

(2025) 01 SHI CK 0003

High Court Of Himachal Pradesh

Case No: CWP No. 10953 Of 2024

Desh Raj

APPELLANT

Vs

State Of Himachal Pradesh And
Others

RESPONDENT

Date of Decision: Jan. 6, 2025

Hon'ble Judges: Ajay Mohan Goel, J

Bench: Single Bench

Advocate: Neel Kamal Sharma, Rahul Thakur

Final Decision: Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has challenged Annexure P3 and Annexure P-4, dated 20.09.2024 and 24.09.2024, respectively, in terms

whereof, the petitioner has been transferred to Sub-Tehsil Nither, District Kullu as a Naib-Tehsildar, without allowing him to complete his normal

tenure at his present place of posting i.e. Tauni Devi.

2. When this case was listed on 26.09.2024, the following order was passed:-

“CMP No.18142 of 2024 Notice in above terms. The grievance of the petitioner is that without allowing him to complete his normal tenure at Tauni Devi,

where he was posted in the month of January, 2024, after his promotion against the post of Naib Tehsildar, he was firstly ordered to be transferred to Sandhol

vide Annexure P-3 and thereafter said order stands modified vide Annexure P-4 and now he has been ordered to be transferred to Sub Tehsil Nither, District

Kullu. Learned counsel for the petitioner submits that before his posting at Tauni Devi, the petitioner was serving at Sandhol, which station is about 50

kilometers away approximately from Tauni Devi.

Having heard learned counsel for the petitioner and taking into consideration the fact that the petitioner has not been permitted to complete his normal tenure at

Tauni Devi and the impugned transfer order does do not spell out as to what necessitated the transfer of the petitioner without allowing him to complete his

normal tenure at the said station, the operation of Annexure P-4 is hereby stayed till further orders. The petitioner shall be allowed to continue to serve at Tauni

Devi as a Naib Tehsildar, de-hors as to whether he stands relieved or not and respondent No.4 shall be directed to rejoin the station, where he was serving before

the issuance of notification dated 24.09.2024. In other words, respondent Department shall maintain status quo ante, as it existed before the issuance of

notification dated 24.09.2024.â€

3. I have heard learned counsel for the parties and also carefully gone through the pleadings i.e. the writ petition and the reply filed by the respondents

along-with documents appended therewith.

4. The petitioner has been transferred from Tauni Devi, where he was posted on promotion in the month of January, 2024. Before that he was serving

at Sandhole, where he served for a normal tenure though against a lower post. The distance between Tauni Devi and Sandhole is admittedly of about

50 Kms.

5. The reason given in the reply by the respondents justifying the transfer of the petitioner is that the transfer has been effected with the approval of

the Minister In-charge in terms of the policy of the respondents-State, governing transfers and further it is entirely for the employer to decide when,

where and at what point of time a public servant is to be transferred from his present place of posting. It is also the stand of the Department that the

cadre of the petitioner is a Divisional cadre and as the transfer has not been effected in violation thereof, therefore also, the impugned transfer order is

not amenable to judicial review.

6. In the considered view of this Court, the transfer of the petitioner from Tauni Devi to Sub-Tehsil Nither after a short stay of about eight months, in

the facts of this case, is not sustainable. Of course, it is the prerogative of the employer as to where an employee is to be posted but then said

prerogative cannot be exercised by the employer in an arbitrary way. It has to be exercised either on account of some administrative exigency or in public interest.

7. The reply filed by the respondents does not spells out any administrative exigency or public interest which warranted the passing of the impugned transfer orders.

8. This demonstrates that the issuance of the impugned transfer order is nothing but an act of colourable exercise of power by the Department simply because the Department had the authority to do so.

9. Undoubtedly, transfer is an incidence of service but the employee when posted at a particular station has a legitimate expectation that there would

be some reasonable period for which he will be allowed to serve at a station even if he happens to be a Class I or a Class II employee. This

observation is being made by the Court for the reason that Deputy Advocate General submitted that the Transfer Policy of the State is not applicable

to Class I and Class II employees. This Court is of the considered view that de hors as to whether the Transfer Policy is applicable on the transfers of

Class I or Class II employees, fact of the matter still remains that even transfer of such incumbents cannot be actuated except due to administrative

exigency or in public interest, if the transfer is being effected soon after the posting of the employee at a particular station. Simply because an

employee happens to be a Class I or Class II employee he cannot be treated as a football and transferred from one station to other, at the whim of the

Authority without any valid justification for effecting the transfer.

10. Accordingly, in the light of the observations made hereinabove, as this Court is satisfied that the impugned transfer of the petitioner is not

sustainable in the eyes of law as the same has not been effected either on the basis of any administrative exigency or in public interest, but is a result

of the colourable exercise of power, by the Authority, therefore, this writ petition is allowed. Impugned Annexures P-3 and P4 qua the petitioner are

quashed and set aside and the respondents are directed to allow the petitioner to continue to serve at Tauni Devi, District Hamirpur, for a reasonable

period of time.

11. The petition stands disposed of, so also the pending miscellaneous application(s), if any, also stand disposed of.