



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 2490 of 2019.

Decided on: 14th October, 2019

Dalip Singh

.....Petitioner.

Versus

State of H.P. & Others

....Respondents.

Coram

The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice.

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner : Mr. H.S. Rangra, Advocate.

**For the respondents : Mrs. Rita Goswami & Mr.
Ashwani Sharma, Addl. A.Gs.
for respondents No.1 to 3.**

Dharam Chand Chaudhary, J (oral).

Challenge in the instant writ petition is to the order dated 11.09.2019 (Annexure P-1), whereby the petitioner, a JBT Teacher, has been transferred from Government Primary School, Hansu, under Education Block, Aut to Government Primary School, Trail, under Education Block, Aut, on the basis of a D.O. Note.

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. **Facts:**

2(i). The transfer order has been challenged on the grounds that the petitioner had joined his duties at Government Primary School Trail under Education Block Aut District Mandi on 31.01.1998 and thereafter in the year 2001 transferred to Government Primary School, Roopa under Education Block Drang at Padhar, District Mandi. The place Roopa, within the meaning of the transfer policy, is a hard area. The petitioner remained/served there for more than 15 years and in August 2016 was transferred to Government Primary School, Hansu, the present place of posting. Thereafter, on 11.9.2019, the petitioner has been transferred from that School vide impugned order Annexure P-1.

2(ii) In the month of July 2019, respondent No.4 was transferred from Government Primary School Chahatigarh to Government Primary School Trail under Education Block Aut. She instead of

joining in the said School had challenged the said order of her transfer by filing O.A. No.7907 of 2019 before the erstwhile H.P. Administrative Tribunal, which was disposed of with a direction to her to file detailed representation to respondent No.2. Respondent No.2, on receipt of the representation, deferred the transfer of respondent No.4 and thereafter she managed to get D.O./U.O. Note in her favour from local MLA for her adjustment. Respondents No.1 to 3, just to accommodate respondent No.4, have adjusted her at the present place of posting of the petitioner and transferred him from that place to Government Primary School, Trail, vide impugned order Annexure P-1, on the basis of D.O. Note.

3. **Record**

3(i). In view of one of the allegations levelled in the writ petition regarding transfer order having been issued on the basis of D.O. Note, we

had called for and perused the record pertaining to the transfer of petitioner.

3(ii). Record reveals that respondent No.4, who was under transfer to Government Centre Primary School, Seri Chahatigarh to Government Primary School Tarail u/c Primary School (Balu) Education Block Aut, District Mandi, on the basis of U.O. Note, received from office of the Chief Minister, was ordered to be adjusted without TTA/JT either at GPS (Hansu) vice Shri Daleep Singh (the petitioner), JBT or GPS Ghalaupati vice Smt. Suman Kumari JBT, in relaxation of ban on transfers.

4. Whether the order of transfer of the petitioner in view of the law laid down by this Court in **Sanjay Kumar** versus **State of Himachal Pradesh and others, 2013(3), Shimla Law Cases 1373;** and **Amir Chand** versus **State of Himachal Pradesh 2013(2) Him. L.R. 648;** is legally sustainable or not, is a question which has engaged our attention in this case. The answer

thereto in the given facts and circumstances, however, would be in negative for the reason that as per the legal principles settled in the judgments supra, an elected representative has no right to claim that a particular employee is transferred to a particular station. Such choice has been left to be exercised by the Administrative Head(s) i.e. the executive and not by the legislators. Whether an employee has to be transferred and posted out, as per the ratio of the law laid down in these judgments has to be decided by the administration. This Court has also expected from the Administrative Head(s) to apply their mind and take a decision to issue order of transfer of the employees independently and uninfluenced by the recommendations, if any, made by the political executive i.e. merely on asking by MLA or Minister. Not only this, but in the event of any recommendation is received from the political executive, the Administrative Department can

always make a back reference stating therein as to why the recommendations so made cannot be accepted. In **Amir Chand**'s judgment cited supra, it has further been held that whenever transfer of an employee is not ordered by the departments but on the recommendations of Minister or MLA, in that event also, before the order of transfer is issued, views of Administrative Department should be obtained. Only thereafter the transfer can be ordered, if approved by the Administrative Head(s).

The law so laid down is reproduced as under:-

"[81] In addition to the directions issued in the individual writ petitions, we are of the considered view that certain general directions are required to be issued. We have collated the various directions issued by us in different cases which have not been complied till today. After taking into consideration the entire scenario, we issue the following directions:

1. The State must amend its transfer policy and categorize all the stations in the State under different categories. At present, there are only two categories, i.e. tribal/hard areas and other areas. We have

increasingly found that people who are sent to the hard/tribal areas find it very difficult to come back because whenever a person is posted there, he first manages to get orders staying his transfer by approaching the political bosses and sometimes even from the Courts. Why should the poor people of such areas suffer on this count. We are, therefore, of the view that the Government should categorize all the stations in the State in at least four or five categories, i.e. A, B, C, D and E also, if the State so requires. The most easy stations, i.e. urban areas like Shimla, Dharamshala, Mandi etc. may fall in category A and the lowest category will be of the most difficult stations in the remote corners of the State such as Pangi, Dodra Kwar, Kaza etc. At the same time, the home town or area adjoining to home town of the employee, regardless of its category, otherwise can be treated as category A or at least in a category higher than its actual category in which the employee would normally fall. For example, if an employee belongs to Ghumarwin, which is categorized in category B, then if the employee is serving

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in and around Ghumarwin, he will be deemed to be in Category A.

2. After the stations have been categorized, a database must be maintained of all the employees in different departments as to in which category of station(s) a particular employee has served throughout his career. An effort should be made to ensure that every employee serves in every category of stations. Supposing the State decides to have four categories, i.e. A, B, C, D, then an employee should be posted from category A to any of the other three categories, but should not be again transferred to category A station. If after category A he is transferred to category D station, then his next posting must be in category B or C. In case such a policy is followed, there will be no scope for adjusting the favourites and all employees will be treated equally and there will be no heart burning between the employees.

3. We make it clear that in certain hard cases, keeping in view the problems of a particular employee, an exception can be made but whenever such exception is

made, a reasoned order must be passed why policy is not being followed.

4. Coming to the issue of political patronage. On the basis of the judgments cited hereinabove, there can be no manner of doubt that the elected representative do have a right to complain about the working of an official, but once such a complaint is made, then it must be sent to the head of the administrative department, who should verify the complaint and if the complaint is found to be true, then alone can the employee be transferred.

5. We are, however, of the view that the elected representative cannot have a right to claim that a particular employee should be posted at a particular station. This choice has to be made by the administrative head, i.e. the Executive and not by the legislators. Where an employee is to be posted must be decided by the administration. It is for the officers to shows their independence by ensuring that they do not order transfers merely on the asking of an MLA or Minister. They can always send back a

proposal showing why the same cannot be accepted.

6. We, therefore, direct that whenever any transfer is ordered not by the departments, but on the recommendations of a Minister or MLA, then before ordering the transfer, views of the administrative department must be ascertained. Only after ascertaining the views of the administrative department, the transfer may be ordered if approved by the administrative departments.

7. No transfer should be ordered at the behest of party workers or others who have no connection either with the legislature or the executive. These persons have no right to recommend that an employee should be posted at a particular place. In case they want to complain about the functioning of the employee then the complaint must be made to the Minister In charge and/or the Head of the Department. Only after the complaint is verified should action be taken. We, however, reiterate that no

transfer should be made at the behest of party workers.”

5. In the case in hand, as noticed supra, no doubt, the Chief Minister, Himachal Pradesh has approved the transfer of respondent No.4 either vice Daleep Singh, the petitioner or one Smt. Suman Kumari, JBT posted in Government Primary School Chalauhati and the matter was forwarded to the 2nd respondent. Nothing is there in the record produced before us that in the office of 2nd respondent, the matter was examined to ascertain the justification of the transfer of the petitioner approved by an elected representative. Again nothing is there on record to show that the office of respondent No. 2 has examined the matter and the said respondent recorded its satisfaction qua the desirability of the transfer of the petitioner in the interest of administration or larger public interest. Therefore, obviously, respondent No.2 has issued the order of transfer merely on the D.O. note of the

Chief Minister which is not legally permissible as the law laid down by this Court deprecate such practice of transfer of an employee.

6. Admittedly, the petitioner was transferred and posted at the present place of his posting in the month of August 2016. Now, he has again been transferred to Government Primary School, Trail, under the same Education Block i.e. Aut vide order under challenge. What is the distance between Government Primary School, Hansu and Government Primary School, Trail, nothing has come on record. The Administrative Head i.e. respondent No.2 may transfer the petitioner, however, strictly in accordance with law and in the interest of Administration and not on the basis of D.O. note alone and at the behest of political executive.

7. The competent authority i.e. the 2nd respondent on receipt of approval for transfer of the petitioner should have examined the same

independently, uninfluenced by the recommendation, if any, of the elected representative and issued the order of transfer thereafter. The issuance of order of transfer of the petitioner by the 2nd respondent, therefore, is not in the interest of administration or public interest and rather colourable exercise of power. Being so, the impugned order, in all fairness and in the ends of justice, is not legally sustainable. The same, as such, deserves to be quashed and set aside. A Coordinate Bench of this Court in **Ashok Kumar Attri versus Himachal Pradesh Power Corporation Limited, 2013 (3) Shim.LC 1594**, under similar set of facts and circumstances has held as under:-

“6. Taking overall view of the matter, therefore, we not only quash and set aside the office order, dated 31st August, 2013, but also direct respondent No.1 to reconsider the issue of posting of petitioner and respondent No.3 afresh, taking into account all aspects of the matter and that decision should be

taken in accordance with the extant transfer policy and not under dictation or influence of the D.O. letters received from the office of the Chief Minister, which has no value and if that is taken into account, it would be nothing short of extraneous consideration by the Appropriate Authority of respondent No.1.”

8. In view of the legal principles settled in the judgments cited supra, we are in agreement with the submissions made by Mr. H.S. Rangra, learned counsel representing the petitioner that order of transfer, Annexure P-1 is not legally sustainable.

9. For all the reasons hereinabove, this petition succeeds and the same is accordingly allowed. Consequently, the order under challenge in this writ petition, Annexure P-1 is quashed and set aside. We, however, leave it open to the Competent Authority (respondent No.2), to transfer

of the petitioner, if so required, strictly in accordance with law and as per the Transfer Policy.

10. With the aforesaid observations, the writ petition stands disposed of, so also the pending application(s), if any.

**(L. Narayana Swamy)
Chief Justice**

**(Dharam Chand Chaudhary)
Judge.**

October 14, 2019 (ps)

High Court