

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No. 21338 of 2016
Date of decision: 7.10.2016**

Anil Kumar Sharma & anr.

... Petitioners

Versus

State of Haryana & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anil Kumar Sharma, Advocate, and
Mr. Lalit Rishi, Advocate,
for the petitioners.

RAJIV NARAIN RAINA, J.(Oral)

The petitioners are on the verge of retirement. They have less than a year to serve as Head Teachers of the Government Primary Schools they are posted at. This petition has been filed against transfer orders. Both of them have made representations by way of a justice demand notice served on the respondents through the prescribed online process set up in the department for settling grievances and they have been allotted Ticket No.1030597-363C4 and 1030757-DA7C4 respectively on September 13, 2016 and September 26, 2016 at Sugam Sampark. However, till date no action has been taken on the same and the respondents are sitting over the matter.

The circumstance that the petitioners have less than a year of service left to their credit before they retire, may alone be justification to call upon the competent authority to sympathetically consider the request of the petitioners and allow them to retire from their present places of posting “as it would facilitate the determination of their retirement benefits”. This consideration has been found relevant by the Division Bench of this Court

in LPA No.1629 of 2016 (Darshana Kumari v. State of Haryana & ors.), decided on August 30, 2016.

Nevertheless, such a decision has to be taken by the authorities alone and this Court can only direct disposal of the representation by a speaking order. However, if the request made is found genuine, then they may be returned to their old places of posting to serve the remainder of their services till 2017 and for this, no orders will be required to be passed in writing containing reasons. It may be recorded that the petitioners have been relieved of their respective duty and have thus obeyed orders of transfer. It may also be noted that in the transfer order itself it has been recorded that in case there is a grievance against the transfer orders, the officers/officials concerned can write to the concerned Director through email after joining the new places of posting. It has been assured in the transfer order at Annex P-1(pg. 21) that such grievances shall be considered as per Teachers Transfer Policy 2016 and shall be conveyed to the concerned within appropriate time. The impugned order was passed on September 17, 2016. The complaint/representation was preferred by the petitioners even prior to the passing of the impugned order at Annex P-1. If a decision has not been taken soon after September 17, 2016 then it does not appear to this Court to be compatible to the stipulation “within appropriate time frame”. Therefore, additional direction is issued that the cases of the petitioners be considered compassionately within the corners of the policy within 7 days from today. In taking the decision the competent authority consider relevant case law appropriate to the point which the learned counsel have relied upon i.e. the decision of the Division Bench of this Court in Dr. Dev Parkash Chugh v. State of Punjab & ors., 2005(4) S.C.T.

726. The Division Bench in the ruling has held that once the Government frames a policy, it cannot plead that the same is not mandatory and the department is bound to follow the same. The Government can deviate from the terms of the policy only for sufficient reasons to be recorded or in the paramount public interest. If no valid and acceptable reason is recorded the transfer order cannot be sustained.

With the above observations and directions, the petition stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

7.10.2016
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>