

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

CWP No.22550 of 2019 (O&M)

Date of Decision.26.08.2019

Maya Devi and others

...Petitioners

Vs

State of Haryana and another

...Respondents

Present: Mr. Mazlish Khan , Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Petitioners, 17 in number, had sought indulgence of this Court under Article 226 of the Constitution of India for quashing action of the respondents in effecting transfers through online transfer mode allegedly in mid-session to be in contravention of the Policy dated 29.06.2016 and amended policy dated 05.06.2017 as well as quashing of clauses 7(I)(C) and 8 (I) (A) of the aforementioned policies dated 29.06.2016 and 05.06.2017 (Annexures P-1 & P-2).

Facts which emanate from the pleadings are that petitioners are working as PGT History or other different subjects and have been allotted stations in various districts as referred to in the memo of parties. They have been discharging their duties honestly, diligently and with utmost satisfaction of their superiors. Vide Annexure P-1 dated 29.06.2016, Haryana Government promulgated Teachers Transfer Policy, 2016 ensuring equitable demand based distribution of Teachers/Heads for the purpose of protecting the interest of students and optimization of job satisfaction. The priority of transfer as per the time schedule referred to in Clause 4 (ii) is that it would be made once in a year but it can be done at any time depending upon the administrative exigencies, transfer of spouses of employees etc.

Clause 6 envisages criteria for deciding the claim against vacancy. The aforementioned policy was amended vide amendment dated 05.06.2017 whereby Clause 5 (ii) (b) and (c) envisage that transfer orders will be issued in the months of April-May every year and qualifying date for actual vacancies, deemed vacancies, weightage/merit points calculation, count of stay shall be 31st March of the calendar year of transfer.

Mr. Mazlish Khan, learned counsel appearing for petitioners submitted that Clause 6 of the amended policy envisages availability of the option only once, which shall be final and can be only provided under the provisions of the policy. Unless protected under a provision of this policy, every teacher completing five years stay/tenure whether independently in a district or cumulatively of more than one district of the State shall be transferred. Vide notice dated 19.07.2019 (Annexure P-3), Director General of Secondary Education, Haryana communicated to all District Education Officers in State and District Elementary Education Officers in the State for commencement of the transfers (online) w.e.f. 18.07.2019 at 5 PM. The aforementioned policy is not in accordance with the instructions and vide impugned order (Annexure P-5), respondents while framing policy have gone wrong in setting up merit criteria for allotment of posts under Clause 7 of amended Policy (Annexure P-2), which has given weightage to the age of employees other than the period of service rendered in the department. For example, female has been given three times of weightage viz; (i) for gender maximum 10 points; (ii) for special category female teachers maximum 10 points and (iii) for couple case maximum 5 points whereas special category male teachers maximum 5 points and so on and so forth. As per amended policy, there are two types of vacancies actual and deemed and none else

but for the reasons best known to respondents, reserved posts for different subjects in various schools by giving remarks “to be blocked” so that nobody can opt for the option. This is totally discriminatory in nature. Vide memo dated 18.06.2019 (Annexure P-5), fresh appointments had been made and certain posts have been blocked for new appointees and in such manner, posts of PGT in Government Secondary School/Higher School as per the students strength as on 31.07.2019 have been blocked. For example in Government Senior Secondary School, Assan, posts of PGT History have been blocked. There is no rationality while preparation of merit for appointment on the posts. According to the policy, Government schools shall be categorized in seven zones but as per the guidelines in the policy, distances of certain schools are not in conformity with the policy.

I have heard learned counsel for petitioners, appraised paper book and of the view that there is no force and merit. It is matter of record that in the month of March and April, there were general election in most part of the country including Haryana and therefore, owing to promulgation of Model Code of Conduct, transfers could not have been effected. It is a matter of record that petitioners have participated in the transfer drive and five member committee was constituted by the State to look into grievance. 150 grievances were addressed and purpose of rationalization is to transfer teachers to other schools where there is workload. This Court cannot assume role of expert by lifting the veil as to whether decision making process in framing the policy is vitiated in law and this exercise can be done only if it is prima facie found to be against settled procedure/service jurisprudence. Awarding of points to females and other specially disabled persons with diseases, special category of male teachers is only on the basis

of past practice and experience. This Court cannot examine the same in the absence of any data. Issue with regard to blocking of posts for newly recruited teachers has been taken care of by allotment of cadre district by fixing the period of stay and carving out different zones. In pursuance of direction given by this Court on 22.08.2019, stay of five petitioners have been more than three years and some of them approximately four years. Data of other ones was not apprised to this Court.

In view of aforementioned situation, I do not find any merit in the argument for causing interference under Article 226 of the Constitution of India regarding transfer drive.

Dismissed.

(AMIT RAWAL)
JUDGE

August 26, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No