

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

**Civil Writ Petition No. 10471 of 2021 (O&M)
Date of Decision: 28.05.2021**

Renu Bala and others

..... Petitioners

Versus

The State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

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

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

[1] The seven (07) petitioners, namely, *[1] Renu Bala; [2] Lakhbir Singh; [3] Pankaj Kishore; [4] Meenu Devi; [5] Harpreet Singh; [6] Pritpal Singh; and [7] Bimal Rani*, who are working as primary teachers in various Government schools in State of Punjab, have filed the present writ petition challenging Clause 6 of the Teachers Transfer Policy dated 25.06.2019 (**Annexure P-1**) and the transfer process arising therefrom, especially the order of transfers dated 06.02.2021 (**Annexure P-3**) and 05.04.2021 (**Annexure P-9**) issued by respondent No. 2, i.e. the Director, Education Department (E.E), Punjab.

[2] It is argued by counsel for the petitioners that under Clause 6 of the calculation of points on the basis of which transfer of the teachers are to be made, is highly discriminatory. According to him, although weightage of 40 points has been given to the teachers on the basis of their performance

but less points are awarded to primary teachers, i.e teachers teaching I to IV

whereas higher marks have been given to teachers teaching class V and therefore the clause is discriminatory in nature. It is further argued that whole process of transfer is full of lacunas and flaws as the online portal shows incorrect figures of vacant posts which are lying vacant. Due to incorrect data on the portal, place of postings have been given of the stations where no post is lying vacant. It is also argued that despite objections having been called by the respondents from the teachers, no action has been taken on said objections/ representations and instead respondents are continuing with the transfer process and this action has already been put to challenge in *CWP No. 8288 of 2021*.

[3] We have heard learned counsel for the petitioners at length and scrutinized the paper book.

[4] In the present case, since petitioners have laid challenge to Clause 6 of the Transfer Policy, therefore, it would be apposite to reproduce the same alongwith **Annexure-B** for ready reference:

“ 6. CRITERIA FOR DECIDING THE CLAIM AGAINST VACANCY:

- (i) Decision of allotment to a vacancy shall be based on the total composite score of points earned by a teacher, out of 250 points as described below. The teacher earning highest points shall be entitled to be transferred against a particular vacancy.*
- (ii) Length of Service shall be the prime factor for deciding the claim of the teachers against a vacancy since it shall have weightage of 95 points as per para 6 iii (a), out of total 250 points.*
- (iii) However, to take care of categories like women, widows, widowers, differently abled persons, persons with serious ailments and well performing teachers, a privilege of maximum 50 points can be availed by the teachers of these*

categories. The division of points shall be as given in para 6 (iii)(a), 6 (iii) (b) 6 (iii) (c) and 6 (iii) (d) below:-

a) Length of Service (95 Points)

Major Factor	Criteria for calculation	Maximum Marks
Service Points In various zones	$(Z1 \times LOS1 + Z2 \times LOS2 + Z3 \times LOS3 + Z4 \times LOS4 + Z5 \times LOS5) / \text{Total LOS}$ $Z1=10, \quad Z2=20, \quad Z3=30, \quad Z4=40, \quad Z5=50,$ $LOS1= \text{Length of Service in Zone 1 in Days}$ $LOS2= \text{Length of Service in Zone 2 in Days}$ $LOS3= \text{Length of Service in Zone 3 in Days}$ $LOS4= \text{Length of Service in Zone 4 in Days}$ $LOS5= \text{Length of Service in Zone 5 in Days}$ $LOS \text{ is Length of service in days}$	50
Length Of Service	$(\text{Total length of service in Punjab Education Department in days}) / 365$ (upto 4 decimal points) Note: If the marks exceeds 35 then the teacher will get 35 marks	35
Age	Age will be calculated on 31st March of every year. A teacher having completed age of 48 years will get 1 mark, 49 years will get 2 marks and so on. Maximum marks will be 10	10

b) Special Category (50 marks):

<i>Sr No</i>	<i>Major Factor</i>	<i>Sub Factor</i>	<i>Maximum Points</i>	<i>Criteria for calculation</i>
1	Gender	Female	10	10 points will be given to female teachers
2	Special Category female teachers	Widow/ divorced/ unmarried female/ wife of serving Military personal/ Paramilitary personal working outside the State	10	All females of this category shall be given 10 marks only.
3	Special Category male teachers	Widower (A male who has lost his wife and has not re-married) and has one or more minor children and/ or unmarried daughter (s)	5	Eligible male widowers shall be given 5 points only, (in case remarriage of self/children becoming major/ daughter getting married, the employee will have to update his profile in the MIS and will not be eligible for the advantage any more
4	Differently abled persons	Vision (Above 60% disability)	10	Certified by Civil Surgeon from the State of Punjab or Equivalent Authority or as per list of medical colleges at Annexure A
		Locomotors above 60 % disability)	10	
		Persons on wheel chair	10	
5	Diseases of “Debilitating Disorders” (i.e. cancer, chronic renal failure, thalasemia, sickle cell anemia, Hepatitis (B and C)	Self Spouse/ unmarried Children	10	Certified by Civil Surgeon from the State of Punjab or Equivalent Authority or as per list of medical colleges at Annexure A

Sr No	Major Factor	Sub Factor	Maximum Points	Criteria for calculation
6	<u>Differently abled</u> or <u>mentally challenged</u> children	Men/ women having Mentally challenged children with IQ below 70 or 100% differently abled child	10	Men/ Women teachers having mentally challenged or 100% differently abled children provided maximum 10 points
7	If both husband and wife are working in State/ Central Govt or PSU	In case both husband and wife are working at places at a distance more than 15 km.	5	

c) Well performing teachers (90 marks)

Sr No	Major Factor	Sub Factor	Maximum Points	Criteria for calculation
1	Well performing teachers	Teachers giving good results in last board exam or under Learning Enhancement Programme (Padho Punjab Padhao Punjab)	40	As per Annexure B
2	Grading of school of posting		10	(Grading Marks of School)/10 and maximum marks will be 10
3	Annual Confidential Report		20	Marks obtained in ACR/5 and maximum marks will be 20
4	Teachers seeking transfer from Zone 1, 2 and 3 to zone 4 and 5		20	For transfer to zone 5 from Zone 1, 2 and 3=20 marks For transfer to Zone 4 from Zone 1, 2 and 3 = 10marks
	Total		90	

Note: The average of last five years of results will be considered.

d) Ward of a Teacher studying In Government school (15 marks)

<i>Sr No</i>	<i>Major Factor</i>	<i>Sub Factor</i>	<i>Maximum Points</i>	<i>Criteria for calculation</i>
<i>1</i>	<i>Ward of a Teacher enrolled/ studying/ studied in Government School</i>		<i>15</i>	<i>For one child marks awarded will be $0.625 \times$ No of years studied in Government school</i> <i>For Two or more children marks will be the sum of marks awarded for each child as per criteria above. (Maximum marks 15)</i>

e) Excessive Leave

<i>Sr No</i>	<i>Major Factor</i>	<i>Sub Factor</i>	<i>Maximum Points</i>	<i>Criteria for calculation</i>
<i>1</i>	<i>Excessive Leave</i>	<i>Teachers taking any kind of leave more than 3 months during an academic year except maternity and child care leave</i>	<i>5</i>	<i>• For leave more than 3 months but less than 4 months during the preceding academic year (-1) mark.</i> <i>• For leave more than 4 months but less than 5 months during the preceding academic year (-2) mark.</i> <i>• For leave more than 5 months but less than 6 months during the preceding academic year (-3) mark.</i> <i>• For leave more than 6 months but less than 7 months during the preceding academic year (-4) mark.</i>

Sr No	Major Factor	Sub Factor	Maximum Points	Criteria for calculation
				For leave more than 7 months during the preceding academic year (-5) mark.

Note:

- Number of teachers belonging to Special Category as defined in Para 6(iii) (b) point 2 to 6 above, posted in one school shall not exceed 50% of the total sanctioned strength. Therefore, such teachers shall not be considered for transfer in a school already having 50% staff of Special Category.
- If husband and wife, both are working in School Education Department, the benefit of 10 points under para 6(iii)(b)(6) above can be claimed by only one of them.
- If two teachers obtain same score calculated upto 6 decimal places and if one of them is a female, then female will get preference. In case both are of the same gender, then the one senior in service will have preference. ”

“ **Annexure B**

Well performing teachers

Sub factor: Results of teachers

Formula for calculating of weightage as per Board results (Max 40)

Teacher’s Board Results

Below 50%	=	0 mark
50%	=	5 marks
51 % to 60%	=	10 marks
61 % to 70%	=	15 marks
71% to 80%	=	20 marks
81% to 90%	=	30 marks
91 % to 99%	=	35 marks
100%	=	40 marks.

Formula for calculation of weightage for Parho Punjab Parao subjects (maximum 40)

Above State Average of end line or any other term used for Paro Punjab Parao Punjab evaluation

0-5%	=	8 marks
5-10%	=	20 marks
11-15%	=	32 marks
16-20%	=	40marks

Below Average of end line

0-5%	=	(-) minus 2 marks
5-10%	=	(-) minus 5 marks
11-15%	=	(-) minus 8 marks
16-20%	=	(-) minus 10 marks

Lecturer / teacher Teaching Only Board Classes	Whole weightage will be for Board class as per formula above
Lecturer / teacher Teaching both Board, non board classes/ PPPP subjects	60% weightage will be for Board Classes and 40% for non board classes / PPPP subjects
Lecturer / teacher Teaching only non board classes / PPPP subjects	100% weightage will be average of non board classes / PPPP subjects

Formula for calculation for Subjects with grading (Max 40)

Grade	Multiplying factor	%age of students	Formula for calculation
A	40	X1	(X1x40)/100
B	30	X2	(X2x30)/100
C	20	X3	(X3x20)/100
D	10	X4	(X4x10)/100
E	0	X5	0
Total			

For Physical Education Teachers/ Lecturers

If any student of the school participates at National level then weight age will be 40, for State level weight age will be 30 and at District level weight age will be 20.

For teachers working as DMs/BMs/CMT/BMT/ District Coordinator PPPP marks will be allotted by the Director SCERT

*on the recommendation of District Education Officer (SE/EE).
(Maximum Marks will be 40)*

*For teachers working in the State Resource Group marks
will be allotted by the Administrative Secretary on the
recommendation of State Project Director or Director SCERT as
the case may be. (Maximum Marks will be 40)*

*For CHTs weightage will be on the basis of the average of
the Parho Punjab Parao Punjab results of the schools falling in
the cluster and the results will be compared with State Average. ”*

A perusal of the objective of the impugned policy dated 25.06.2019 **(P-1)** would show that same has been devised for distribution of human resources in an optimal manner to protect academic interest of students and maximize job satisfaction amongst employee in fair and transparent manner. In order to achieve the said objective and to obviate any undue influence, the education department has set out marks alongwith weightage to be given to the teachers. A teacher who secures highest marks is rewarded with the option to choose the school/ block of his liking. As far as grant of weightage is concerned, it is apparent that the respondent-department has a clear focus on uplifting the standard of education for the students studying in higher classes viz. Class V onwards as compared to the students studying in primary ones viz. upto Class IV. This decision of awarding higher marks to teachers from Class V onwards, to our mind, is based on reasonable classification and does not suffer from either any arbitrariness or irrationality or discrimination. There is always a line that is drawn by the department at the time of implementation of any policy, which usually becomes a bone of contention. The department, who is maintaining the entire data viz. number of students studying, teachers available,

percentage of result secured etc., is in a better position to take a call and we, while exercising powers under Article 226 of the Constitution cannot substitute our view on such decision. The Courts are required to refrain themselves from interfering in the decisions taken by administration, which are made applicable to all. It is only under exceptional circumstances that the Court can quash the administrative decisions, when it is clearly shown to be a result of arbitrariness or is of such nature that shocks the consciousness of the Court or is *mala fide*. Since the decision taken by the respondents is applicable to all teachers teaching in entire state of Punjab, therefore, the petitioners cannot claim any special prejudice being caused to them. Hence, the first argument raised by petitioners is rejected and it is held that Clause 6 read with **Annexure-B** of the Policy dated 25.06.2019 (**P-1**) does not require interference from this Court.

[5] As far as the factual assertions raised by the petitioners regarding posts been shown as vacant, which are factually not vacant is concerned, suffice to say that it is for the department to verify the ground position and take a call. In case there is no vacant post then there arises no occasion for any employee to work on an un-sanctioned post at a particular place. Even otherwise, no specific instance has been brought to our knowledge, which would compel us to even issue notice on this aspect. Thus, this argument is also rejected.

[6] As far as giving of representations/objections by teachers are concerned, again it is for the department to analyze and take a pragmatic view on the grievances raised by the employees. However, this alone cannot be a ground to set aside the entire transfer process. Be that as it may, in view

of the fact that this action is already under challenge in another writ petition bearing *CWP No. 8288 of 2021* pending consideration before learned Single Judge, we would like to refrain ourselves from entering into this controversy.

In view of the above, finding no merit, instant writ **petition** is ordered to be **dismissed**.

(JASWANT SINGH)
JUDGE

May 28, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>