

CWP-7728-2023 (O&M)

229

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-7728-2023 (O&M)
Date of Decision: 29.01.2024

Surender Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Kapil Bansal, DAG, Haryana.

Mr. Abhishek Goel, Advocate for
Mr. P.S. Saini, Advocate,
for respondent Nos.1 & 2.

Mr. Johan Kumar, Advocate,
for respondent No.3.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 12.04.2023 (Annexure P-3) passed by respondent No.2 vide which the petitioner has been transferred from the office of Municipal Corporation, Faridabad to the office of Municipal Committee, Mohindergarh which is utter violation of Clause 6 of the Transfer Policy dated 29.04.2022 (Annexure P-4) without completing three years of service of petitioner as Accountant at Municipal Corporation, Faridabad.

2. Learned counsel for the petitioner submitted that the petitioner

was transferred vide impugned order dated 12.04.2023 (Annexure P-3) from the office of Municipal Corporation, Faridabad to the office of Municipal Committee, Mohindergarh and he had served at the office of Faridabad only for a period of two years and in terms of the Transfer Policy (Annexure P-4), the transfer could not have been effected unless he had completed 3 or 5 years and has referred to Clause 6(ix) & (x) of the Transfer Policy in this regard. He further submitted that since the transfer was in violation of Transfer Policy (Annexure P-4), the impugned order is liable to be set aside. He also submitted that the sole reason for the transfer of the petitioner was to adjust the respondent No.4 against the post which the petitioner was holding, the respondent No.4 has now been appointed vide Annexure P-3.

3. On the other hand, Mr. Kapil Bansal, D.A.G., Haryana, while referring to the reply filed by the State has submitted that the petitioner does not have any vested right seeking challenge to the transfer order since the order was made because of the administrative reasons. While referring to the reply he submitted that the main grievance of the petitioner is that the transfer order was in violation of the Transfer Policy (Annexure P-4) whereas it has been specifically so stated in the reply filed by the respondent-State that the Transfer Policy (Annexure P-4) is an Online Transfer Policy and it has not been even implemented till date. He further submitted that there was no question of violation of Transfer Policy which was only an Online Transfer Policy and has not been implemented and so far as the impugned order (Annexure P-3) is concerned, it was not in pursuance of the Online Transfer Policy but was in pursuance of pure and simple administrative exigencies. He also submitted that so far as the

allegation of *mala fide* pertaining to the fact that the petitioner has been transferred only to adjust respondent No.4 is concerned, the allegation is totally vague even as per the pleadings made in the writ petition and no specific allegation has been made in this regard. He further submitted that even otherwise also, had there been any *mala fide* on the part of the respondent/State to have adjusted respondent No.4, then he would not have been transferred so frequently because respondent No.4 has also been transferred for about four times in short span of time and it is not the case that the respondent No.4 stayed at a particular place for a long period of time and it was only because of the administrative exigencies that both the petitioner and respondent No.4 have been transferred and therefore, the present petition is liable to be dismissed.

4. Mr. Johan Kumar, learned counsel for respondent No.4 has also stated that respondent No.4 has also been transferred for about four times and it was on the basis of administrative exigencies.

5. I have heard the learned counsels for the parties.

6. This Court while issuing notice of motion had stayed the operation of the order (Annexure P-3) qua the present petitioner in view of the submissions made by the learned counsel for the petitioner that he was transferred after completion of two years of service *de hors* the Transfer Policy (Annexure P-4). However, today the learned State counsel, while referring to the reply filed by the State has specifically stated that the Transfer Policy (Annexure P-4) has not even been implemented because it is an Online Transfer Policy whereas Annexure P-3 which is an impugned transfer order, has not been passed on the basis of the Transfer Policy

(Annexure P-4) while it was purely and simply because of administrative exigencies for which the petitioner does not have any vested right. It is a settled law that there is no vested right to challenge the transfer of an employee unless there are some exceptional circumstances or when there is violation of any policy or instructions which has sanctity in law either statutorily or otherwise.

7. In the present case, as per the stand taken by the State, the Transfer Policy (Annexure P-4) has never been implemented till date because it was only an Online Transfer Policy whereas the impugned transfer order vide Annexure P-3 is not on the basis of the Transfer Policy. In addition to the above, the reply which has been filed by the State, the statutory provisions of Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 2010 has been reproduced in the writ petition and vide Rule 12, it has been so provided that a member of the service shall be liable to serve, at any place whether within or outside the State of Haryana on being ordered to do so by the appointing authority. Therefore, there is no vested right with an employee to challenge the transfer order unless as aforesaid there are extreme or exceptional circumstances or violation of any notification or statutory rules etc. Therefore, this Court does not find any merit in the present petition and the same is hereby dismissed. The interim order dated 18.04.2023 stands vacated.

8. However, in case the petitioner moves any representation to the competent authority based upon some exceptional circumstances then the competent authority shall consider and decide the same in accordance with

law within a period of one month.

29.01.2024
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

- 1. Whether speaking/reasoned: Yes/No
- 2. Whether reportable: Yes/No