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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.13907 of 2020
Date of decision: 11.09.2020

Rahul Sharma and another

.....Petitioners

V/s.

State of Haryana and others

.....Respondent

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Saurabh Dalal, Advocate, for the petitioners.

Mr. Rajesh Gaur, Additional Advocate General, Haryana and
Mr. Minderjeet Yadav, Deputy Advocate General, Haryana.

Sanjay Kumar, J.

The petitioners are Clerks working in Government Schools in the State of Haryana. They are aggrieved by the transfer order dated 14.08.2020 issued by the Director, Secondary Education, Haryana. Thereby, the first petitioner was transferred from the Government Middle School Koyal, Narwana, Jind, to the Government Senior Secondary School, Kakkar Majra, Shehzadpur, Ambala, while the second petitioner was transferred from the Government Girls Middle School, Phulian Khurd, Narwana, Jind, to the Government Senior Secondary School, Badhauri, Naraingarh, Ambala.

According to the petitioners, their transfers were not in keeping with the transfer policy of 2020.

It is however relevant to note that Clause 6 (vii) of the Online Transfer Policy of Ministerial Staff-2020 promulgated by the State of Haryana provides an effective remedy to those employees who are aggrieved by their transfers thereunder. This clause states to the effect that within 15 days of the issuance of the transfer order, the aggrieved employee could represent to the department after joining at the place of posting and his representation would be considered by the duly constituted Grievance Redressal Forum in accordance with the policy and an appropriate decision would be taken, as deemed fit, and conveyed to the employee concerned.

Mr. Saurabh Dalal, learned counsel for the petitioners, would however contend that an assurance was given by the learned Advocate General, Haryana, before the first Bench of this Court that the Online Transfer Policy would not be enforced for a period of two months.

However, Mr. Rajesh Gaur, learned Additional Advocate General, Haryana, would clarify that the assurance given by the learned Advocate General was not in absolute terms. He would produce copies of the orders passed by the first Bench in *CWP No. 10253 of 2020 (O&M)*, titled 'Gram Sachiv Welfare Association V/s. State of Haryana and others', decided on 17.08.2020, and *CWP No.11324 of 2020 (O&M)*, titled 'Diploma Engineer's Association V/s. State of Haryana and others', decided on 04.09.2020.

Perusal of the said orders reflects that the learned Advocate General, Haryana, stated that the authorities undertake not to enforce the policy for a period of two months except *vis-à-vis* those who had already given their options and were willing to join at their new place of posting.

Significantly, Clause 6(i) of the policy provides that the Head of the Department would seek preference for choice of station in a zone from from eligible employees for transfer and Clause (ii) thereof provides that the option once availed and confirmed by the employee shall be final and could not be changed.

Therefore, the assurance given by the learned Advocate General, Haryana, with regard to not enforcing the transfer policy for a period of two months would not be applicable to those who had already given their options. The very act of furnishing such options would imply the willingness to be posted in accordance therewith. It was only in relation to those who were altogether unwilling and did not even offer their options that the said assurance would be operative. The petitioners in the present case do not claim that they did not give their options in terms of the aforestated policy.

That being so, the petitioners cannot seek to draw any benefit from the aforestated assurance given by the learned Advocate General, Haryana, before the first Bench of this Court.

In consequence, if the petitioners have any grievance with regard to their transfers under the order dated 14.08.2020, they must necessarily avail the remedy provided to them under the policy itself.

Mr. Saurabh Dalal, learned counsel, states that the petitioners have not made their representations as yet and they may not be allowed to do so as the time line prescribed is only 15 days from the date of issuance of the transfer order, in terms of Clause 6(vii) of the transfer policy.

In that view of the matter, the writ petition is disposed of permitting the petitioners to make their representations against their transfers, if they so choose, within one week from today. In the event such representations are received, the Grievance Redressal Forum constituted by the department shall consider the same on their own merits and in accordance with the policy expeditiously and, in any event, not later than three weeks from the date of receipt of such representations.

No order as to costs.

(SANJAY KUMAR)
JUDGE

11.09.2020

rakesh

whether speaking/non speaking : Yes/no

whether reportable/non reportable : Yes/no