

Before Rajiv Narain Raina, J.

ROSHAN LAL—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 14950 of 2013

July 16, 2013

Constitution of India, 1950 - Art. 226 - Writ Jurisdiction - Service Law - Transfers - Haryana Government Circulars dated 07.04.1989, 19.11.1998, 06.10.2003 and 06.10.2004 - Transfer within one/two years of retirement - Policy not similar to that of Punjab Government notified on 20.04.2005 - Case not of adverse treatment - No mala fides or bias imputed or alleged against the transferring authority - Authority to resolve competing interests - Public post cannot be left vacant - Transfer guidelines non-statutory and non-justiciable but amenable to judicial review - Petition dismissed

Held, that the guidelines issued by the Government are non-statutory and are not mandatory in nature. They are more in the nature of self introspection of transferring authorities in government to resolve competing interests of a large number of employees and for them to see who best fits where. If this is done without malice in law or in fact the Court really has no role to play just as the executive has absolutely no role to play in the matter of authority and jurisdiction exercised by the Full Court of the High Court on its administrative side with respect to postings and transfers of judicial officers serving in the affairs of the State. The executive and the higher judiciary must remain equidistant in the matter of transfers. Therefore, the competent authority has the right to consider as to whether an employee is to be transferred or not in the administrative exigencies of service and to determine in its collective or individual wisdom that who should be where. The instructions issued by the State Government are merely guidelines, which are to be followed by the controlling authorities, but has no binding force nor are legally enforceable in the ordinary sense. They are not inflexible rules because in human affairs and governance enough free play has to be left in the joints lest the State machinery suffers arthritis or breed caucuses and corruption. However, this is not to suggest that they can be breached with impunity and transfers inflicted by way of punishment or in gross abuse of authority to transfer, then this Court will not remain a bystander. The

nature of the post, its position in the hierarchy, whether it involves public dealing, or it is, what is now unfortunately called 'lucrative' would certainly weigh in the mind of the Court even if the employee is shy of retirement. That is where the constitutional Court can step in to correct a wrong or enforce the rule of law of which it is the repository not just for the executive or legislature but even for those serving on its own establishment or administrative control under the Constitution.

(Para 9)

S.S.Dinarpur, Advocate, *for the petitioner.*

RAJIV NARAIN RAINA, J.

(1) The challenge in this petition is to an order transferring the petitioner from the office of the General Manager, Haryana Roadways, Kurukshetra to the office of the General Manager, Haryana Roadways, Nuh (Mewat). The petitioner holds the post of Chief Inspector. He states that he is due to retire on reaching the age of superannuation on 30.06.2014. Since he is nearing retirement he prays that the Court interferes in the transfer, citing the guidelines of transfer issued by the Haryana Government through the Circular dated 07.04.1989, and two others that followed.

(2) Mr. S.S. Dinarpur, learned counsel for the petitioner has argued with great vehemence while relying on a division bench decision of this Court in *Dr. Dev Parkash Chugh versus State of Punjab and others (1)*, to contend that once the State frames policy it cannot plead that the same is not mandatory. The Government can deviate from the terms of the policy only for sufficient reasons to be recorded or in the paramount public interest and if no valid and acceptable reason is recorded, the transfer order cannot be sustained.

(3) A reading of the afore-mentioned judgment shows that the Court was interpreting the transfer policy of the State of Punjab notified on 20.04.2005. Clause 2(b) of the policy dated 20.04.2005 reads as follows:-

"Government employees whether gazetted or non-gazetted, who are due to retire within the next two years, may be allowed to continue in the same district or at the same station of posting till retirement, as far as possible."

(4) The Court also referred to Clause 2(g) of the said policy that pre-mature transfers i.e. transfer of an employee before he has completed minimum of three years stay should not be ordered except under rare circumstances of punishment or clearly spelling out administrative reasons.

(5) The policy guidelines for posting and transfers at first relied upon by the petitioner is dated 07.04.1989 (P-2). Para (iii) of the said policy guidelines reads as under:-

"The maximum period for continuously serving on a post shall normally be five years. This maximum period shall not be applicable in respect of the employees who are working in Colleges, Schools and Laboratories including employees working in Industrial/Technical Training Institutions. This maximum period of five years shall also not apply to Government employees both gazetted and non-gazetted who are due to retire within the next two years and they may be allowed to continue on their present posts till retirement."

(6) The Haryana Government transfer policy guidelines are not identical to those of Punjab Government. Para (iii) of the Haryana Government guidelines prescribes maximum period for continuously serving on a post as 5 years. It does not fix any minimum period. The policy has excluded certain employees such as working in Colleges, Schools and Laboratories including employees working in Industrial/Technical Training Institutions from the purview of the guidelines. In the said paragraph itself an exemption from five years service is granted to both gazetted and non-gazetted employees who are retiring within the next two years and they may be allowed to continue on their present posts till retirement. Policy guidelines dated 07.04.1989 have been substituted or varied by policy guidelines dated 19.11.1998 and again on 6.10.2003. Both these policy guidelines have been placed on record as Annexures P-3 & P-4. The 1998 policy reduces the period before retirement from two years to one year. The policy dated 06.10.2004 for the year 2004-2005 dealt with both Class III and Class IV Government employees.

(7) In the present case, the petitioner is holding a superior post of Chief Inspector and has been transferred against a vacant vacancy at Nuh. It is for the Government to fill the vacancy which would necessitate it to fill it up by promotion or transfer of an incumbent from one station to another. Posts ought not be left vacant as it would be contrary to public interest. The present is also not a case of frequent transfers as was the case in *Dr. Dev Parkash Chugh* (supra). It is also not a case where an employee has been singled out for adverse treatment. Therefore, the decision of the Division Bench of this Court relied upon is distinguishable on facts.

(8) The scope of interference in transfer matters has been explained by the Supreme Court in *Union of India and others versus S.L. Abbas (2)*, and *Chief General Manager (Telecom) N.E. Telecom Circle and another versus Shri Rajendra Ch. Bhattacharjee and others (3)*, *Somesh Tewari versus Union of India and others (4)*.

(9) The petitioner states that he was promoted to the post of Chief Inspector in the year 2008 and may have already spent 5 years on the post at one station. If there were any transfers suffered in between then it has not been disclosed in the petition. He has not explained what transpired from 2008 till the passing of the impugned order dated 08.07.2013. No mala fide or bias has been imputed or alleged against anyone to have caused the transfer. The guidelines issued by the Government are non-statutory and are not mandatory in nature. They are more in the nature of self introspection of transferring authorities in government to resolve competing interests of a large number of employees and for them to see who best fits where. If this is done without malice in law or in fact the Court really has no role to play just as the executive has absolutely no role to play in the matter of authority and jurisdiction exercised by the Full Court of the High Court on its administrative side with respect to postings and transfers of judicial officers serving in the affairs of the State. The executive and the higher judiciary must remain equidistant in the matter of transfers. Therefore, the competent authority has the right to consider as to whether an employee

(2) 1995(4) SC 455

(3) 1995 (2) SC 868

(4) (2009) 2 SCC 592

is to be transferred or not in the administrative exigencies of service and to determine in its collective or individual wisdom that who should be where. The instructions issued by the State Government are merely guidelines, which are to be followed by the controlling authorities, but has no binding force nor are legally enforceable in the ordinary sense. They are not inflexible rules because in human affairs and governance enough free play has to be left in the joints lest the State machinery suffers arthritis or breed caucuses and corruption. However, this is not to suggest that they can be breached with impunity and transfers inflicted by way of punishment or in gross abuse of authority to transfer, then this Court will not remain a bystander. The nature of the post, its position in the hierarchy, whether it involves public dealing, or it is, what is now unfortunately called 'lucrative' would certainly weigh in the mind of the Court even if the employee is shy of retirement. That is where the constitutional Court can step in to correct a wrong or enforce the rule of law of which it is the repository not just for the executive or legislature but even for those serving on its own establishment or administrative control under the Constitution.

(10) In this case no breach has been pointed out or change in conditions of service resulting from transfer except that the petitioner retires in a year and that alone should induce this Court to interfere. All transfers cause inconvenience in some way or the other. The mechanics of transfer are such that invariably do cause friction and heart burn to someone or the other unless it is by mutual consent of employees, which are cases few and far between. It is only the degrees of sufferance and the resulting unavoidable hardship in the context of malice that the Court has to look in at what really is strictly a human problem, not a complex forensic controversy to resolve.

(11) For these reasons, I do not find any extraordinary merit in this petition which may warrant none other than judicial interference in the impugned order of transfer of the petitioner.

(12) The petition is accordingly dismissed in limine.