

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 8893 of 2021

Date of Decision: 23.04.2021

Vijay Kumar

... Petitioner(s)

Versus

State of Haryana and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikram Sheoran, Advocate
for the petitioner.

Anil Kshetarpal, J.

The petitioner claims that he was appointed as a J.B.T. Teacher (Junior Basic Trained Teacher) in the State of Haryana pursuant to a recruitment notice issued in the year 2012. The petitioner is stated to have joined at Sirsa in the year 2012. A J.B.T. Teacher is a district cadre post. Thus, the transfer can only be within the district. The State of Haryana, in order to redress the grievances of various primary teachers (J.B.T. Teachers) formulated a cadre change policy on 06.08.2018. The aforesaid policy was challenged by filing various writ petitions. The Court, vide judgment dated 14.08.2020 in *Sapna Devi and Others v. State of Haryana and Others* (Civil Writ Petition No. 22361 of 2019) disposed of the writ petition with certain directions, which are extracted as under:

“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”.

2. Pursuant to the aforesaid directions, it appears that the State has now proceeded to implement the directions.

3. However, when the State Government has started to take steps to implement the directions, the petitioner assails the correctness thereof. On a careful reading of the communications dated 15.11.2020 and order dated 20.04.2020 , it is apparent that the Director General, Elementary Education, Haryana, has directed the officials to implement the previous transfer orders of 2554 JBT teachers, appointed in the years 2004, 2008 and 2011. It is not in dispute that the name of the petitioner is not amongst the aforesaid teachers who have been transferred. The petitioner apprehends that if the

aforesaid transfer orders are implemented, then the posts would be filled up and his chances to get the district of his choice would get reduced.

4. In the considered view of this Court, the writ cannot be entertained merely on the basis of apprehensions. The Court has already issued directions after considering all the aspects of the matter. Keeping in view the aforesaid facts, the writ cannot be issued merely on the basis of the aforementioned apprehension.

5. Before concluding, this Bench is compelled to express its anguish. A reading of the pleadings of the writ petition leaves much to desire. The petitioner has not followed the well settled rules of pleadings. It is expected that the petitioner should state the facts in an ordinary manner. However, while reading the petition, the Court has been left with an impression that it is a result of patch work. In para 2, the petitioner has tried to highlight his grievance. Thereafter, from a careful reading of the pleadings in the subsequent paragraphs, it is apparent that they travel from one direction to another without clear linkage. The pleadings are so ambiguously drafted that in order to dig out the facts, the Court is made to read in between the lines.

6. Keeping in view the aforesaid facts, the members of the Bar are requested to follow the well established rules of pleadings.

7. With the observations made above, the writ petition is dismissed.

(Anil Kshetarpal)
Judge

April 23, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No