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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19764-2024
Date of decision: 14.08.2024

MANJEET

...Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED AND ORS.

...Respondents

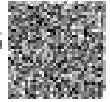
CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Chander Pal Tiwana, 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 09.08.2024 (Annexure P-2), vide which the petitioner has been transferred from the office of XEN (OP) Division Pundri to the office of XEN (OP) Division Pehowa, which is contrary to the transfer policy dated 06.10.2004 (Annexure P-1) and the law laid down by a Division Bench of this Court in case of *Dr. Dev Parkash Chugh versus State of Punjab and others, 2005 (4) SCT 726* with a further prayer to direct the respondents to allow the petitioner to continue at her present place of posting as Divisional Accountant (DA) as the petitioner is a patient of chronic disease i.e. Diabetes Mellitus, Celiac disease.

2. Learned counsel for the petitioner submitted that the petitioner is a lady and she is suffering from Diabetes Mellitus and Celiac disease and she is

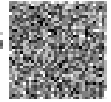


taking her treatment from Fortis Hospital, Mohali. He further submitted that the petitioner has been transferred vide impugned order dated 09.08.2024 (Annexure P-2) from the office of XEN (OP) Division Pundri to the office of XEN (OP) Division Pehowa and the distance between the aforesaid two places is about 30 kms. He further submitted that the petitioner is also having a minor child and also having matrimonial dispute and it will cause acute hardship to her due to the aforesaid transfer and therefore, considering her hardship the aforesaid transfer order (Annexure P-2) may be set aside.

3. After hearing learned counsel for the petitioner, this Court is of the considered view that the petitioner is only transferred by a distance of about 30 kms. As per the impugned order (Annexure P-2), transfer of the petitioner has been effected on the basis of administrative grounds. It is a settled law that the Courts would interfere in the transfer matters only when there is a *mala fide* being alleged and also when there is a violation of statutory provisions of law. 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

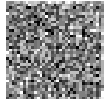


of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject....."

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



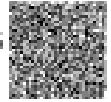
public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this 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:-*



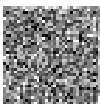
"8. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people 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.

4. In view of the aforesaid facts and circumstances, the present writ petition being devoid of any merit, is hereby dismissed.

5. Since the plea of the petitioner is with regard to her acute hardship due to the reasons mentioned by her, liberty is granted to the petitioner to file any comprehensive application/representation to the Managing Director of the respondent-Nigam giving all the details with regard to her hardship. In case any such application/representation is filed before the Managing Director of the respondent-Nigam, then the Managing Director shall consider the same in accordance with law with regard to the hardship being claimed by the petitioner due to the transfer and thereafter, shall pass an order within a period of 15 days and copy be also supplied to the petitioner after passing of the order.

14.08.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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