

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

**CWP No.12736 of 2018
Date of decision: 15.10.2018**

Vikas Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishal Nehra, Advocate,
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of orders dated 02.05.2018 & 14.05.2018 (Annexures P-2 & P-3), whereby he has been relieved from Govt. Senior Secondary School, Ahri, Jhajjar for joining in District Palwal without mentioning name of any school.

Petitioner joined as PTI teacher on 11.05.2010 and was given posting at School, Yakpur, District Jhajjar. In the month of April, 2016, he was transferred to Jhajjar District. Vide order dated 01.04.2016 (Annexure P-1), the petitioner was adjusted in District Jhajjar from Palwal. Vide order dated 02.05.2018 (Annexure P-2), Director General, School Education, Haryana, directed the petitioner to join at Palwal. Grievance of the petitioner is that his transfer from Jhajjar to Palwal is against the guidelines of transfer policy, as per which, an employee has to stay at a place of posting for three years. Moreover, some posts are still lying vacant in District Jhajjar. It has been pleaded that father of the petitioner is 70%

handicapped. His mother is also 50% handicapped. Petitioner is having school going minor children. Vide order dated 18.05.2018, learned State counsel was directed to take instructions from the competent authority as to what was the reason for transferring the petitioner from Jhajjar to Palwal keeping in view the fact that he had been transferred only in the last year and had completed one year at the present place of posting.

Upon notice, reply on behalf of the respondents was filed on 24.05.2018. Along with the reply, they have placed on record application made by the petitioner for transfer from District Palwal to District Jhajjar under Clause 3 (ii) of the policy relating to transfer on medical ground by annexing medical certificate dated 28.02.2007 (Annexure R-1). Case of the petitioner was considered and inadvertently, he was allotted District Jhajjar on 01.04.2016. It was stated that the petitioner had not annexed a medical certificate issued by PGIMS, Rohtak, PGIMER, Chandigarh and AIIMS, New Delhi. The medical certificate issued by the Civil Surgeon, Jhajjar was not as per Clause 3 (ii) of the Transfer Policy. Thereafter, the petitioner produced a medical certificate dated 09.01.2017 (Annexure R-2) issued by PGIMS, Rohtak. However, the said certificate was produced after the cut off date of transfer policy. Hence, the medical certificate, after the cut off date could not be made basis for transferring him to District Jhajjar. In similar circumstances, CWP No.17800 of 2016, titled as **Raj Kumar vs. State of Haryana and others,** was dismissed by this Court on 16.01.2017. The petitioner has already been relieved from his duties on 14.05.2018 by the Principal, Govt. Senior Secondary School, Ahri (Jhajjar).

Heard, counsel for the parties.

It is not the case of respondents that before the cut off date,

medical certificate dated 28.02.2007 (Annexure R-1) issued by the Civil Surgeon, Jhajjar, which was produced by the petitioner, was wrong. A perusal of the said certificate shows that father of the petitioner was 70% permanently physically handicapped. This certificate pertains to the year 2007. Further, a perusal of the new certificate dated 09.01.2017 (Annexure R-2), issued by the PGIMS, Rohtak shows that father of the petitioner is 100% permanently physically disabled. Certificate dated 28.02.2007 (Annexure R-1) was presented along with the application before the cut off date i.e. 15.09.2015. Disability of petitioner's has gone verse and is not less than 70% as assessed by PGIMS, Rohtak. Case of the petitioner could be dismissed on the ground that the earlier disability certificate dated 28.02.2007 (Annexure R-1) was not correct. Rather, in the present case, the extent of disability has increased from 2007 to 2017. As per disability certificate (Annexure R-1), father of the petitioner was aged about 58 years as on 28.02.2007 when he was 70% physically disabled and after 10 years on 09.01.2017, he has become 100% permanently disabled. Clause 3 (ii) of the Transfer Policy, which is relevant in this case, is reproduced as under:-

“3 (ii). Physically challenged teachers or teachers whose children or parents/spouse are physically challenged (70% or more). The Medical Certificate should have been issued to this effect by the Medical Board of Pandit Bhagwat Dayal Sharma, PGIMS, Rohtak (Government of Haryana) or Post Graduate Institute of Medical Science and Research (PGIMER), Chandigarh or All India Institute of Medical Science and Research (AIIMS), Delhi.”

In the facts of the present case, father of the petitioner was physically challenged to the extent of 70% as per certificate dated 28.02.2007 (Annexure R-1). The disability has increased upto 10% in the year 2017. Hence, case of the petitioner cannot be discarded only on the

ground that the second certificate dated 09.01.2017 (Annexure R-2) was produced after the cut off date. Disability of petitioner's parents was existing even at the time of submitting the application for inter district transfer and it has been reaffirmed by the second certificate dated 09.01.2017 (Annexure R-2) issued by the PGIMS, Rohtak. Hence, only on the technical ground that disability certificate issued by PGIMS, Rohtak is dated 09.01.2017 (Annexure R-2) case of the petitioner cannot be rejected. In **Raj Kumar's** case (supra), which has been referred to by the respondents, for the first time petitioner had made application after the cut off date, therefore, the same could not be accepted. In the present case, application was made well before the cut off date along with disability certificate dated 28.02.2007 (Annexure R-1). However, the second disability certificate dated 09.01.2017 (Annexure R-2) was produced as the same was got issued from PGIMS, Rohtak, which shows that the disability has considerably increased during the last ten years.

In view of the above discussion, the present petition is allowed and the impugned orders dated 02.05.2018 & 14.05.2018 (Annexures P-2 & P-3) are set aside.

15.10.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No