

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

(112)

CWP-3722-2024

Date of decision: - 28.02.2024

Shri Krishan

....Petitioner

Versus**State of Haryana and others**

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Dr. Suresh Kumar Redhu, Advocate,
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is a civil writ petition under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari to quash the impugned transfer orders No.1828-31/St.C IGP Karnal dated 06.02.2024 (Annexure P-10) passed by the Inspector General of Police, Karnal Range, Karnal vide which the petitioner has been transferred from District Panipat to District Karnal.

2. Learned counsel for the petitioner has challenged the impugned order on several grounds. The first ground raised is that the petitioner is a resident of Sonipat and has referred to his ration card and Aadhar Card (Annexures P-1 & P-2) to buttress the same and has submitted that he is not a resident of District Panipat and thus District Panipat cannot be regarded as his home town. It is next argued that

although the instructions dated 18.10.2023, as noticed in the impugned order, state that a person who is due to retire within a period of six months, can be given place of posting of their choice including home district, but as per the instructions dated 07.04.1989, read along with instructions dated 19.11.1998, more so clause 3 of the instructions dated 07.04.1989, it has been provided that a person should not be transferred in case he is about to retire within a period of two years (amended to one year vide instructions dated 19.11.1998). It is stated that the petitioner is about to retire on 31.12.2024 and has a little over 10 months left and thus, the transfer order (Annexures P-10) is bad as it violates the instructions (Annexures P-3 and P-4). It is also submitted that the transfer is also in violation of the instructions dated 13.02.2020 (Annexure P-5) and also in violation of sub-clause (iii) of para 5.3 of the instructions dated 21.12.2023 which have been reproduced in Annexure P-8. The next argument raised by learned counsel for the petitioner is that the petitioner was transferred from District Panipat to District Karnal, vide order dated 27.01.2022 and he had joined District Karnal on 02.02.2022 and thereafter, he was transferred from District Karnal to District Panipat on his own request and was relieved on 11.04.2023 and had joined in District Panipat on 11.04.2023 and the petitioner has now again been transferred by virtue of the impugned order.

3. Learned State counsel, on the other hand, has opposed the present writ petition and has submitted that the petitioner has already joined, in District Karnal on 19.02.2024 and thus, the impugned order has been acted upon and the present writ petition has been rendered

infructuous. It is further submitted that the impugned order has been passed after taking into consideration the directions given by the Election Commission of India dated 21.12.2023, wherein it was specifically provided that the Police Sub-Inspectors, like the petitioner, should be posted out of their home districts and it has been specifically recorded in the impugned order that as per the office record, at the time of joining in the police department, the home district which the petitioner had mentioned was District Panipat, which was subsequently changed to District Sonipat and as per the instructions of the Director General of Police dated 25.11.2014, in case any police official had changed his home address from the address which was mentioned by him at the time of joining, both the districts would come under the definition of Home District. It is stated that the said aspect has neither been rebutted in the writ petition nor the said instructions have been challenged. It is further stated that the impugned order passed is in accordance with law and has been passed after giving due hearing to the petitioner and that vide the order dated 19.01.2024 (Annexure P-6), 12 persons including the petitioner were transferred, on account of the ensuing general elections and for administrative reasons. It is further submitted that there is no allegation of malafide made by the petitioner in the present writ petition and since transfer is an incidence of service, thus, it is not for the petitioner to choose where he wishes to be posted.

4. This Court has heard learned counsel for the parties and has perused the record.

5. It is not in dispute that in pursuance of the impugned order

dated 06.02.2024 (Annexure P-10), the petitioner has already joined in District Karnal, where he has been transferred. A perusal of the impugned order (Annexure P-10) would show that it has been specifically stated that for the purpose of the upcoming elections to the House of People (Lok Sabha), 2024, the Election Commission of India, to conduct the elections in a fair and impartial manner has issued directions to Haryana Government as well as all over India with respect to transfer/posting of officials and as per Para 5.3(i) of the said directions, which has also been reproduced in Annexure P-8 (at page 41 of the paperbook), the police officials holding the rank of Sub-Inspector and above should not be posted in their home district. The said para 5.3(i) is not disputed and rather in the petition, Annexure P-8 has been annexed, in which, reference has been made to the said para 5.3(i). It has further been recorded that as per the office record, at the time of joining in the police department, the home district of the petitioner was mentioned as District Panipat and it was subsequently that he had changed his home address to District Sonipat. It has further been recorded that the Director General of Police, Haryana, vide office Endst. No.13276-82/E(II)-1 dated 25.11.2014 had issued directions that if any police official changed his home address from the address which has been mentioned at the time of joining, then, both the districts will come under the definition of Home District. A perusal of the writ petition would show that there is no averment in the writ petition to the effect that as per the office record, at the time of joining in the police department, the petitioner had not shown District Panipat as his home district. The instructions dated 25.11.2014 have neither been

annexed nor been challenged. A perusal of para 4 of the writ petition (at page 7) would show that it is the own case of the petitioner that he had sought transfer from District Karnal to Panipat on his request and all the said facts show that the petitioner himself had given his home district as Panipat at the time of joining in the police department. At any rate, the said observation made in the impugned order has not been stated to be false, inasmuch as, there is no averment that in the office record the home district of the petitioner was not stated to be District Panipat initially. It is thus apparent that as per the instructions dated 25.11.2014, even District Panipat is to be taken as the home district of the petitioner in addition to District Sonipat and thus, the petitioner could neither be posted in District Panipat nor in District Sonipat. In the impugned order, it has further been averred by the Inspector General of Police that during the personal hearing, the petitioner had requested that he be transferred to District Karnal instead of District Kaithal as was earlier ordered. Although in the writ petition, the said fact has been disputed, but this Court does not find any reason to disbelieve the observation made by the Inspector General of Police in the impugned order dated 06.02.2024 (Annexure P-10). At any rate, even in case the said aspect is not taken into consideration, then also, the impugned order has been passed in accordance with law and in compliance with the directions issued by the Election Commission of India, more so, Para No.5.3(i).

6. Before considering the arguments raised by learned counsel for the petitioner, it would be relevant to refer to the judgment of the Co-ordinate Bench of this Court in ***CWP-1927-2021, decided on 12.03.2021***

titled as “**Raman Sharma Vs. State of Haryana and others**”, in which case, the Co-ordinate Bench of this Court after considering the various judgments of the Hon'ble Supreme Court as well as the Division Bench of this Court, had observed that transfer is an incidence of service and no government servant or employee of Public Undertaking has a legal right for being posted at any particular place and since the said transfer is generally a condition of service, which fact has not been disputed in the present case before this Court, the employee has no choice in the matter and transfer from one place to the other is necessary to ensure efficiency in public administration and that a Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at a particular place. In the said judgment, reliance was placed upon the judgment of the Hon'ble Supreme Court in ‘**Shilpi Bose (Mrs.) & Ors. Vs. State of Bihar & Ors.**’ reported as **1991 Supp (2) SCC 659**, in which, the Hon'ble Supreme Court had observed that even in case a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order. Reference was also made to the Division Bench of this Court in ‘**Parveen Kumar Vs. State of Punjab**’, reported as **2008(4) SCT 596**, to the effect that the guidelines laid down by the State for the transfer of its employees from one place to another are for the guidance of officers and are not enforceable for the purposes of assailing their transfer and do not vest any immunity in an employee from transfer in Government service. The relevant portion of the judgment in **Raman Sharma's case (supra)** is reproduced herein below: -

“13. xxx xxx xxx Moreover, a Division Bench of this Court in **‘Parveen Kumar vs. State of Punjab & Ors.’** [2008(4) SCT 596] *inter alia* held that :

“The guidelines laid down by the State for the transfer of its employees from one place to another are for the guidance of officers and are not enforceable for the purposes of assailing their transfer. These do not vest any immunity in an employee from transfer in Government service. Besides, transfer of an employee from one station to another is a normal feature and incidence of service which does not, in any manner, alter the conditions of his service. No Government servant can claim to remain at a particular post or a station of his choice”.

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15. In the matter of **‘Gujarat Electricity Board & Anr. vs. Atmaram Sungomal Poshani’** [(1989) 2 SCC 602] the Supreme Court *inter-alia* held that :

“Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order”.

16. In the matter of **“Rajendra Singh vs. State of U.P. & Ors.”** [(2009) 15 SCC 178] the Supreme Court *inter alia* held that :

“A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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

contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see State of U.P. v. Gobardhan Lal, 2004(2) SCT 368 : (2004) 11 SCC 402]”.

17. In **‘Shilpi Bose (Mrs.) & Ors. vs. State of Bihar & Ors.’** [1991 Supp (2) SCC 659] the Apex Court held that :

“In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders”.

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19. It is not the case of the petitioner that respondent No.1 who passed the impugned transfer order (Annexure P-4) had no power to do so. It is also not his case, as set-out in the writ petition, that his transfer is against the service rules which govern him. Though at the stage of filing the replication the petitioner put his reliance on the Policy and Guidelines for Posting and Transfers dated 07.04.1989 (Annexure P-11), there is no reference to the same in the writ petition. ***Even otherwise a Division Bench of this Court in Parveen Kumar’s case (supra) has held that such guidelines are only for the guidance of officers and are not enforceable for the purposes of assailing the transfer and do not vest any immunity in an employee from transfer in Government service.”***

7. In the above-said case also, several arguments were raised on behalf of the petitioner therein, including the fact that the petitioner therein had been transferred three times in the last four years and he was due to retirement in the near future and that the transfer order would cause great hardship and suffering to the petitioner therein as his wife was suffering from serious health issues and even arguments were raised regarding the said transfer order having been passed to favour respondent No.3, who was stated to be a blue-eyed boy of the State Government. Para No.4 of the said judgment raising the said plea has been reproduced herein below: -

“4. Learned Senior counsel appearing for the petitioner has contended that the impugned order (Annexure P-4) is illegal and arbitrary in as much as the petitioner has already been transferred three times in the last four years and the present transfer is just 1 year 5 months after the last transfer. He further submitted that the petitioner is due to retire in 1 year 9 months and therefore, no practical purpose will be served by posting him to Hisar for the remaining period of his service. Counsel for the petitioner further submitted that the impugned transfer would cause great hardship and suffering to the petitioner whose wife is suffering from certain health issues and needs constant support and care. He pressed into service medical prescriptions (Annexures P-5 and P-6) to support his stand. Learned Senior counsel contended that the impugned order (Annexure P-4) is a colourable exercise of power since the transfer of respondent No.3 as Chief Engineer, Municipal Corporation, Sonipat with Municipal Corporation, Faridabad in addition has already been stayed by this Court vide order dated 27.11.2020 (Annexure P-7) passed in CWP No.20361 of 2020 and thus the impugned transfer has been ordered only to accommodate respondent No.3. It has been contended that one Birender Kumar Kardam was Chief Engineer with Municipal Corporation, Faridabad. Vide order dated 22.11.2020 the said Birender Kumar Kardam was relieved of this charge and respondent No.3 was given this posting in addition to the post of Chief

Engineer, Municipal Corporation, Sonipat which he already held. Birender Kumar Kardam challenged the order dated 22.11.2020 in this Court vide CWP No.20361 of 2020 in which this order stands stayed (Annexure P-7). According to the learned Senior counsel, respondent No.3 is the blue-eyed boy of the State Government and since his posting as Chief Engineer, Municipal Corporation, Faridabad was stayed by this Court, he (respondent No.3) was favoured and transferred to Municipal Corporation, Gurgaon and in this process the petitioner has been transferred to Municipal Corporation, Hisar. Lastly, the learned Senior counsel submitted that the petitioner has an unblemished service record and therefore the impugned transfer was for extraneous and mala fide reasons. The learned Senior counsel appearing for the petitioner has relied upon the decisions in ‘N.S. Bhullar & Anr. vs. The Punjab State Electricity Board & Ors.’ [1991(1) SLR 378], ‘Dr. (Mrs.) Pushpa Mehta vs. Rajasthan Civil Services Appellate Tribunal & Ors.’ [2000 (5) SLR 598 Raj.], ‘Birender Singh Hooda vs. State of Haryana & Ors.’ [2020 SCC Online P&H 220], ‘Anil Garg vs. State of Punjab & Ors.’ [2020(4) SCT 559], ‘Rechlama T.S. vs. State of Rajasthan & Ors.’ [2004 WLC 594 Raj.], ‘Dr. Dev Parkash Chugh vs. State of Punjab & Ors.’ [2005(4) SCT 726], ‘Birender Kumar Kardam vs. State of Haryana & Ors.’ [2017(1) SCT 384] and the interim orders dated 12.11.2020 and 19.11.2020 passed ‘Rajesh Kumar & Ors. vs. State of Haryana & Ors.’ [CM-11704-CWP-2020 in CWP-17718-2020].”

After considering all the abovesaid pleas raised on behalf of the petitioner therein and the law laid down in various judgments, the writ petition filed by the petitioner therein was dismissed.

8. It would be relevant to note that there is no dispute that the respondent authorities have the power to transfer and the petitioner has not alleged any malafide against any officer nor has impleaded any officer by name in the present writ petition. Reliance placed upon the instructions (Annexures P-3 and P-4) by the petitioner do not further the case of the

petitioner in view of the law laid down in the above-said judgment and also in view of the fact that Clause (iii) of the instructions (Annexure P-3) (at page 23) has been misinterpreted by the petitioner, which provides for a maximum period for continuing the service on a post at a particular place and a reading of the whole rule would show that once the maximum period has elapsed, it is incumbent upon the authorities to transfer the said person. However, under the said clause, discretion has been given to the government not to transfer a person who is about to retire within a period of two years (amended to one year as per the instructions dated 19.11.1998 (Annexure P-4) and the fact stands fortified from the usage of the word “may” in sub-clause (iii) of the instructions (Annexure P-3). The same cannot be construed to give an absolute right to an employee to stall his transfer on the ground that the employee is about to retire. **An enabling power of the government cannot be construed as an enforceable right of the petitioner.** Even reliance upon Clause (iii) of Para 5.3 as mentioned in Annexure P-8 is also misplaced as the same also mandates for a police officer to be transferred after he has completed the tenure of three years and it is nowhere mentioned that an employee cannot be transferred prior to the said period, even on account of administrative exigencies as arisen in the present case in view of the ensuing elections. Even reliance placed on the instructions dated 13.02.2020 (Annexure P-5) would not further the case of the petitioner, in view of the laid down in **Raman Sharma's case (supra)**, in which, judgments of the Hon'ble Supreme Court as well as the Division Bench of this Court have been relied upon.

9 Keeping in view the above-said facts and circumstances, the present writ petition is meritless and deserves to be dismissed and is accordingly dismissed.

February 28, 2024
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes