

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1333 of 2020.

Date of decision: 23.03.2020.

Desh Raj

.....Petitioner.

Versus

State of Himachal Pradesh and others **.....Respondents.**

Coram

**The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Anoop Chitkara, Judge.**

Whether approved for reporting?¹

For the Petitioner : Mr. Manish Thakur, Advocate.

**For the Respondents: Mr. Ashok Sharma, Advocate
General with Mr. Vinod
Thakur, Additional Advocate
General and Mr. Bhupinder
Thakur, Deputy Advocate
General.**

Tarlok Singh Chauhan, Judge (oral)

Records reveal that the petitioner had made a request for his transfer from Government Primary School, Shaktidehra, Education Block, Kiani, where he was working as Head Teacher to Government Primary School, Kundi, Education Block, Mehla and the same was recommended by the Joint Director to the Deputy Director, Elementary Education, Chamba,

¹***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

District Chamba, who in turn, forwarded the same to the Director of Elementary Education.

2. It was in this background that the respondents vide orders dated 18.03.2020 and 20.03.2020 were directed to obtain instructions.

3. Today, the learned Advocate General, has placed on record the instructions, the relevant portion whereof reads as under:

“The aforementioned case was listed before the Hon’ble High Court on 18-3-2020, when the Hon’ble Court has directed the respondent State to seek instruction regarding the transfer of the petitioner. The case is listed on 20-3-2020.

In this regard, it is submitted that the petitioner is working as Head Teacher in Govt. Primary School, Shaktidehra Education Block Kiani and enrollment of students in the said school is 32. If the petitioner is transferred to Govt. Primary School, Kundi, Education Block Mehla-1, then the Govt. Primary School, Shaktidehra, will remain single teacher school which is the violation of Right to Education Act(RTE). Moreover, the enrollment of students in Govt. Primary School, Kundi is 77 and two JBT teachers are already working there. Therefore, it is not in the interest of study of the students to transfer/adjust the petitioner in the

above school. The details of both schools is as under:

Name of Schools	Enrollment	Sanctioned Post				Filed		Vacant		
		CHT	HT	JBT	C-T	HT	JBT	CHT	HT	JBT
Shiksha Delra	32	-	01	01	-	01	01	-	-	-
Total	77	-	01	02	-	-	02	-	01	-

4. It is more than settled that transfer is an incidence of service and unless and until the same is contrary to the public interest or has been ordered without there being any administrative exigency or for better utilization of the employee concerned, the same cannot be interfered with.

5. Reference in this regard can conveniently be made to a recent judgment of this Court in **CWP No. 1978 of 2019** titled as **Sunita Devi vs. State of H.P. and others**, decided on 18.03.2020.

6. Moreover, it is equally settled that who should be transferred where and in what manner is the sole prerogative of the employer and this Court in absence of any allegations of malafides will loath to interfere with such orders.

7. The mere fact that the case of the petitioner has been recommended by the Joint Director for transfer does not in

any way create any right in favour of the petitioner for being posted at a particular station when admittedly he had not completed his normal tenure of service at Govt. Primary School, Shaktidehra.

8. For all the reasons aforesaid, We find no merit in this writ petition and the same is dismissed, so also the pending application, if any.

(Tarlok Singh Chauhan)
Judge

(Anoop Chitkara)
Judge

23rd March, 2020.
(krt)