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**(2013) 04 P&H CK 0182**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.W.P. No. 13784 of 2012 (O and M)

Shyam Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision:** April 11, 2013

**Citation:** (2013) 171 PLR 664 : (2013) 3 SCT 730

**Hon'ble Judges:** Rajesh Bindal, J

**Bench:** Single Bench

**Advocate:** N.S. Shekhawat, for the Appellant; D.D. Gupta, A.A.G., Haryana, Mr. Raman B. Garg, Advocate for the Respondent No. 3 and Mr. B.S. Mittal, Advocate for the Respondent Nos. 4 and 5, for the Respondent

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**Judgement**

Rajesh Bindal, J.

The petitioner, who is working as Safai Daroga/Jamadar, has approached this court impugning his transfer from Municipal Committee, Ellenabad to Municipal Committee Kalanwali (Sirsa) vide order dated 27.6.2012. The order has been impugned alleging malafides. The case set up by the petitioner is that he was working as Jamadar since 1.3.1982. His wife-Mrs. Chand Rani was also appointed as Sweepers on 18.10.1983. All along the work of the petitioner had been appreciated. In the elections of Municipal Committee, Ellenabad, held on 20.5.2010, daughter-in-law of the petitioner, namely, Mrs. Simran Athwal was elected as Municipal Councillor from Ward No. 2. She has her affiliation with INLD party. In the election for the posts of Chairman and Vice Chairman of the Municipal Committee held on 1.7.2010, the representatives having affiliation with INLD party were elected. The daughter-in-law of the petitioner also voted in their favour. At times, even pressure was put on the daughter-in-law of the petitioner to cast her vote in favour of the candidate belonging to Congress party. No Confidence Motion moved by the Congress party also failed. Even at that stage also, the daughter-in-law of the petitioner was pressurised to cast her vote in favour of No Confidence Motion. As a result of this, the petitioner and his wife were the targets for harassment. Vide

communication dated 21.2.2012, Director General, Department of Urban Local Bodies, Haryana informed the Secretary, Municipal Committee, Ellenabad and Mandi Dabwali that regarding transfer of the petitioner from Municipal Committee, Ellenabad to Municipal Committee, Mandi Dabwali, a note has been received from Hon"ble the Chief Minister. As the appointing authority for the post is Secretary of the Municipal Committees concerned, their consent/no objection was required. The petitioner never made any request for his transfer from Municipal Committee, Ellenabad to Municipal Committee, Mandi Dabwali. On 26.6.2012, even the wife of the petitioner was placed under suspension. On 27.6.2012, the petitioner was directed to be transferred from Municipal Committee, Ellenabad to Municipal Committee, Kalanwali. This is the order of transfer, which has been impugned in the present petition.

2. On 20.2.2013, learned counsel for the State sought time to produce records of the case. On the next date of hearing, the record was not produced. One more opportunity was granted. On 5.4.2013, on a perusal of the record and finding that initially the transfer of the petitioner from Municipal Committee, Ellenabad to Municipal Committee, Mandi Dabwali was on the basis of a note received from Hon"ble the Chief Minister, whereas the stand taken in the replies filed by the Deputy Director, Urban Local Bodies, Haryana and Secretary, Municipal Committee, Ellenabad was that the proposed transfer of the petitioner vide communication dated 21.2.2012 was on his own request and from the record produced in court, learned counsel for the State had not been able to point out that there was any request made by the petitioner for his transfer, learned counsel for the respondents sought time to explain the discrepancy in the written statements vis-a-vis the record. The order passed on 5.4.2013 is extracted below:

The petitioner herein is impugning his transfer from Municipal Committee Ellenabad to Municipal Committee Kalanwali vide order dated 27.6.2012 (Annexure P-7). Prior to that the petitioner was transferred from Municipal Committee Ellenabad to Municipal Committee Mandi Dabwali vide communication dated 21.2.2012 from Director General Local Bodies Department, Haryana, Chandigarh to Secretary Municipal Committees, concerned (Annexure P-5). It is mentioned in the aforesaid communication that the transfer has been directed on the basis of note received from Hon"ble the Chief Minister.

In the replies to the petition filed by Virender Sharma, Deputy Director, Urban Local Bodies, Haryana and Kuldeep Singh Malik, Secretary, Municipal Committee Ellenabad, District Sirsa, the stand taken is that transfer of the petitioner vide order dated 21.2.2012 (Annexure P-5) from Ellenabad to Mandi Dabwali was made on his own request.

The record of the case was directed to be produced in Court on the last date of hearing. From the record learned counsel for the respondents have not been able to point out that any request was made by the petitioner for his transfer from

Ellenabad to Mandi Dabwali. Apparently, the stand taken in the written statements filed by both the aforesaid persons is contrary to record.

The learned counsel for the respondents seeks short adjournment to explain the discrepancy in the written statement vis-a-vis the record.

3. Today, when the case was taken up, learned counsel for the respondents have not been able to point out any material on record to show that there was any request made by the petitioner for his transfer from Municipal Committee, Ellenabad to Municipal Committee, Mandi Dabwali. However, learned counsel for the State produced an order dated 9.4.2013 passed by the Director, Department of Urban Local Bodies, Haryana, Chandigarh, whereby the order of transfer of the petitioner dated 28.6.2012 as Safai Daroga from Municipal Committee, Ellenabad to Municipal Committee, Kalanwali has been cancelled. The language used in the order does not fit in the facts of the case for the reason that the order of transfer had already been given effect to and the petitioner had joined at his new place of posting.

4. Learned counsel for the petitioner submitted that in view of the order dated 9.4.2013 passed by the Director, Department of Urban Local Bodies, Haryana, Chandigarh, though prayer made in the present petition has been rendered infructuous, however, the respondents are required to be dealt with appropriately for filing wrong written statements in this court especially considering the fact that the petitioner was being harassed only on account of the fact that his daughter-in-law is a Municipal Councillor at Ellenabad and has affiliation with INLD party.

5. Learned counsel for the respondents submitted that there was a bonafide error in what is mentioned in the written statements filed. The same was not deliberate. As in the communication from the Director General, Department of Urban Local Bodies, Haryana, it was mentioned that the petitioner is required to furnish his affidavit to forego his seniority and will not claim any TA/DA, it was taken that transfer is being made on his own request as these conditions are put normally in those circumstances. The respondents are regretful of the lapse.

6. After hearing learned counsel for the parties and while disposing of the writ petition as infructuous, as far as challenge to the order of transfer is concerned, in my opinion, appropriate proceedings deserve to be initiated against Virender Sharma, Deputy Director, Urban Local Bodies, Haryana and Kuldeep Singh Malik, Secretary, Municipal Committee, Ellenabad for filing wrong written statements to the writ petition. The communication dated 21.2.2012 (Annexure P-5), with reference to which wrong statement was made in the written statements filed, reads as under:

On the aforementioned subject, you are informed that for the transfer of Sh. Shyam Lal, Sweeper from Municipal Committee, Ellenabad to Municipal Committee, Mandi Dabwali, a note has been received from the Hon"ble Chief Minister and for this post, the appointing authority is Secretary of the Committee. In such a situation, you

should send your consent/no objection certificate to this Directorate with regard to appointment of this employee of Municipal Committee Ellenabad to Municipal Committee, Mandi Dabwali, to the effect that you have no objection in case this employee is transferred from Municipal Committee, Ellenabad to Mandi Dabwali, so that the employee may be transferred to Mandi Dabwali against a vacant post.

Superintendent (Administration)

For Director General, Local Bodies Department,

Haryana at Chandigarh Memo No. 5A/2012/6270 Dated 21.2.2012

A copy of the same is sent to Sh. Shyam Lal, Sweeper, Municipal Committee, Ellenabad and is directed that he should make available his affidavit/undertaking to this Directorate to the effect that in case he is transferred from Municipal Committee Ellenabad to Municipal Committee, Mandi Dabwali, he is ready to forego his earlier seniority and would not claim TA/DA.

7. A perusal of the aforesaid communication shows that for transfer of the petitioner, a note had been sent by the office of Hon"ble Chief Minister. In the aforesaid communication, there is no reference to any request made by the petitioner for his transfer. In paragraph 2 of the reply filed by Secretary, Municipal Committee, Ellenabad, the stand taken is "... The Annexure P-5 is related to transfer of the petitioner on his own request from Ellenabad to Mandi Dabwali..." In the reply filed on behalf of respondents No. 1 and 2, in paragraph 2 thereof, it has been stated as under:

... The Annexure P-5 is related to transfer of the petitioner on his own request from Municipal Committee Ellenabad to Municipal Committee Mandi Dabwali where by consent of Secretary Municipal Committee Ellenabad, Mandi Dabwali was sought in view of note received from Hon"ble Chief Minister...

When opportunity was given to the respondents to explain the aforesaid factual statement from the record, nothing could be produced in support thereof. Apparently, the statement was wrong. May be this is the reason when the respondents were confronted, they cancelled the order of transfer of the petitioner. As in the present case, the order of transfer of the petitioner on a note received from the office of Hon"ble Chief Minister was sought to be defended by the officials by filing wrong written statements claiming that the same was on his own request, Virender Sharma, Deputy Director, Department of Urban Local Bodies, Haryana and Kuldeep Singh Malik, Secretary, Municipal Committee, Ellenabad, District Sirsa are required to be dealt with appropriately. They tried to mislead the court by projecting wrong facts.

Let Registrar General get a criminal complaint filed against them in the court of competent jurisdiction.