

IMMEDIATE

No. PER (AP-B)B(7)-1/2010-Loose
Government of Himachal Pradesh
Department of Personnel
APPOINTMENT- II

From

The Pr. Secretary (Personnel) to the
Government of Himachal Pradesh.

To

1. All the ACSs/Principal Secretaries/Secretaries to the Government of Himachal Pradesh.
2. All Heads of the Departments in H.P.


Dated Shimla-171002, the 23rd February, 2012

Subject: Copy of order dated 23.12.2011 passed by Hon'ble Division Bench of the Hon'ble High Court in case of LPA No. 542 of 2011 titled as Sheela Chauhan VS. H.P. State Pollution Control Board & Ors.

Sir/Madam,

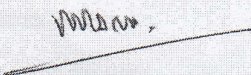
I am directed to enclose herewith a copy of orders/directions given by Hon'ble High Court of Himachal Pradesh in case of LPA No. 542 of 2011 titled as Sheela Chauhan VS. H.P. State Pollution Control Board & Ors. for information and strict compliance.

Yours faithfully,


Under Secretary (Personnel) to the
Government of Himachal Pradesh.

No. PER (AP-B)B(7)-1/2010-Loose Dated Shimla-171002, the 23rd February, 2012.
Copy forwarded to:-

1. Private Secretaries to Hon'ble Chief Minister, Himachal Pradesh, with the request to brought the orders passed by Hon'ble High Court into the notice of Hon'ble Chief Minister.
2. Private Secretaries to all Ministers/CPS in the State of Himachal Pradesh with the request to brought the orders passed by Hon'ble High Court into the notice of Hon'ble Minister/CPS.


Under Secretary (Personnel) to the
Government of Himachal Pradesh.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

LPA No. 542 of 2011.

Decided on: December 23, 2011.

Kumari Sheela Chauhan daughter of Sh. Munshi Ram, presently serving as a Clerk in the office of the H.P. State Pollution Control Board, Central Laboratory Parwanoo, Distt. Solan, H.P.

.....Appellant.

Versus

1. The H.P. State Pollution Control Board through its Member Secretary with Headquarter at Shimla, H.P.
2. The Chairman, H.P. State Pollution Control Board with Headquarter at Shimla, H.P.

.....Respondents.

Coram

The Hon'ble Mr. Justice Kurian Joseph, Chief Justice.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

For the appellant: Mr. A.K. Gupta, Advocate.

For the respondents: Mr. Anil Chauhan, Advocate.

Justice Kurian Joseph, C.J. (Oral)

The appellant is the petitioner in the writ petition. The writ petition was filed aggrieved by Annexure P-2, order of transfer from Parwanoo to Shimla. According to the petitioner, there was no request on her part for transfer. The learned Single Judge, however, declined to interfere with the matter observing that the allegations were not found to be *prima facie* true and the writ petition was dismissed, ordering also that she would be entitled to travelling allowance and joining time, as per the rules.

2. When the matter came up in appeal before us, in view of the submission made by the counsel for the appellant on specific instruction that the practice of making request on behalf of an employee has been going on for some time, we directed the officers concerned to be present before this Court with

records pertaining to the transfer. It has now come out, after verification of records by the officers concerned, that there was no request by the petitioner for transfer and that a request was made by a Member of the Legislative Assembly to the competent authority. Learned standing counsel for the respondent Board submits that on the transfer thus made on the request of a Member of the Legislative Assembly, the appellant-petitioner had also made a request through another M.L.A. for cancellation to the competent authority and on that representation by the appellant, the matter was left to be decided by the Board.

3. It has come to the notice of this Court that in several cases, the allegation is that the transfers are made without the request by the employee concerned. If it is a question of request transfer or mutual transfer, the matter can be processed only if there is a request by the employee or employees concerned through proper channel. The Members of the Legislative Assembly or the representatives of people or for that matter any persons other than the employee have no business to request for transfer. Transfer is an incidence of service and it is a matter of routine administration and it should be left to the administrative departments. Therefore, it is made clear that there shall be no transfer on request by any person other than the employee concerned, including mutual transfer where the request should be by the employees concerned. All such requests should be routed through proper channel. It is also made clear that unless it is extremely necessary and required, transfer during mid academic session should be avoided.

4. The officers who are present before this Court and also the learned standing counsel, on instruction submits that there is requirement of the service of the appellant at Parwanoo as well. If that be so, the appellant-petitioner will be continued at Parwanoo. However, it is made clear that this judgment shall not stand in the way of the Pollution Control Board on their own examining the issue and effecting transfers in the exigencies of administration. Needless to say, for

such exercise, all relevant aspects like the incumbents with longer stay, shorter stay, special circumstances, couple case, doubtful integrity etc. in terms of the general guidelines shall also be considered.

5. In case the appellant-petitioner has applied for leave after she has been relieved from Parwanoo, the said period will be regularized as leave of the kind due and if leave of the kind due is not available in her leave account, the same shall be adjusted as leave not due. The judgment under appeal is hence set aside.

6. With the above observations, the appeal stands disposed of, so also the pending application(s), if any.

7. A copy of this judgment will be immediately communicated to the Chief Secretary for appropriate action.

Copy dasti.

(Justice Kurian Joseph),
Chief Justice.

December 23, 2011,
(karan/vs)

(Justice V.K. Ahuja),
Judge.