

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

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**CWP-24206-2016 (O&M)
Date of decision: 17.03.2017**

Rajender Kumar Narula

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.Suresh Kumar Kaushik, Advocate for the petitioner.

Mr. Hitesh Pandit, AAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition the petitioner has questioned the validity of transfer order dated 06.08.2016 vide Annexure P3 by which he has been transferred from Government Senior Secondary School, Dhankot, (854), Block Gurgaon, District Gurgaon to Government Senior Secondary School, Sidhrawali (789), Block Pataudi, District Gurgaon against deemed vacancy being created after transfer of Meenakshi Sharma. Learned counsel for the petitioner in support of the challenge to transfer order dated 06.08.2016 submitted that it is in violation of Government Transfer Policy

dated 29.06.2016 in particularly para 5 (v) of the policy which reads as under:-

5. BASIC PRINCIPLES:

(i) Transfer/posting to the opted zone/school will not be claimed or treated as a matter of right.

(ii) Each year vacancy in the schools will be notified. Definition of vacancy and deemed vacancy is given in para 7(i).

(iii) The option once availed and confirmed shall be final and can be changed only under the provisions of this Policy.

(iv) No male teacher below the age of 50 years shall be posted in a Girls School.

(v) Unless protected under a provision of this Policy, every teacher completing 5 every teacher completing 5 years continuous stay in a particular school shall be transferred.

(vi) In some cases no option may be received for a "deemed vacancy". In such a case, teacher occupying that post will be allowed to continue in the same school for the next tenure of five years, if he/she opts for this. In such a scenario, his/her immediate next option shall stand exhausted and after the completion of his extended tenure he/she will be considered for his/her next priority zone and onwards. Such teacher shall not be allowed to seek transfer before the completion of his/her stretched

tenure of next Five Years.

Provided that such post is not to be kept vacant as per provisions of para 7(ii) below”.

2. It was further submitted that para (v) is very specific that there is a protection that every teacher completing 5 years of continuous stay in a particular school shall be transferred. Therefore, the transfer order is liable to be set aside on the ground that the petitioner was transferred on 01.04.2016 from Malab, Mewat District to Dhankot, Gurgaon District. In other words, the petitioner is yet to complete one year of service at Dhankot which falls under Zone 3.

3. On the other hand learned counsel for the respondent-State submitted that the petitioner's entire service under Zone 3 has been taken into consideration for the purpose of transferring the petitioner that he has completed 5 years of service namely on 24.11.2004 to 24.07.2012, 22.7.2013 to 02.06.2014, 1.4.2016 to 09.08.2016 he was in Zone 3. Thus, he has completed 5 years in the Zone 3. Therefore, the official respondents have rightly transferred the petitioner. Therefore no interference is called for.

4. Heard learned counsel for the parties.

5. Perusal of para 5(v) of the policy dated 29.06.2016 it is evident that a Teacher can be transferred after completion of 5 years of continuous stay in a particular school and it is not that in a particular zone. Assuming that zone is taken into consideration but still para 5(i) cannot be read in

isolation it is to be read entire para 5 of the transfer policy. Therefore, the petitioner has made out a prima facie case against the order dated 06.08.2016. Accordingly, order dated 06.08.2016 vide Annexure P3 is set aside.

6. CWP stands allowed.

17.03.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No