

Vikas Kumar Vs. State of HP and ors.

CMP No. 1740 of 2026 in CWP No. 1259 of 2026

Reserved on: 16.1.2026

23.1.2026 Present: Mr Onkar Jairath, Advocate, for the petitioner.

Mr Pushpender Jaswal, Additional Advocate General, for the respondents No.1 to 3, State.

Mr Rajesh K. Sharma, Advocate, for respondent No.4.

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As per the applicant/petitioner, he was transferred from Patwar Circle Nahan-III, District Sirmaur, to Patwar Circle Paonta Sahib, District Sirmaur, on 29.09.2024. He has now been transferred to Patwar Circle, Saraswati Nagar, District Shimla, H.P., after one year and ten months without completing the normal tenure, based on the U.O. note to accommodate the private respondent No.1. The transfer order is contrary to the transfer policy, which prescribes a normal tenure of 3-5 years. The petitioner's mother is a widow, and the petitioner is the only person to look after her. Hence, it has been prayed that the present petition be allowed and the operation of the transfer order be stayed.

2. I have heard Mr Omkar Jairtah, learned counsel for the petitioner, Mr Pushpender Singh Jaswal, learned Additional Advocate General for the respondents No. 1 to

3/State and Mr Rajesh K. Sharma, learned counsel for respondent No. 4.

3. Mr Onkar Jairath, learned counsel for the petitioner, submitted that the petitioner was transferred without permitting him to complete the normal tenure after serving for one year and 10 months based on the U.O. note to accommodate the private respondent No.4. Hence, he prayed that the operation of the transfer order be stayed. He relied upon the judgment of *Vipender Kalta versus State of H.P. and others, passed in CWP No. 2862 of 2021, decided on 20.07.2021*, in support of his submissions.

4. Mr Pushpender Singh Jaswal, learned Additional Advocate General for the respondents No.1 to 3/State submitted that there is nothing on record to show that the transfer was made based upon the U.O. note. Even if it were so, it is not bad. The transfer was made in the public interest. Hence, he prayed that the present petition be dismissed.

5. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

6. The Hon'ble Supreme Court dealt with the scope of judicial review of transfer in *Pubi Lombi v. State of Arunachal Pradesh, (2024) 12 SCC 292*, and held as under:

“15. In view of the foregoing enunciation of law by judicial decisions of this Court, it is clear that in the absence of:

- (i) pleadings regarding mala fides,
- (ii) non-joining the person against whom allegations are made,
- (iii) violation of any statutory provision,
- (iv) the allegation of the transfer being detrimental to the employee who is holding a transferable post, judicial interference is not warranted.

In the sequel of the said settled norms, the scope of judicial review is not permissible by the courts in exercising the jurisdiction under Article 226 of the Constitution of India.”

7. It was laid down by the Hon’ble Supreme Court in *Mohd. Masood Ahmad v. State of U.P.*, (2007) 8 SCC 150: (2007) 2 SCC (L&S) 806, that even if the transfer was made on the recommendation of an MLA, it will not vitiate the transfer because it is the duty of the representative of the people to express the grievance of the people. It was observed:

8. ... In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people, and if there is any complaint against an official, the State Government is certainly within its jurisdiction to transfer such an employee.”

8. A similar view was taken in *Pubi Lombi* (supra), wherein it was observed at page 298:

“19. In view of the stand taken by the Government and in absence of plea of mala fide and no averment regarding violation of statutory provision taken by

the private respondent before the High Court, interference as made by the Division Bench [*Nyamo Rina v. State of Arunachal Pradesh*, 2023 SCC OnLine Gau 3529] setting aside the well-reasoned judgment [*Nyamo Rina v. State of Arunachal Pradesh*, 2023 SCC OnLine Gau 5182] of the Single Judge is not justified merely on the unsubstantiated pretext that the proposed modification is arbitrary or without application of mind for the sole reason that it was mooted by the MLA. In our view, the Division Bench has committed an error in setting aside the judgment of the learned Single Judge.”

9. The record shows that the Chief Minister had approved the transfers. The transfer policy relied upon by the petitioner itself provides that the transfer during the ban period cannot be effected without the prior approval of the Chief Minister. Therefore, the mere fact that the Chief Minister had approved the transfer does not lead to an inference of political interference, and the judgment in *Vipender Kalta* (supra) does not apply to the present case.

10. The other ground for seeking the stay of the transfer is the violation of the transfer policy, which is not a statutory provision but the executive instructions whose violation is not sufficient to invalidate the transfer, as held by the Hon’ble Supreme Court in *Pubi Lombi* (supra). Therefore, no case for the grant of an interim direction is made out at this stage.

11. Reply, on behalf of the non-applicants/respondents, if any, be filed within three weeks, and the matter be listed along with the main matter.

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List the matter before the appropriate Bench
having a roster after the winter vacation.

(Rakesh Kainthla)
Vacation Judge

23rd January, 2026
(Chander)