

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

275

CWP-10624-2023

Date of Decision :-14.12.2023

Manish Kumar @ Manish Kumar Goyal**..Petitioner**

Versus

State of Haryana and others**...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Wazir Singh, Advocate for the petitioner.

Mr. Tapan Yadav, DAG, Haryana.

Mr. Vikas Lochab, Advocate for respondent No.5.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to order dated 11.05.2023 (Annexure P-4) by which, the petitioner has been transferred from the office of District Ayurvedic Officer, Sonapat to the District Ayurvedic Officer, Gurugram.

2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. The petitioner was appointed as Clerk on 29.10.2005 and was posted at Kurukshetra till the year 2013 and, thereafter, he was transferred to Sonapat on 16.07.2013. After joining his service at Sonapat within a period of 15 days, the said order of transfer was cancelled and the petitioner was again directed to join at Kurukshetra.

4. On 04.05.2018 upon promotion as Assistant, the petitioner was transferred to Jhajjar and, thereafter, vide order dated 21.4.2022, he was transferred to the office of District Ayurvedic Officer, Panchkula. Vide order dated 29.06.2022, the petitioner was posted to Sonapat from Panchkula and now within a period of 11 months of the said transfer, the petitioner has been again transferred from Sonapat to the office of District Ayurvedic Officer, Gurugram.

5. Learned counsel for the petitioner argues that in the present case, the petitioner has been transferred time and again and he had joined wherever he has been directed to join by the authority concerned but now even before completing the minimum period of stay at Sonapat, where petitioner joined on 29.06.2022, which is 03 years as per the transfer policy, the petitioner has been again transferred within a period of only 11 months of stay.

6. Learned counsel for the petitioner further argues that the petitioner has been transferred only to accommodate respondent No.5, who has remained posted at Sonapat since the year 2016 and was only transferred out in the year 2022.

7. Learned counsel for the petitioner submits that from the year 2016 onwards, respondents No.5 has been continuously working at Sonapat and only transferred out from Sonapat to Panchkula, from which station he was transferred to Gurugram on 12.05.2022 and now again to accommodate respondent No.5 at Sonapat, petitioner has been transferred from Sonapat so as to post the respondent No.5 at Sonapat once again.

8. Upon notice of motion, respondents have filed reply. The facts

which have been recorded qua the posting order of petitioner as well as respondent No.5 recorded hereinbefore are conceded. Learned State counsel submits that it is a jurisdiction of the respondent-State to transfer an employee due to administrative exigency hence, transfer of the petitioner from Sonapat to Gurugram is perfectly valid and legal.

9. Learned counsel for the private respondent though, conceded the fact that from the year 2016, respondent No.5 remained posted at Sonapat but submits that case of the respondent No.5 is a couple case as wife of the respondent No.5 is working on contract basis in the Sonapat only hence, being a couple case, respondent No.5 has rightly been brought back from Gurugram to Sonapat.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. From the facts stated hereinbefore, it is clear that petitioner has been transferred from Sonapat to Gurugram within a period of 11 months of stay at Sonapat whereas, respondent No.5 was continuously working at Sonapat starting from the year 2016 till 2022 i.e. 06 years. Respondent No.5 was only transferred from Sonapat to Panchkula and thereafter to Gurugram in May, 2022 and now once again, within a period of 11 months, he has been brought back to Sonapat by uprooting the petitioner who has only 11 months stay at Sonapat .

12. Nothing has come on record as to what is the administrative exigency so as to keep respondent No.5 in district Sonapat despite the fact that he had already completed more than maximum period of stay at one station as per the transfer policy. Nothing has been mentioned by the

respondents in their reply as to what was the administrative exigency to uproot the petitioner, who has only 11 months of stay at Sonapat .

13. Further, from the record and the facts which have been recorded hereinbefore, it is clear that respondent No.5 has been accommodated at Sonapat by causing prejudice to the petitioner on the ground of administrative exigency. Administrative exigency is that when the services of a particular employee is needed at a particular station without effecting the said transfer, work of the department will suffer. No such kind of administrative exigency has been brought on record by the respondents except that respondent No.5 is to be accommodated at Sonapat.

14. In case the contention of the private respondent that on the ground of couple case, respondent No.5 has been brought back to Sonapat from Gurugram is accepted, then, respondent No.5 will remain posted at Sonapat for all times to come as wife of the respondent No.5 is working at Sonapat on contract basis in the department, which is non-transferable post hence, the benefit of couple case cannot be given by uprooting the employee, who has joined a particular station only 11 months ago.

15. Further, the Hon'ble Supreme Court of India in **Civil Appeal No.1243-2022, titled as S.K. Nausad Rahaman and others vs. Union of India and others decided on 10.03.2022** has held that nobody can claim posting on the basis of a couple case and wherever husband and wife are in service, they should know that under the administrative exigency as per the rules governing the service, they are required to serve throughout the State and once they have joined service with open mind, they cannot claim that they should be kept at a particular station at the disadvantage of others.

Relevant paragraphs of the judgment are as under-

“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 PART D 27 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 Mehta²⁴ 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 Abbas²⁵ 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”

16. Keeping in view the facts and circumstances of the present case, transfer of the petitioner within a period of 11 months of his joining at Sonapat and that too when he has not completed the minimum stay required under the transfer policy, cannot be upheld. Further, no administrative exigency has been brought to the notice of this Court except to accommodate the respondent No.5 on the ground of couple case, who had already stayed at Sonapat for a period of 06 years prior to the present transfer, which is beyond the maximum period provided under the transfer policy.

17. From the facts and circumstances stated hereinbefore, terming the transfer of the petitioner under the guise of administrative exigency is colourable exercise of power, whereas the real intention is to accommodate respondent No.5 at Sonapat and that too at the cost of the petitioner even though, the petitioner has not completed minimum required period of stay at Sonapat as required under the transfer policy issued by the respondent-State. Colourable exercise of power cannot be allowed to operate especially, when the same has caused prejudice to another employee, who is the petitioner in the present case.

18. It may be noticed that colourable exercise of power also operated again, which is clear from the fact that during the pendency of the present petition, the respondents have sought time to reconsider the transfer of the petitioner and keeping in view the said reconsideration, the respondent-State has passed order dated 12.10.2022. In the said order also, it is conceded by the respondents that respondent No.5 was posted at Sonapat in July, 2016 and remained there till June, 2022 and, thereafter, he was posted at Panchkula and within a period of one month, he was transferred to Gurugram, from where, he was again brought back to Sonapat within a period of 10 months. Despite recording all these facts, the respondents have mentioned that keeping in view the guidelines that husband and wife should be kept at same station, the claim of the petitioner qua his transfer has been rejected. The respondents while passing the said order has ignored the fact that even in a couple case, the employee, who has less than minimum stay at a particular station cannot be uprooted to accommodate an employee on the ground of couple case.

19. Keeping in view the facts and circumstances recorded hereinbefore, present petition is allowed. Impugned order dated 11.05.2023 (Annexure P/4) is set aside.

December 14, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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