



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

207

CWP-21987-2024 (O&M)
Date of decision: 06.09.2024

Dhirender Singh

....Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jagbir Malik, Advocate for the petitioner

Mr. Harish Nain, AAG Haryana

Mr. Siddharth Gupta, Advocate for respondent No.3

AMAN CHAUDHARY, J. (ORAL)

1. The petitioner challenges the order rejecting his representation as also the one whereby he had been transferred, by placing solitary reliance on the Division Bench judgment in **R.K. Mittal vs. State of U.P. and Another**¹, against which no SLP was filed, relevant paras whereof read thus:

“20. Even for those persons where the orders of transfer have been passed but could not be implemented, the Code provided vide Clause 5 that it shall not be implemented without permission of the Commission. The said clause reads as under :

"The transfer orders issued in respect of the above categories of officers prior to the date of announcement but not implemented till date should not be given effect to without obtaining specific permission from the Commissioner in this regard."

21. Thus, the Code is to be observed but in order to facilitate the function of the State, certain exceptions have been carved out in the Code itself and State Government can implement the transfer orders, etc. after taking prior clearance from the Commission.

¹ 2004 (8) SLR 367



22. The Code does not relate to every employee of the State Government. It is concerned only with those persons who can be involved in election process as Clause 4 of the Code reads as under ;

"The Commission directs that there shall be a total ban on the transfer of all officers/officials connected with the conduct of the elections. These include but are not restricted to :

(i) The Chief Electoral Officer and Additional/ Joint/ Deputy/Chief Electoral Officers ;

(ii) Divisional Commissioners

(iii) The District Election Officers, Returning Officers, Assistant Returning Officers and other Revenue Officers connected with the Conduct of Elections ;

(iv) Officers of the Police Department connected with the management of elections like rangeIGs and DIGs, Senior Superintendents of Police and Superintendents of Police, Sub-Divisional level Police Officers like Deputy Superintendents of Police and other Police Officers who are deputed to the Commission under Section 28A of the Representation of The People Act, 1951."

23. Thus, it is apparent from the aforesaid clause that the list mentioned therein is not exhaustive, it is rather illustrative and it is for the State Government to consider and for the Election Commission to examine as to whose services are required in the election for the reason that after amendment in Section 159 of the Act, 1951, the services of the employees of the Government Companies, Public Undertakings and local bodies can be involved in the election process.

24. Transfer of the employees whose services are required in the electioneering process, may be restrained/regulated by the Election Commission in order to conduct the election free and fair, for the reason that a political party in power, may post the officers of its liking at a particular place for a definite purpose of some unlawful gain in the election and in order to curb such a situation/possibility, it may be necessary for the Election Commission to issue such kind of direction, and once such a direction is issued, it requires strict adherence. It is not that every direction issued by the Commission requires observance rigorously but where the direction is being issued to ensure free and fair election, all other authorities are under obligation to give strict adherence to the same.

25. If the instant case is examined in the light of the aforesaid settled legal proposition, the order impugned had been passed on 28.2.2004 but it came to the knowledge of the petitioner employee for the first time on 3rd March, 2004, therefore, the question of implementation/execution of the transfer order dated 28.2.2004 could not have arisen prior to the issuance of



the Code of Conduct on 29th February, 2004. Thus, the transfer order cannot be given effect to without seeking clearance of the Election Commission as provided under Clause 5 of the said Code. In case it is necessary for the State Government in administrative exigency that the petitioners services are required at a different place, the State must approach the Election Commission for clearance of such transfer before it can be given effect to.

26. Therefore, it is necessary for the State Government to take prior clearance as to whether services of the Executive Engineer in the department of local bodies Nagar Nigam are required in the election process and, if yes, whether the Election Commission is willing to give its clearance for transfer in a particular case. In case, their services are not required in the election and it is clarified by the Election Commission, the transfer order shall be given effect to and the petitioner is directed to join at the transfer place.

27. Since in the case at hand the order was before clearance from the Election Commission, thus, in view of the above, petition succeeds and is allowed. The impugned transfer order shall not be given effect to without seeking clearance of the Election Commission.”

2. In view of the observations made in the aforesaid operative paras, the learned State counsel having been unable to find any reason to offer resistance, the present petition stands disposed of in terms thereof.

(AMAN CHAUDHARY)
JUDGE

06.09.2024
gsv/M.Kamra

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