

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

223/39)

Date of Decision: 14.08.2020

1)

CWP no.22361 of 2019 (O&M)

Sapna Devi and others

...Petitioners

Versus

State of Haryana and others

...Respondents

2)

CWP no.24582 of 2019(O&M)

Sumit Rohilla and others

...Petitioners

Versus

State of Haryana and others

...Respondents

3)

CWP no.14249 of 2019(O&M)

Pushpa Dabas

...Petitioner

Versus

State of Haryana and another

...Respondents

4)

CWP no.23713 of 2019(O&M)

Anita Devi

...Petitioner

Versus

State of Haryana and another

...Respondents

5)

CWP no.23832 of 2019(O&M)

Ravinder Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

6) CWP no.24162 of 2019(O&M)

Nirmala and another ...Petitioners

Versus

State of Haryana and others ...Respondents

7) CWP no.24751 of 2019(O&M)

Mohit Batra and others ...Petitioners

Versus

State of Haryana and another ...Respondents

8) CWP no.25009 of 2019(O&M)

Monika and others ...Petitioners

Versus

State of Haryana and another ...Respondents

9) CWP no.25025 of 2019(O&M)

Sunder Singh ...Petitioner

Versus

State of Haryana and others ...Respondents

10) CWP no.25497 of 2019(O&M)

Balbir Singh and others ...Petitioners

Versus

State of Haryana and another ...Respondents

11) CWP no.26691 of 2019(O&M)

Vikas and others ...Petitioners

Versus

State of Haryana and others ...Respondents

12) CWP no.27232 of 2019(O&M)

Rishi Raj ...Petitioner

Versus

State of Haryana and others ...Respondents

13) CWP no.27251 of 2019(O&M)

Anita ...Petitioner

Versus

State of Haryana and others ...Respondents

14) CWP no.27254 of 2019(O&M)

Manjeet Singh ...Petitioner

Versus

State of Haryana and others ...Respondents

15) CWP no.27255 of 2019(O&M)

Sushil Muwal ...Petitioner

Versus

State of Haryana and others ...Respondents

16) CWP no.27318 of 2019(O&M)

Jyoti ...Petitioner

Versus

State of Haryana and others ...Respondents

17) CWP no.27319 of 2019(O&M)

Sushma Devi ...Petitioner

Versus

State of Haryana and others ...Respondents
18) CWP no.27320 of 2019(O&M)

Surender Kumar ...Petitioner
Versus

State of Haryana and others ...Respondents

19) CWP no.27344 of 2019(O&M)

Rakesh Kumar ...Petitioner
Versus

State of Haryana and others ...Respondents
20) CWP no.27350 of 2019(O&M)

Ashok Kumar ...Petitioner
Versus

State of Haryana and others ...Respondents
21) CWP no.25863 of 2019(O&M)

Geeta Rani ...Petitioner
Versus

State of Haryana and others ...Respondents
22) CWP no.27354 of 2019(O&M)

Braham Singh Snehi ...Petitioner
Versus

State of Haryana and others ...Respondents
23) CWP no.27352 of 2019(O&M)

Om Singh ...Petitioner
Versus

State of Haryana and others ...Respondents
24) CWP no.27417 of 2019(O&M)

Vinod Kumar and others ...Petitioners
Versus

State of Haryana and others ...Respondents
25) CWP no.27695 of 2019(O&M)

Sukhwinder Singh ...Petitioner
Versus

State of Haryana and others ...Respondents
26) CWP no.34670 of 2019(O&M)

Manju Rani and another ...Petitioners
Versus

State of Haryana and another ...Respondents
27) CWP no.829 of 2020(O&M)

Baljeet Kumar and another ...Petitioners
Versus

State of Haryana and others ...Respondents

28) CWP no.5024 of 2020(O&M)

Mohini Gaur ...Petitioner
Versus

State of Haryana and others ...Respondents
29) CWP no.23763 of 2017(O&M)

Pawan Kumar and others ...Petitioners
Versus

State of Haryana and others ...Respondents
30) CWP no.8126 of 2020(O&M)

Sonia Pawar ...Petitioner

Versus

State of Haryana and others ...Respondents
31) CWP no.31988 of 2019(O&M)

Darshana Devi and others ...Petitioners
Versus

State of Haryana and another ...Respondents
32) CWP no.9600 of 2020(O&M)

Manju Bala and others ...Petitioners
Versus

State of Haryana and others ...Respondents
33) CWP no.9331 of 2020(O&M)

Ram Singh and others ...Petitioners
Versus

State of Haryana and others ...Respondents
34) CWP no.9349 of 2020(O&M)

Praveen Kumar and others ...Petitioners
Versus

State of Haryana and others ...Respondents
35) CWP no.9599 of 2020(O&M)

Ravinder Singh and others ...Petitioners
Versus

State of Haryana and others ...Respondents

36) CWP no.10064 of 2020(O&M)

Darshna Basik ...Petitioner

Versus

State of Haryana and others ...Respondents

37) CWP no.10157 of 2020(O&M)

Madhu and another ...Petitioners

Versus

State of Haryana and others ...Respondents

38) CWP no.10163 of 2020(O&M)

Sonu Bainsla ...Petitioner

Versus

State of Haryana and others ...Respondents

39) CWP no.8765 of 2020(O&M)

Manbir Singh and another ...Petitioners

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. D.S.Patwalia, Senior Advocate, with
Mr. B.S. Patwalia, Advocate, and
Mr. Sunil Nehra, Advocate,
Mr. Anurag Goyal, Advocate,
Mr. Tej Pal Dhull, Advocate,
Mr. R.R. Kaushik, Advocate,
Mr. Jasbir Mor, Advocate,
Mr. Vikram Sheoran, Advocate,
Mr. Sandeep Thakan, Advocate, for the petitioners.
Mr. R.K. Chaudhary, Advocate for Mr. Jagbir Malik, Advocate,
for the private respondents in CWP no.22361 of 2019.
Mr. B.R. Mahajan, Advocate General, Haryana with

Ms. Shruti Jain, DAG, Haryana.

Amol Rattan Singh, J.

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By these petitions, the petitioners who are Primary Teachers (PRTs), challenge the Cadre Change Policy issued by the Government of Haryana, on 06.08.2018, on the ground that they are not being posted to the districts/places of posting that they had opted for either at the time of the selection process itself, or as per any choice exercised thereafter.

Though detailed pleadings have been submitted in each case, the complete details thereof are neither feasible to be repeated here nor is it even necessary, in view of the fact that all learned counsel appearing for the petitioners in these cases are *ad idem* that the essential grievance is as aforesaid.

The grievance of most of the petitioners is to the effect that some of those who were selected in the selection processes that culminated earlier (or were started earlier to their own selection process), i.e. the selectees of the previous batches (their seniors), are being given a choice of posting for the second time and therefore those petitioners who are junior to them, are not being allotted the districts/places of their own choice even once.

Some of the petitioners are aggrieved of the fact that juniors to them in their own batch, i.e. those who were selected along with them but were lower in the merit list, have been given their choice of postings to various districts/places, whereas those senior in the merit list have not been

given 'their first preference choices'.

All learned counsel are again *ad idem* that at the time of opting for the district of posting/place of posting, six preferences are to be given.

Notice of motion having been issued in these petitions, the respondent State of Haryana has filed a reply to CWP no.22361 of 2019, which also all counsel are *ad idem* would suffice as the reply to all petitions.

In the said reply, the details of litigation previously existent, as regards the selection processes in different years, has been given, along with orders passed by this court from time to time in such previous litigations.

Essentially, as regards the issue in question as described hereinabove, it has been stated in paragraph 17 of the preliminary submissions, that those teachers who have rendered service out of their home districts for the past 8 years, are entitled to a preference of posting to their home districts over the employees appointed much later; and that those (senior) employees are therefore also necessary parties to the petition.

It has been further stated (reference para 17 of the reply on merits), that as per the aforesaid policy of 2018, only those district cadre teachers who are working on regular basis and have completed three years of regular service in the Elementary Education Department of the Government of Haryana, have been held eligible to participate in the Cadre Change Policy Drive of 2018 and with the petitioners neither having been confirmed in service, nor having completed three years regular service, they are not entitled to impugn the order dated 23.08.2019 (in CWP no.22361 of 2019), vide which their request for a transfer has been rejected.

As already observed hereinabove, though the history of previous litigation has been detailed in the written statement, that is not

considered necessary to be gone into detail in this order, because all learned counsel for the petitioners, including Mr. Patwalia, learned Senior Counsel, appearing for some of them, as also Mr. B.R. Mahajan, learned Advocate General, Haryana, have addressed arguments in detail and eventually this court has put a query to the learned counsel, as to why a pragmatic approach should not be taken by allowing transfers of seniors prior to juniors (whether senior in the same batch or by way of prior selection) who have not already, at any time, obtained district cadres of their first preference at any time, upon entering into service.

Though Mr. Mahajan, learned Advocate General, Haryana, has submitted that the policy also allows those who have remained in a particular cadre for 8 years to exercise their option again for their home cadre, however, I am of the opinion that those who had opted for a particular cadre at the time of entering into service or anytime thereafter, and have already got the cadre of their first preference, should not be allowed to exercise their preference again prior to all other employees who have been recruited later up till this time. That is to say, if any senior had given a first preference for a particular cadre and has already obtained it, he/she cannot again be allowed to exercise his/her option simply because he/she put in 8 years of service, over and above those who have not ever been given their first preference.

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.

14.08.2020

(AMOL RATTAN SINGH)

vcgarg

JUDGE

Whether reasoned/speaking: Yes

Whether reportable: Yes