



REPORTABLE

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IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 15th DAY OF NOVEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE SATYEN VAIDYA

CIVIL WRIT PETITION NO. 3357 OF 2020

Between:-

DEEPAK RAJ SHARMA, S/O SHRI
BHUP SINGH SHARMA,
RESIDENT OF HIG-23, H.P.
HOUSING BOARD COLONY,
BHEULI, MANDI, TEHSIL &
DISTRICT MANDI, H.P.

...PETITIONER

(BY SH. AJAY SHARMA, SR.
ADVOCATE WITH SH. ATHRAV
SHARMA, ADOVCATE)

AND

1. STATE OF HIMACHAL PRADESH
THROUGH ITS SECRETARY
(TRANSPORT) TO THE
GOVERNMENT OF HIMACHAL
PRADESH 171 002.
2. HIMACHAL ROAD TRANSPORT
CORPORATION LTD., OLD BUS
STAND, SHIMLA-171003,
THROUGH ITS MANAGING
DIRECTOR.
3. THE DIVISIONAL MANAGER,
HIMACHAL ROAD TRANSPORT
CORPORATION LTD., MANDI,
DISTRICT MANDI, H.P.
4. THE REGIONAL MANAGER,
HIMACHAL ROAD TRANSPORT

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**CORPORATION LTD., MANDI,
DISTRICT MANDI, H.P.**

...RESPONDENTS

**(SH. ASHOK SHARMA, A.G.
WITH SH. RAJINDER DOGRA, SR.
ADDL. A.G., SH. VINOD
THAKUR, SH. HEMANSHU
MISRA, ADDL. AGS. AND SH.
BHUPINDER THAKUR, DY. A.G.).**

RESERVED ON: 10.11.2021

*This Petition coming on for Admission after Notice this day, the
Hon'ble Mr. Justice Tarlok Singh Chauhan, passed the
following:-*

ORDER

This is yet another glaring example of Employees' Unions/Associations making recommendations and getting effected non-consensual transfers of the employees of the respondents-Corporation despite repeated orders of this Court.

2. The petitioner was engaged as a Drive on contract basis on 19.06.1999 and thereafter his services were ordered to be regularized vide order dated 19.06.2000.

3. In July/August, 2019 petitioner was engaged as Assistant In-charge Drivers Duty. Vide order dated 28.08.2019, the petitioner was posted as Assistant In-charge Driver Duty at Regional Workshop, Mandi, however, shortly this assignment was withdrawn by the respondents vide order dated 13.09.2019 with a direction to the petitioner to work as a Driver.

4. However, subsequently vide order dated 28.08.2020, the petitioner was again posted as In-charge Drivers Duty with immediate effect but the said order was withdrawn on the very next day i.e. 29.08.2020, constraining the petitioner to file the instant petition for the grant of following substantive relief:-

a) That the impugned office order dated 29.08.2020, Annexure P-4, may very kindly be quashed and set aside with directions to the respondents to allow the petitioner to continue discharging duties of In-charge Driver Duty as per Annexure P-3, in the interest of law and justice;

5. It is averred by the petitioner that the impugned order dated 29.08.2020 is not sustainable in the eyes of law as the order has been passed owing to the political influence and the petitioner has every reason to believe that some other person was ordered to be posted as In-charge Drivers Duty.

6. The respondents have contested the petition by filing reply wherein it is averred that the act and conduct of the petitioner is not good with his colleagues as a number of complaints have been received by the respondents-Corporation against the petitioner. One such complaint even made to the Hon'ble Chief Minister on 05.01.2019, whereby the Employees' Association requested for withdrawing the services of the petitioner from Assistant In-charge Drivers Duty.

7. WWW.LIVELAW.IN Thereafter, the replying respondents issued show cause notice to the petitioner on 24.01.2019, 14.02.2019, 12.03.2019 and 20.05.2019 seeking his clarification for his act and conduct. It has further been averred that there are five Unions, namely, INTUC, AITUC, BMS, Drivers & Conductors, Store & Office Association in the respondents Corporation and while the petitioner had been posted in the Workshop as Assistant In-charge Drivers Duty, the complaints from Drivers & Conductors as well as BMS Unions were received to withdraw the services of the petitioner from the post of Assistant In-charge Drivers Duty. It is further stated that despite being a junior, the petitioner was posted as Assistant In-charge Driver Duty and his services were withdrawn on 13.09.2019 on the basis of the complaint made by the Bhartiya Mazdoor Sangh (BMS).

8. Now, the moot question in this background is whether the order of transfer can be sustained, when the same has admittedly been carried out on the basis of the complaint made by one of the Unions i.e. BMS.

We have heard learned counsel for the parties and have gone through the material placed on record.

9. We are appalled by the gross indiscipline existing in the respondent-Corporation where a member of different Employees' Associations or Unions are acting as extra

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constitutional authority and not only making but actually getting effected their recommendations for non-consensual transfers, especially, of their opponents.

10. This Court while dealing with the identical case being ***CWP No. 6196 of 2021, titled as Amit Kumar and Ors. vs. Himachal Pradesh State Electricity Board & Ors. Decided on 08.10.2021***, observed as under:-

7. This Court, while dealing with an identical case being ***CWP No. 4851/2021, titled as Sushil Kumar vs. State of H.P. & ors. decided on 9.9. 2021***, observed as under:

5. It is rather very unfortunate that cases are coming up repeatedly before this Court, in which the impugned transfer orders or transfer cancellation orders unabashedly and brazenly state that the transfer order or transfer cancellation is being done by or at the instance of persons, who have no role, position or authority in the administration of the department.

6. For better administration, the employees/officers must be shielded from fear of being harassed by the repeated transfers or transfers ordered at the instance of someone, who has nothing to do with the business of administration.

7. This court has repeatedly held that the transfer of officials/officers is required to be effected on the basis of set norms and guidelines; and this power cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians, who has no concern with the working of the department.

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8. The result of such political interference in the matter of transfers and postings of government servants is that the government servants get demoralized and they become affiliated to some political party or politician, which is wholly destructive to all norms of administration.

9. The citizens have a fundamental right to good governance, which is possible only if government servants including the employees of the Board/Corporation, who are governed and controlled by the State Government, are politically neutral and are not transferred or otherwise victimized at the instance of a political party or politician.

10. To say the least the Association has made a mockery and has used its strength as a tool to transfer the employees.

11. The Government as an ideal employer has a bounden duty to strictly safeguard the interest of its employees against the machinations of such organization so that the public servants can discharge their functions without fear or favour and they need not to toe the line drawn by the association. If such transfer is allowed to take effect, it would embolden other association(s) to seek the transfer of unfavourable and upright government officials from their pocket boroughs and to see that they are posted somewhere else.

12. This would demoralize the government servants and may even inspire them to amend their ways in such a manner so as to please each and every one whoever come under the banner of the Association. If the government machinery has to serve the people well, their functioning and official routines are to be insulated against the extraneous influences.

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13. Even otherwise, upholding such kind of transfers would mean compromising with the rule of law, which is a basic feature of the Constitution, that permeates the whole of the constitutional fabric and is an integral part of the constitutional structure. Rule of law contemplates governance by laws and not by humour.

14. That apart, the transfer cannot be used as a medium to scuttle or choke the voice of dissent, especially, the voice of dissent cannot be silenced through administrative arbitrariness.

15. The employees' association primarily constituted to highlight the grievances of the employees can no doubt request the competent authority for transfer of employees of the Association highlighting the grievances of the employees, but in no case can recommend for the transfer of the employees that too to a particular station, which is solely the job of the administrative department.

16. In addition thereto, under no conditions or circumstances can these associations, unions etc., as the case may be, recommend for a non-consensual transfer merely because the association may comprise of sizable number of employees. These Associations cannot indulge in hand twisting tactics and try to exert pressure on the administrative authority to effect a non-consensual transfer.

17. Likewise, these associations cannot impress upon the administrative authorities to promote a particular employee, as that again is only within the exclusive domain and domain of the administrative department. In case an individual employee is aggrieved by his non promotion, then it is always open to him to approach the administrative

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department and in case, the administrative department does not accede to his request, the door of justice are always open to such employee. The association cannot usurp the power of administrative department.

18. Therefore, we direct that henceforth no recommendations for non consensual transfer shall be made by the Himachal Pradesh Sikshak Mahasangh (Association), much less, accepted by the competent authority. It is made clear that when such recommendations come to the notice of this Court, then the Himachal Pradesh Sikshak Mahasangh shall be disqualified for all intent and purposes.

19. Since the recommendations to transfer the petitioner had been mooted by an extra constitutional authority, which 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.

8. In compliance to the directions contained in aforesaid case, the Chief Secretary to the Government of Himachal Pradesh, has issued instructions, which read as under: -

“Your attention is invited to the Hon’ble High Court orders dated 20.7.2021 titled as Vipender Kalta vs. State of H.P. & others and further orders dated 9.9.2021 of Hon’ble High Court passed in CWP No.4851/2021, titled as Sushil Kumar vs. State of H.P. & others. In both the cases the Hon’ble High Court has expressed serious concern over recommendation related to service matters of employees including transfer, promotion etc., by extra constitutional

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authorities which have no role in the functioning and business of the administration. All the Secretaries/HODs must ensure that such recommendation, if received, should not be taken on their face value and must be put up to competent authorities purely on merit and dealt strictly on administrative grounds.”

9. Even instructions, in compliance to the aforesaid judgment, also stand issued by the Director (Higher Education).

10. However, it appears that the judgment rendered in Sushil Kumar's case supra has not had its effect on the Employee's Associations or Unions, as they in the blatant and brazen manner continue to make recommendations for nonconsensual transfers, as is evident from the facts of the instant case.

11. If any individual employee or officer or office bearer of any Union or Association, recognized or unrecognized, indulge in any coercive or intimidating or indisciplined acts or behavior, the employer is always at liberty to take such action, as permissible in law.

12. Therefore, we make it absolutely clear that henceforth the Boards, Corporation or any other institutions, falling under the definition of the 'State' under article 12 and 226 of the Constitution of India, shall not entertain much less consider and decide recommendations made by any of the Employees' Associations or Unions for non-consensual transfers of its employees in the State of Himachal Pradesh and any Employees' Associations or Unions in the State of Himachal Pradesh resorting to such practice shall,

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in addition to any other action, be liable to be de-recognized and disqualified for all intents and purposes.

13. A copy of this order be sent by the Registry of this Court to the Chief Secretary to the Government of Himachal Pradesh for onward circulation to all the Departments of the Government, all Boards, Corporations etc.

11. In compliance to the aforesaid Chief Secretary to the Government of Himachal Pradesh has already issued necessary directions to all the Departments of the Government, Boards and Corporations etc.

12. In such circumstances, obviously, in view of what has been stated above, the order of transfer normally would not be sustained, but when the facts of the instant case are adverted to, it would be noticed that the conduct of the petitioner himself has not been above board as he himself been pulling strings and involving the various unions including the Drivers & Conductors Union as a shield to subserve his own purpose. Not only that, the petitioner had on 15.08.2019 met with the President, Bhartiya Janta Party, Mandi and requested that he may be posted on the Drivers Duty (Annexure R-4), which clearly goes to indicate that the petitioner has no faith in judicial system.

13. In such circumstances, the conduct of the petitioner, to say the least, is deplorable. The people, who lose faith in the judiciary, are required to be condemned and curbed with strong

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hands by one and all, who are interested in the orderly society and have faith in democracy. This is the basic creed of our Constitution.

14. There cannot be a second opinion that the institution of judiciary took time immemorial to establish. Its functionaries, working independently without favour and fear within the parameters established by law, tradition, usages, customs etc., have earned faith of the public for the institution of being trusted.

15. People's faith in independence of judiciary is of paramount consideration not only in public interest, but also in the interest of society. To protect the faith of the people in the independence of the judiciary developed, established, accepted by a consistent tradition from time immemorial, is the avowed duty of every one of us, especially of Lawyers, Judges, Legislators and the Executives.

16. Faith in judiciary are the facets of the judicial administration to which they contributed substantially. It is essential to maintain faith of common masses in the judiciary, failing which it would lose its respect and esteem. Law is meant to meet the ends of justice.

17. Having WWW.LIVELAW.IN resorted to extra constitutional methods for quashing of order of transfer, the Courts have no room for litigants like the petitioner, who has no faith in the judiciary.

18. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed. However, before parting, we once again reiterate and make it absolutely clear that henceforth the Corporation shall not entertain much less consider and decide or act on such recommendations made by any of the Employees' Unions for non-consensual transfer of the employees of the Corporation and, in case, any of these Unions resorted to such misadventure, in addition to taking any other action including Contempt of the Courts, these Unions/Associations will be de-recognised and disqualified for all intent and purposes.

19. The petition stands disposed of in the aforesaid terms, so also pending application(s), if any. Parties are left to bear their own costs.

(Tarlok Singh Chauhan)
Judge

15th November, 2021
(sanjeev)

(Satyen Vaidya)
Judge