

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

**CWP No.20037 of 2018  
Date of decision:21.08.2019**

Dr. Prem Kumar Jakhar

... Petitioner

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Sanjeev Kodan, Advocate  
for the petitioner.

Mr. Hitesh Pandit, Addl.Advocate General, Haryana.

**AMIT RAWAL J.**

Question involved in present writ petition is whether in view of pendency of two charge-sheets under relevant rules, a person/petitioner is eligible or not for grant of Assured Career Progression (ACP) over and above prayer for quashing of order dated 10/11.07.2018 (Annexure P-12) whereby headquarter of the petitioner has been fixed at Panchkula from Fatehabad, therefore, prayer for transferring the petitioner in any Government College nearby Rohtak in view of Haryana Government Policy.

On 07.03.1988, petitioner was appointed to the post of Lecturer Mathematics (Applied Sciences) in the Department of Technical Education, Haryana and vide order dated 31.08.2007, was promoted to the post of Head of Department w.e.f. 02.01.2006 instead of 04.08.2006 from the date his juniors were promoted. During last three years commencing from

31.08.2015 to 16.05.2018, he had been transferred to more than five places.

Learned counsel appearing on behalf of the petitioner submitted that aforementioned transfer was owing to the personal enmity of respondent no.2 with the petitioner as he had been nursing animosity. Wife of the petitioner, Smt. Santosh Jakhar, is presently posted as Math Mistress in Government Senior Secondary School Pakasma (Rohtak) and as per the Haryana Govt. Policy dated 26.09.1986, petitioner is required to be posted either at the same station or any nearby station in order to avoid adverse impact in discharging the official duties.

Earlier petitioner approached this Court by filing CWP No.2595 of 2018 and vide order dated 05.02.2018 (Annexure P-4) was disposed of with a direction to the respondents to decide the representation . The petitioner, was, accordingly called for personal hearing after submission of representation and Director General, Technical Education, Haryana after affording the opportunity of hearing and considering the material on record considered the case of petitioner and observed that case of posting/deputation at any of the Government Society, Polytechnics nearby Rohtak against vacant post of Head of Department (Applied Science) be forwarded to the State Government for consideration and as well as for grant of Assured Career Progression and promotion. Thereafter, the petitioner submitted a representation dated 17.05.2018 to respondent no.1 but no action was taken, even compelled to file contempt petition i.e. COCP No.1749 of 2018 which was withdrawn on 29.05.2018 (Annexure P-9). Another contempt notice was served upon the respondents through

registered post dated 30.05.2018 (Annexure P-10). The respondents, despite, did not take decision, thus, compelled to file another COCP No.2113 of 2018. Vide order dated 19.07.2018 (Annexure P-11), it was dismissed as withdrawn with liberty to avail the remedy in accordance with law as certain order was passed.

Respondent no.1 without considering the facts and circumstances of the case, vide order dated 10/11.07.2018 (Annexure P-12) transferred the petitioner at Panchkula from Fatehabad which is not sustainable in the eyes of law as he is being harassed continuously by way of perpetual transfers with a malafide intention nor has been placed nearby place of posting of his wife, who is working as Maths Mistress. Panchkula is more than 250 kilometers from Rohtak, thus, posting of petitioner is against the transfer policy.

Counsel for the petitioner also relied upon letter dated 28.12.2012 communicated by the Financial Commissioner and Principal Secretary to Government Haryana, Finance Department to all the Head of Departments regarding grant of Assured Career Progression Scale.

Per contra, Mr. Hitesh Pandit, learned Additional Advocate General, Haryana submitted that it is not a simple case that petitioner had been transferred frequently on the basis of honesty but on the basis of various complaints as and when posted to any Institute nearby place of posting of his wife.

Attention of this Court has been drawn to certain preliminary

enquiries conducted against the petitioner and as well as complaints, Annexures R-1 and R-2. In view of record, petitioner under Rule 5 of Haryana Civil Services (Punishment and Appeal) Rules 2016, vide order dated 10.07.2018 (Annexure P-12) was placed under suspension. List of 10 (ten) stations whereby petitioner remained posted has been extracted in paragraph 4 of reply, all of which are located within the radius of 50 kilometers from Rohtak but past record of the petitioner has been such that his work and conduct at every station has always been controversial and thus, supported the impugned order.

The order of Director General dated 23.02.2018 would not be considered as Magna Carta, for, he was communicated adverse entry in the Annual Confidential Report for the year 2010-11, though in appeal, was expunged but fact of the matter is that Finance Department, vide decision dated 30.06.2017, intimated that two charge-sheets under Rule 7 were still pending against the petitioner and therefore, his case for grant of ACP was not considered and thus, urged this Court for dismissal of writ petition.

I have heard learned counsel for the parties, appraised paper book and of view that there is no force and merit in writ petition. The facts stated in writ petition, particularly in written statement have not been controverted by filing rejoinder, meaning thereby reports of Committee, Annexures R-1 and R-2 are matter of record. The Instruction dated 28.12.2012 relied upon by the petitioner, rather goes against the petitioner. Serial no. 4 of the same reads as under:-

*“4. Accordingly, in the situation described earlier, employee*

*'X' will become eligible for the ACP Scale from date 'A' once the charge-sheet-I is dropped. No impact of the subsequent charge-sheet-2/disciplinary inquiry will be caused in the matter.'"*

The petitioner cannot be granted Assured Career Progression until and unless charge-sheets are dropped. Concededly, two charge-sheets are pending.

As regards case of petitioner for posting nearby the place of posting of his wife, his case was considered sympathetically and petitioner remained posted on the following stations:-

| <i>Sr.No.</i> | <i>From</i> | <i>To</i> | <i>Name of Station</i>                           |
|---------------|-------------|-----------|--------------------------------------------------|
| 1             | 01/01/10    | 30/09/10  | B.K. Government Polytechnic, Narnaul             |
| 2             | 11/10/10    | 02/11/11  | Government Polytechnic, Jhajjar                  |
| 3             | 03/11/11    | 18/11/11  | Government Polytechnic Education Society, Loharu |
| 4             | 18/11/11    | 17/05/12  | Government Polytechnic, Sanghi                   |
| 5             | 21/05/12    | 31/08/15  | Government Polytechnic, Sonipat                  |
| 6             | 14/09/15    | 02/12/16  | Government Polytechnic, Nilokheri                |
| 7             | 06/12/16    | 08/05/17  | Government Polytechnic Women Faridabad           |
| 8             | 11/05/17    | 12/05/17  | Government Polytechnic Education Society, Meham  |
| 9             | 12/05/17    | 07/02/18  | Government Polytechnic, Bhiwani                  |
| 10            | 08/02/18    | 24/05/18  | Head Quarter at Panchkula                        |
| 11            | 25/05/18    | 11/07/18  | Government Polytechnic, Dhangar                  |

It is on account of complaints, he was transferred vide impugned order. A person having such conduct cannot seek indulgence of this Court to bring the case within the judicial review.

No ground for interference is made out.  
Dismissed.

(AMIT RAWAL)  
JUDGE

August 21, 2019  
savita

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |