

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 16351 of 2016 (O&M)

Date of Decision: 19.09.2016.

Meeta Kansal

--Petitioner

Versus

State of Haryana and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Anurag Goel, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

TEJINDER SINGH DHINDSA.J

Challenge in the instant petition is to the transfer of the petitioner, who is serving as P.G.T, English from Rohtak to Bhiwani. It is not in dispute that the petitioner suffers from a 100% visual impairment.

Identical issue came to be considered by this Court in ***CWP No.16119 of 2016 (Pardeep Singh and others Vs. State of Haryana and others)*** and which has been dealt with by a detailed judgement and order dated 9.9.2016.

The relevant and operative part of the judgement which has been rendered by the Coordinate Bench in respect of 100% visually impaired teachers working under the Education Department and who had also impugned orders of transfer reads in the following terms:-

“16. However, the writ court is a court of equity and here appears to be an appropriate case to exercise equitable considerations for a request to the Additional Chief Secretary, Government of Haryana in the Department of Secondary Education to remit the matter to the Cabinet to review the transfer policy to accommodate the claims of the petitioners who form a special class by considering making a

provision in the policy to treat them differently in the larger class of the disabled. And in the meanwhile to return the petitioners to their previous schools till the Cabinet decides on their fate.

17. On September 09, 2016 while allowing the petition after hearing counsel at great length, with reasons to be stated, this Court passed the order as an ad interim arrangement that the petitioners will be posted back to the schools from where they were transferred. A copy was given to Mr. Rathee under signatures of the Bench Secretary of this Court for compliance.

18. This order contains the reasons why I have allowed the petition by upholding the reasoning of the Director, Secondary Education, Haryana while at the same time honouring the technical view of the Additional Chief Secretary, Secondary Education, Haryana accepting that any change in the Transfer Policy of Teachers-2016 can be effected only through the Cabinet. A fresh Cabinet decision taken in the wisdom of the Government may take time and, therefore, it would neither be fair nor proper to put any limitations of time for such consideration and consequently while accepting the petition the following directions are issued for the present and for the future:-

(i) The Teachers Transfer Policy-2016 deserves to contain a special provision for persons suffering from 100% blindness. They should not suffer transfers and posting except by consent which is the view of the Government expressed by the Chief Secretary, Haryana in the earlier instructions relied upon be then Director Secondary Education, Haryana.

(ii) It will be open to the State Government to differentiate cases of Government servants suffering from one hundred percent blindness from other categories of disability falling under the provisions of the 1995 Act such as locomotor disability, hearing impairment and low vision but not complete blindness. These other are somewhat lesser disabilities in degrees of suffering than complete blindness making persons

completely dependent on others while living in darkness. In this exercise, the Government would be free to make reasonable classification within the rehabilitation carved out by section 33 of the 1995 Act.

(iii) Till such time as the Cabinet does not meet and review the Transfer of Teachers Policy-2016 to accommodate the special claims of persons like the petitioners, the petitioners would continue at their previous places of posting and accordingly, the interim order dated September 09, 2016 is made absolute but by way of an ad interim arrangement till new provision is made in the Policy in accordance with law and in the wisdom of the Cabinet.

(iv) These orders will not be treated in personam but in rem. That is for every category of teachers from primary to secondary and higher education in the State of Haryana who suffers complete blindness. They constitute a class apart within the reservation. The State Government in making its policy of transfer and posting in schools and colleges in Haryana through the window of the present case will no doubt do debate in the Cabinet with the spirit of humanism, sympathy and compassion for the special class of persons dealt with in this case. The officers of the Government in charge of posting and transfers of teachers will I am sure acquaint themselves with the nature and condition of disability of each Government employee and their family circumstances falling within the categories covered by the 1995 Act and the policy and/or other categories of disability which it may like to include in the list that may follow deserving special attention. Officers of Government may like to read the once published World Report on Disability released by the World Health Organization where in the Foreword the famous British theoretical physicist Stephen Hawking who has amyotrophic lateral sclerosis commented as follows:-

"We have a moral duty to remove the barriers to participation for people with disabilities, and to invest sufficient funding and expertise to unlock their vast potential. It is my hope this century will

mark a turning point for inclusion of people with disabilities in the lives of their societies"

(v) However, a word of caution; the directions hereby issued awaiting Cabinet revisit of the Policy are not meant for Teachers/Lecturers who suffer from one hundred percent blindness and are facing disciplinary proceedings for gross misconduct involving moral turpitude inviting major punishment, in the present or in the future.

19. For the foregoing reasons the petition is allowed while setting aside the impugned orders of transfer qua the petitioners while holding at the same time that the orders are neither illegal nor arbitrary. They have been passed ex aequo et bono. Before parting this Court records its appreciation of the honest and courageous stand points of both, the Director, Secondary Education and the Additional Chief Secretary, Secondary Education, the latter placing a definite legal barrier to relief from the administration. This order I believe is a workable via media for the time being and as an ameliorative measure to mitigate extreme hardship which cannot be achieved if the orders are left to stand.

20. The letter from Government produced by Mr. Rathee together with the noting sheets is retained on record as Mark 'A'."

The instant petition is also disposed of in terms of the judgement referred to above.

(TEJINDER SINGH DHINDSA)
JUDGE

19.09.2016

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Whether speaking/reasoned: Yes

Whether Reportable: No