

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

117

CWP-19711-2020(O&M)

Date of Order:19.11.2020

RAJESH DAHIYA AND ORS

..Petitioners

Versus

STATE OF HARYANA AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shranav Katyal, Advocate,
for the petitioners.

Ms. Shruti Jain, DAG, Haryana

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conference, on account of restricted functioning of the Courts.

The petitioners, who are 11 in number, are working as Junior Basic Teachers (hereinafter referred to as 'JBT'), in School cadre with Education Department, Haryana.

The petitioners through the present writ petition have sought quashing of order dated 15.11.2020, being contrary to a previous order passed by the High Court on 14.08.2020, in Civil Writ Petition No.22361 of 2019. The petitioners are working in District Cadre posts. A policy notified by the Government, so as to enable such employees to go back to their home district, was the subject matter of challenge before this court in the afore-said writ petition which has been decided. The operative part of the order reads as under:-

Undoubtedly, normally a court would refrain from

interfering in a policy framed by the Government exercising executive powers, even as per well settled law which need not be detailed here; however, it is equally well settled that if a particular policy is wholly arbitrary in any particular aspect, then the court would interfere to ensure that arbitrariness is done away with.

It must be stated that the learned Advocate General, Haryana, has very fairly stated that the 'State being a neutral employer', has promulgated the policy for the benefit and welfare of its employees and as such it would not affect the State in either manner as regards this court deciding on any particular aspect of the policy.

Consequently, having considered the matter, in my opinion, the policy allowing an option for the 2nd time to those who have already obtained their first preference choice at any time during their service, is arbitrary; and they should not be given another 'right' to exercise their first preference over and above those who have joined service recently and have exercised their choices as was their right to do even at the time of filling in their forms in the selection process, which again is not a factual position that is denied by either side.

Mr. Patwalia, learned Senior Counsel, as also other learned counsel appearing for the petitioners, have submitted that preference of cadre is necessarily to be exercised right at the time of filling in the forms at the initial stage of the selection process itself; and consequently all petitioners and in fact all employees who have participated in the selection process in the past 10 years at least, had filled in the forms accordingly, giving their choices of preferences up to the 6th place (as required by the form), but with a lot of the petitioners not having been allotted a cadre as per such choice.

Thus, in the opinion of this court, since a choice of cadre is to be given as part of the initial selection process itself, such choice is necessary to be considered by Government at the very beginning of each teachers' service and therefore, ignoring that choice to give an option again to those who have already been given their first preference once when they entered service, is extremely arbitrary, just because they have completed 8 years of service on their preferred place of posting. That alone would not entitle them to give a preferred option again, over and above those who have entered service later but have never been given their first choice of cadre, with the latter even having given their preference at the time of filling in the forms at the beginning of the selection process itself.

If of course, once those who are junior have been given their preferred cadre of choice, thereafter

obviously the seniors who are wanting a change of cadre again, can be adjusted on the remaining vacancies in the cadres of their choices, as they chose to do after 8 years of service.

It also needs to be noticed that different counsel for the petitioners have also submitted that in fact though some selection processes started more than 8 years ago (or about 8 years ago), i.e. in the year 2012, they actually did not finally conclude till much later because of challenges made before this court to different aspects of the selection processes at different points of time by the candidates, leading to a delay in the final selection being announced.

Hence, they submit that even those who were supposed to be selected by the selection process of the year 2012, actually may not have completed 8 years of service as of today.

Keeping in view all the above, the direction already issued hereinabove is reiterated while disposing of these petitions, i.e. that all seniors employees, whether they are senior by way of an earlier selection process, or by virtue of being higher in the merit list in a particular selection process, would naturally be given preference of a first choice of selection of their cadre, over and above all their juniors, only once, after which the case of each junior would be considered in relation to all seniors for allotment of cadre of first preference, and thereafter each junior would be granted his/her first preference choice, and if that first preference is not available then each junior would be given the second/third/fourth preference downwards, as per availability of vacancies in each cadre, depending upon the number of vacancies consumed by exercise of first preference by the seniors.

Thereafter, after all employees have been adjusted as above, after exercising their option for the first time, the remaining vacancies would be given (again seniority wise) to those who had been already given their first preference earlier, if they wish to still change their cadre again, after 8 years.

For example, if a person selected in the year 2012, had given his first preference as District Ambala and was allotted that district, and thereafter wants to now change his district to Kurukshetra, he would not be given preference to do so if any person junior to him (i.e. selected by a subsequent selection process), has also given District Kurukshetra as his first preference. In such a situation, it would be the subsequent selectee who would be first adjusted at District Kurukshetra and only thereafter, after all first preference vacancies of subsequent selectees have been adjusted in District

Kurukshetra, then the person earlier selected (in the year 2012 or before) who had already been granted his district of first preference earlier, would be adjusted on the remaining vacancies in Kurukshetra.

The exercise of allotment of cadres in the aforesaid manner, be carried out within a period of three months from today.

Any changes required to be made in the policy under consideration be made by the respondent State accordingly.

These petitions stand disposed of in the aforesaid terms.

Since all learned counsel were heard by way of video conferencing, and there were many counsel, if anything has been missed out by this court, any such counsel would be at liberty to file an appropriate application to bring to the notice of this court what has been missed out, which naturally would be considered on its own merits, after giving notice to all other counsel.

A copy of this order be placed on the file of the other connected matters too.”

Learned counsel for the petitioner contends that after the order was passed by this court, the respondents have not adhered to the directions issued in the order dated 14.08.2020 and have re-issued the previous orders of posting.

Ms. Shruti Jain, Deputy Advocate General, Haryana, has submitted that the directions issued by this order in the order dated 14.08.2020, have been complied with in letter and spirit.

Attention of the court has not been drawn to any specific instance proving violation of the judgment referred to above.

Keeping in view the aforesaid facts, no further order is required to be passed.

The present petition is disposed of.

November 19, 2020

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Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)

JUDGE

: Yes/No

: Yes/No