

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.2734 of 2024

Reserved on: 04.06.2025

Decided on: 06.06.2025

Monika Katna

.....Petitioner

Versus

State of H.P. & others

.....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

***Whether approved for reporting?*¹ Yes**

For the Petitioner:

**Mr. K.S. Banyal, Senior Advocate
with Mr. Uday Singh Banyal,
Advocate.**

For the Respondents:

**Mr. Ramakant Sharma, Mr. Navlesh
Verma, Ms. Sharmila Patial,
Additional Advocates General with
Mr. Raj Negi, Deputy Advocate
General.**

Tarlok Singh Chauhan, Judge

The question referred to this Bench is:

“Whether Office Memorandum dated 27.10.2023 on the subject: ‘Clubbing of stay for the purpose of transfer of employees of the Education Department’ is contrary to Clause-10 of the Transfer Policy of the State Government dated 10th July, 2013 and the mandate of Statutory Rule, i.e., SR 2 (18)?”

¹***Whether the reporters of the local papers may be allowed to see the Judgment?*yes**

2. Unable to concur with the view expressed by the learned Single Judge of this Court (Hon'ble Mr. Justice Ranjan Sharma) in ***CWP No.8605 of 2023 titled as Anurag Chadha versus State of Himachal Pradesh and others***, decided on 14.12.2023, wherein it was held that office memorandum dated 27.10.2023 whereby clubbing of stay for the purpose of transfer of employees of the Education Department is contrary to Clause-10 of the Transfer Policy of the State Government dated 10.07.2013 and the mandate of Statutory Rule i.e. SR 2 (18), another Single Judge of this court (Hon'ble Mr. Justice Ajay Mohan Goel) has referred the aforesaid question to be answered by the Larger Bench.

3. However, before we answer the question, certain minimal facts need to be noticed.

4. The petitioner had assailed order of transfer dated 22.03.2024, in terms whereof, she had been transferred as a Trained Graduate Teacher (Medical) from GHS Khianpatt, District Kangra to GSSS, Chobia (Bharmaur), District Chamba, H.P. This transfer had been effected by clubbing her previous stay in and around GHS, Khianpatt, District Kangra. The transfer order was assailed on the ground that the respondents could not have clubbed her previous stay as it was against the judgment passed in ***Anurag Chadha's case*** (*supra*) wherein it was held in Para-7 (ii) as under:

“7(ii). The contention of Mr. Anup Rattan, Learned Advocate General that the clubbing of previous stay within 25-30 Kms has been resorted to, in view of the fact that the petitioner has served for more than eight years at nearby stations.

*The above plea of the State Authorities, has no force and the previous postings at nearby or adjoining stations (at different Headquarters) cannot be the basis for this Court to refrain itself from showing indulgence or in examining the validity of the impugned transfer orders, for the reasons, **firstly**, once the State Authorities had permitted the petitioner to serve at nearby places therefore, the respondents are estopped to raise such a plea; and **secondly**, once Clause 10 of the existing transfer policy mandates that the computation of stay of an employee to be three years “at one station” then, such a plea is baseless; and **thirdly**, the clubbing of stay { at one or more stations} is contrary to the Statutory Rule [SR 2(18)], whereby, the movement of a Government servant from one headquarter-station to another headquarter-station either to take up duties of new post or due to change of headquarter-station amounts to transfer; and **fourthly**, the clubbing of previous stay of the petitioner at one or nearby stations cannot give a leverage or a license to the respondents for issuing the impugned transfer orders when, in the instant case, the impugned order was initiated and was founded on extraneous considerations, abuse of discretion, is perverse and arbitrary; and **fifthly**, even, in case, the clubbing was based on a Government decision dated 27.10.2023 [taken on record] then also, this communication cannot operate de hors the mandate of Clause 10 of Transfer Policy issued on 10.7.2013 and de hors the object, spirit and mandate of Statutory Rule i.e. SR 2(18), whereby the movement of a Government servant from one headquarter-station to another headquarter-station either to take up duties of new post or due to change of headquarter-station amounts to transfer; and **lastly** when, communication dated 27.10.2023*

cannot operate, in the instant case, once the impugned transfer orders had its genesis/origin from approval contained in U.O. Note dated 15.09.2023 of Private Secretary to Minister, which reached the department on 18.09.2023 (referred to in Para 5 above), then, the clubbing of previous stay, cannot be applied in case of the petitioner and moreover, when, the clubbing is dehors Clause 10 of the Transfer Policy and is dehors the Statutory Rule i.e. SR 2(18) as discussed above. Accordingly, the decision making process and the resultant transfer order (Annexure P-1), does not satisfy the test of judicial scrutiny, as the same suffers from factual and legal infirmities and therefore, the same cannot be permitted to operate, in the peculiar facts of the instant case. Ordered accordingly.”

5. However, learned Single Judge (Hon'ble Mr. Justice Ajay Mohan Goel) expressed his reservation regarding the correctness of the judgment in **Anurag Chadha's case** on the ground that guiding principles framed by the Department of Personnel regulating the transfer of State Government employees were not statutory in character because the word “Guiding Principle” has been used in office memorandum dated 10.07.2013 and moreover, these guidelines had no statutory force behind them and therefore, could have been amended.

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

7. It is now well-settled that transfer policy merely lays down the guidelines for transfer which are not only non-statutory but even non-justiciable.

8. In ***Union of India and others versus S.L. Abbas, (1993) 4 SCC 357***, the Hon'ble Supreme Court held that the guideline in respect of transfer does not confer upon the government employee a legally enforceable right. It was further held that it is trite that non-statutory directions are not enforceable in the Court. The Hon'ble Supreme Court has gone to the extent of holding that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable right and therefore, unless the transfer order is shown to be vitiated by malafides or is made in violation of any statutory provision, the same cannot be interfered with.

9. In ***Syndicate Bank versus Ramachandran Pillai and others, 2011 (15) SCC 398***, the Hon'ble Supreme Court has held that the guidelines or executive instructions are not statutory in character and are not having force of law. Consequently, they can not confer any legal right to seek a direction in the court of law for compliance with such guidelines even if there has been any violation or breach of such non-statutory guidelines.

10. Once the guiding principles framed by the Department of Personnel regulating the transfer of State government employees are held to be non-justiciable as well as non-statutory, therefore, such guidelines like any other guidelines can always be altered or amended or varied by additions/subtractions by the Competent Authority from time to time, even if, the effect thereof is to supplement

or for that matter supplant the earlier provisions. Such guidelines pertain to the field of policy which is within the exclusive discretion and jurisdiction of the State subject, of course, to the limitations or restrictions envisaged in the Constitution of India.

11. In addition to the above, it is more than settled that where the Constitution does not require an action to be taken only by legislation or there is no existing law to fetter the executive power of the Union (or a State, as the case may be), the Government would be not only free to take such action by an executive order or to lay down a policy for the making of such executive orders as occasion arises, but also to change such orders or the policy itself, as often as the Government so requires, subject of course to the conditions that such change must be made in the exercise of a reasonable discretion and not arbitrarily. It has to ensure that such change complies with Article 14, so that the persons equally circumstanced are not treated unequally and it would otherwise be subject to judicial review.

12. As regards the applicability of SR 2 (18), the same reads as under:-

“2(18) “Transfer” means the movement of a Government servant from one headquarter station in which he is employed to another such station, either-
(a) to take up the duties of a new post, or
(b) in consequence of a change of his headquarters.”

13. We are at a complete loss to understand how the clubbing of stay for the purpose of transfer of an employee violates the aforesaid provisions as it does not alter the meaning of “*transfer*”.

14. In this view of the matter, we respectfully agree with the view taken by Hon'ble Mr. Justice Ajay Mohan Goel, in the instant case and hold that the office memorandum dated 27.10.2023 which provides for clubbing of stay for the purpose of transfer of employees of the Education Department is absolutely legal and valid and not contrary to Clause-10 of the Transfer Policy of the State government dated 10.07.2013 and/ or the mandate of Statutory Rule i.e. SR 2 (18), as held by a Coordinate Bench (Hon'ble Mr. Justice Ranjan Sharma) in its decision dated 14.12.2023 passed in ***CWP No.8605 of 2023 titled as Anurag Chadha versus State of Himachal Pradesh and others*** and consequently, the judgment so rendered is overruled and the question is answered accordingly.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

06th June, 2025.
(yogesh/krt)