

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.3341 of 2020

Decided on: 01.10.2020

Virender Singh Thakur

....Petitioner.

Versus

State of H.P. and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

¹ *Whether approved for reporting? Yes*

For the petitioner: Dr. Lalit Kumar Sharma, Advocate.

For the respondents: Mr. Ashok Sharma, Advocate General,
with Mr. Sumesh Raj, Additional Advocate
General.

(Through Video Conferencing)

Ajay Mohan Goel, Judge *(oral)*

Petitioner, who is an Officer belonging to H.P. Police Service, vide Annexure P1, notification dated 20th February, 2020, on placement as Superintendent of Police, was ordered to be posted as SP, SDRF, Junga, District Shimla. The Court stands informed that before the placement of petitioner, as such, he was serving as Assistant Superintendent of Police, Sirmour District at Nahan. Thereafter, vide notification dated 2nd June, 2020,

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

Annexure P2, petitioner was ordered to be transferred from the post of SP, SDRF, Junga, District Shimla to the post of SP, PTC Daroh, District Kangra. This order, however, was, subsequently, modified and vide notification dated 8th June, 2020, Annexure P3, petitioner was ordered to be transferred to as Commandant, 4th IRBn Jungle Beri, District Hamirpur. In compliance to said order, petitioner joined at Jungle Beri, District Hamirpur, on 11th June, 2020.

2. Grievance of the petitioner is that within a short span of about two months, vide Annexure P9, notification dated 22nd August, 2020, he has again been transferred from his present place of posting at Jungle Beri to Kullu as Commandant Home Guards, which order, according to the petitioner, is in violation of the provisions of Section 12 of H.P. Police Act, 2007, read with Section 56 thereof. According to the petitioner, notification dated 22nd August, 2020, Annexure P9, has not been issued by the State either on account of any administrative exigency or in public interest, but the same has been issued just to accommodate the private respondent, whose husband also

happens to be an Officer of Indian Police Service and who vide same notification, is ordered to be posted as Superintendent of Police Hamirpur. In this background, it has been prayed by the petitioner that as the impugned transfer order has been passed by the State by violating the provisions of Sections 12 and 56 of the H.P. Police Act, 2007, by ignoring the fact that petitioner is at the verge of superannuation as he was to superannuate on 31st May, 2021, the impugned notification be quashed and set aside.

3. As per report of the Registry, private respondent has not been served, however, learned Advocate General, on instructions, submits that he has instructions to appear on behalf of private respondent in the petition, who adopts the reply filed on behalf of other respondents.

4. While opposing the petition, State has submitted that challenge by the petitioner to the transfer order on the ground of short stay is not sustainable in the eyes of law, because as the petitioner is Class-I Officer, therefore, the Department is within its rights to transfer the petitioner keeping in view the exigency of service. It is further submitted on behalf of the State that post to which

petitioner was transferred at Jungle Beri, in fact, has been manned by the cadre of Indian Police Service, whereas, the petitioner belongs to H.P. Police Service. Therefore, in order to avoid any complication, he was ordered to be posted as Commandant Home Guards Kullu. Learned Advocate General informs the Court that an Officer belonging to H.P.P.S. cadre, cannot be continued against the post belonging to Indian Police Service Cadre as for this purpose, special permission is required to be sought. He further submits that while issuing the said order, the Government has taken into consideration the place of posting of the husband of the private respondent, being a couple case.

5. Learned Advocate General, by referring to Annexures R-7 and R-8, appended with the reply, further submits that now, in fact, petitioner has been ordered to be posted as Commanding Officer, Home Guards at Mandi, keeping in view the fact that petitioner is on the verge of superannuation and has fixed the marriage of his daughter and that he happens to be the permanent resident of Jogindernagar, District Mandi. On these counts, it is

prayed on behalf of the State that there is no merit in the petition and the same is liable to be dismissed.

6. By way of rejoinder, petitioner has refuted the contentions so raised by the State. As per the petitioner, the stand of the State that petitioner could not be continued at Jungle Beri for the reason that he happens to be an Officer of H.P.P.S. Cadre, is totally misconceived, because there are innumerable examples where Officers belonging to H.P.P.S. Cadre, have been appointed and called upon to serve against the posts, which otherwise are to be manned by Indian Police Service Cadre for substantive period.

7. I have heard learned counsel for the parties and have gone through the pleadings as well as documents appended therewith.

8. Primarily, the grievance of the petitioner is with regard to his being transferred, vide Annexure P9, from Jungle Beri to Kullu as Commandant Home Guards. No doubt, this transfer was effected by the State within two months from the date of his posting at Jungle Beri. Though, it is correct that the assurance of minimum tenure

of 3 to 5 years in terms of the Transfer Policy of the respondent-State, is not available to Class-I Officers, yet, this Court wants to make the observation that frequent transfers even of Class-I Officers are neither in the interest of administration nor the employee.

9. Be that as it may, coming to the facts of the present case, when the petitioner was ordered to be transferred from Junga to Jungle Beri, this transfer order was also made by the respondent-State within about four months and the petitioner being posted at Junga. However, the petitioner did not object to the same because it appears that he was satisfied with the place where he was ordered to be posted and the Court is not finding any fault with this satisfaction of the petitioner.

10. As noted above, the main contention of learned counsel for the petitioner vis-à-vis the legality of notification, Annexure P9, is that the same has been issued in violation of the provisions of Section 12 of the H.P. Police Act, 2007, read with Section 56 thereof.

11. I will first deal with Section 56 of the H.P. Police Act, 2007. Section 56 of the said Act, *inter alia*, envisages

that there shall be a State Police Establishment Committee headed by the Director General of Police and comprising of four senior police officers not below the rank of Inspector General of Police, to be nominated by the Director General of Police and said Committee shall be responsible for the acts which are mentioned in the said Section, which, *inter alia*, includes the recommendation of proposals for postings and transfers of Gazetted Police Officers to the State Government subject to provisions of the Act and relevant Rules.

12. Annexure P9 is a notification, which has been issued by the Chief Secretary to the Government of Himachal Pradesh. Though, it has been contended by the petitioner that this transfer is in violation of Section 56 of the Act, however, no material has been placed on record by the petitioner to demonstrate that the transfers, which have been effected by the State Government, vide Annexure P9, were without necessary recommendations of the Committee, as is envisaged under Section 56 of the Act, 2007. The reason as to why the Court is shifting the onus upon the petitioner to prove this fact is because it is the

basic principle of law that he who alleges has to prove. As it is the allegation of the petitioner that transfer has been effected by violating the provisions of Section 56 of the Act, 2007, the Court cannot throw the onus upon the State Government to demonstrate that provisions of Section 56 of 2007 Act, were complied with. To the contrary, it was for the petitioner to have had gathered relevant information, may be under the Right to Information Act, to demonstrate that there was a violation of Section 56 of 2007 Act. In the absence of there being any such material on record, inference to the contrary has to be drawn. It is relevant to mention, at this stage itself, that Annexure R-7 appended with the reply, otherwise also demonstrates that the Committee, as is envisaged under Section 56 of 2007 Act, undertook the relevant exercise by making recommendation to the Government, before the issuance of notification Annexure P9.

13. Now, coming to Section 12 of 2007 Act, in my considered view, the provisions of this Section are also not attracted in the peculiar facts of this case. Section 12 of 2007 Act, *inter alia*, provides that an Officer posted as

Station House Officer, Sub-Divisional Police Officer or as Superintendent of Police of a District, shall normally have minimum tenure of two years and maximum tenure of three years, unless promoted to a higher post earlier. It is further provided in the said Section that any Officer may be removed from his post before expiry of minimum tenure of two years by the authority competent to do so for the reasons to be recorded in writing, consequent upon the exigency which stands contemplated in this statutory provision itself.

14. In the present case, petitioner was not holding the post of Superintendent of Police of a District at the time when the impugned transfer order was passed. Simply because the petitioner happens to be an Officer of the rank of Superintendent of Police, this does not confers any protection upon the petitioner as envisaged under Section 12 of 2007 Act. This, I say so for the reason that Section 12 of 2007 Act, opens with words "an Officer posted", meaning thereby that this protection is extendable only to those Officers, who actually are posted either as Station House Officer, Sub-Divisional Police Officer or

Superintendent of Police of a District. In other words, a person, who otherwise may be holding a post equivalent to said posts, is not entitled to protection under Section 12 of 2007 Act. Therefore, I hold that petitioner is not entitled for any protection, as is envisaged under Section 12 of 2007 Act.

15. Now, addressing the contention of the petitioner that the impugned transfer order has been passed not on account of any administrative exigency or in public interest, but to adjust private respondent only, a perusal of impugned notification demonstrates that private respondent, who was serving as Commandant at 1st IRBn Bangarh, District Una, vide said order was posted as Commandant, 4th IRBn, Jungle Beri, in place of the petitioner. Jungle Beri happens to be in District Hamirpur and husband of private respondent, who was serving as Superintendent of Police, District Una, vide the same notification, has been ordered to be transferred as Superintendent of Police Hamirpur, H.P. A perusal of the transfer order does not demonstrates that Ms. Sakshi Verma (private respondent) was transferred from Bangarh

(Una) to Jungle Beri (Hamirpur) on her request. This, I say for the reason that generally in case an Officer is posted at a particular station on his or her request, then the transfer is without TTA, but there is no such reflection in the transfer order that private respondent was being transferred from Bargarh to Jungle Beri, without TTA.

16. Now, because it is the contention of the petitioner that transfer order was on extraneous consideration, rather than on administrative exigency and in public interest, again onus is upon the petitioner to have demonstrated this fact. By simply making a bald assertion to this effect, it cannot be said that petitioner has been able to discharge his obligation in this regard. Even otherwise, taking into consideration the fact that husband of private respondent is also an IPS Officer, in case the Department has made an endeavour to ensure that they are posted at places which are adjacent to each other, the Court cannot not find any fault with the said act of the State as it is inconsonance with the Transfer Policy of the State Government to post couples at places nearer to each other. Therefore, this Court does not concurs with the

submissions of the petitioner that the impugned transfer order has been passed on account of any extraneous reasons at the behest of private respondent, rather than in public interest or administrative exigency.

17. Further, now, keeping in view the fact that after issuance of notification, Annexure P9, vide which the petitioner was ordered to be transferred to Kullu, as the petitioner stands accommodated at Mandi, which place is hardly situate at a distance of 50 Kms. from the home station of the petitioner, which is at Jogindernagar, therefore, also in my considered view, petitioner cannot have any grouse in this regard.

Accordingly, in view of the observations made hereinabove, as this Court does not finds any merit in this petition, same is dismissed, so also pending miscellaneous application(s), if any.

(Ajay Mohan Goel)
Judge

October 01, 2020
(Bhardwaj)