

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 11.07.2018****CWP No.20258 of 2017 (O&M)**

Gian Singh & another

...Petitioners

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jitender S. Chahal, Advocate, for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

Heard.

The respondents appear to be in contempt of the directions of this Court issued on 27.10.2017 and 10.11.2017. The direction in the earlier order i.e. 27.10.2017 enables the petitioners to appear before the Director, Secondary Education, Haryana – respondent No.2 on a date fixed by the Court i.e. 01.11.2017 with the direction that he would hear their grievances and pass an order within two days thereafter, with the order to be produced on the next date of hearing. It was also directed as a precaution that in case the Officer is not available on that particular date, he would give a date to the petitioners to appear before him prior to the next date of hearing before this Court and to ensure that the order is passed by him before that date. On 10.11.2017, Mr. Chahal, learned counsel for the petitioners, made a statement that his clients had appeared before the Director, Secondary Education, Haryana, but no orders have been passed. However, the case was adjourned to 14.11.2017 with the observations that if the order dated

27.10.2017 is not seen to be complied with by that date, the Director, Secondary Education, Haryana, shall be summoned to Court. Thereafter, it appears that the case has been adjourned by orders and has come up for hearing today.

During the course of arguments, Mr. Harish Rathee, Sr. DAG, Haryana, refers to the short reply by way of affidavit on behalf of respondents No.1 & 2 dated 27.02.2018, but a scrutiny of the case file reveals that said affidavit is not on judicial record, as may be the case was not taken up for hearing after 10.11.2017. Simultaneously, learned counsel for the petitioners submits that the copy of the short reply was not supplied to him. Leave aside that omission, a photocopy of the short reply by way of affidavit referred to by Mr. Rathee is taken on record. In the affidavit, it is explained that the representation of petitioner No.1 was examined in detail and it was decided to withdraw his transfer orders and accordingly, office order dated 16.11.2017 was issued, rendering the petition infructuous as far as petitioner No.1 is concerned. However, in the case of petitioner No.2, it is sworn in para.2 of the affidavit of Deputy Secretary to Government Haryana, Secondary Education Department, Panchkula that no representation of petitioner No.2 was received. As and when representation is made, final decision in the case of petitioner No.2 shall be taken.

It is rather disheartening to note that despite their being no direction by this Court in the interim orders referred to above for the petitioners to make a representation in writing before their cases could be considered, the respondents have read into the order regrettably that the decision was dependent on a representation being made by petitioner No.2. All that the direction of this Court in the order was for the petitioners to

appear on the date fixed and for the Officer to hear them on their grievances and pass an order. In this manner, the rights of petitioner No.2 have been unnecessarily postponed to future uncertain date. She is a differently-abled person suffering 70% handicap. She is a regular employee teaching Hindi in the school i.e. Government Senior Secondary School, Kuttabadh, Block Ellenabad, District Sirsa from where she has been transferred to another school i.e. Government Senior Secondary School, Mehna Khera, District Sirsa falling about 35 Kms. distant.

Earlier, there were two posts of Hindi Teachers in Government Senior Secondary School, Kuttabadh, Block Ellenabad, District Sirsa, which after rationalization was reduced to one by the department. Thus, the Government Senior Secondary School, Kuttabadh, Block Ellenabad, District Sirsa can accommodate only one Hindi Teacher and the petitioner being a regular employee has certainly a preferential right to posting against the single post which is superior to a Guest Faculty Teacher. The Guest Faculty Teacher may have been teaching for the last 10 years, but he is not a regular employee.

The argument raised by Mr. Rathee that in case the petitioner is retained in Government Senior Secondary School, Kuttabadh, Block Ellenabad, District Sirsa, the Guest Faculty Teacher would lose his job and livelihood. I am not impressed with this argument. The rights of regular Teacher and a disabled person are far superior to the rights of Guest Faculty Teacher, who is able bodied. It would be too much to expect petitioner No.2 to travel about 35 Kms. one way in a day, in case she retains residence at or near the place of posting from where she has been transferred. In terms of comparative hardship, I would place my hand on petitioner No.2 as against

the Guest Faculty Teacher, whom the Government may consider posting to another school from where he can travel to and fro.

For the reasons recorded above, the petition with respect of petitioner No.1 is dismissed as infructuous, while the petition qua petitioner No.2 is allowed. The respondents are directed to relieve petitioner No.2 immediately to enable her to join her earlier place of posting at the earliest.

Petitioner No.2 is also entitled to the cost of litigation to the tune of ₹20,000/-, which will be paid to her with the next salary.

11.07.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>