

(2024) 01 SHI CK 0062

High Court Of Himachal Pradesh

Case No: Latter Patent Appeals No. 256 Of 2023

Col. Pratibha Rai

APPELLANT

Vs

Union Of India & Others

RESPONDENT

**Date of Decision:** Jan. 12, 2024

**Hon'ble Judges:** M.S. Ramachandra Rao, CJ; Jyotsna Rewal Dua, J

**Bench:** Division Bench

**Advocate:** Subhash Sharma, Balram Sharma

**Final Decision:** Dismissed

Judgement

M.S. Ramachandra Rao, CJ

1. This Letters Patent Appeal is preferred by the appellant against the judgment dt. 26.12.2023 in CWP no.5404 of 2023 of the learned Single Judge.

2) The appellant herein had filed the said Writ petition on 14.08.2023, challenging an order dt. 18.07.2023 (Annexure P-8), pursuant to which, she was posted as ADC (R&R), Delhi Cantonment, from Military Dental Centre, Shimla, where she was working at that point of time.

She sought a direction to the respondents for grant of further extension of tenure to her at Military Dental Centre, Shimla, till completion of her four years tenure in September, 2024, conforming to guidelines contained in Annexure P-11 to the Writ petition, to enable her son to complete his academics in the D.A.V. Senior Secondary Public School, Lakkar Bazar, Shimla.

The background facts

3) The appellant had previously been commissioned in the Indian Army and subsequently re-employed with the 18th Infantry Division and had been posted as Officer Commanding, Military Dental Centre, Shimla, from 04.12.2020.

4) She was married in 1997 and her spouse is also a commissioned Officer in the Indian Army. The appellant's husband also retired as Colonel from the Indian Army, and after retirement had been re-employed and is serving in the 18th Infantry Division and is posted in Rajasthan at Kota. The couple have two sons, one of whom, was pursuing B.Tech. Course at Hyderabad, while the younger son was studying in Class XI in the D.A.V. Senior Secondary Public School, Lakkar Bazar, Shimla.

5) According to her, anticipating a further posting in future upon completion of her normal tenure of three years at Military Dental Centre at Shimla, she had approached the 2nd respondent and had made a request on 20.02.2023 for extension of her tenure in Shimla, so that her 2nd son could complete his schooling from one station and

would also become eligible for domicile of the State, which would help him to get admission in a good college to pursue higher education in the subject of his choice.

6) According to her, the 2nd respondent advised her to make such application and on 19.04.2023 she made another representation to the 2nd respondent.

7) The 2nd respondent did not agree for her continuance at Shimla and informed her on 25.04.2023 vide Annexure P-4 to that effect.

8) She contends that if she is permitted to extend her tenure at Shimla, her son would be treated as a domicile of the State of Himachal Pradesh for the purpose of admission and that 85% is reserved in the State for domiciles of the State of H.P.

9) Ultimately, through the order of 18.07.2023 (Annexure P-8), the appellant was ordered to report at ADC (R&R), Delhi Cantt., on 04.09.2023.

10) Contending that her son had already gone through more than half of the current academic session, she made an application (Annexure P-9) on 27.07.2023, seeking deferment of her posting.

11) This was also rejected on 07.08.2023 vide Annexure P-10 by the 2nd respondent.

12) She, therefore, filed the instant Writ petition.

The interim order dt.18.8.2023 passed by a learned Single Judge of this Court

13) On 18.08.2023, this Court granted stay of the order dt. 18.07.2023 as well as the order dt. 07.08.2023, till the next date of hearing, which order continued till the disposal of the Writ petition.

The reply filed by respondents

14) Reply was filed by the respondents, opposing grant of relief in the Writ petition to the appellant.

15) They contended that transfer orders in Armed Forces are necessary exigency of service and cannot be interfered with and there was no arbitrary or malafide action on the part of the respondents. It is stated that though posting of officers is planned to take place at the end of each academic cycle, so as not to affect the education of the wards during such movement, it would not always be possible to do so due to certain factors. It is stated that it is for this reason that the Government had started Army Public Schools and several Central Schools to aid in the mid-session admission, and to facilitate continuity of education of the wards of such officers.

16) The respondents mentioned that on 01.05.2023, appellant forwarded a D.O. letter to the 2nd respondent requesting for extension of tenure at Shimla till August/September, 2024 or sidestepping her to the DGBR Dental Unit at Shimla or even posting to any Dental Unit in Delhi or a Field Hospital Dental Section located in Delhi Station, but she did not forward any Compassionate Ground Application requesting for posting to specific stations on educational grounds, as prescribed in the posting Policy.

17) It is also stated that on 15.05.2023, she submitted an advance copy of Compassionate Ground Posting Application to the office of the Director General of Dental Services requesting for her posting to Delhi/ Bangalore/Shimla stations and also mentioned that her son was eligible for domicile status only at Delhi, and would be eligible for domicile of Himachal Pradesh only if he completes his 12th standard from Shimla, but did not mention any timeline within which she would have wanted to be posted out of Shimla.

18) It is also stated that though the appellant had requested the 2<sup>nd</sup> respondent on 20.02.2023 for posting to Delhi as an alternative to the extension of tenure at Shimla, she had forwarded the Compassionate Ground Posting Application in prescribed format after more than three months in May, 2023, thus losing on the opportunity of being posted out earlier.

19) It is stated that she had given Delhi as her first choice and Shimla as her last choice and since there was no vacancy available at DGBR GREF Dental Unit, she was considered for her posting to Delhi station, which was her first choice which would also ensure that her son would get domicile of Delhi station.

20) It is also stated that she had applied for spouse coordinated postings four times in her career, and every time she was accommodated as per her request.

21) It was also stated that the appellant, who applied for compassionate ground posting vide Annexure P-6 dt.8.5.2023, had not attached any documents regarding her son's eligibility for domicile status at Delhi or

Himachal Pradesh and having deliberately omitted to do so, cannot blame the respondents.

22) Reliance is placed on "Posting Policy", Clause 49 of which permits deferment of posting, for a maximum period of three months only under exceptional circumstances.

The order of the learned Single Judge

23) In the impugned order dt.26.12.2023, the learned Single Judge rejected the plea of the appellant, stating that transfer orders are issued by the competent authority and they do not violate any of legal rights of an employee.

24) The learned Single Judge, while noting that the transfer order would affect the studies of children of employees, took note of the fact that when the matter was listed on 19.12.2023, the respondents had been asked to take into account the personal hardship of the appellant and they have placed on record order dt. 20.12.2023, which indicated that on account of the appellant not joining her new duty station, an entire chain of transfers had been affected and other officers, whose transfers have been effected, their children's education is also being hampered.

25) In addition thereto, the learned Single also noted that according to the respondents, post graduate training of young Officers was also getting severely hindered.

26) The learned Single, therefore, dismissed the Writ petition.

The instant Appeal

27) Challenging the same, the instant appeal was filed.

28) Counsel for the appellant strenuously contended that as per the Policy Guidelines dt. 25.05.2018 provided for postings, though the general tenure of appointment would be two to three years, Clause 45 thereof permitted extension of tenures for those who have not completed tenures of four years or more in a Unit on any grounds. He, therefore, contended that since the appellant did not complete the tenure of four years at Shimla, the respondents ought to have extended her tenure, as prayed, to avoid inconvenience to the appellant and ensure that her son continues to study Class-11 in Shimla and becomes eligible to secure domicile status in the State of Himachal Pradesh for further education.

Consideration by the Court

29) Transfer is an incidence of service. Normally Courts should not interfere with orders of transfer in the absence of malafide or arbitrariness. In State of Rajasthan v. Anand Prakash Solanki (2003) 7 SCC 403, at page 408, the Supreme Court held:

“...Transfer is an incidence of public service and the power to transfer is available to be exercised by the employer unless an express bar or restraint on the exercise of such power can be spelt out. The power, like all other administrative powers, has to be exercised bona fide.

In Public Services Tribunal Bar Assn. v. State of U.P. (2003) 4 SCC 104, the Supreme Court reiterated:

“37. Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. This Court consistently has been taking a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner.”

30) Clause 45 of the Policy P-11, no doubt, permits extension of tenures in cases where the officers had not completed tenures of four years or more in a Unit, but there is no right conferred on any employee for such extension of tenure automatically on a mere asking.

31) Also request for deferment of postings under Clause 49, would be entertained only in exceptional circumstances.

32) Admittedly, the appellant had a tenure at the Military Dental Centre, Shimla, as Officer Commanding from 04.12.2020 and had successfully delayed giving effect to her transfer order dt. 18.07.2023, till 26.12.2023.

33) The letter dt. 20.12.2023, relied upon by the respondents, indicates that on account of the appellant not joining her new duty station, an entire chain of transfers had been affected and other officers whose transfers had been effected, their children's education was also being hampered, apart from hindering post graduate training of young Officers.

34) Having regard to the said circumstance and in the absence of any arbitrariness or malafides in issuing the transfer/posting orders of the appellant at Delhi, and also having regard to the fact that according to the respondents, she opted for Delhi as her first choice and Shimla as the last choice in her application (Annexure P-6), and having also regard to the fact that considerable administrative inconvenience has been caused on account of her not complying with the transfer order (Annexure P-8), we do not find any merit in the appeal, it is accordingly dismissed.

35) Pending miscellaneous application(s), if any, shall also stand disposed of.