

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

CWP No.8589 of 2017 (O&M)

Date of decision: 11.10.2018

Kanwar Pal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anurag Goyal, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the order dated 17.03.2017 (Annexure P-11) passed by respondent No.2-Director General, Elementary Education, Haryana, whereby request of the petitioner to transfer him in District Bhiwani as per policy dated 06.08.2015 (Annexure P-1), has been rejected.

Petitioner belongs to BC-A category. He is seeking transfer to District Bhiwani on the ground that he is suffering from chronic disease i.e. Epilepsy since childhood. In this regard, a certificate dated 22.09.2015 issued by the PGIMS, Rohtak has been annexed as Annexure P-2. The representation made by the petitioner has been rejected on the ground that his request could not be considered after the last date of submission of the application i.e. 15.09.2015. The petitioner had made this representation in compliance with the order dated 09.09.2016 passed by this Court in CWP No.16671 of 2016 (Annexure P-9). On this ground alone, the impugned

order requires to be set aside, as the respondents were duty bound to consider the medical certificate of the petitioner, which was issued by the PGIMS, Rohtak, which they have not done.

During the pendency of this petition, an additional affidavit dated 18.12.2017 was filed by the Director Elementary Education, Haryana, stating that there were 52 vacant posts of JBT under BC-A category in District Bhiwani. If the petitioner was transferred to District Bhiwani, then it would be against the Transfer Policy dated 06.08.2015, as the cut off date for submission of applications was 15.09.2015. In the affidavit, it is not stated, whether the department had rejected the case of any senior JBT teacher under BC-A category, for inter district transfer as per policy dated 06.08.2015. It has been merely stated that some senior JBT, who have opted this district, will be adversely affected. The only ground taken by the respondents is that after the cut off date, the petitioner's case could not be considered.

Since the representation was made by the petitioner in compliance with the order dated 09.09.2016 passed by this Court in CWP No.16671 of 2016 (Annexure P-9), it could not be rejected on the ground that the same has been filed beyond the cut off date. On 27.09.2018, learned State counsel had informed that a meeting would be convened on 04.10.2018 to consider the case of the petitioner in view of his medical condition. Thereafter, again the case has been rejected on the ground that vacancy under the BC-A category was not available at the relevant time.

Learned counsel for the petitioner has handed over two sets of informations to the learned State counsel to show that in the year 2015-2016, a number of posts were lying vacant, where the petitioner could have

been adjusted as per the transfer policy. He has also given information to the effect that one Guest Teacher is working under BC-A Category in Bhiwani and he could not shifted to the vacant post.

Keeping in view the medical condition of the petitioner, he initially, can be adjusted against the said post and thereafter, the department can adjust the Guest Teacher against the post which is not meant for BC-A and that post be given to him. Moreover, while rejecting the case of petitioner vide impugned order dated 17.03.2017 (Annexure P-11), it is not stated that request of any other senior teacher under BC-A category has already been rejected on the ground of non availability of the post. The respondents are making attempts to justify their wrong order on the ground that seniors will get affected, if the petitioner is transferred to District Bhiwani.

In view of the above, the impugned order dated 17.03.2017 (Annexure P-11) is set aside and the respondents are directed to adjust/transfer the petitioner in District Bhiwani on a post, where one Guest Teacher is working against the BC-A category. The said Guest Teacher may be adjusted on any vacant post against any other category in the same district.

The petition stands allowed accordingly.

11.10.2018
ajp

(RITU BAHRI)
JUDGE

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