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(Rajesh Bindal, J.)

*Before Rajesh Bindal, J.*

**GURPAL SINGH—Petitioner**

*versus*

**STATE OF PUNJAB AND ANOTHER —Respondents**

**CWP No. 465 of 2014**

April 01, 2014

*Constitution of India, 1950 - Art. 226 - Punjab Civil Services Rules, Vol. I - Part I - Rls. 3.17 & 4.22 - Punjab Educational Service (College Cadre) Class I Rules, 1976 - Rl. 17 - Transfer - Petitioner, appointed as Director, Public Instruction (Colleges) impugned the order posting him as Director, Punjab State University Text Book Board, largely on grounds that posting was to a post outside his cadre, and that in any case he was not qualified for the said post (Director of the Board), as he lacked essential qualification of M.A. in Punjabi - No mala fide was alleged - State resisted plea of Petitioner on grounds that there was no reduction in rank, pay or status as a result of posting as Director of Board; that his posting was approved by the Board, and requirement of M.A. in Punjabi was done away with - Held, that it is wisdom of employer to see where services of an employee can be best utilised - Order of transfer of a Government employee is not generally interferred with by the Courts - Thus, Petitioner's posting as Director of the Board was legal.*

*Held*, that Rule 4.22 of the Punjab Civil Services Rules, Volume I, Part I, provides that the competent authority may appoint a Government employee to hold substantively, as a temporary measure, or to officiate on, two or more independent posts at one time, however, in such cases he shall draw the highest pay to which he would be entitled to if appointed to one of the posts alone, provided that he fulfils the requisite qualifications therefore.

(Para 12)

*Further held*, that Rule 17 of the 1976 Rules, provides that every member of the service is liable to transfer to any post whether included in any other service. In the present case, it is not in dispute that transfer

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of the petitioner as Director of the Board is in terms of the order of the Government. It is undisputed case of the parties that status or emoluments of the petitioner have not been changed as he will be drawing the same salary and further status of the post is equivalent to the post substantively being held by the petitioner, as even Director, Public Instruction (Colleges), who is *ex-officio* member of the Board, can be given charge of the post. Rule 3.17 of the Punjab Civil Services Rules, Volume I, Part I, is not applicable in the present case for the reason that pay or status of the petitioner has not been reduced as compared to the post, which the petitioner substantively holds.

Once there is enabling provision in the service rules applicable to the petitioner, in terms of which he can be transferred to any other post included in any other service, the order of posting of the petitioner as Director of the Board does not suffer from any illegality.

(Paras 13 and 14)

*Further held*, that the order of transfer of a Government employee is not generally interfered with by the courts as it is the wisdom of the employer to see where the services of an employee can be best utilised.

(Para 15)

Puneet Gupta, Advocate *for the petitioner*.

Anshul Gupta, Assistant Advocate General, Punjab. Pardeep Bajaj, Advocate for respondent No. 1.

**RAJESH BINDAL J.**

(1) The petitioner, who was promoted as Director, Education Department (Colleges) [also known as Director, Public Instruction (Colleges)], vide order dated 6.1.2014 from the post of Principal, has filed the present petition impugning the order dated 10.1.2014 (Annexure P-9), whereby he has been posted as Director, Punjab State University Text Book Board (for short, 'the Board').

(2) Learned counsel for the petitioner submitted that the petitioner was appointed as Lecturer in Physics on 12.4.1980 and was promoted as Principal on 29.7.2010. He was to retire after attaining the age of

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superannuation on 30.11.2012. However, in terms of the policy of the Government, he was granted extension in service. Now he is due to retire on 30.11.2014. He has unblemished service record. The service of the petitioner as Principal or Director, Public Instruction (Colleges) is governed by the Punjab Educational Service (College Cadre) (Class-I) Rules, 1976 (for short, 'the 1976 Rules'). As per Appendix 'A', annexed with the aforesaid Rules, there is only one post of Director, Public Instruction (Colleges). Finding the petitioner suitable in terms of the 1976 Rules, the petitioner was promoted to the post of Director, Public Instruction (Colleges) vide order dated 6.1.2014. The petitioner joined his service as Director, Public Instruction (Colleges) on 10.1.2014. The joining report was duly submitted. Vide impugned order dated 10.1.2014, passed by the Principal Secretary, Higher Education Department, Punjab, the petitioner was posted as Director of the Board.

(3) Learned counsel for the petitioner submitted that in terms of the 1976 Rules, Director, Public Instruction (Colleges), is the highest post in the cadre. There is only one post. As per Rule 17 of the 1976 Rules, every member of service is liable to transfer under the orders of the Government to any post whether included in any other service or not on the same terms and conditions as are specified in Rule 3.17 of the Punjab Civil Services Rules, Volume I, Part I. The submission is that transfer of the petitioner from the post of Director, Public Instruction (Colleges) to the post of Director of the Board is outside the cadre, hence, the same was impermissible without the consent of the petitioner. In support of his arguments, reliance was placed upon *Jawaharlal Nehru University v. Dr. K.S. Jawalkar*(1) ; *Umapati Choudhary v. State of Bihar and another*(2) ; *Ajmer Lal and others v. The State of Punjab and others*(3) ; *Aroor Chand v. State of Punjab*(4) ; *Bahadur Chand v. State of Haryana*(5) ; *Sh. K.C. Agnihotri, Treasury Officer (Treasury*

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(1) AIR 1989 SC 1577

(2) (1999) 4 SCC 659

(3) 1981(2) SLR 775

(4) 1991(2) SCT 709

(5) 1995(3) SCT 469

***& Accounts Branch), Patiala v. State of Punjab and another(6) and Parkash Singh Sekhon v. The State of Punjab and others(7).***

(4) He further submitted that the Board is a society registered under the Societies Registration Act, 1860. The Director, Public Instruction (Colleges), Punjab is one of the *ex-officio* member of the Board. The Memorandum and Articles of Association of the Board prescribe the qualifications required for appointment as a Director of the Board. One of the necessary qualification is M.A. in Punjabi first class or high second class with Ph.D. as additional qualification. The petitioner is not having these qualifications, hence, not eligible to hold the post. The petitioner is M.Sc. and M.Phil. in Physics. A person having qualification and experience in Punjabi is required for the reason that the object, for which the Board was constituted, is for switching over to Punjabi language. He further submitted that power to appoint a Director lies with the Board. In the present case, the order has been passed by the Principal Secretary, Higher Education Department, Punjab, hence, the appointment is otherwise also illegal. Further, it is contended that there are only three modes of appointment, namely, direct, deputation or entrustment of additional charge to any of the members of the Board till such time the whole-time Director is appointed.

(5) Learned counsel further submitted that in fact the Board is a defunct body, where no activity is practically carried on. A meeting of the Board of Directors was called on 3.2.2014, for which notice dated 27.1.2014 was posted on 30.1.2014, which was received by the petitioner on 5.2.2014. In fact, the Director of the Languages Department was holding additional charge of the post till such time the petitioner was posted there. Still further, the contention is that as per Rules of Business of the Government of Punjab, 1992, posting of Head of the Department is with the prior approval of the Chief Minister. In the present case, the order has been passed by the Secretary of the department concerned. It was further submitted that qualifications required for appointment as a Director of the Board were changed after the petitioner had already been posted there.

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(6) 1996(3) RSJ 850

(7) 1997(2) PLR 204

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(6) On the other hand, learned counsel for the State submitted that the petitioner has merely been posted as Director of the Board in public interest. The appointment of the petitioner has been approved by the Board *ex-post facto* in its meeting held on 3.2.2014. There is no reduction in the status or pay of the petitioner while being posted as Director of the Board. Under Clause 24 of the Memorandum and Articles of Association, the Government can otherwise issue directions to the Board on any matter. Rule 17 of the 1976 Rules clearly provides that member of the service can be transferred to any post whether included in any other service but on the same terms and conditions. As in the present case, there is enabling provision in the Service Rules applicable to the petitioner, no fault can be found with the posting of the petitioner in the Board.

(7) Learned counsel for the Board submitted that the petitioner cannot be permitted to raise grievance about his posting as Director in the Board as there is no change in his status and emoluments. Considering the multifarious activities the Board is to carry on, which includes publication of books in different subjects, the qualification requiring Master's degree and Ph.D. in Punjabi was deleted. The appointment of the petitioner was approved by the Board *ex-post facto*.

(8) Heard learned counsel for the parties and perused the paper book.

(9) The undisputed facts on record are that the petitioner was promoted as Director, Education Department (Colleges), Punjab, vide order dated 6.1.2014 and thereafter he was posted as Director of the Board. The grievance of the petitioner is that Director of the Board being not a cadre post, he could not have been posted there without his consent.

(10) The service of the petitioner is governed by the 1976 Rules. Rule 17 thereof, which is extracted below, provides that every member of the service shall be liable to transfer under the orders of the Government to any post whether included in any other service or not on the same terms and conditions, as are specified in Rule 3.17 of the Punjab Civil Services Services Rules, Volume-I, Part-I:

**“17. Liability to transfer-** Every member of the Service shall be liable to transfer under the orders of Government to any post whether included in any other service or not on the same terms and conditions as are specified in rule 3.17 of the Punjab Civil Services Rules, Volume I, Part I.”

(11) Rule 3.17 of the Punjab Civil Services Rules, Volume I, Part I, provides that the Government may transfer a Government employee from one post to another provided that except on account of inefficiency or misbehaviour or on his written request, a Government employee shall not be transferred substantively or appointed to officiate on a post carrying less pay than the pay of the permanent post on which he holds a lien, except the cases covered by Rule 4.22. Rule 3.17 is extracted below:

“ 3.17 (a) Government may transfer a Government employee from one post to another, Provided that except-

- (1) on account of inefficiency or misbehaviour; or
- (2) on his written request;

A Government employee shall not be transferred substantively to or, except in a case covered by rule 4.22, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien.”

(12) Rule 4.22 of the Punjab Civil Services Rules, Volume I, Part I, provides that the competent authority may appoint a Government employee to hold substantively, as a temporary measure, or to officiate on, two or more independent posts at one time, however, in such cases he shall draw the highest pay to which he would be entitled to if appointed to one of the posts alone, provided that he fulfils the requisite qualifications therefor.

(13) The contention raised by learned counsel for the petitioner is that the petitioner has been transferred to a post, which is not part of the cadre, without his consent, and the same is impermissible. However, the contention is totally misconceived if considered in the light of the

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provisions of Rule 17 of the 1976 Rules, which provides that every member of the service is liable to transfer to any post whether included in any other service. In the present case, it is not in dispute that transfer of the petitioner as Director of the Board is in terms of the order of the Government. It is undisputed case of the parties that status or emoluments of the petitioner have not been change as he will be drawing the same salary and further status of the post is equivalent to the post substantively being held by the petitioner, as even Director, Public Instruction (Colleges), who is *ex-officio* member of the Board, can be given charge of the post. Rule 3.17 of the Punjab Civil Services Rules, Volume I, Part I, is not applicable in the present case for the reason that pay or status of the petitioner has not been reduced as compared to the post, which the petitioner substantively holds.

(14) Once there is enabling provision in the service rules applicable to the petitioner, in terms of which he can be transferred to any other post included in any other service, the order of posting of the petitioner as Director of the Board does not suffer from any illegality. In the judgments, relied upon by learned counsel for the petitioner, it has not been pointed out that there existed a provision in the service rules applicable to the employees therein which enabled the competent authority to transfer them to any other post, as is there in the present case, hence not applicable.

(15) The order of transfer of a Government employee is not generally interfered with by the courts as it is the wisdom of the employer to see where the services of an employee can be best utilised. Though the issues regarding qualifications and meeting of the Board had also been raised, however, that itself will not be sufficient to set aside the order of posting of the petitioner once no malafide has been alleged.

(16) For the reasons mentioned above, I do not find any merit in the present petition. The same is accordingly dismissed.

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*P.S. Bajwa*