

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

1. CWP No. 28707 of 2019

Manish Kumar **...Petitioner**
versus

State of Haryana and others **..Respondents**

2. CWP No. 28784 of 2019

Nisha **...Petitioner**
versus

State of Haryana and ors. **..Respondents**

3. CWP No. 28790 of 2019

Ritu Kaushik **...Petitioner**
versus

State of Haryana and others **...Respondents**

4. CWP No. 28793 of 2019

Vandana Jangra **...Petitioner**
versus

State of Haryana and others **...Respondents**

5. CWP No. 29027 of 2019

Mrs. Teenu and ors. **...Petitioners**
versus

State of Haryana and others **...Respondents**

Date of Decision: 17.01.2020

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Goyat, Advocate,
Mr. Parmod Chauhan, Advocate and
Mr. S.K. Kaushik, Advocate
for the petitioners

Ms. Shruti Jain, D.A.G. Haryana

RITU BAHRI, J.

This order shall dispose of the above five petitions as common question of facts are involved in all the petitions wherein challenge is to impugned transfer orders dated 22.08.2019 & 13.09.2019. However, the facts are being taken from CWP No. 28707-2019.

On notices of the petitions, separate written statements have been filed by Joint Director on behalf of respondent Nos. 1 and 2 in the Court today and the same are taken on record.

On 06.03.2019, petitioner was appointed and joined the department of Secondary Education, Haryana as PGT/Lecturer Mathematics in Government Senior Secondary School, Sandwa (382), District Bhiwani. Thereafter, as per list issued on 15.08.2019 (P-2), petitioner was held eligible for transfer and was forced to participate in the general transfer despite the fact that the petitioner had not completed 05 years of service at the above said school. The petitioner participated in the transfer drive and gave the preference of about 48 schools (P-3). Subsequently, he was transferred vide order dated 22.08.2019 from Government Senior Secondary School, Sandwa (382), District Bhiwani to Government Senior Secondary School, Baghpur (1123), District Palwal.

Learned counsel for the petitioners inter alia contends that that transfer of the petitioner is liable to be set aside on the following grounds:-

“(a) That when the petitioner was appointed, he was not given the station of his choice as the preference given by him in the application form.

(b) He has not completed 05 years of service and thus the transfer is against transfer policy dated 05.06.2017 (P-4).

(c) Petitioner has been forcible asked to participate in the transfer drive.

(d) After taking his option again, he has been transferred on the plea that it is in the interest of students rationalisation distribution of post.

(e) Petitioner after his transfer, has given a complaint on 27.08.2019 (P-6) and without deciding that complaint, he has been transferred.

However, learned State counsel on the other hand has referred to written statement filed by Joint Director today wherein it has been stated that Government of Haryana framed Teachers Transfer Policy, 2016 dated 29.06.2016 and the same was amended on 01.06.2017. Thereupon, transfers were made under this amended policy of 2017. Under this policy, all Government schools have been categorized into seven zones for the purpose of transfer of teachers and the teacher is eligible to opt any number of schools across the zones available to him, across the district in the State. Further the General Transfer Drive, 2019 was conducted in furtherance of the guidelines as laid down vide Teachers Transfer Policy, 2016, as amended on 01.06.2017 whereby it has been clearly mentioned vide para 5 that transfer/posting necessitated by promotions/direct recruitment, posts needed to be filled up in public interest, can be made any time. Further para 8 (1) (b) which defines “Deemed Vacancy” also lays down that a “post occupied by a teacher given temporary manual posting due to non-availability of online drive shall be deemed to be a “deemed vacancy” for the purpose of Transfer Drive.”

It has been further stated in the written statement that the petitioners had been given temporary manual posting due to non-availability of the transfer drive at that time. Further while the stations are allocated to

the newly appointed teachers, it is clearly mentioned in their appointment

letters, that “ It may also ensure that he/she completed his/her MIS Profile from the station where he/she is being posted temporarily, so that, he/she can opt for further posting in the next phase of transfer drive”. In the appointment letter of the petitioner, it has been clearly mentioned that he has been appointed temporarily and therefore, he has been rightly posted vide next transfer drive.

Learned counsel for the petitioner has referred to appointment letter dated 06.03.2019 (P-1) to contend that the appointment letter did not contain any condition and only the general directions have been issued on 12.01.2019 that the teachers have been posted temporarily so that he can opt for further posting in the next phase of transfer drive. While referring to transfer policy dated 05.06.2017 (P-4), learned counsel further contends that as per Clause 8 (b) (ii), voluntary deemed vacancy means a post occupied by such teacher who has been adjudged eligible and allowed to participate in general transfer drive even if he is not eligible otherwise on the minimum tenure criteria.

The petitioner has been asked to participate in the General transfer drive forcibly and thus the impugned order is liable to be set aside.

Heard learned counsel for the parties at length.

The present petitions deserves to be dismissed and reference at this stage can be made to transfer policy dated 05.06.2017 (P-4) wherein clause 8 (i) (b) and (ii) of the policy reads as under:-

(i) xxxx

(b) *Deemed Vacancy:-*

(i) *Involuntary deemed vacancy: A post of any cadre (teaching*

school education department in a regular capacity for a period of five years or more on the qualifying date in present zone of posting: or

A post occupied by a teacher given temporary manual posting due to non-availability of online transfer drive or technical problems or compulsions of administrative or litigational nature. However, it will not include the posts occupied by teachers who become duly posted as an outcome of the grievance redressal mechanism of general transfer drive.

(ii) Voluntary Deemed Vacancy:- A post occupied by such teacher who has been adjudged eligible and allowed to participate in general transfer drive even if is not eligible otherwise on the minimum tenure criteria.

(ii) Some vacancies of all categories of teachers may remain unfilled at any given point of time due to shortage of teachers in the department. To avoid disproportionate concentration of teachers in some schools, the department may block some actual vacant pots to be kept vacant in the transfer drive.

Thus, in view of clause 8 (i) (b) and (ii) of transfer policy dated 05.06.2017 (P-4), even if the petitioner had not completed 05 years of service in a particular school, he has been rightly asked to participate in the general transe driver and was transferred. Hence the vacancy on which the petitioner was posted temporarily will be taken by Voluntary Deemed Vacancy as he has been adjusted being eligible and freshly appointed and as per endorsement made on 06.03.2019 on the appointment letter of the petitioner (P-1), the District Education Officer was directed to ensure that the applicant

Completed his/her MIS Profile from the station where he/she is being posted

temporarily so that he/she can opt for further posting in the next phase of transfer drive.

Hence the argument of learned counsel for the petitioner that the petitioner has been forcibly asked to participate in the transfer drive is rejected.

Further a bare perusal of Annexure P-4 shows that decision of allotment to a vacancy shall be based on the total composite score of points earned by a teacher out of 80 points as described below. The teacher earning highest points shall be entitled to be transferred against a particular vacancy.

Learned State counsel has further shown letter dated 27.08.2019 written by Director Secondary Education, Haryana Panchkula to all DEOs/ DEEOs/BEOs/BEEOs etc regarding General Transfer 2019. This letter is taken on record as Annexure A-1. As per this letter, teacher aggrieved from the General Transfer Drive shall register their grievance on Sugam Sampark Portal only under Transfer Drive 2019, after joining of new place of posting. The grievance can be registered by visiting the website of the department. No manual applications will be entertained.

In view of the above factual position, at this stage, no ground is made out for setting aside impugned transfer orders dated 22.08.2019 & 13.09.2019, as the same are passed in accordance with law.

The writ petitions are dismissed. However, the petitioners are at liberty to pursue their remedy, in accordance with law, keeping in view letter dated 27.08.2019 (A-1).

(RITU BAHRI)
JUDGE

17.01.2020
G Arora