



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA  
CWP No.2454 of 2023  
Date of decision: 25.05.2023

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Sanjeev Kumar .....Petitioner

Versus

State of H.P. & Ors. ....Respondents

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*Coram:*

**The Hon'ble Mr. Justice Vivek Singh Thakur, J.**

**The Hon'ble Mr. Justice Sushil Kukreja, J.**

*Whether approved for reporting ?<sup>1</sup>*

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**For the Petitioner:** Ms. Seema Azad, Advocate.

**For the Respondents:** Mr. Anup Rattan, Advocate with Mr. R.P. Singh, Deputy Advocate General.

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**Vivek Singh Thakur, Judge(Oral):**

Petitioner has approached this Court against his transfer vide order dated 24.04.2023, whereby he has been transferred from P.V.D Navgarh, District Sirmour to P.V.D. Chandog, District Sirmour *vice versa* respondent No.4.

**2.** The grievance of the petitioner is that he has been transferred on the basis of D.O note, but not in administrative exigency or public interest.

**3.** Record was summoned, which has been produced. Perusal of the record reveals that D.O. note, generated and

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*Whether the reporters of Local Papers may be allowed to see the judgement?*

approved regarding the transfer of the petitioner and respondent No.4, dated 24.04.2023, was received in the Office of Directorate of Animal Husbandry, Himachal Pradesh and the same was dealt with in the Directorate by transferring petitioner and respondent No.4 with immediate effect, as per approved recommendation of Hon'ble the Chief Minister's/Hon'ble Animal Husbandry Minister's received through D.O/ U.O.

4. Record further indicates that there is no due application of mind of the administrative authority, but the impugned order has been issued only on the receipt of approved D.O. note.

5. Record of basis of generation of D.O. note is not available, therefore, genesis of the transfer order is not available. In any case, there is nothing on record to reflect the reason for transferring the petitioner and respondent N.4 except D.O. note.

6. It is evident from the record that impugned transfer has been ordered by the department without application of mind, but acting on the basis of recommendations received from office of Hon'ble the Chief Minister/Hon'ble Animal Husbandry Minister. Therefore, very basis for issuing impugned transfer is in conflict with various pronouncements of the Courts including the Supreme Court.

7. For adjudication of present case, reference in this regard can be made to various pronouncements of this Court,

including *Ram Krishan vs. District Education Officer*, reported in *ILR HP 1979 HIM 481 : 1979 Shim LC 345*; *A.K. Vasudeva vs. State of H.P. and others*, reported in *ILR (Himachal Series) (1981) 10 HIM 359*; *1982 Shim LC 104*; *CWP No.1105 of 2006*, titled as *Sushila Sharma vs. State of H.P. and others*; *Sant Ram Pant vs. State of H.P. and others*, reported in *2009 (3) Shim. L.C. 206*; *CWP No.2844 of 2010*, titled as *Pratap Singh Chauhan vs. State of H.P. & others* reported in *2010(3) Shim.LC 379*, decided on *18.06.2011*; *CWP No.3530 of 2011*, titled as *Babita Thakur vs. State of H.P. and others* reported in *2011(2) Shim.LC 28*; *Amir Chand vs. State of Himachal Pradesh*, reported in *2013 (2) HLR (DB) 648*; *Sanjay Kumar vs. State of H.P. and Ors.*, reported in *Latest HLJ 2013 (HP) 1051*; *Raj Kumar vs. State of H.P. and Ors.*, reported in *2015 (1) Him. L.R. (DB) 567*; *CWP No.2621 of 2020*, titled as *Lekh Raj vs. State of H.P. & Ors.*, decided on *17.08.2020 : 2020 SCC Online HP 3429*; *CWP No.511 of 2020*, titled as *Sheela Suryavanshi vs. Stae of H.P.*, decided on *26.8.2020*; *CWP No.2677 of 2020*, titled as *Shugal Singh vs. State of H.P.*, decided on *24.9.2020*; *CWP No.2211 of 2020*, titled as *Sudhir Kumar vs. State of Himachal Pradesh*, decided on *29.9.2020*; *CWP No.5294 of 2020*, titled as *Abdul Hamid vs. State of H.P. and others*, decided on *5.1.2021 : 2021 SCC Online HP*

**48: 2021 Lab IC (NOC 215) 65; CWP No.1387 of 2021, titled as Praveen Kumar vs. State of H.P and others, decided on 31.3.20221; CWP No.2862 of 2021, titled as Vipender Kalta vs. State of H.P. and others, decided on 20.7.2021; and CWP No.5721 of 2021, titled as Promila vs. State of H.P. and others, decided on 8.10.2021.** Following principles propounded in above referred pronouncements may be relevant for the purpose of adjudication of present petition:-

(a) It is for the employer to see where the Government servant is to be posted. However, there should be no arbitrariness in the action. The transfer cannot be used as an instrument to accommodate/ adjust the persons without there being any administrative exigency. The underline principle for transfer is public interest or administrative exigency.

(b) Interference from outsiders in day-to-day administration of the State is not warranted and in case such interference is allowed, it would only mean that the Government servants should run after those who are taking part in public life and in politics for getting better terms of service and a better place of posting and should do everything to please them and not to please the department by their ability, honesty and integrity and such interference is highly detrimental to the public interest as it would result in nepotism and corruption wherein only those who can wield influence and purse, can succeed. Therefore, sooner this type of interference is discouraged and stopped, the better for the administration and the people of the State.

(c) An elected representative can only propose the transfer of an employee, that too for genuine and cogent reasons and not

by usurping the authority of the administrative department, who alone is competent to issue the orders of transfer after due application of mind.

(d) Public representatives have a right to make recommendations, but these can only be recommendations and cannot be taken to be the final word.

(e) The transfer of the petitioner on the recommendation of the MLA in the given facts and circumstances by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official, the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case.

(f) Whenever any transfer is ordered not by the departments but on the recommendations of a Minister or MLA, then before ordering the transfer, the views of the administrative department must be ascertained and only after ascertaining the views of the administrative department, the transfer may be ordered if approved by the administrative department, meaning thereby the views of the administrative department have essentially to be sought in the matters of transfer. What follows is that the views of the administrative department must reflect subjective satisfaction and conscious application of mind that the transfer is essential on account of administrative exigency and / or public interest or that the transfer of employee is necessary for the effective utilization of his/her services.

(g) A recommendation by a peoples representative requesting for a particular course of action in the realm of administrative

functioning may not per se constitute an unauthorized or unwarranted interference or cause

vitiating provided the consequential steps are taken by the authority of administration alone, the nature of action then to be drawn by the administrative department would be contingent on the attending facts. It is only when the contextual facts demonstrate servile subjugation of an administrative authority to the dictates of an outside entity in power by meekly abdicating his dominion, the resultant order or decision would be impeachable as antithetical to the foundational precepts of governmental functioning. The facts and circumstances of each case will therefore have to be evaluated.

(h) Any person has a right to make a complaint against an employee regarding his conduct to his superiors including the Hon'ble Chief Minister and even request for his transfer. It is, however, only for the competent authority i.e. administrative department to consider the request and take appropriate action in accordance with law. But when the administrative authorities do not perform their duties and resultantly fair play is denied by the administrative authorities, people turn up to the courts complaining of such blatant case of administrative excess compelling the courts to intervene in such matter.

(i) Courts are clearly of the view that normally Courts would not like to interfere in transfer orders passed in administrative interests. The administration has to be stern and strict in matters of transfers. At the same time, it also has to be fair and just and should treat all the employees equally. It is only because the administration itself is lax and transfer orders are passed on extraneous considerations and the administration reverses its decisions day in and day out, that the courts are forced to intervene.

8. In the similar circumstances, observation made by Coordinate Bench of this High Court in **CWP No. 2621 of 2020 titled as Lekh Raj vs. State of HP** reported in **2020 SCC Online HP 3429** is also relevant, which reads as under:-

“8. However, the moot question poised in the instant petition is the scope of writ petition where the orders of transfer are proposed/generated by the local MLA giving a long list of employees, who are to be transferred and then such recommendations are thereafter got implemented through the Hon’ble Chief Minister, leaving virtually little or no scope for any discretion or taking any independent decision for the administrative department.

9. ....

10. Before the recommendations could reach the administrative department, the same were placed before the Hon’ble Chief Minister, who appended his note on 03.07.2020 “May be done as proposed”. It appears that all the proposed transfers were approved as it is, without even consulting the administrative authority.

10A. It is more than settled that an elected representative can only propose the transfer of an employee, that too for genuine and cogent reasons and not by usurping the authority of the administrative department, who alone is competent to issue the orders of transfer after due application of mind. Obviously, the administrative department in such circumstances, had no choice whatsoever, but to implement the recommendations made by the local MLA as approved aforesaid.”

9. In view of the aforesaid circumstances, we have no other option except quashing of the impugned transfer order dated 24.04.2023

qua the petitioner and respondent No.4 and accordingly same is quashed.

**10.** It is made clear that quashing of impugned transfer order does not mean that petitioner and respondent No.4 can never be transferred from the present place of posting in any eventuality. The respondents-authority/administrative department is at liberty to transfer them in accordance with law in administrative exigency or in public interest or for justifiable reason to utilize their services wherever so required by the department.

Petition is allowed and disposed of in aforesaid terms.

**( Vivek Singh Thakur )  
Judge**

**( Sushil Kukreja )  
Judge**

**May 25, 2023**  
(reena)