

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 31st DAY OF AUGUST, 2021**

**BEFORE
HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN
&**

**HON'BLE MR. JUSTICE SATYEN VAIDYA
CIVIL WRIT PETITION NO. 3390 OF 2021**

Between:-

**VEENA DEVI W/O LATE SH.
PADAM DEV, AGE 49 YEARS,
VILLAGE POST OFFICE
MEERU, TEHSIL NICHAR,
DISTRICT KINNAUR, H.P. AT
PRESENT WORKING AS
PANCHAYAT SECRETARY,
GRAM PANCHAYAT BARI,
TEHSIL NICHAR, DISTRICT
KINNAUR, H.P.**

...PETITIONER

**(BY SH. MAHINDER SINGH
THAKUR)**

AND

**1. STATE OF H.P. THROUGH ITS
PRINCIPAL SECRETARY
PANCHAYTI RAJ GOVT. OF H.P.**

**2. DIRECTOR, DEPARTMENT OF
PANCHAYTI RAJ HIMACHAL
PRADESH, SHIMLA-9.**

**3. BLOCK DEVELOPMENT
OFFICER, DEVELOPMENT BLOCK
NICHAR, DISTRICT
KINNAUR, H.P.**

**4. CHIEF EXECUTIVE OFFICER,
JILLA PARISHAD KINNAUR, H.P.**

**5. BALDEV NEGI, PANCHAYAT
SECRETARY RUPI,
DEVELOPMENT BLOCK NICHAR,
DISTRICT KINNAUR.**

...RESPONDENTS

**(SH. ASHOK SHARMA ADVOCATE
GENERAL WITH MR. RAJINDER
DOGRA, SR. ADDITIONAL
ADVOCATE GENERAL, SH
HEMANSHU MISRA, MR. VINOD
THAKUR ADDL. ADVOCATE
GENERAL AND MR. BHUPINDER
THAKUR, DY. ADVOCATE
GENERAL FOR THE
RESPONDENTS/STATE.**

*This petition coming on for orders this day, **Hon'ble**
Mr. Justice Tarlok Singh Chauhan, passed the following:-*

ORDER

Aggrieved by the order of transfer, the petitioner has filed the instant petition for the grant of following substantive reliefs:-

- i) To set aside and quash the impugned orders date 15.6.2021 as contained at Annexure P-1 supra where by the petitioner has been ordered to be transferred from Gram Panchayat Bari, Development Block Nichar,*

District Kinnaur, H.P. to Gram Panchayat Panvi, Development Block Nichar, District Kinnaur, H.P.

- ii) *To direct the respondents to allow the petitioner to work at her present place of posting i.e. Gram Panchayat Bari, Development Block Nichar, District Kinnaur, H.P. in accordance with transfer policy, instruction and guidelines issued by the Govt. of H.P. from time to time and the respondents may be restrained from reliving the petitioner from the present place of posting.*

2. The petitioner was initially appointed as Assistant Secretary in the Gram Panchayat Meeru Development Block Nichar on 6.4.2004, on contract basis and thereafter, her services were regularized and she was posted as Secretary Gram Panchayat Yangpa, Development Block Nichar, District Kinnaur, H.P. where she joined on 25.3.2017. Thereafter on 7.8.2019, the petitioner was transferred to Gram Panchayat Bari and now vide order dated 15.6.2021 she has been transferred to Gram Panchayat Panvi, Development Block Nichar and aggrieved thereby has filed the instant petition.

3. It is vehemently argued by Mr. Mahinder Singh Thakur, Advocate, for the petitioner that the impugned order of transfer is not sustainable in the eyes of law, as the petitioner has not been permitted to complete her normal tenure of service of three years and has been transferred in short span of one year 10 months. It is contended that since the petitioner is widow she is entitled to certain privileges and protections under the “***Comprehensive Guiding Principle-2013 for regulating the transfer of State Government Employee***” -Prescription of new Provision thereof (for short Comprehensive Guiding Principle-2013).

4. The respondents has contested the petition by filing the reply wherein it is averred that petitioner in her service career of approximately seventeen years remained posted at Development Block Nichar, District Kinnaur and, therefore, cannot take any exception to the order of transfer which otherwise has been ordered in normal exigencies of service and in larger public interest.

5. We have heard the learned counsel for the parties and have gone through the material placed on record.

6. It is trite that transfer is an incidence of service and as long as the authority acts keeping in view the administrative exigency and taking into consideration the public interest as the

paramount consideration, it has unfettered powers to effect transfer subject of course to certain disciplines. Once it is admitted that the petitioner is State government employee and holds a transferable post then he is liable to be transferred from one place to the other within the District in case it is a District cadre post and throughout the State in case he holds a State cadre post. A government servant holding a transferable post has no vested right to remain posted at one place or the other and courts should not ordinarily interfere with the orders of transfer instead affected party should approach the higher authorities in the department. Who should be transferred where and in what manner is for the appropriate authority to decide. The courts and tribunals are not expected to interdict the working of the administrative system by transferring the officers to “proper place”. It is for the administration to take appropriate decision.

7. Even the 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 redressal 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 prospects such as seniority, scale of pay and secured emoluments. Even if the order of transfer is made in transgression of administrative guidelines, the same cannot be interfered with as it does not confer any legally enforceable rights unless the same is shown to have been vitiated by mala fides or made in violation of any statutory provision. The government is the best judge to decide how to distribute and utilize the services of its employees.

8. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations without any factual background foundation or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as on the basis of complaints. It is the basic principle of rule of law and good administration, that even administrative action should be just and fair. An order of transfer is to satisfy the

test of Articles 14 and 16 of the Constitution otherwise the same will be treated as arbitrary.

9. Judicial review of the order of transfer is permissible when the order is made on irrelevant consideration. Even when the order of transfer which otherwise appears to be innocuous on its face is passed on extraneous consideration then the court is competent to go into the matter to find out the real foundation of transfer. The court is competent to ascertain whether the order of transfer passed is bonafide or as a measure of punishment.

10. The law regarding interference by Court in transfer/posting of an employee, as observed above, is well settled and came up before the Hon'ble Supreme Court in *E.P. Royappa vs. State of Tamil Nadu*, (1974) 4 SCC 3; *B. Varadha Rao vs. State of Karnataka*, (1986) 4 SCC 131; *Union of India and others vs. H.N. Kirtania*, (1989) 3 SCC 445; *Shilpi Bose (Mrs.) and others vs. State of Bihar and others*, 1991 Supp(2) SCC 659; *Union of India and others vs. S.L. Abbas*, (1993) 4 SCC 357; *Chief General Manager (Telecom) N.E. Telecom Circle and another vs. Rajendra Ch. Bhattacharjee and others*, (1995) 2 SCC 532; *State of M.P. and another vs. S.S. Kourav and others*, (1995) 3 SCC 270;

Union of India and others vs. Ganesh Dass Singh, 1995 Supp. (3) SCC 214; *Abani Kanta Ray vs. State of Orissa and others*, 1995 Supp. (4) SCC 169; *National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and Shiv Prakash*, (2001) 8 SCC 574; *Public Services Tribunal Bar Association vs. State of U.P. and another*, (2003) 4 SCC 104; *Union of India and others vs. Janardhan Debanath and another*, (2004) 4 SCC 245; *State of U.P. vs. Siya Ram*, (2004) 7 SCC 405; *State of U.P. and others vs. Gobardhan Lal*, (2004) 11 SCC 402; *Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and others*, (2004) 12 SCC 299; *Somesh Tiwari vs. Union of India and others*, (2009) 2 SCC 592; *Union of India and others vs. Muralidhara Menon and another*, (2009) 9 SCC 304; *Rajendra Singh and others vs. State of Uttar Pradesh and others*, (2009) 15 SCC 178; and *State of Haryana and others vs. Kashmir Singh and another*, (2010) 13 SCC 306 and the conclusion may be summarised as under:-

1. *Transfer is a condition of service.*
2. *It does not adversely affect the status or emoluments or seniority of the employee.*
3. *The employee has no vested right to get a posting at a particular place or choose to*

serve at a particular place for a particular time.

4. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required.

5. Transfer order should be passed in public interest or administrative exigency, and not arbitrarily or for extraneous consideration or for victimization of the employee nor it should be passed under political pressure.

6. There is a very little scope of judicial review by Courts/Tribunals against the transfer order and the same is restricted only if the transfer order is found to be in contravention of the statutory Rules or malafides are established.

7. In case of malafides, the employee has to make specific averments and should prove the same by adducing impeccable evidence.

8. The person against whom allegations of malafide is made should be impleaded as a party by name.

9. Transfer policy or guidelines issued by the

State or employer does not have any statutory force as it merely provides for guidelines for the understanding of the Department personnel.

10. The Court does not have the power to annul the transfer order only on the ground that it will cause personal inconvenience to the employee, his family members and children, as consideration of these views fall within the exclusive domain of the employer.

11. If the transfer order is made in mid-academic session of the children of the employee, the Court/Tribunal cannot interfere. It is for the employer to consider such a personal grievance.

11. Bearing in mind the aforesaid exposition of law, it would be noticed that the post held by the petitioner is a District Cadre post and thus she is liable to serve anywhere in the District of Kinnaur. That apart, it is not denied by the petitioner that in the entire service of 17 years she has remained posted at Development Block Nichar, once that be so obviously then she cannot claim any defeasible right to continue to be remain posted in the Development Block Nichar.

12. As observed above, exception to the transfer order can only be taken on well settled principles and none of such principles are attracted to the facts of the instant case.

13. As a last ditch efforts, learned counsel for the petitioner would argue that the orders of transfer are contrary in terms of **Comprehensive Guiding Principles-2013** inasmuch as, the petitioner has not been permitted to complete her normal tenure of service and moreover, she has not been provided protection as is available to the widow.

14. We are not inclined to accept the contentions of the petitioner, for it is more than settled that the transfer policy or guidelines issued by the State for an employee does not have any statutory force as it merely provides for guidelines for the understanding of the department personnel.

15. That apart, the petitioner has been protected for the last 17 years by permitting her to continue to serve in the development Block Nichar and transfer cannot take exception to the orders of transfer.

In view of the aforesaid, we find no merit in this petition and the same is accordingly disposed of. The pending application(s), if any, also stands disposed of. Leaving the parties to bear their own costs.

(Tarlok Singh Chauhan)
Judge

(Satyen Vaidya)
Judge

August 31 , 2021
(himani)