

251 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.13752 of 2021 (O&M)

Date of decision : 14.03.2023

Dr. Kapil Sharma

..... Petitioner

versus

State of Punjab & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Amitabh Tewari, Advocate
Mr. Shivam Sharma, Advocate and
Mr. Dilmrig Nayani, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

Mr. H.S.Batth, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition the petitioner prays for issuance of a writ in the nature of Certiorari for quashing the order dated 16.07.2021 (Annexure P-1) whereby the petitioner has been ordered to be transferred from University School of Applied Management, Patiala to University School of Business Studies, Guru Kashi Campus, Talwandi Sabo.

The petitioner was appointed as Lecturer in the Management on adhoc basis at University School of Business Studies, Guru Kashi Campus, Talwandi Sabo vide order dated 10.08.2006. Thereafter he was appointed on regular basis vide appointment letter dated 10.02.2009 (Annexure P-4) The terms of appointment were specifically spelled out which includes the term with respect to the job of the petitioner being non-transferable and his appointment be

meant only for University School of Business Studies, Guru Kashi Campus, Talwandi Sabo. However, on request made by the petitioner on medical grounds he was ordered to be transferred from University School of Business Studies, Guru Kashi Campus, Talwandi Sabo to Punjab University Regional Centre for Information Technology and Management, Mohali from where later on he was transferred to the University School of Applied Management, Patiala vide order dated 24.06.2011. Vide impugned order the petitioner has been ordered to be transferred to his parent department i.e. at University School of Business Studies, Guru Kashi Campus, Talwandi Sabo.

Learned counsel for the petitioner has vehemently argued that the transfer order is punitive in nature. The same has been passed in anticipation of disciplinary proceedings against the petitioner on complaint received against him. The transfer of an employee cannot be given colour of a punishment. In case the employer resorts to the said modus, the same has to be struck down being barred by malice in law. Reliance is being placed upon law laid down by the Apex Court in the case of *Somesh Tiwari Vs. Union of India & ors. (2009) 2 SCC 592*.

Per contra learned counsel for respondent No.2 submits that since the appointment letter of the petitioner itself carried a specific covenant to the effect that the appointment of the petitioner is for University School of Business Studies, Guru Kashi Campus, Talwandi Sabo only, the petitioner cannot be allowed to raise grievance in case he is being sent back to his parent department. However, he does not dispute that disciplinary proceedings were initiated against the petitioner. Charge-sheet was issued and the same is also subject matter of a writ petition pending before this Court in *CWP No.2438 of*

2022 titled as *Kapil Sharma Vs. State of Punjab & anr.*

I have heard learned counsel for the parties and have gone through the records of the case.

Learned counsel for the petitioner is 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.

In view of the aforesaid facts, finding no merit in the present writ petition, the same is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

14.03.2023
Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No