclosed that the petitioner's husband is running a private school, namely S.R.K.P. Senior Secondary School at village Bungal, District Pathankot and the government apprehends that because of her persuasion, the students from the government school are continuously shifting to the school run by her husband.

5. This Court has considered the submissions and analysed the arguments of the learned counsels representing the parties. It is well known fact that transfer of an employee from one place to another is the incidence of service. The petitioner does not allege any infringement of the service rules. As regards the argument of the learned counsel that the impugned order is punitive in nature, it would be noticed that the inquiry report referred to by the competent authority is only a fact finding inquiry. Such an inquiry is not a disciplinary inquiry against the petitioner. No charge sheet has been issued to her. The impugned order does not reflect that her transfer order is being made as a measure of punishment. It is specifically noticed in the order that she is being transferred on the administrative basis.

6. As regards the judgment in *Somesh Tiwari's case (supra)*, it would be noticed that the Supreme Court, in the peculiar facts of the case, held that if the order is malafide and the transfer order is passed in lieu of punishment, the same is liable to be set aside being wholly illegal and arbitrary. However, as already noticed, in this case, the impugned order is

not punitive but administrative. The State, being the employer, is entitled to protect its interest and regulate the working of its employees on the basis of rules, instructions and policies framed. Every the order passed by the government does not require inference by the Court in exercise of its extraordinary jurisdiction. It is a well settled rule that normally, the order posting the employee from one place to another should not be interfered with, unless it suffers from malafide or arbitrariness.

7. Keeping in view the aforesaid facts and discussion, no ground is made out to issue the writ. Hence, the present writ petition is dismissed.

(Anil Kshetarpal)
Judge

March 14, 2023
“DK”

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