

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

CWP No.19437 of 2010 (O&M)

Date of Decision : 20th February, 2017

Usha Sabharwal

..... Petitioner

Versus

State of Haryana and others

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Nand Lal Sammi, Advocate
for the petitioner.

Ms. Shruti Jain, Goyal, AAG, Haryana
for the respondent(s)-State.

Mr. Ashok Gupta, Advocate
for respondent No.4.

AJAY TEWARI, J. (Oral)

By this petition, the petitioner seeks a direction to the official respondents to adjust her on an equal post in Government school.

The petitioner was appointed as Craft Teacher (Tailoring & Cutting) on a sanctioned post on 01.01.1987 in a school in Haryana-respondent No.1 which is an aided school. After two decades, the strength of students in the stream in which she was teaching well, became nil and the post was declared surplus. By this petition, the petitioner has claimed that under Rule 59 of the Higher Education Rules 2003 under Sub Rule 3 which reads as under:-

“The Director shall be competent to transfer the surplus post to another school as per requirement in the same district or outside district in the State.”

In the written statement, the stand taken was simply that the petitioner having relieved by the management and having no direct relationship with the Director, the Director had nothing to do with regard to the reinstatement of the petitioner in service in any other school. Thereafter, the petitioner filed CM No.16504 of 2012 to place on record the copy of judgment dated 16.02.2012, passed by the Single Bench of this Court in CWP No.14210 of 2010 titled as Smt. Sudha Agnihotri and others versus State of Haryana and others (Annexure A-1). In that case also some posts in an aided school came to be declared as surplus and those persons sought adjustment and the plea taken was that those persons could not be adjusted in any Government school. In the said judgment, this Court held as follows:-

“Objection to the readjustment of the School which are mentioned by the petitioner is on the ground that they are all Government schools and the Government cannot be compelled to accommodate them for posts that are rendered vacant in privately managed schools. The mandate which the Rules state under Section 59 that spells out the competence of the Director to transfer the surplus posts to another school ought not to be understood as only a transfer to a 'Management School'. If there are vacancies in Government Schools themselves, such vacancies shall be filled up by the Government without turning out of the persons who are competent in the respective streams and where vacancies are available in Government schools. The provision must be so read that shall be deployed in the manner that subserves the cause of education. Even though the order relieving the petitioners without the prior sanction of the education department is wrong, there is no scope for

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retaining them and by the subsequent decision taken by the State directing the closure of the science stream in that school. I do not find any reason to quash the order but instead direct the Government to re-deploy the petitioners in any of the vacant posts in the schools mentioned above. This appoint shall be done on the appraisal of the necessary education qualification and experience as prescribed under the relevant rules for appointment in any government schools. Any recruitment for securing recommendations from the employment exchange may be dispensed with and no advertisement for those posts shall be made in view of the fact that the redeployment is done under the orders of the Court and as a measure of the recognition of the competency of a Director to pass appropriate orders of transfer to another school. At the time of passing of orders, the State can also elicit information of any vacancy position from any of the privately managed schools which obtains state grant and if there are any vacancies within the same District, the State shall be at liberty to redeploy them in any other school by appropriate directions to any other Management. In any event the order directing the re-deployment shall be issued within a period of six weeks from the date of receipt of copy of the order. Till that date when they are redeployed the petitioners shall be paid the salary and the forth respondent-management shall be primarily responsible and the state shall provide the grant in the manner that the law provides for. The redeployment will mean that the petitioners will also have the benefit of continuity of service from the time when they were originally appointed with the fourth respondent.

The writ petition is allowed on the above terms.”

This judgment is sought to be distinguished on the ground that

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in the reply to this application it has been mentioned that there are no sanctioned posts of Craft Teacher (Tailoring & Cutting) in any school in Haryana. However, in document (Annexure P-6), the respondent-State had admitted that till the time it was not declared surplus, the post of Craft Teacher (Tailoring & Cutting) on which the petitioner had been working was a sanctioned post.

Learned State counsel has also raised an argument that under the subsequent 2008 Rules, the cadre of Craft Teacher (Tailoring & Cutting) had been declared as a dying cadre and no fresh appointment is being made in that cadre.

In my opinion, the adjustment of the petitioner in terms of Sub Rule 3 of Rule 59 of the Higher Education Rules 2003 would not amount to reviving the cadre.

Consequently, the present petition is disposed of in the same terms as passed in that judgment (Annexure A-1).

20th February, 2017

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**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No