

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

CWP (T) No. 3480 of 2008.

Judgment reserved on: 26.02.2009.

Date of decision: 28.02.2009.

Bal Krishan Soni.

.....Petitioner.

Vs.

Gita Devi & Ors.

.....Respondents

Coram:

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? Yes.

For the Petitioner : Mr. Keshav S. Thakur, Advocate.

**For the Respondents
No. 1 & 2 : Mr. A.K. Bansal, Additional
Advocate General.**

For the respondent No.3 : Ms. Archna Dutt, Advocate.

Kuldip Singh, Judge.

Petitioner has filed this Petition, praying therein a direction to respondent No. 2 to consider cancellation of transfer order Annexure A-2, dated 07.08.2006 and allow the petitioner a minimum tenure of posting at Government Senior Secondary School (GSSS), Hatli, Una, as per Government Policy on transfer of its employees or in the alternative quash and set aside Annexure A-2.

2. The facts, in brief, are that petitioner filed Original Application No.2623 of 2006 before Himachal Pradesh Administrative Tribunal which was abolished vide notification dated 8th July, 2008. Thereafter, the Original Application was transferred to this Court in

Whether the reporters of the local papers may be allowed to see the Judgment? Yes.

view of the Himachal Pradesh Administrative Tribunal (transfer of decided and pending cases and applications) Act, 2008 and was registered as CWP(T) No.3480 of 2008.

3. The pleaded case of the petitioner is that in April, 2006, he was transferred by respondent No.2 from GSSS, Saroh, Una to GSSS, Hatli, Una, on his request. He joined at GSSS, Hatli on 10.05.2006. The respondent No.2 in less than three months of the joining of petitioner, again transferred the petitioner from GSSS, Hatli to GSSS, Ambehra Dheer, Una vide order dated 07.08.2006, Annexure A-2.

4. The transfer order, Annexure A-2, has been assailed on the grounds of arbitrariness and not in public interest, in as much as no substitute of the petitioner was provided at Hatli. The transfer order is not on the basis of some valid administrative ground or exigency of service. It must be for some extraneous consideration to create vacancy to accommodate some person. The transfer order is malafide. It has been passed to accommodate appointee of Parents Teacher Association of GSSS, Hatli. The transfer order is in violation of Articles 14, 16 of the Constitution and is also in violation of transfer policy of the State vide which a Government servant is allowed a reasonable tenure of three to five years at one place of posting.

5. The respondents No.1 and 2 contested the petition by filing a joint reply. It has been alleged in the reply that petitioner was posted at GSSS, Saroh and he worked there from 27.08.2002 to 09.05.2006. The petitioner, on his request, was transferred from GSSS, Saroh to GSSS, Hatli. The petitioner has been transferred from GSSS, Hatli to GSSS, Ambehra Dheer with the prior approval of competent authority in public interest. The petitioner has been working

within the radius of 25 Kms. since 27.08.2002 and is working in his own District since 21.07.1998. The transfer is incidence of service, the petitioner has been transferred in public interest.

6. The petitioner filed a rejoinder to the reply, wherein, he reiterated his stand and denied the case setup by respondents No.1 & 2. He has pleaded that distance between Saroh and Hatli is 28.4 Kms. The respondent No.3 was added party in the petition and she also contested the petition by filing reply. She has pleaded that she was working on P.T.A. basis as Lecturer (Hindi) in GSSS, Hatli w.e.f. 16.05.2005. The petitioner got himself adjusted only to disturb respondent No.3. As per instructions of the Government vide letter dated 23.06.2006, before issuing any transfer order or posting of teacher for filling up the vacant post, it should be ascertained by the department whether any teacher is working against that vacant post on contract basis or on P.T.A. basis and when this fact came to the notice of Director (Education), the petitioner was immediately transferred from GSSS, Hatli to GSSS, Ambehra Dheer.

7. I have heard Mr. Keshav S. Thakur, learned counsel for the petitioner, Mr. A.K. Bansal, Additional Advocate General for respondents No. 1 & 2 and Ms. Archana Dutt, Advocate, learned counsel for respondent No.3 and have gone through the record. The learned counsel for the petitioner has submitted that in less than three months from the date of joining at GSSS, Hatli, the petitioner was transferred to GSSS, Ambehra Dheer. He has submitted that transfer order is subject to conditions mentioned in the transfer order and as per condition No.1, it is to be seen that the official has completed his normal service tenure of three years at a station. He has contended that the petitioner has hardly served at GSSS, Hatli for about three

months and, therefore, his transfer from GSSS, Hatli to GSSS, Ambehra Dheer is in violation of terms and conditions of the transfer order. It has also been contended that the transfer order is not in public interest nor it is in exigency of service and no administrative ground is made out for transferring the petitioner in short period. The transfer order is arbitrary, malafide and in violation of Articles 14, 16 of the Constitution. The learned counsel for the petitioner has submitted that the events after filing of the petition are to be ignored and petitioner is entitled to relief on the basis of situation existing on the date of filing of petition. The learned counsel appearing on behalf of respondents No.1, 2 and 3, have supported the transfer order dated 07.08.2006, Annexure A-2 and have submitted that the petitioner had been working in a radius of less than 25 Kms. from August, 2002. The allegations in the petition are without any foundation. The learned counsel for the respondent No.3, has additionally submitted that respondent No.3 was working as P.T.A. teacher at GSSS, Hatli, when this fact came to the notice of the authorities, therefore, in terms of the Policy of the State, the petitioner was transferred to GSSS, Ambehra Dheer. In transferring the petitioner from GSSS, Hatli to GSSS, Ambehra Dheer, the State has complied its own Policy. The learned counsel for the respondents have submitted that the Tribunal vide order dated 24.08.2006, ordered status quo qua implementation of transfer Annexure A-2 and this order is still continuing. In other words, the petitioner is working at GSSS, Hatli.

8. The transfer is a condition of service and an employee in exigency of service is liable to be transferred, an employee cannot claim posting at a particular place as a matter of right. The scope of

judicial review in transfer matters is limited, as held by the Supreme Court in various judgments.

9. In ***State of U.P. and Another Vs. Siya Ram and Another (2004) 7 Supreme Court Cases 405***, the Supreme Court has held that High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.

10. In ***State of U.P. and Others Vs. Gobardhan Lal (2004) 11 Supreme Court Cases 402***, the Supreme Court has held that Administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority

to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospectus such as seniority, scale of pay and secured emoluments. The order of transfer may even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, shown to be vitiated by malafides or is made in violation of any statutory provision. In the same judgment, the Supreme Court has held that even allegations of malafides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

11. In ***Mohd. Masood Ahmad Vs. State of U.P. and Others (2007) 8 Supreme Court Cases 150***, the Supreme Court has held that interference by the Courts with transfer orders should only be in very rare cases, transfer is an incidence of service. It should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

12. In ***State of U.P. Vs. Goverdhan Lal (Supra)***, in fact, Civil Appeal No. 408 of 2004 and Civil Appeal No.409 of 2004 were decided by common judgment dated 23.03.2004. In Civil Appeal No.408 of 2004, the respondent was transferred on 10.4.1999 from

Unnao to Meerut and he joined there, lateron, he was transferred from Meerut to Lucknow vide order dated 8.12.1999 which was challenged before the High Court and the High Court disposed of the Writ Petition with certain directions. In paragraph 6 of the report, it has been observed by the Supreme Court “having regard to the efflux of time the respondent in Civil Appeal No. 408 of 2004 could not claim to continue in the same place forever, apart from the fact that we have been told that he has already been serving in a different station.”

13. The petitioner was transferred from GSSS, Hatli to GSSS, Ambehra Dheer vide transfer order dated 7.8.2006 and he is continuing there in view of status quo order dated 24.8.2006 passed by the Tribunal. The petitioner had joined at GSSS, Hatli on 10.05.2006. In other words, for the last about 33 months, the petitioner is working at GSSS, Hatli. In **State of U.P. Vs. Goverdhan Lal** also, the respondent was transferred after about five months from Meerut to Lucknow and on those facts, the Supreme Court has observed that having regard to the efflux of time, the respondent in Civil Appeal No. 408 of 2004 could not claim to continue in the same place forever. In these circumstances, even though the petitioner was transferred from GSSS, Hatli to GSSS, Ambehra Dheer after about 3 months, but fact cannot be ignored that he is working at GSSS, Hatli for the last about 33 months. Infact, he is working within the radius of about 25 Kms. since 27.8.2002

14. The petitioner has used high sounding expressions, such as arbitrary, malafide, not in public interest and lack of administrative grounds in the petition, but, petitioner has not pleaded facts in support of these expressions used by him in the petition. In absence of facts in support of these expressions, these are bald allegations and it cannot

be said that transfer of petitioner from GSSS, Hatli to GSSS, Ambehra Dheer, is arbitrary, malafide, not in public interest or having no administrative ground. The learned counsel for the petitioner has submitted that transfer order Annexure A-2, is in violation of Government Policy which allows normal tenure of 3 to 5 years at a place of posting. The Policy is nothing, but administrative guidelines. In view of **State of U.P. Vs. Goverdhan Lal**, administrative guidelines do not confer any legally enforceable right, unless, shown to be vitiated by malafides or is made in violation of any statutory provision which has not been established in the present case.

15. The transfer order has been passed with the approval of competent authority. There is no allegation in the petition that the competent authority while giving approval for the transfer of petitioner from GSSS, Hatli to GSSS, Ambehra Dheer, has acted arbitrarily, malafide and he did not take into consideration public interest and administrative grounds at the time of giving approval for the transfer of petitioner. The petitioner has no right to remain posted at particular place of his choice forever. The transfer is incidence of service and in exigency of service, petitioner is liable to be transferred from one place to another place. It is not the case of the petitioner that his cadre is limited to certain area only, therefore, he can be transferred anywhere in the State. It has not been established on record that on the date of transfer of petitioner from GSSS, Saroha to GSSS, Hatli on 22.4.2006 vide Annexure A-1, the respondent No.3 was working as PTA teacher at GSSS, Hatli. The document, Annexure MA-2 would show that respondent No.3 had worked as Lecturer (Hindi) at GSSS, Hatli from 16.5.2005 to 28.2.2006. There is nothing on record that on 22.4.2006, respondent No. 3 was working as teacher at GSSS, Hatli.

In any case, the petitioner has failed to make out any case for quashing Annexure A-2 dated 7.8.2006. In the facts and circumstances of the case, the petitioner is not entitled to any relief, as prayed by him in the petition.

16. No other point was urged.

17. The result of above discussion, the petition fails and is accordingly dismissed with no order as to costs. Interim order dated 24.08.2006, extended from time to time, is vacated.

(Kuldip Singh)
Judge.

February 28, 2007
(bhupender)