

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.13074 of 2016 (O&M)
Date of decision: 05th August, 2016**

Raj Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Goyat, Advocate,
Mr. Anil Ghanghas, Advocate,
Mr. J.S.Chahal, Advocate,
Mr. Charanpreet Singh, Advocate,
Mr. Ramesh Malik, Advocate
Mr. Parminder Singh, Advocate and
Mr. Surya Prakash, Advocate
for the petitioner(s).

Mr. Harish Rathee, Senior D.A.G., Haryana.

RAJIV NARAIN RAINA, J

1. This order will dispose of the present and connected cases tabulated at the foot of this petition.

2. In this and connected writ petitions an issue was raised regarding deemed vacancy on completion of five years service in a school and how was it to be implemented in Clause 7(i)(b) of the Haryana Teachers Transfer Policy-2016 of School Education Department, Haryana dated June 29, 2016. This transfer policy also envisioned zoning of schools in seven jurisdictions. The action which was impugned was the Education Department placing online the deemed vacancy position to identify those

teachers with over five years of stay in a school. Some of the teachers had completed five years on a post while others had not and, therefore, sought continuance and in their cases deemed vacancy should not arise. The question really was from where policy would run i.e. prospectively or retrospectively. This Court issued notice of motion on July 08, 2016 on the point of deemed vacancy and whether it was correct in treating the petitioner as a teacher in deemed vacancy whereas the transfer policy required minimum five years of service to fall within the definition in para 7 (i)(b). I had then ordered maintenance of status quo till further orders.

3. After hearing counsel for the respective parties at length, I passed the following order on July 14, 2016:-

“This order will dispose of the above referred seven writ petitions as the pleas raised in all the writ petitions are similar and can conveniently decided by a common order. This is a transfer and posting matter.

Heard.

Notice of motion deserves to be issued on the point of deemed vacancy and whether it was correct in treating the petitioner as a teacher on deemed vacancy whereas the transfer policy requires minimum five years of service in one posting to fall within the definition.

Notice of motion.

On asking of the Court, Mr. Harish Rathee, Sr. DAG, Haryana accepts notice on behalf of the official respondents and waives service on them.

Learned counsel for the petitioner(s) to supply requisite number of paper-books in the office of Advocate General, Haryana in each case and one copy to Mr. Rathee has been handed over in Court.

After hearing learned counsel, these petitions are disposed of with the following directions :-

1. The Director, Secondary Education/Director Elementary Education, Haryana will collect data from all schools in the

various districts of Haryana with respect to length of posting of each teacher in the schools where employees like the petitioner(s) are posted.

2. *After the data is collected and true position made available on file/website, then the number of deemed vacancies be applied for considering cases of transfer of those teachers who have exhausted 5 years tenure in a school. It is only after expiry of 5 years service at a particular station that the post stands declared deemed to be vacant even if person continues and will be open to transfer. Thereafter, final orders of posting and transfers may be passed.*

This order is intended to bring about uniformity, parity and probity in decision-making process so that all teachers are treated on the principle of equality with reference to the transfer policy in the State of Haryana resulting from principle of “deemed vacancy”. The result of the exercise be put in the public domain so that each teacher knows where he/she stands. This would obviate any apprehension in the mind of the petitioners that there has been an effort of some teachers suppressing facts regarding their tenure, of true facts which may not be available in public domain or in the notice of the transferring authorities having escaped their notice resulting in unnecessary litigation. If the transferring authority is in possession of full facts/data regarding “deemed vacancy” across State then as per transfer policy, transfers can be effected without any heartburn to anyone since the true position will be available on the official website of the department. If there are still any grievances remaining they can be sorted out easily and without delay. None of the aggrieved employees would need run from pillar to post and bring his case to light armed by facts. Otherwise persons would keep knocking the doors of the court canvassing a pure point of fact neither known to litigant nor court compelling interference and orders of interim stay. Meanwhile, status quo ought to be maintained to make room for fairness-inaction and equality of treatment.

With these observations and directions, the writ

petitions are disposed of.

A copy of this order be given dasti to Mr. Rathee under the signature of the Bench Secretary for onward transmission and compliance of quarters concerned.

A photocopy of this order be placed on the file of each connected case.”

4. Thereafter the State moved an application for clarification of the order dated July 14, 2016 upon which notice was issued to the parties and after hearing them, the following order was passed on August 01, 2016:-

“CM No.8992 of 2016

Mr. Sinhal has read out in Court the order dated 21.07.2016 issued by the Additional Chief Secretary, Department of Education, Haryana, which is clarificatory in nature of the transfer policy.

Notice of the application.

Mr. Sandeep Kumar Goyat, Advocate, who is present in Court, accepts notice on behalf of the non-applicant/petitioners. He prays for and is granted time to file reply to the application.

On the other hand, Mr. Lokesh Sinhal, on instructions from Mr. Virender Sehrawat, Additional Director (Secondary Education), Haryana, expressed State’s difficulty arising out of direction (2) because of which they are unable to proceed further in the matter regarding posting and transfers in Schools after having adopted the Zoning Policy and dividing Haryana into seven Zones, which was a condition in the existing policy (Annex P-1). The difficulty of the State arises with the use of word “thereafter” in the last sentence of direction (2). Once the difficulty has been expressed, then the Court while examining the transfer policy should not be seen as a clog on the transfer process. Therefore, the last sentence in direction (2) is recalled so that no ambiguity is left. Government may go ahead in implementing the policy read with clarification dated 21.07.2016 in all fairness and transparency.

List again on 03.08.2016.

In case, the present petitioners or the petitioners in other connected petitions and non-petitioners have any difficulty in future with respect to the transfer policy and the supplementary policy, now placed on record, they may approach the Director, School Education, Haryana for redressal of their grievances, if any, which in case submitted will be decided in right earnest in not more than 2/3 days and party/s be informed in writing or orally, but through proper channel of where they stand.

Those Teachers, who have not been put in a position to exercise their options, may do so by Wednesday i.e. the date fixed till 5.00 PM. In cases, where service profiles are still not approved by the competent authority that may also be done by the date fixed.

A copy of the order be given to Mr. Sinhal under the signatures of the Bench Secretary.

5. Thereafter, the matter was adjourned to August 03, 2016 when this Court passed the following order:-

"I passed the order dated 01.08.2016 with an intention to try and bring about peace and harmony in the matter of postings and transfers of school teachers in the Education Department, Haryana. The order was final and chalked out a path which I thought was just and fair in an effort to crease out chronic problems in implementation of the transfer policy of teachers in the rising tide of litigation. A large many cases were decided by that order. However, a large number of them still remain.

I have heard Mr. Sandeep Goyat, learned counsel in Anju Bala's case who also represents Seema Garg, who is present in Court and whose case was disposed of in terms of the earlier order dated 14.07.2016 and Mr Harish Rathee Sr.DAG, Haryana. I have also heard Mr. Virender Sehrawat, Additional Director (Secondary Education), Haryana present in Court and having heard them at great length I have veered to the view that it is no longer possible to judicially manage minutely disputes on facts, exercise of options etc., transfers by zones involving thousands of

teachers across the State and would therefore say no more than what I have thought in my order dated 01.08.2016 and the present one by applying the salutary principles in Section 14 of the Specific Relief Act, 1963 which guard courts of law from passing orders and enforcing them where the factual issues are so minute with numerous details as are hard to manage by court directions that the matter I think would ultimately have to be left to the wisdom of the State Government in the Education Department to holistically consider claims and counter-claims and reconcile the competing interests of a large number of restless teachers, both petitioning and non-petitioners, for the competent authority to take an aerial and holistic view of the transfer policy in so far as it concerns school teachers and the clarificatory policy placed before this Court issued in response to court directions and queries in the present set of cases and for them to take a comprehensive and composite view causing least injury to anyone. However, it is no longer possible or feasible for this Court to spend extraordinary time on these transfer matters anymore than thus far which henceforth are best left to State Government. No question of law is involved in these cases for adjudication.

The policy implementation would no doubt also keep in clear view the prime consideration that the interest of students in schools in Haryana should not suffer any longer to wait for teachers to enter classrooms and pick the chalk. The mechanism which has been evolved in these proceedings heretofore would have to be taken to their logical conclusion by the authorities in the least possible time. The authorities would ensure that their grievance redressal Website remains functional during the day and open to exchange of correspondence through e-mail and requests/ options made by teachers are responded to promptly and their problems solved without delay. If grievances are sent on the website by the petitioners and other teachers the effort would be to redress the grievances immediately keeping in view the larger obligation that lies on the shoulders of the competent authorities in governance to perform their fundamental duties towards education and

to keep doing so in the spirit of humanism enshrined in Article 51-A (h) of the Constitution of India which requires all citizens to develop the scientific temper, humanism and the spirit of inquiry and reform.

The application stands disposed of.

A copy of this order be given to Mr. Rathee attested by the Bench Secretary.”

6. The special feature of those proceedings on August 01, 2016 was that Mr. Lokesh Sinhal, Addl. A.G., Haryana, produced clarification instruction dated July 21, 2016 which had led to the passing of the order and to remove the status quo order from the way to implementation of the transfer policy which by the very nature of things does not brook delay where cases of transfer of thousands of teachers are involved, while the fate of thousands and thousands is involved. It may be noted that there are only about 67 teachers who have approached this Court in the present petition. I issued clarification regarding the word “thereafter” in the last line of the sentence of direction (2) of the order dated July 14, 2016.

7. I have nothing further to speak on the petitions except to say that the Court is informed that the clarificatory instructions dated July 21, 2016 issued under Clause 15 of the Policy are under challenge before a Coordinate Bench and that case is adjourned to 23.08.2016. Therefore, for any residual grievances representing these instructions, parties are free to ventilate them before the Coordinate Bench in Civil Writ Petition No.15427 of 2016. The Court is also informed that notice of motion has not been issued in that case and it will be for the Hon'ble Bench to pass such orders as are deemed fit including the issue of entertainability of the petition. Meanwhile, the Department would honestly and diligently implement the orders dated 14.07.2016 and 01.08.2016 in letter and spirit. It will be open

to the petitioners to show any dichotomy in the original transfer policy and the clarification issued on 21.07.2016 and to what legal effect.

8. The petitions stand disposed of.

05th August, 2016
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(RAJIV NARAIN RAINA)
JUDGE

1	CWP No.13085 of 2016	Rajiv Verma vs. State of Haryana and others
2	CWP No.13098 of 2016	Anil Kumar vs. State of Haryana and others
3	CWP No.13113 of 2016	Karamvir Singh vs. State of Haryana and others
4	CWP No.13251 of 2016	Anita Naresh Munjal vs. State of Haryana and others
5	CWP No.13483 of 2016	Ashok Kumar and others vs. State of Haryana and others
6	CWP No.13552 of 2016	Rajbir Singh vs. State of Haryana and others
7	CWP No.13553 of 2016	Poonam vs. State of Haryana and others
8	CWP No.13556 of 2016	Satya Pal vs. State of Haryana and others
9	CWP No.13558 of 2016	Geetu Sharma vs. State of Haryana and others
10	CWP No.13564 of 2016	Neelam vs. State of Haryana and others
11	CWP No.13600 of 2016	Virender Kumar vs. State of Haryana and others
12	CWP No.13715 of 2016	Neelu vs. State of Haryana and others
13	CWP No.13723 of 2016	Dr. Anju Chaudhary vs. State of Haryana and others
14	CWP No.13797 of 2016	Sudhir Kumar and others vs. State of Haryana and others
15	CWP No.13829 of 2016	Suresh Grover and others vs. State of Haryana and others
16	CWP No.13800 of 2016	Ritu vs. State of Haryana and others
17	CWP No.15150 of 2016	Shiv Charan vs. State of Haryana and others
18	CWP No.15340 of 2016	Manpreet Kaur vs. State of Haryana and others

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Whether Speaking/reasoned Yes/No

Whether reportable Yes/No