

CWP No.9491 of 2019

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

CWP No.9491 of 2019

Date of decision:29.08.2019

Haryana Forest Employees Welfare Association

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Nitish Bhatia, Advocate and
Mr. Deepak Jindal, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, Deputy Advocate General, Haryana.

AMIT RAWAL J.

This order of mine shall dispose of three Civil Writ Petitions bearing Nos.9491, 10533 and 10602 of 2019.

Reply filed in CWP No.9491 of 2019 is taken on record, subject to all just exceptions.

Haryana Forest Employees Welfare Association through its General Secretary has invoked the extra ordinary jurisdiction of this Court for quashing the impugned transfer orders dated 29.03.2019 (Annexure P-5), transfer lists dated 26.10.2018 (Annexures P-7 to P-15 and Annexure P-22), 27.10.2018 (Annexures P-16 to P-21) and 29.10.2018 (Annexures P-6 and P-23) being unfair, unjust and unconstitutional against the instruction/draft policy dated 09.03.2018 (Annexure P-2).

It has been alleged that Government of Haryana through

Additional Principal Chief Conservator of Forest, Haryana promulgated a policy dated 01.08.2018 for implementing the transfer of Forest Guards through online process, in other words, through computer system based as per their merit order/points.

The aforementioned notification came to be challenged before this Court vide CWP No.20790 of 2018 and vide order dated 14.11.2018, the Hon'ble Division Bench of this Court disposed of writ petition directing the State to implement the proposed transfers w.e.f. 1.4.2019 irrespective of the code of conduct coming into operation by that date.

Noticing the contention of State with regard to non-posting of 57 Forest Guards, on payment of salary, this Court granted liberty to State to issue posting orders for 57 Forest Guards at appropriate places and other members of the petitioner union did not accept the contention with regard to other set of persons/members of association who did not intervene for advanced transfer.

Mr. Nitish Bhatia, learned counsel appearing on behalf of the petitioner submitted that proposed transfer policy dated 09.03.2018 (Annexure P-2) is not practically applicable as the respondents have not considered the technicalities and problem likely to arise after the transfer as it is cut copy paste of Education Department whereas working of Forest Department is totally different, in fact, technical in nature. Neither any objection nor any consideration has taken place in promulgating the aforementioned policy. After the decision of aforementioned writ petition, the respondents have again implemented transfer policy through impugned

order, Annexure P-5. While doing so, implemented the same list without making any amendment or without affording the opportunity, much less decision of the objections, thus, entire action of the respondents in transferring the Forest Guard is adoption of pick and choose which is not permissible as it results into disgruntlement amongst the members of association. The action of the respondents is derogation of the undertaking reflected in the affidavit filed in response to the writ petition, *ibid*, as most of the employees have been transferred from present station to out of district/zones, in other words, the preferences opted by members of association have not been honoured and as well as not in consonance with the undertaking. Attempt is being made to cite certain instances by pointing out serial number of employees according to which employees have been transferred without taking into consideration the objections and couple cases have also been ignored.

Ms. Shruti Jain Goyal, learned Deputy Advocate General, Haryana raised the objection by relying upon preliminary submissions taken in written statement and as well as in Annexures. Only following two objections have been taken:-

- i) The staff which has been working in one district for the last three to five years should be transferred as the handing over of charge would take many months due to large number of trees under the charge of a Forest Guard.
- ii) The policy does not mention anything about posting of block incharge.

The objections are totally against the essence of online transfer policy. The basic purpose of transfer is to transfer a person who had been working at one place for a considerably long time whereas second objection has no connection being irrelevant as the posting of block incharge is not at all associated with online transfer policy. The policy aforementioned has been promulgated in public interest with an objective to bring fairness and transparency. All the objections/suggestions have been considered which have been incorporated in the post policy and final online transfer policy dated 23.10.2018, Annexure R-2.

Not only this, even in pursuance to the terms and conditions of the policy, employee have consented to the merit points awarded to them by filling up preferences and on complete data verification, transfer was determined by software system on the basis of merit-cum-preference criteria without any manual intervention. It is an accepted principle that in public service, transfer is incident of service and Government servant is liable to be transferred to a similar post in the same cadre.

I have heard the learned counsel for the parties, appraised paper book and of view that there is no force and merit in the submissions of Mr. Bhatia. The applicability of the policy dated 23.10.2018 categorized the Government employees. The object of policy is on the basis of categorization in the following manner:-

2. Categories of Government Employee to whom this Policy apply:-

(1) Save as otherwise provided by or under this Policy, this Policy shall apply to the following:-

(a) Persons appointed and occupying the posts in the categories of “Foresters” and “Forest Guards” (under the Haryana State Forest Executive Section (Group C) Service Rules, 1998 or any predecessor Service Rules of the said Rules) and serving in connection with the affairs of the Government of Haryana within the Administrative control of the Department of Forests & Wild Life,

(b) Any other class and categories of persons who are serving in connection with the affairs of the Government of Haryana within the Administrative control of the Department of Forests & Wild Life and on whom the Government may, by order, specifically direct this Policy to be made applicable.

(2) Save as otherwise provided by or under this Policy, this Policy shall not apply to:-

(a) Persons not in whole time employment ; (b) Persons paid otherwise than on monthly basis, including those paid on a piece-rate basis or on daily wages basis or on contract basis ;

(c) Postings being made as a consequence of Government Employee being promoted/posted on fresh appointment/posted after joining back from deputation or to fill up vacancy arising due to the retirement of the incumbent or to fill up vacancy arising due to the incumbent proceeding on training/long leave or to fill up vacancies arising due to resignation/removal/dismissal, etc, of the incumbent;

(d) Posting being made on the basis of consideration of the request of mutual transfer; (e) Any other class or category of persons whom the Government may, by order, specifically exclude from the operation of all or any of the provisions contained in this Policy.”

Under sub-clause 10 of Clause 4 dealing with guiding

principles regulating the transfer of the Government employees, the intendment of framers have also been reflected by envisaging the exigencies, normal tenure under ordinary circumstances i.e merely three years within district extendable upto 05 years. For the sake of brevity sub clause 10 of Clause 4 with note appended there under is extracted herein below:-

“4. **Basic guiding principle regulating the transfer of the Government employee:**

1.	x	x	x	x	x	x
2.	x	x	x	x	x	x
3.	x	x	x	x	x	x
4.	x	x	x	x	x	x
5.	x	x	x	x	x	x
6.	x	x	x	x	x	x
7.	x	x	x	x	x	x
8.	x	x	x	x	x	x
9.	x	x	x	x	x	x

10. Subject to the provisions of this policy and save the situations when it is ordered to be otherwise in case of any Government Employee by authorities competent to order transfers/postings and, as the case may be, save other exigencies, normal tenure under ordinary circumstances for a Government Employee at any station/place of posting shall be of nearly 3 years and, further, within any District it may extend to a total of nearly 5 years. A Government Employee, in whose case, at the time of the next

“General Transfer” the said “nearly 3 years” or, as the case may be, the said “nearly 5 years” gets completed, shall be transferred in the said “next General Transfer” and thus, shall be eligible to exercise the option as prescribed in this policy at that time.

Note: Any Government Employee who has completed more than 30 months or, as the case may be, 54 months on a post on the cutoff date (which, unless prescribed to be otherwise under this policy or by the competent authority, happens to be the 30th day of the April in the relevant Financial Year) shall be deemed to have completed „nearly 3 years” or, as the case may be, nearly 5 years on the post occupied by him for the purposes of this policy.”

The scope of judicial intervention by exercising i.e. exercise of judicial review is no longer *res integra*. It can be exercised only when it is outside the parameters of rationality, legality or fallacy. Inconveniences and objection cannot be ground for tinkering with the policy under challenge. Annexure P-5 is in consonance with the directions, *ibid* of this Court which could not be implemented as per reply upto 30.04.2018 owing to non-preparation of the software which became effective only w.e.f. 01.08.2018. Neither any case of pick and choose has been made nor the averments in written statement have been rebutted. In fact, reply revealed that 409 transfers of Forest Guards were done in total by the online transfer system. 250 Forest Guards out of 409 were transferred outside the division by the online transfer system, therefore, the orders were implemented through Human Resource Management System (HRMS) for the purpose of withdrawal of salary. As per the orders, 159 Forest Guards out of 409 were

to join within the same division as the names of concerned Forest Guards were already there in HRMS. In this process, separate lists for implementation of online transfer policy, Annexure R-4 was issued. At the drop of hat, the Court cannot cause interference in the administrative machinery of the State owing to such a vast employment, few would always remained disgruntled. Reply of the State, in my view, does not reveal any misuse of powers or exercise of irrationality, inconsistency or adoption of pick and choose policy or fallacy.

As an upshot of my observations, I am of the view that writ petitions are devoid of merit. Accordingly, the same are dismissed.

(AMIT RAWAL)
JUDGE

August 29, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No