

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

Date of decision: 11.08.2016

CWP No.14176 of 2016

Sunil Rana

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Singh Sangwan, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

In the light of the previous order, this Court is satisfied with the explanation given by Mr. Harish Rathee, Sr. DAG, Haryana, who has produced the photocopy of the original record of transfer including the decision of the Minister In-charge of the Education Department and the directions of the Chief Minister, Haryana on file together with the approval of Director Health Services (Malaria), Haryana taking action accordingly on a written request made by the wife of non-official respondent Rajesh Kumar to transfer her husband on account of their child suffering from 90% mental disability and the difficulties faced in nurturing their offspring which may be widened by non-transfer. The photocopies of record produced are taken on record as Mark-A (Colly). The child has an IQ of just 34 as certified by the Civil Surgeon, Rohtak and for which reason Hon'ble the Chief Minister has ordered on extreme compassionate grounds the transfer of Rajesh Kumar to Sampla or to PGIMS, Rohtak. The record produced reveals that there was

no sanctioned post of MPHS (M) available in PGIMS, Rohtak and therefore the second option was followed and Rajesh Kumar transferred vice the petitioner.

Discretion posited in the administration and of the Chief Minister, Haryana when exercised reasonably on humanistic grounds is not open to interference in writ jurisdiction unless discretion is arbitrary and whimsical. The Court is not the best judge of the cause or of the ground situation prevailing. It cannot be said that the decision to transfer Rajesh Kumar to Sampla is either a decision which suffers from malice or is actuated by mala fides. It is another matter that such a transfer would have caused the displacement of someone else and, therefore, I would not think it appropriate to interfere in this transfer matter and would dispose of the instant petition by dismissing it. While dismissing the petition liberty is granted to the petitioner to press his case for transfer elsewhere by a request to the administration in balancing equities to mitigate hardship. The court has no doubt that if a request is made, it will be considered in the same spirit of accommodation.

[RAJIV NARAIN RAINA]
JUDGE

11.08.2016
Vimal

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*