



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA



ON THE 12th DAY OF SEPTEMBER, 2022.

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE VIRENDER SINGH

CIVIL WRIT PETITION No.5622 OF 2022.

Between:-

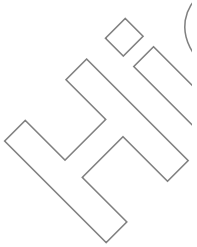
SH. MANOJ KUMAR,

.....PETITIONER.

(BY SH. MUKUL SOOD, ADVOCATE)

AND

1. STATE OF HIMACHAL PRADESH THROUGH PRINCIPAL SECRETARY (ELEMENTARY EDUCATION) TO THE GOVT. OF H.P. SHIMLA, H.P. 171002.
2. THE DIRECTOR, ELEMENTARY EDUCATION TO THE GOVERNMENT OF HIMACHAL PRADESH, SHIMLA 171001, H.P.
3. SH. KAPIL DEV,





.....RESPONDENTS.

(SH. ASHOK SHARMA, ADVOCATE GENERAL WITH SH. RAJINDER DOGRA, SENIOR ADDITIONAL ADVOCATE GENERAL, SH. VINOD THAKUR, SH. SHIV PAL MANHANS, ADDITIONAL ADVOCATE GENERALS, SH. BHUPINDER THAKUR, DEPUTY ADVOCATE GENERAL AND SH. RAJAT CHAUHAN, LAW OFFICER, FOR RESPONDENTS-1 & 2).

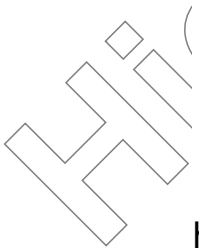
(SH. SANJEEV BHUSHAN, SENIOR ADVOCATE WITH SH. RAKESH CHAUHAN, ADVOCATE, FOR RESPONDENT-3)

*This petition coming on for admission after notice this day, **Hon'ble Mr. Justice Tarlok Singh Chauhan**, passed the following:*

ORDER

Aggrieved by the order of transfer, the petitioner has filed the instant petition for grant of the following substantive relief:-

“Issue a writ of certiorari for quashing the transfer order dated 16.08.2022(Annexure P-1) issued by respondent No.2.”



2. A perusal of the records goes to show that the transfer of the petitioner has been effected on the basis of the D.O. Note issued by the Member of Parliament. A perusal of the D.O. Note further goes to show that not only the petitioner has been recommended to be transferred, but even the station(s) to which he could be transferred is suggested in the D.O. Note. This amounts to encroachment of the jurisdiction and authority of the Administrative Authority and, therefore, clearly is not sustainable as the question as to who and where is to be posted is the sole discretion of the Administrative Authority.

3. Consequently, the impugned order of transfer cannot sustain and is accordingly quashed and set aside.

4. However, at this stage, learned counsel for respondent No.3 states that it is due to extreme hardship that he had approached the Member of Parliament for his transfer. The father of respondent No.3 died on 09.06.2020 and after his death, it is he, who is required to take care not only of his mother, who is currently 71 years of age and suffering from multiple ailments, but also his daughter, who is 16 years of age and suffering from a rare disease i.e.


Leukocytosis and currently under treatment from Kidney Hospital, Jalandhar. ◇

5. It is more than settled that as regards the case of individual hardship, it is for the employer to decide the same and reference can conveniently be made to the judgment of the Hon'ble Supreme Court in ***Rajendra Roy vs. Union Of India and anr. (1993) 1 SCC 148.***

6. In the given facts and circumstances of the case, we deem it appropriate to dispose of this petition by directing respondent No.2 to consider the reply filed by respondent No.3 before this Court as a representation on his behalf and thereafter decide the same sympathetically taking into consideration the adverse family circumstances (mentioned supra in which respondent No.3 is placed and take a decision thereupon within a period of 10 days from today and, if possible, order the transfer and posting of respondent No.3 to anyone of the following stations:-

- “(1). GSSS Ghanari, District Una.
- (2). GSSS Gugdehar (Una).
- (3). GMS Amb u/c GSSS Amb, Una.
- (4). GSSS Chowki Maniyar, Una.”

Ordered accordingly.

7. The petition is disposed of in the aforesaid terms, so also the pending application, if any. 

8. However, before parting, it is made clear that this order is being passed in the peculiar facts and circumstances of the instant case and shall not be treated as a precedent in future.

9. For compliance, to come up on **27.09.2022.**

(Tarlok Singh Chauhan)
Judge

(Virender Singh)
Judge

12th September, 2022.
(krt)

