

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19048-2023
DECIDED ON: 29.08.2023

SANDEEP CHHABRA

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sunil Nehra, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in nature of certiorari for quashing the impugned order dated 18.08.2023 endorsed on 21.08.2023 (Annexure P-7) vide which the petitioner has been transferred from the post of Registrar, Haryana Medical Council ("HMC") to Tertiary Care Cancer Centre ("TCCC") Ambala Cantt, stating the same to be in violation of the Punjab Medical Registration Act, 1916 ("Act, 1916").

2. The case set up by the petitioner is that the petitioner was appointed as Medical Officer in the Health Department, Haryana. Thereafter vide order dated 03.09.2015, the petitioner was posted as Medical Officer, Civil Hospital, Sector-6, Panchkula. On 28.02.2019, the petitioner was given the charge of Registrar, Haryana Medical Council in the following terms:

“Dr .Sandeep Chhabra, Medical Officer, Civil Hospital, Sector-6, Panchkula has been given the charge of Registrar, Haryana Medical Council in addition to his duties till the regular appointment of Registrar, Haryana Medical Council.” (Annexure P-2)

3. The petitioner contends that thereafter the Haryana Medical Council approved the name of the petitioner for the post of Registrar, the relevant minutes of meeting dated 15.04.2019 relied upon would read as under:

“Agenda No. 4:- Request for creation of post of permanent Registrar in HMC.

<i>Proposal of the Council</i>	<i>Remedy</i>
<i>As per provision of HMC Act 1916, section 10(1) “the council shall appoint a registrar who shall act as Secretary of the council and who shall act as Treasurer” The matter of regular post of registrar was discussed in the meeting. An issue in this concern was raised and it was stated that Regular appointment of registrar will cost approximately Rs.1,00,000/- per month (i.e. Rs.12,00,000/- per Year) to the council whereas Registrar appointed by Haryana Government will cost no salary burden.</i> <u><i>After detailed discussion it was decided that</i></u> <u><i>Dr. Sandeep Chhabra is already looking after</i></u> <u><i>the work of the council as Registrar as an</i></u> <u><i>additional charge by Haryana Government,</i></u>	<i>Discussed at Agenda No.7 also.</i>

<u>so he shall continue as Register of the Council and consolidated amount of Rs.20000/- per month for additional work as Honorarium shall be paid to him by the council subjected to approval by Haryana Government.</u>	
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... ..

Agenda No. 7:- Honorarium for President and Registrar of HMC.

<i>Proposal of the Council</i>	<i>Remedy</i>
<i>Considered and decided in the meeting that, since honorarium is already being paid to the President (Rs. 10000/- Per Month) and Registrar (Rs.7400/- Per Month) at present. A resolution was passed in the meeting to increase the honorarium of President from Rs.10000/- to Rs.50000/- per month and for Registrar Rs.7400/- to Rs.20000/- per month. So, this is being sent to Government for approval.</i>	<i>Proposal may be approved with the conditions that no financial burden shall be shared by the govt. and council has to meet out the expenses on this account from its own funds. However, honorarium to Registrar seems to be higher side being govt. employee hence office is of the view that Rs.10,000/- P.M. may be approved for registrar and all the members.</i>

4. He further submits that the aforesaid minutes of meeting were approved by the Government of Haryana, which were was communicated vide Memo No. 47/09/2019-4HB-II dated 15.07.2019 (Annexure P-5), as read out as per the letter

dated 22.10.2019 addressed by the President, HMC to the Director General Health Services informing that- “...*Haryana Medical Council approved the name of Dr. Sandeep Chhabra, ASMO, Civil Hospital, Panchkula for the post of Registrar as an additional charge in minutes of meeting held on 15/4/2019 under provisions of HMC Act 1916 section 10(1).*”

5. The grievance is raised on his behalf on account of the subsequent issuance of order dated 18.09.2023 transferring the petitioner from HMC, Panchkula to TCCC, Ambala Cantt in the following terms:

“HARYANA GOVERNMENT

HEALTH DEPARTMENT

ORDER

“The Governor of Haryana is pleased to transfer Dr. Sandeep Chhabra, Registrar, Haryana Medical Council, Panchkula to TCCC Ambala Cantt. Being MD (Radiotherapy) against vacant post with immediate effect.”

6. Laying stress to the above, it is argued that vide another order dated 24.08.2023, the private respondent has been transferred from Government Hospital, Ambala Cantt. to the post of Registrar, HMC, Panchkula, in place of the petitioner. It has further been contended that there are no provisions under the Act, 1916 for transferring the Registrar, hence, the orders being *void ab-initio* are violative of Act, 1916.

7. The petitioner by way of the writ petition is seeking to impugn the aforementioned orders while stating that no action could have been taken to transfer the petitioner from the post of Registrar without taking the approval of HMC.

8. Learned counsel for the petitioner heard at length.

9. First and foremost, it has to be understood that the petitioner was working as a Medical Officer and was given ‘additional charge’ of Registrar, which is clear

from bare perusal of the order dated 28.02.2019 (Annexure P-2). Further, the minutes of meeting dated 15.04.2019 also do not reflect that the petitioner stands appointed as Registrar, it merely states that- “...*Dr. Sandeep Chhabra is already looking after the work of the council as Registrar as an additional charge by Haryana Government, so he shall continue as Register of the Council...*”. As a matter of fact, a bare perusal of Agenda 4 of the minutes of meeting reflects that the HMC, has taken a decision against the regular appointment of Registrar owing to the financial burden.

10. The petitioner has heavily relied on Section 10 of the Act, 1916 which is as under:

“10. Registrar and other officers. - (1) The Council shall appoint a registrar who shall act as Secretary of the Council and who shall also act as treasurer, unless the Council shall appoint another person as treasurer. Every person so appointed shall be removable at the pleasure of the Council.

(2) The Council may also employ such other persons as it may deem necessary for the purposes of this Act.

(3) All persons appointed or employed under this section shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV OF 1860).”

11. However, the aforesaid section would come into play once the regular appointment of Registrar has been made. In the present case, it is a matter of record, that no regular appointment was made and the petitioner was merely holding ‘additional charge’ for which he was being paid honorarium and not regular salary as is payable to Registrar. The petitioner has no vested right whereby

he can claim to continue to hold the additional charge of the post of Registrar or seek to rely on the provisions which are applicable to a regular incumbent. It is well-settled that a person holding lesser grade can be made in-charge of a higher post and may also be paid certain remuneration as is admissible to the higher post, for instance the honorarium in the present case, however, the same will not make the person entitled to claim any benefit attached to the additional post as if he was a regular incumbent to the said post. As such, any reliance on Section 10 of Act, 1916 is misplaced as the same is applicable to a regular incumbent and not the petitioner who was granted additional charge for limited purpose and object.

12. The petitioner, during the course of arguments had placed before this Court the judgment in *Kanta Devi v. The Punjab Nurses Registration Council and others* [CWP No. 15235 of 2012, Decided vide order dated 11.01.2013] however, the reliance on the said judgment is misplaced. In the said case, the petitioner was duly appointed as Registrar. The question of holding of additional charge was not before the Court.

13. Even otherwise, the scope of interference with the power of an employer to transfer an employee by the High Court is very limited and can only be entertained in case the transfer has been ordered without there being any jurisdiction with the authority, which has passed the order or the transfer order suffers from mala fide, which has to be proved on the basis of the specific averments made in the petition. In the present case, none of the criteria, which justifies the interference by this Court in the order of transfer has been made out. This Court in *Iqbaljeet Singh v. State of Punjab* [2022 (4) S.C.T.733] observed that:

“8. In the present case, concededly the petitioner has remained in his home district for more than eight years. So far as execution of orders is concerned, that would be part of his duty. Moreover, there is no such

reflection in the impugned orders that petitioner has been transferred on that account. The contention that order is in violation of the transfer policy is also not acceptable in view of the fact that transfer policies are just guidelines and not legally enforceable. The petitioner has failed to substantiate that he has suffered any element of manifest injustice or non- acceptance of his prayer will result into failure of justice in any manner.”

14. Similarly, in the case of *Neha Sood v. State of Punjab* [2018(1) S.C.T. 715; 2018(3) SLR 354] this Court has held that- “Transfer is an incidence of service. Matters of transfer/posting are best left to the judgment of the employer. Orders of transfer would be open to challenge only if the same have been passed in violation of statutory provision or are vitiated by malafides. Terms and conditions contained in a transfer policy/guidelines do not vest an enforceable right in an employee. A reference in this regard may be made to the decision of Hon'ble Apex Court in the case of *Union of India v. S.L. Abbas*, 1995 (4) SCT 455.”

15. Accordingly, keeping in view the above discussion, this Court is of the opinion that in the absence of vested right accruing in the favour of the petitioner, no infirmity can be found in the action of the respondents. The petitioner has no valid cause to maintain the present writ petition.

16. Hence, the present petition is dismissed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

29.08.2023
Poonam Negi

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