

(2024) 04 SHI CK 0001

High Court Of Himachal Pradesh

Case No: Civil Writ Petition No. 1680 Of 2024

Kishori Lal

APPELLANT

Vs

State Of H.P. And Ors

RESPONDENT

Date of Decision: April 2, 2024

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Kulbhushan Khajuria, Avni Kochhar, Devender K. Sharma

Final Decision: Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has taken an exception to office order dated 01.03.2024 (Annexure P-1), whereby petitioner has been ordered to be transferred from Govt. Sen. Sec. School, Trifalghat (Mandi) to Govt. Sen. Sec. School, Balag (Mandi), against respondent No.3.

2. The grievance, as raised, by the petitioner is firstly that his transfer is in violation of 'Comprehensive Guiding Principles-2013'-for regulating the transfer of State Government employees, as he has not been allowed to complete his normal tenure at Govt. Sen. Sec. School, Trifalghat, secondly, his transfer was neither for any administrative exigency or in public interest, rather was a consequence of political interference by respondent No.4, on whose recommendation, the impugned order of transfer came to be issued.

3. Parties were put to notice, respondents No. 1 to 3, have filed written instructions dated 19.03.2024, issued by respondent No. 2. Respondent No. 3 has filed his detailed reply.

4. The stand taken by respondents No. 1 and 2 is that the petitioner has completed his normal tenure of three years and for maintaining so, it has been submitted that the petitioner has been posted within a distance of 30 Kms since 11.06.2020. Respondents No. 1 and 2 being employer have asserted their right to transfer the petitioner.

5. Respondent No.3 has contested the claim of the petitioner by submitting that the petitioner has already completed his normal tenure. It has been detailed that prior to his posting at Govt. Sen. Sec. School, Trifalghat, petitioner had served Govt. Sen. Sec. School, Samaila (Mandi) since 11.06.2020 and distance between both the stations was just 3 Kms. It has also been alleged that the petitioner had also been a beneficiary of D.O. Note in the past. As per respondent No. 3, the transfer of petitioner from Govt. Sen. Sec. School, Samaila to Govt. Sen. Sec. School, Trifalghat was result of a D.O. Note. Further, respondent No. 3 has also tried to justify his transfer to Govt. Sen. Sec. School,

Trifalghat, giving reasons of his ill health and other family problems.

6. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

7. The material on record reveals that neither respondents No. 1 and 2 nor respondent No. 3 have specifically denied the allegation that respondent No. 4 has been instrumental in getting the respondent No. 3 transferred in place of the petitioner. The contesting respondents have also not shown that respondent No. 4 is an elected public representative. The specific allegation of the petitioner that respondent No. 4 is merely a leader of ruling party having no other capacity in the State Government, has also not been controverted.

8. Learned counsel for respondents vehemently argued that this Court has held that the person who has completed his normal tenure is not entitled to object to his transfer on the ground of having been effected on the basis of D.O. Note. He further submitted that this Court has also held in CWP No. 1387 of 2021, titled as Praveen Kumari Vs. State of H.P. that a government servant, who himself has been beneficiary of D.O. Note cannot have any right to object to the transfer of other person in his place on the basis of D.O. Note .

9. The facts of the case in hand, as noticed above, are somewhat different from the facts which formed subject matter of the judgment relied upon by learned counsel for respondent No.3. In this case, the fact that the impugned transfer is a consequence of intervention by respondent No. 4 and that respondent No. 4 is not holding any office or responsible position in the government has remained uncontroverted. That being so, the instant case carries different dimension.

10. The issue regarding the interference in administrative functions of the government by persons/ authorities having no role to play in the affairs of the administration, has already been decided by a Division Bench of this Court in Vipender Kalta Vs. State of Himachal Pradesh (2021) 3 Shimla Law Cases, 1462. The Division Bench (in which, I was one of the Member) while delivering the judgment dated 20.07.2021 in Vipender Kalta case, after noticing the applicable judicial precedent held as under:-

“28. The citizens have a fundamental right to good governance, which is possible only if government servants are politically neutral and are not transferred or otherwise victimized at the instance of a political party or politician.

29. It is only when the Court notices gross irregularities being committed by the government in the matters of transfer, it becomes necessary for the court to interfere. Therefore, its time to turn the searchlight on the State Government and remind it that the transfer policy should not be taken lightly and or made a mockery or a tool to transfer government employees on the whims and fancies of the politicians.

30. The Government as an ideal employer has a bounden duty to strictly safeguard the interest of its employees against the machinations of politicians. The public servants need to discharge their functions without fear or favour and they need not to toe the line drawn by the politicians.

31. If such transfer is allowed to take effect, it would embolden the other political cadre and influential local level politicians of all hues to seek the transfer of unfavourable and upright government officials from their pocket boroughs and to see that they are posted in somewhere else. This would demoralize the government servants and may inspire them to amend their ways in such a way of pleasing each and every one whoever come under the banner of some political party. If the government machinery has to serve well the people, their functioning and official routines are to be insulated

against the extraneous influences. (Refer Akash Sharma v. State of U.P., 2007(4) AWC 2899)

32. The Hon'ble Supreme Court as also this Court and various other High Courts have held in certain cases that it would be permissible for the administrative authority to consider recommendations of the MLAs or MPs or Ministers concerned, that too, in case they have received complaints regarding the working of the government servants seeking their transfer, however even then the final decision in this regard has to be taken by the administrative department as the politician cannot don the rule of administration.

33. Even otherwise, upholding such kind of transfers would mean compromising with the rule of law, which is a basic feature of the Constitution, which permeates the whole of the constitutional fabric and is an integral part of the constitutional structure.

34. Rule of law contemplates governance of laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being.

35. Since the recommendations to transfer the petitioner had been mooted by an extra constitutional authority, who has no role in the functioning and business of the administration, therefore, the impugned transfer of the petitioner on the basis of such recommendations cannot be sustained and is accordingly quashed.

36. The government would be well advised not to entertain much less encourage such extra constitutional authority to interfere with the administration and governance of the State, or else, there is every likelihood of there being a complete breakdown of rule of law."

11. The impugned order of transfer herein evidently is in the teeth of aforesaid judgment in Vipender Kalta's case. It shows that despite having received strong observations and dictum from a Division Bench of this Court, the State Authorities have not made any attempt to mend its ways. Such conduct of respondents No. 1 and 2 needs to be viewed seriously.

This Court cannot be a silent spectator to a fact situation where its direction has been violated with impunity.

12. In light of above discussion, while allowing the petition by setting-aside the impugned order of transfer dated 01.03.2024 (Annexure P-1), this Court requires respondents No. 1 and 2, to explain within one week from the date of passing of this judgment by filing their respective personal affidavits, as to why, the directions issued in Vipender Kalta Vs. State of Himachal Pradesh and Ors. (2021) 3 Shimla Law Cases 1462, have not been implemented.

13. The petition, is accordingly, disposed of, so also the pending miscellaneous application, if any.

14. List for compliance on 09.04.2024.