

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18827-2020

Date of Decision: November 09, 2020

VINOD KUMAR AND OTHERS

..... PETITIONER(s)

Versus

STATE OF HARYANA AND OTHERS

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sajjan Singh, Advocate
for the petitioners.

Mr. Ashish Yadav, Addl. A.G., Haryana.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

The petitioners, who are working as Clerks with the respondent-Department, seek quashing of their transfer order/s dated 14.08.2020 (Annexure P-5). It is to be noted that all the petitioners have been relieved from their place of posting and have admittedly joined at the transferred posts in August, 2020 itself.

Learned counsel for the petitioners vehemently argues that the transfers are in violation of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'the Act'). He refers to Section 14(7)(c) of the Act, which provides that the School Management Committee

shall monitor that the Teachers are not burdened with non academic duties other than those specified in Section 27. It is submitted that blocking of posts of Clerks is a violation of not only this provision but also a violation of Clause 4(vii) of the Transfer Policy itself. It is submitted that the policy provides for rationalization and seeks to avoid disproportionate concentration of employees at a particular station and it is in this view of the matter that the Department should rationalize sanctioned posts. It is submitted that even single posts have been blocked. Moreover, the list of blocked posts was issued after the timeline for voluntary participation (Annexure P-17) was over. It is further contended that newly selected Clerks have been appointed on the posts which were earlier blocked at the time of seeking preferences. Learned counsel submits that transfers of the petitioners are in violation of the amendments carried out in the policy on 07.08.2020 (Annexure P-14), in as much as options were not sought from the petitioners, in terms of the amendment to para six of the policy. It is thus prayed that this petition be allowed.

Learned counsel for the State, to whom an advance copy of the writ petition has been supplied, opposes the petition.

I have heard learned counsel for the parties and have gone through the file with their able assistance. However, I do not find any ground whatsoever to interfere in this writ petition, at this stage. It is a settled position that the terms and conditions in a transfer policy cannot vest an employee with an enforceable right. No *mala fide* is alleged in this petition. Reference in this regard can gainfully be made in this regard to decision of Hon'ble Supreme Court in ***Union of India Vs. S.L. Abbas 1995(4) SCT 455***. Reference can also be made to order dated 16.09.2020, passed by a co-ordinate Bench, in ***CWP-14471-2020***.

It is brought to my notice that as per Clause 6 of the Policy, there is a provision for an employee aggrieved with the transfer process to represent to the Department, after joining at the new place of posting and within 15 days of issuance of order before the grievance redressal forum to be provided by the Department.

Mr. Ashish Yadav, Addl. A.G., Haryana confirms that the grievance redressal forum is in place and in case a representation is submitted even as on date, the same shall be considered by the Department in accordance with law.

Keeping in view the facts and circumstances of the matter, this writ petition is disposed of with a direction to the competent authority/forum to consider the present writ petition as a representation by the petitioners and decide the same within a period of two weeks from receipt of certified copy of this order.

Writ petition is disposed of accordingly. Needless to say there is no expression of opinion on the merits of the controversy.

09.11.2020

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No