

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

CWP No. 17240 of 2016
Date of decision: 10.11.2017

Anand Kumar

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Jagbir Malik, Advocate,
for the petitioners (in CWP Nos. 17240, 17241, 17242, 17252,
20063 of 2016 and CWP Nos. 742 and
14313 of 2017).

Mr. Kshitija Mittal, Advocate,
for Mr. C.R. Dahiya, Advocate,
for the petitioners (in CWP Nos. 9847 and 26461 of 2016).

Mr. Manjeet Singh, Advocate,
for Mr. Jasbir Mor, Advocate,
for the petitioner (in CWP No. 26431 of 2016).

Mr. Manjeet Singh, Advocate,
for the petitioner (in CWP No. 7153 of 2017).

Mr. Anurag Kulharia, Advocate,
for Mr. Anurag Goyal, Advocate,
for the petitioner (in CWP No. 26653 of 2016).

Ms. Jyoti, Advocate,
for Mr. Vishal Malik, Advocate,
for the petitioners (in CWP Nos. 5056, 4760, 5084,
4863 and 5029 of 2017).

Mr. Ashok Kumar Sharma, Advocate,
for the petitioner (in CWP No. 25271 of 2017).

Mr. Vikram Sheoran, Advocate,
for the petitioner (in CWP No. 26696 of 2016
and CWP No. 15548 and 24889 of 2017).

Mr. Anil Kumar Sharma, Advocate,
for the petitioner (in CWP No. 6905 of 2017).

Mr. Sandeep Takhan, Advocate,
for the petitioner (in CWP No. 1962 of 2017).

Mr. Rajesh Dhankar, Advocate,
for the petitioners (in CWP Nos. 26687 and 26724 of 2016 and
CWP Nos. 5781 and 13505 of 2017).

Mr. R.S. Malik, Advocate,
for the petitioner (in CWP No. 27155 of 2016).

Mr. Harish Rathee, Sr. DAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

The present judgment shall dispose of 30 writ petitions i.e. CWP Nos. 17240, 17241, 17242, 17252, 20063, 9847, 26431, 26687, 26461, 27155, 26724, 26653 and 26696 of 2016 and CWP Nos. 14313, 742, 887, 1962, 5056, 4760, 5084, 4863, 5029, 7153, 6905, 13505, 11548, 5781, 4720, 24889 and 25271 of 2017 since common questions of facts and law are involved in all the writ petitions. The petitioners, who are working as JBT Teachers, seek the relief of transfer to their districts of preference which has been denied on account of the fact that in principle, guest faculty teachers (in short 'GFT') are working against those regular posts. Therefore, the claim of the petitioners cannot be considered as the said posts cannot be considered to be vacant posts. Facts are being taken from ***CWP No. 17240 of 2016, Anand Kumar vs. State of Haryana and others*** to demonstrate how the State continues to adjust the GFTs at the cost of regular employees.

The case of the petitioner is that in the year 2004, he was selected as JBT teacher as a general category candidate and had opted for district Bhiwani. However, he was offered district Gurugram vide appointment letter dated 08.07.2004 (Annexure P-1). District Gurugram was bifurcated in three districts and some part of the district went to district Palwal and some part of the district went to district Mewat, now district

Nuh. The school in which the petitioner was posted went in district Mewat and which is now at district Nuh. In pursuance of the inter district transfer (Appointment by Transfer) policy dated 06.08.2015 (Annexure P-2), JBT teachers who were now posted in district Mewat but their appointment was made prior to creation of district Mewat in district Gurugram could seek transfer at station of his/her choice as per clause 3(xvi)(a) In accordance to the said policy, he had submitted his request for transfer/adjustment in district Bhiwani, Mahendergarh or Fatehabad vide Annexure P-3.

On account of the guest teachers working on posts of JBT teachers in the general category in the said districts, the petitioner's case did not get positive recommendation as they had not been disturbed. It is his case that on an earlier occasion, similarly situated persons in ***CWP No. 1591 of 2011 titled Vishav Pal and another vs. State of Haryana and others***, decided on 21.12.2016 had come to this Court seeking similar relief. Resultantly, order dated 30.09.2013 (Annexure P-5) was passed wherein the factum of the petitioners being direct recruit selectees by Haryana Staff Selection Commission and being appointed on the posts of primary teachers whose seniority is to be district wise was taken into consideration. The fact that they had been given Mewat and other districts had been noticed and that in ***CWP No. 15929 of 2012, Sivani Gupta vs. State of Haryana and others***, the Division Bench on 21.12.2012 had called upon the State to discontinue the practice of engaging the GFTs. Reliance was also placed upon the judgment in ***Civil Appeal Nos. 5956-57 of 2012, Naresh Kumar and others vs. State of Haryana and others*** arising out of Division Bench judgment in ***CWP No. 6090 of 2010, Tilak Raj vs. State of Haryana and others***, decided on 30.03.2011 wherein, no fresh appointment of guest

teachers had to be made from 01.04.2012. Resultantly, directions were issued to the State for considering the feasibility of transferring and posting GFTs in a particular district or in nearby districts to accommodate the petitioners since GFTs could not be allowed to continue for all times. The fact that direct recruits being treated in a step motherly manner was accordingly noticed. The relevant part of order dated 30.09.2013 in Vishav Pal's case reads as under:-

“The Supreme Court interim orders do not however preserve any right of continuance of Guest Faculty Teachers perpetually and ad nauseum. After all direct recruits have a valuable preferential right of adjustment based on option therefore the inchoate engagements of GFTs remain subservient to the petitioners' interests who have the first right and right of GFTs subordinate to the abiding interest of direct recruits to be positioned in their respective proposed parent districts. The view expressed by this Court in Tilak Raj Vs. State of Haryana and ors, to dismantle the entire super-structure of Guest Faculty Teacher system has been upheld by the Supreme Court in the order (R-4). I do not think it would be proper or justified, for the State to treat direct recruits in a step-motherly fashion. However, having regard to the reasonable stand of the petitioners that are prepared to face hardship, for sometime and to work at the present places of posting in the interregnum then I think Mr. Nehra should take instructions from the Director General, Elementary Education, Haryana of the time frame within which the petitioners can be relocated at the districts of their choice opted for in writing. Let an affidavit be filed accordingly within 2 weeks disclosing the stand of the State and the time limit within which the process can be

completed to honour the options. The State may also consider the feasibility of transferring and posting GFTs in a particular district or in nearby districts to accommodate the petitioner. To this end a status report of vacancy position of the districts involved may be shown and how many GFTs are working there. If the response is not received within the time, the substantive part of this order will be made absolute and time frame fixed accordingly.

A copy of the order be given to Mr. Nehra, Sr.DAG Haryana, by the Bench Secretary of this Court.

Adjourned to 25.10.2013.”

It is accordingly the contention of the petitioner that in order to comply with the said order, policy dated 06.08.2015, which is the Inter District Transfer Policy, came into force on the basis of which he had applied but has not got positive consideration. It is further his case that in the policy itself, no protection has been granted and rather could not have been granted to the guest faculty in view of the above recording by the Court in *Vishav Pal's case (supra)*. However, he is aggrieved on the conditions put in the transfer orders which were given to the petitioners in *Vishav Pal's case (supra)* whereby, under clause 8 of the transfer policy dated 01.04.2016 (Annexure P-4), incorporation was put that the post on which guest teachers are working are not to be treated as vacancies. Clause 8 reads as under:-

“8. The post on which guest teachers are working not to be treated as vacancies.”

The defence of the State in the written statement, as noticed, is on account of the fact that there is a policy of the State and they cannot be transferred against the posts which are held by guest faculty teachers since

they are not to be treated as a vacancy. Counsel for the State has further justified clause 8 on the ground that as per the policy dated 06.08.2015 and clause 6, the Director, Elementary Education could issue clarifications with regard to the interpretation and applicability of the policy. Clause 6 reads thus:-

“6. Director Elementary Education (DEE) Haryana, Panchkula may issue clarifications with regard to interpretation and applicability of this policy as and when required. These clarifications shall be considered part and parcel of this policy and shall be applicable as such.”

It is also pertinent to notice that in CWP No. 26431 of 2016 on the same account, instructions dated 31.03.2010 (Annexure P-4) are also subject matter of challenge, which obviously are also impediment to the petitioners being considered in their home districts. By virtue of the said communication which was issued much earlier before the policy dated 06.08.2015 also came into force, the State was giving special status to the GFTs by holding out that regular appointed teachers were being posted against posts where GFTs were teaching despite that the vacancies were available in other schools. Resultantly, instructions were issued that in future, posting of newly appointed/promoted teachers should be against which no GFT is working. Only after the aforesaid vacancies are filled up, the spill over regular appointees/promotees may be posted against vacancies on which guest teachers are working. The relevant portion of the instructions issued by the Commissioner and Director General, School Education, Haryana reads thus:-

“Sub: Regarding posting of newly appointed/promoted teachers of various categories.

..

As you are aware that the studies of the students may not suffer due to shortage of teachers, the guest faculty teachers have been engaged in Govt. Schools. It has been noticed in the past that posting of newly appointees/promoted teachers are made against the guest teachers despite the fact that vacancies are available in other schools where no guest faculty teacher is working and immediate requirement of teacher is there in such schools. In such a situation the studies of the students badly suffers due to the fact that the guest faculty teacher is not immediately made available as per the adjustment policy. Keeping in view the above it has been decided that in future while posting of newly appointed/promoted teachers of various categories it may be tried first that such vacancies may be filled up against which no guest teacher is working and therefore, studies are suffering in the absence at a guest/regular teacher. Only after the aforesaid vacancies are filled up, the spill over regular appointees/promotees may be posted against vacancies on which guest teachers are working.”

It is not disputed that in *Tilak Raj's case (supra)*, the Division Bench had directed that the extensions to the guest teachers are not be beyond 31.12.2012 and no further appointments are to take place after 01.04.2011. The matter was tested before the Apex Court in Civil Appeal Nos. 5956-57 of 2012, wherein, directions were given that the exercise indicated in the scheme should be completed within the time specified and no further extension would be permitted and the GFTs would be allowed to continue to function but the recruitment to teachers on regular basis shall not be supplemented or replaced by this procedure of appointing guest

teachers. The relevant portion of *Naresh Kumar's case (supra)* reads thus:-

“8. We make it very clear that as directed by the Division Bench of the High Court, no fresh appointments of 'Guest Teachers' will be made from 1st April, 2012. However, since students also cannot be made to suffer on account of the delay in the appointment of regular teachers, we direct that the exercise indicated in the scheme, must be completed within the time specified in the scheme and no further extension or deviation therefrom will be permitted.

9. Till then, the 'Guest Teachers' may be allowed to continue to function, as they have been doing so far.

10. We once again reiterate that the recruitment of teachers on the regular basis shall not be supplemented or replaced by this procedure of appointing 'Guest Teachers' for the sake of convenience.”

It is not disputed that R.A. No. 166 against *Tilak Raj's case (supra)* was also dismissed on 08.04.2015 by the Division Bench, which had been preferred by the GFTs.

In CWP No. 2867 of 2015, *Sanjay Kumar and others vs. State of Haryana* decided on 05.08.2015, the said history was again traced and it was directed that the State shall dispense with the service in the same manner of guest teachers by complying with the directions contained in *Tilak Raj's case (supra)* while noticing that advertisements had been made for regular appointments and the process of verification was in place. It is, thus, apparent that in spite of directions being issued time and again, the State has treated GFTs with kid gloves and continues to give them preferential treatment over and above the regular employees due to which

the petitioners are not being able to be adjusted in their home districts.

Resultantly, this Court is of the opinion that the instructions dated 31.03.2010 are not sustainable and are liable to be quashed. Similarly, clause 8 in the transfer order which had been incorporated, on which reliance has also been placed by the State in the transfer orders dated 01.04.2016 that posts on which the GFTs are working are not to be treated as vacancies, is without any justification.

Resultantly, the writ petitions are allowed with directions to the respondents to consider the case of the petitioners afresh for the benefit of their inter district transfer without being fettered by the vacancy position which is consumed by the GFTs. Preference has to be given to the regular appointees who are wrongly being denied their consideration regarding the inter district transfer on account of the policy dated 06.08.2015 only on account of the fact that the GFTs continue to occupy the posts. Resultantly, the State shall take positive action on the request of the petitioners without keeping into consideration the instructions dated 31.03.2010 or inserting condition clause 8 which has been incorporated in the transfer orders. The necessary exercise accordingly be completed within a period of 3 months from the date of receipt of the certified copy of the order.

10.11.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No