

Before Rajbir Sehrawat, J.

RAJEEV KUMAR—Petitioners

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP NO.7371 of 2020

April 8, 2021

Service matter – Writ petition under Article 226 – Haryana Civil Service (Leave) Rules, 2016 – Child Care Leave (CCL) – Competent authority to sanction - Violation of instructions - Transfer order - Quashing of - Public interest - Extraneous considerations - Political interference – Respondent no.5, working as Chemist at Hisar, was granted CCL for 730 days by the Engineer-in-Chief – The petitioner was transferred as Chemist against the vacant post at Hisar by Principal Secretary to the government – After availing CCL respondent no.5 submitted joining report as at Hisar on 16.03.2020 – The petitioner opposed it stating that an employee after availing leave was not entitled to join at the same place unless there was a specific order – Subsequently, by order of the Special Secretary dated 05.05.2020, respondent no.5 was posted at Hisar against the petitioner, who was transferred to Fatehabad - Held, as per government instructions, CCL of more that 120 days is to be sanctioned by the Administrative Secretary – Whereas, leave of respondent no.5 was sanctioned by the Engineer-in-Chief, who was neither competent to sanction it nor include a stipulation in the order regarding joining back at Hisar – At this stage, when the CCL has already been availed, it is not appropriate to set-aside the sanction of leave in favour of respondent no.5, but the stipulation regarding her joining back at Hisar cannot be enforced under law – It carries no weight being in violation of the instructions, and issued by an incompetent authority – Besides, the sole post at Hisar stood occupied by the petitioner who was posted there by the competent authority, the Principal Secretary - Further held, the fact of respondent no.5 remaining posted at Hisar for an unreasonable long time of about 17 years, out of total service of 22 years, lends credence to the assertion that administrative machinery was working to bring back respondent no.5 at Hisar by hook or by crook – The impugned order itself shows possibility of political interference – It was passed only to bring back respondent no.5 at Hisar and not in any public interest – The order is marked to PS/OSD/CM, no other order was so marked – Hence,

extraneous consideration in passing the order is writ large on the face of it – This kind of administrative action cannot be countenanced by the Court - Petition allowed by setting aside the transfer order.

Held that having heard the counsel for the parties and having perused the record, this Court finds substance in the argument of the counsel for the petitioner. The reliance of the petitioner on the Instructions dated 5.11.2012 is well placed. These un-controverted instructions, which have been attached at Annexure P-11, specifically provides that the Child Care Leave of more than 120 days of the Group A and Group B employees are to be sanctioned by the Administrative Secretaries. In the present case, undisputedly, the leave of the respondent No.5 was sanctioned by the Engineer-in-Chief. The order dated 13.3.2018 of sanctioning leave in favour of respondent No.5 does not have even a reference to any sanction of the leave by any Administrative Secretary of the Department. Therefore, the Engineer-in-Chief was neither competent to sanction the leave as such nor to include a stipulation in the order that the respondent No.5 will join back at Water Testing Laboratory, Public Health Engineering Department, Hisar, after availing the leave. Although it is not necessary or appropriate to set aside the sanction of leave in favour of respondent No. 5 at this stage, because the same already stands availed by her, yet, the stipulation qua the respondent No.5 joining back at Hisar cannot be enforced under the law. Such a stipulation carries no weight, being in violation of the Instructions and having been included by an incompetent authority. Hence, the respondent No. 5 did not have any claim to join back at the Water Testing Laboratory, Public Health, Engineering Department, Hisar after availing leave. This is particularly so because the said post was already being occupied by the petitioner after having been posted there by the competent authority i.e. The Principal Secretary to the Government of Haryana, Public Health Engineering Department.

(Para 8)

Held that this Court also finds substance in the argument of the counsel for the petitioner that he has been transferred again out of the Hisar, only to adjust the respondent No.5 on her asking. Except this, no special reason has been shown by the authorities as to why this transfer of the petitioner from Hisar was necessitated even before the expiry of the normal period of posting of 3 years as prescribed under the policy. Although the petitioner may not have any right to stay at a particular

place for minimum period of 3 years as per the stipulation contained in the transfer policy, the same being only in the nature of guidelines, however, the fact that the respondent No.5 has remained posted at Water Testing Laboratory, Public Health, Engineering Department, Hisar for an unreasonable long time of about 17 years out of the total 22 years of service, lends credence to the assertion of the petitioner that the administrative machinery was working to bring back the respondent No.5 to Water Testing Laboratory, Public Health, Engineering Department, Hisar, by hook or by crook. This assertion of the petitioner is also supported by the fact that although there was no vacancy available at the Water Testing Laboratory, Public Health, Engineering Department, Hisar, the sole post having been occupied by the petitioner, yet the joining report of respondent no. 5 was accepted at that place. Not only that, the Superintending Engineer even wrote a letter to the higher authorities for permission to draw her salary from Hisar instead of Fatehabad, although there was no possibility of such drawl of salary because no post of Chemist was vacant at that place. Moreover, the impugned order itself shows that there is possibility of political interference in the administrative matter of transfer, under manipulation of the respondent No. 5. The order itself shows that the impugned order was being passed only to bring back the respondent No.5 to Hisar and not in any interest of administrative exigencies. Moreover, this order is marked to the office of PS/OSD/CM. No other order was marked to the office of the Chief Minister. Hence, the extraneous consideration in passing of the impugned order is writ large on the face of it, which gives an impression that the entire official machinery was working to favour the respondent No.5 and was treating the petitioner as a second-class citizen, who was not having any kind of legal protection in the cadre. This kind of administrative action cannot be countenanced by the Court.

(Para 10)

S.K. Nehra, Advocate,
for the petitioner

Deipa Singh, Addl. A.G., Haryana

Dinesh Arora, Advocate,
for respondent No.5

RAJBIR SEHRAWAT, J. (ORAL)

(1) This petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of

certiorari quashing the impugned transfer order dated 5.5.2020 endorsed on 6.5.2020 (Annexure P-7).

(2) The facts as given in the present petition are the respondent No. 5 Smt. Kanchan Bishnoi was working as Chemist at Water Testing Laboratory, Public Health Engineering Division No. 1 at Hisar. She was granted child-care leave for 730 days starting from 19/03/2018 till 13/03/2020 vide order dated 12/03/2018 issued by Engineer in-Chief Public Health Engineering Department. Vide this letter it was also ordered that after availing the leave, the respondent No. 5 shall join at the same place where she was posted at the time of availing leave. Since the post of Chemist at Water Testing Laboratory, Public Health Engineering Department Hisar had fallen vacant due to the respondent No. 5 availing leave, therefore, the petitioner was transferred as Chemist from Fatehabad to Water Testing Laboratory Public Health Engineering Department Hisar vide order dated 28/02/2019 passed by Principal Secretary to Government of Haryana, Public Health Engineering Department. The petitioner joined at the new place of posting on 1st March 2019. In the same letter it was also ordered that the salary of the respondent No. 5 during the leave, shall be withdrawn from Public Health Engineering Department, at Fatehabad against vacancy. After having been substantively posted at Hisar the petitioner was given the additional Charge of Chemist of Public Health Engineering, District laboratory Fatehabad; as well.

(3) After availing the child-care leave the respondent No. 5 submitted a joining report as Chemist at Water Testing Laboratory, Public Health Engineering Department at Hisar. Accordingly, on 16/03/2020 a letter was written by the Superintending Engineer Hisar to the Engineer-in-Chief pointing out that the respondent No. 5 had joined as Chemist at Hisar; and a further request was made that order of drawing salary of respondent No. 5 at Public Health Engineering Department Laboratory at Hisar be also issued. On coming to know of this letter the petitioner wrote a letter dated 24/03/2020 to the Superintending Engineer, Public Health Engineering Circle Hisar; mentioning therein that as per Haryana Civil Service (leave) Rules 2016 a government employee returning from the leave is not entitled to join at the same place from where she/ he had availed the leave unless there was a specific order. However the respondent No. 5 was wrongly permitted to join at Hisar in violation of the above said Rules. Instead, the respondent No. 5 and the district authorities should have waited for the posting orders from the competent authority. It was

further pointed out that although in the letter dated 12/03/2018 the Engineer-in- Chief had stipulated that after availing leave, the respondent No. 5 shall join at the same place from where she was relieved for availing leave, however, the said stipulation stood superseded by the subsequent order dated 28/02/2019 issued by the Principal Secretary to the government of Haryana, Public Health Engineering Department, whereby the petitioner was posted at Hisar and it was also ordered that the salary of the respondent No. 5 shall be drawn from Fatehabad. It was requested by the petitioner that the respondent No.5 be not permitted to work at Hisar and that the petitioner be retained at Hisar.

(4) Thereafter, the Special Secretary to Government of Haryana issued the order dated 05/05/2020 whereby the respondent No. 5 has been ordered to be posted as Chemist at Water Testing Laboratory, Public Health Engineering Department, Hisar against the petitioner and the petitioner has been transferred to Water Testing Laboratory, Public Health Engineering Department Fatehabad. Pursuant to this letter the respondent No. 5 joined duty at Hissar on 08/05/2020 at the time when the petitioner was on leave. Challenging this order the present petition has been filed by the petitioner.

(5) Arguing the case, Learned counsel for the petitioner submitted that the government of Haryana has issued instructions dated 07/04/1989 wherein it has been stipulated that an employee should be kept posted at one place for a minimum period of 3 years. The petitioner had not completed even this duration. Despite that the petitioner has been transferred just on the asking of the respondent No. 5. It is also submitted by the Counsel for the petitioner that as per Haryana Civil Service (leave) Rules 2016; in absence of specific order from the competent authority an employee is not entitled to join back at a place from where he/she was relieved on availing leave. Such an employee is required to be in waiting for proper orders to be issued by the competent authority. In case of the respondent No. 5, although there was a stipulation in the order issued by the Engineer-in-Chief that she will join back at Hisar, however, the Engineer-in-Chief was not even competent to issue such a letter. The Counsel has referred to the instructions issued by the government of Haryana dated 05/11/2012; whereby; the competent authorities to sanction leave has been specified. Referring to this letter, the Counsel has submitted that since the post of Chemist is a Group B post, therefore, the competent authority in case of the petitioner and the respondent No. 5 is the

Administrative Secretary in the Department of the Government. Therefore even the child-care leave could not have been sanctioned by the Engineer-in-Chief without prior permission from the Administrative Secretary, much less to speak of passing an order that the respondent No. 5 shall rejoin at Hisar after availing the leave. It is further submitted that in any case, the order passed by the Engineer-in-Chief stood superseded by the subsequent order passed by the competent authority, namely, Principal Secretary to the government of Haryana, Public Health Engineering Department, whereby the petitioner was transferred to Hisar and order was passed that the salary of the respondent No. 5 shall be drawn from Fatehabad. After this letter /order, the earlier order passed by the Engineer-in- Chief lost its relevance qua re-joining of the respondent No. 5 at Hisar. The Counsel has also submitted that when the petitioner was posted at Water Testing Laboratory, Public Health Engineering Department Hisar, he was posted against a vacancy. Since the vacancy had arisen at Hisar and the petitioner had joined there pursuant to the order passed by the competent authority, therefore, the respondent No. 5 could not have furnished her joining report at that place. There was no post available for her to furnish the joining report at Hisar. It is only the collusion of the authorities at the district level that her joining report was accepted and even the letter was written to the Engineer- in-Chief for permitting to draw her salary from Hisar, instead of drawing the same from Fatehabad. It is further submitted by the counsel that the clout of the respondent No. 5 upon the state authorities is manifest from the fact that out of the total service of about 22 years she has remained posted at Hisar for at least 17 years. The details of her postings have been mentioned in the writ petition. Accordingly it is submitted that the petitioner is being treated only as a second- class citizen, whereas, the entire office is geared-up in favour of the respondent No. 5; so as to ensure that the respondent No.5 is retained at Hisar.

(6) On the other hand, the counsel for the state has submitted that the respondent No. 5 had availed her Child Care Leave only as permitted under the rules. Since post at Hisar was lying vacant on account of availing of long leave by the respondent No. 5, therefore, the petitioner was posted as Chemist at Water Testing Laboratory, Public Health Engineering Department at Hisar. Since the post at Fatehabad had also fallen vacant on account of transfer of the petitioner to Water Testing Laboratory, Public Health Engineering Department at Hisar, therefore, the additional Charge of the office at Fatehabad was given to the petitioner for administrative purposes. However, after availing

leave the respondent No. 5 submitted her joining report at Hisar as per the letter sanctioning her leave. Accordingly, she has been posted as Chemist at Water Testing Laboratory, Public Health Engineering Department at Hisar. Rest of the contentions of the counsel for the petitioner qua the instructions specifying the competent authorities for sanctioning leave for Group B officers and qua long stay of respondent No. 5 have not been denied specifically.

(7) Learned counsel for respondent No.5 has submitted that the respondent No.5 availed the leave as duly sanctioned by the Head of the office. Since the respondent No. 5 was on leave, therefore, there was no substantial vacancy for the petitioner to be posted in place of respondent No.5. Since there was a stipulation in the order of sanctioning leave to the respondent No.5, therefore, after availing her full leave, she was required to report back at the place from where she was relieved. On the issue of longer stay at the place, it is submitted by the counsel for respondent No.5 that it is not factually correct that the petitioner has stayed for 17 years in continuity. On the contrary, the petitioner has also stayed at one place for long time. However, the assertion of the petitioner that out of total 22 years of service, respondent No.5 has remained posted at Hisar for about 17 years, has not been categorically refuted by the respondent No. 5.

(8) Having heard the counsel for the parties and having perused the record, this Court finds substance in the argument of the counsel for the petitioner. The reliance of the petitioner on the Instructions dated 5.11.2012 is well placed. These un-controverted instructions, which have been attached at Annexure P-11, specifically provides that the Child Care Leave of more than 120 days of the Group A and Group B employees are to be sanctioned by the Administrative Secretaries. In the present case, undisputedly, the leave of the respondent No.5 was sanctioned by the Engineer-in-Chief. The order dated 13.3.2018 of sanctioning leave in favour of respondent No.5 does not have even a reference to any sanction of the leave by any Administrative Secretary of the Department. Therefore, the Engineer-in-Chief was neither competent to sanction the leave as such nor to include a stipulation in the order that the respondent No.5 will join back at Water Testing Laboratory, Public Health Engineering Department, Hisar, after availing the leave. Although it is not necessary or appropriate to set aside the sanction of leave in favour of respondent No. 5 at this stage, because the same already stands availed by her, yet, the stipulation qua the respondent No.5 joining back at Hisar cannot be enforced under the

law. Such a stipulation carries no weight, being in violation of the Instructions and having been included by an incompetent authority. Hence, the respondent No. 5 did not have any claim to join back at the Water Testing Laboratory, Public Health, Engineering Department, Hisar after availing leave. This is particularly so because the said post was already being occupied by the petitioner after having been posted there by the competent authority i.e. The Principal Secretary to the Government of Haryana, Public Health Engineering Department.

(9) This Court also does not find any substance in the argument of counsel for the respondent No.5 that since the respondent No.5 was only on sanctioned leave, therefore, there was no vacancy at Hisar which could have been filled up by the petitioner during the period when the respondent No.5 was on leave. This argument is based on total misconception. The respondent No.5 is only a member of cadre who can be posted at any place where a sanctioned post of that cadre is in existence. The respondent No. 5 did not have any lien against the particular post at Water Testing Laboratory, Public Health, Engineering Department, Hisar. If the said post was not occupied by any person, at any time and for any reason, that could have been validly filled up by the competent authority by posting any member of the cadre at the said place. The contention of the respondent No. 5 for the post not falling vacant on account of the incumbent going on leave is applicable only either in case of single cadre post or in a case where the incumbent is specifically appointed against a particular post. In a multi post cadre, this concept is simply not applicable.

(10) This Court also finds substance in the argument of the counsel for the petitioner that he has been transferred again out of the Hisar, only to adjust the respondent No.5 on her asking. Except this, no special reason has been shown by the authorities as to why this transfer of the petitioner from Hisar was necessitated even before the expiry of the normal period of posting of 3 years as prescribed under the policy. Although the petitioner may not have any right to stay at a particular place for minimum period of 3 years as per the stipulation contained in the transfer policy, the same being only in the nature of guidelines, however, the fact that the respondent No.5 has remained posted at Water Testing Laboratory, Public Health, Engineering Department, Hisar for an unreasonable long time of about 17 years out of the total 22 years of service, lends credence to the assertion of the petitioner that the administrative machinery was working to bring back the respondent No.5 to Water Testing Laboratory, Public Health,

Engineering Department, Hisar, by hook or by crook. This assertion of the petitioner is also supported by the fact that although there was no vacancy available at the Water Testing Laboratory, Public Health, Engineering Department, Hisar, the sole post having been occupied by the petitioner, yet the joining report of respondent no. 5 was accepted at that place. Not only that, the Superintending Engineer even wrote a letter to the higher authorities for permission to draw her salary from Hisar instead of Fatehabad, although there was no possibility of such drawl of salary because no post of Chemist was vacant at that place. Moreover, the impugned order itself shows that there is possibility of political interference in the administrative matter of transfer, under manipulation of the respondent No. 5. The order itself shows that the impugned order was being passed only to bring back the respondent No.5 to Hisar and not in any interest of administrative exigencies. Moreover, this order is marked to the office of PS/OSD/CM. No other order was marked to the office of the Chief Minister. Hence, the extraneous consideration in passing of the impugned order is writ large on the face of it, which gives an impression that the entire official machinery was working to favour the respondent No.5 and was treating the petitioner as a second-class citizen, who was not having any kind of legal protection in the cadre. This kind of administrative action cannot be countenanced by the Court.

(11) In view of the above, the present petition is allowed. The impugned order dated 5.5.2020, endorsed on 6.5.2020 (Annexure P-7 with the petition) is set aside. By way of abundant caution, it is clarified that the petitioner shall be entitled to all the service benefits for the duration of his posting at Water Testing Laboratory, Public Health, Engineering Department, Hisar, including the period for which the present petition has remained pending before this Court.

Tribhuvan Dahiya