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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-18540-2024

Date of decision: 05.08.2024

NARESH KUMAR KAKKAR

...Petitioner

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED AND
OTHERS

...Respondents

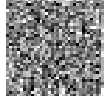
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Sunil Kumar Nehra, Advocate and
Mr. Rahil Mahajan, Advocate
for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

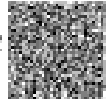
1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 01.08.2024 (Annexure P-3) vide which the petitioner has been transferred from Faridabad to Hisar in violation of the transfer policy dated 07.04.1989 (Annexure P-4) issued by the Chief Secretary, Government of Haryana as the petitioner is due to attain the age of superannuation on 31.03.2025 with a further prayer to direct the official respondents to allow the petitioner to continue at Faridabad till he attains the age of superannuation i.e. 31.03.2025.

2. Learned counsel for the petitioner submitted that the petitioner is working as a Superintending Engineer in the respondent-Nigam and by way of



impugned order dated 01.08.2024 (Annexure P-3), he has since been transferred from Faridabad to Hisar with headquarter at Gurugram. He further submitted that only 8 months of his service are left and as per the Policy of the respondent-Nigam (Annexure P-5), an employee whose one year or lesser service is left before retirement then he/she will not be transferred from the station of posting without the consent of the employee. He further submitted that the transfer of the petitioner is in violation of the aforesaid Policy issued by the respondent-Nigam itself and therefore, his transfer may be set aside.

3. On the other hand, Ms. Rajni Gupta, Addl. A.G., Haryana appearing on behalf of the respondents No.1 and 2-Nigam submitted that she has already received the advance copy of the present writ petition and has also sought instructions and even Mr. Mahesh Kumar, Under Secretary/HR-I, DHBVN, Hisar is also present in the Court today. She further submitted on categorical instructions from the aforesaid officer who is present in the Court that so far as the submission made by the learned counsel for the petitioner that the petitioner will be posted at Hisar, which is far away from Faridabad is incorrect because the petitioner will be posted at Gurugram and not at Hisar. She further submitted that the distance between Gurugram and Faridabad is very short and normally does not take more than 1 hour and therefore, the argument raised by the learned counsel for the petitioner is factually incorrect. She further submitted that the petitioner has been transferred due to administrative exigency and had it been a case that the petitioner was transferred to a far of place where he had to face some difficulties or any problems at the fag end of his career, then he might have some case



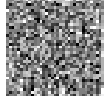
in his favour but shifting of the petitioner is only from Faridabad to Gurugram and therefore, no case is made out.

4. Learned counsel for respondents No.1 and 2-Nigam also submitted that it is a settled law that transfer is an incidence of service and normally the Court should not interfere in the transfer matters except when it is a case of a *mala fide* or when there is violation of any statutory provision of law. She further submitted that as as per the petitioner himself and the petition itself, there is no allegation of *mala fide* against anybody and apart from the above, there is no violation of any statutory provision of law.

5. Mr. Jasbir Mor, Advocate has also appeared on behalf of respondent No.3 and submitted that respondent No.3 has been transferred in place of the petitioner. He further submitted that the place of posting of the petitioner is at Gurugram and not at Hisar. He also submitted that the petitioner was rather posted at Faridabad itself on different posts for long number of years from the year 2005 onwards.

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

7. As per the learned counsel for respondents No.1 and 2-Nigam, she has categorically submitted on instructions from the aforesaid officer who is present in the Court that the petitioner will be posted at Gurugram and not at Hisar and therefore, the plea taken by the learned counsel for the petitioner that he will be posted as Hisar would be incorrect. The distance from Faridabad to Gurugram is normally about 1 hour. This Court could have certainly looked into the aspects of transfer in judicial review when only 8 months of service is left and it is not in accordance with the aforesaid Policy issued by the respondent-

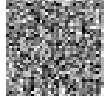


Nigam but considering the aforesaid facts and circumstances, where the transfer is not at a far distance and the aforesaid impugned order dated 01.08.2024 (Annexure P-3) has been issued in administrative exigency and public interest, this Court would not interfere in the aforesaid transfer order passed by the respondent-Nigam. The law with regard to the transfer of an employee is no longer *res integra*. Hon'ble Supreme Court in **Sri Pubi Lombi versus The State of Arunachal Pradesh and others, Civil Appeal No.4129 of 2024 (Arising out of Special Leave Petition (C) No.22074 of 2023)** dated **13.03.2024**, held as under:-

*9. In the case of **Union of India and others v. S.L. Abbas; (1993) 4 SCC 357**, it is clearly observed by this Court that the scope of judicial review is only available when there is a clear violation of statutory provision or the transfer is persuaded by malafide, non-observation of executive instructions does not confer a legally enforceable right to an employee holding a transferable post. The relevant paragraph reads as under:*

"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....."

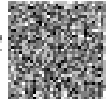
*9.1 Further, following the footsteps of S.L. Abbas (supra) this Court in the case of **Union of India and another v. N.P. Thomas; 1993 Supp (1) SCC 704** held that the interference by the Court in an order of transfer on the instance of an*



employee holding a transferrable post without any violation of statutory provision is not permissible.

*9.2 This Court further curtailed the scope of judicial review in the case of **N.K. Singh v. Union of India and others; (1994) 6 SCC 98** holding that the person challenging the transfer ought to prove on facts that such transfer is prejudicial to public interest. It was further reiterated that interference is only justified in a case of malafide or infraction of any professed norm or principle. Moreover, in the cases where the career prospects of a person challenging transfer remain unaffected and no detriment is caused, interference to the transfer must be eschewed. It is further held that the evidence requires to prove such transfer is prejudicial and in absence thereof interference is not warranted. The law reiterated by this Court is reproduced, in following words:-*

"9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset.



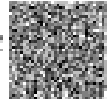
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"23.Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

"24. ...Challenge in courts of a transfer when the career prospects remain unaffected and there is no detriment to the government servant must be eschewed and interference by courts should be rare, only when a judicially manageable and permissible ground is made out. This litigation was illadvised."

9.3 The issue involved in the present case is somewhat similar in the case of **Mohd. Masood Ahmad v. State of U.P. and others; (2007) 8 SCC 150** wherein this Court in paragraph 8 has observed as thus:-

"8. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee....."



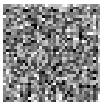
9.4 It is not tangential to mention that this Court in the case of **State of Punjab v. Joginder Singh Dhatt; AIR 1993 SC 2486** observed as thus:-

"3.....It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting....."

9.5 It is also imperative to refer the judgement of this Court in the case of **Ratnagiri Gas and Power Private Limited v. RDS Projects Limited and Ors.; (2013) 1 SCC 524** where it reiterated one of the pertinent principles of administrative law is that when allegations of malafide are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer. The relevant excerpt is reproduced as thus:

"27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned....."

10. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in absence of (i) pleadings regarding malafide, (ii) non-joining the person against whom allegation are made, (iii) violation of any statutory provision (iv) the allegation of the transfer being detrimental to the employee who is holding a transferrable post, judicial interference is not warranted. In the sequel of the said settled norms, the scope of judicial review is not



permissible by the Courts in exercising of the jurisdiction under Article 226 of the Constitution of India.

8. Consequently, the present writ petition being devoid of any merit, is hereby dismissed.

05.08.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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