

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1513 of 2009 alongwith
CWP No. 653 of 2009.

Judgment reserved on: 8.7.2009

Date of decision: 31.7.2009

CWP No. 1513 of 2009

Harbans Singh Attri

.... Petitioner

Versus

State of H.P & ors.

..... Respondents

CWP No.653 of 2009

Bhagirath

..... Petitioner

Versus

State of H.P & Ors.

..... Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting ? No

For the petitioner: Mr.Rakesh Jaswal, Advocate in CWP
No.1513 of 2009 and Mr.Surinder
Saklani, Advocate in CWP No.653 of
2009.

For the respondents: Mr.Vikas Rajput, Dy.Advocate
General for the respondents-State.

Mr.Surinder Saklani, Advocate, for
respondent No.4 in CWP No.1513 of
2009.

Deepak Gupta, J.

The aforesaid two writ petitions are being disposed of by this common judgment since similar questions of law and facts are involved in these two writ petitions.

Both the petitioners are aggrieved by their transfers. A perusal of the file clearly shows that on 3.10.2005 Sh.Harbans Attri, petitioner in CWP No.1513 of 2009 was transferred to Government Senior Secondary School, Hatgarh. On 1.12.2008 after completing a period of almost three years Sh.Harbans Attri was transferred from the Government Senior Secondary School, Hatgarh to Government Senior Secondary School, Jarol. The petitioner filed CWP No.2764 of 2008 challenging his transfer. Sh.Bhagirath was arrayed as respondent No.4 in CWP No.2764 of 2008. This petition was rejected on 17th December, 2008 when counsel for the petitioner submitted that since he is to retire in a little more than one year, he would like to make representation to the authority concerned for being posted at a station of his choice. This Court on the statement of the petitioner disposed of the writ petition. The only direction given was

that in case such a representation is made, the same shall be disposed of in accordance with law.

Thereafter on 20th December, 2008 the transfer of Harbans Attri from Hatgarh to Jarol and that of Sh.Bhagi Rath from Jarol to Hatgarh was cancelled. It is not clear whether this order was passed pursuant to the order of the Court or in response to some earlier representation. In any event on 17th January, 2009, the State passed another order recalling its earlier order dated 20th December, 2008. By this order Harbans Attri was directed to join at Government Senior Secondary School, Jarol and Sh.Bhagi Rath at Government Senior Secondary School, Hatgarh. The matter did not end here. On 26th February, 2009 the earlier order was again withdrawn meaning thereby that Harbans Attri was to continue at Hatgarh and Sh.Bhagi Rath at Jarol. Thereafter, Sh.Bhagirath filed CWP No.653 of 2009 in which notice was issued to the State on 12.3.2009 and the following order was passed by this Court on his stay application:

“CMP No.1164 of 2009

Notice in the aforesaid terms.

On perusal of the record, we find that the petitioner was transferred from Govt. Senior Secondary School, Jarol (Thunag-Mandi), in District Mandi to Govt. Senior Secondary School, Hatgarh, in the same District. This order was passed on 1.12.2008. The petitioner joined at Hatgarh on 4.12.2008. Thereafter on

20.12.2008, the earlier order was cancelled, meaning thereby that the petitioner was retransferred to Jarol on 17.1.2009. The State passed another order transferring certain teachers and the cancellation order of 20.12.2008 was also cancelled. Resultantly, the first order dated 1.12.2008 again came into force. Now on 26.2.2009, this order has again been withdrawn. The petitioner states that he joined at Hatgarh on 4.12.2008. It is alleged in the petition that respondent No.3 has remained in and around Hatgarh throughout his service career and that he has already completed three years at Hatgarh.

Keeping in view the aforesaid facts, we stay the order dated 26.2.2009 and further direct that the petitioner shall be continued to function as Principal at Govt. Senior Secondary School, Hatgarh and respondent No.3 shall function as Principal, Govt. Senior Secondary School, Jarol (Thunag-Mandi), till further orders by this Court.”

After passing of the aforesaid stay order by this Court, the State again withdrew the transfer orders of the two persons vide order dated 23rd April, 2009. We are constrained to observe that the State has been passing orders of the transfer of S/Sh.Harbans Attri and Bhagi Rath and withdrawing them time and again which has led to unnecessary heart burning and avoidable litigation.

The explanation given by the State in its reply is that the Government passed these orders due to the orders passed by the Court. We are not at all impressed with this argument. The stay order was granted by this Court on 12.3.2009 in CWP No.653 of 2009. Prior to that, no stay order was passed by this Court. If Sh.Bhagi Rath

had already joined at Hatgarh on 4.12.2008, the State could have easily rejected the petition of Sh.Harbans Attri. Even if it was to accept the representation of Sh.Harbans Attri, there is no explanation why orders were passed on 26.2.2009. This Court while passing the order dated 12.3.2008 had clearly directed that Sh.Harbans Attri would join at Jarol.

We have been informed that thereafter Sh.Harbans Attri in fact joined at Jarol. We also find from the record that Sh.Bhagi Rath was posted at Jarol as Principal only on 1.12.2009 and after a short span of four months, he managed his transfer to Hatgarh. The record of the case reveals that Sh.Bhagi Rath has managed to stay in or around his native place right from the very beginning. Sh.Harbans Attri is nearing his retirement and keeping in view this fact, he should not have been transferred at the fag end of his career except to a station of his choice.

Keeping in view the aforesaid facts, we allow the petition filed by Sh.Harbans Attri and direct that he be posted as Principal at Government Senior Secondary School, Hatgarh. Sh.Bagirath is directed to join at Government Senior Secondary School, Jarol (Thunag-

Mandi) immediately and shall function there till he completes his normal tenure at the said station.

With these observations, both the writ petitions are disposed of.

(Deepak Gupta)
Judge

July 31 , 2009
(m)

(Surinder Singh)
Judge