

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

CWP No.11236 of 2021 (O&M)

Date of Decision: 23.11.2021

Meena Kumari and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Shashi Kumar Rattan, Advocate for the petitioners.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab
for the respondents.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for issuance of a writ in the nature of mandamus directing the respondents to implement the transfer orders dated 09.04.2021 & 22.03.2021, whereby both the petitioners were transferred to Govt. Primary School Ghumiara Khera and Govt. Primary School Sounke, Block Malout, District Muktsar, respectively.

(2) Facts are not in dispute.

(3) Initially, petitioners were appointed as Elementary Trained Teachers (ETT) and joined services w.e.f. 21.05.2002 & 01.01.2002, respectively. On 18.03.2020, they were promoted to the post of Head Teachers. After promotion, petitioner No.1 was posted at Govt. Primary School Sehna

Khera; whereas petitioner No.2 joined at Govt. Primary School Kakhanwali, District Sri Muktsar Sahib, Punjab.

Both petitioners are stated to be confirmed employees and have been performing their duties up to the entire satisfaction of the authorities.

(4) On 25.06.2019, State of Punjab issued Teachers Transfer Policy (*for short 'transfer policy'*). In pursuance thereof, petitioners applied through online mode for seeking transfer and they were transferred by the Director Public Instructions (Elementary Education), Punjab (*for short 'Director'*) while passing the above orders.

In nutshell, the petitioners have raised the grievance that they are not being allowed to join duties at new places in pursuance of their transfer orders by the Block Primary Education Officer (*for short 'BPEO'*).

(5) It is contended by learned Counsel that petitioners were promoted as Head Teachers on 18.03.2020; they have been transferred vide orders dated 09.04.2021 & 22.03.2021, respectively. However, these orders are not being implemented by the BPEO on the premise that petitioners had not completed the minimum stay of two years at their present places of postings before seeking transfer. Further contended that for a Head Teacher, the pre-condition of minimum stay of two years before seeking transfer has already been exempted by the respondents vide letter dated 27.05.2020. Also contended that similar transfer orders were duly implemented in the cases of other Head Teachers, who did not complete two years' stay at their earlier places of posting; hence, the action of respondents is not legally sustainable.

On the other hand, learned State Counsel opposed the contentions raised by the petitioners while submitting that in terms of clause 8(iv) of the

transfer policy, minimum stay of two years is pre-requisite for seeking transfer by a Teacher, including Head Teacher. Also submitted that inadvertently, the field office approved the data pertaining to the transfer of petitioners and on the basis thereof, transfer orders were issued by the Director. He again submitted that after rectification of the mistakes, above orders have been modified on 08.09.2021 to the extent that as and when the petitioners complete the stay of two years at their present places of postings, the transfer orders shall be implemented. Learned State Counsel specifically submitted that transfer orders of other Head Teachers, who did not complete the minimum stay of two years, have also been cancelled on 02.09.2021. Further submitted that letter dated 27.05.2020, granting exemption from requirement of three years' stay, is applicable to directly appointed Head Teachers, instead of promotees like petitioners. Lastly submitted that letter dated 27.05.2020 has also been withdrawn by the competent authority vide Memo dated 12.07.2021. Hence, prayed for dismissal of the writ petition.

(6) Heard learned Counsel for the parties and perused the paper-book.

(7) There is no dispute that petitioners were promoted to the post of Head Teachers on 18.03.2020 and they have been transferred vide orders dated 09.04.2021 & 22.03.2021, respectively. Thus, none of the petitioners had completed the period of two years' stay at the time of seeking transfer or even on the date of issuing their transfer orders.

(8) Clause 8(iv) of the transfer policy being relevant is extracted as under:-

“Minimum stay at a particular school for seeking transfer shall be two year. For newly appointed teachers minimum stay in

the school will be three years or probation period whichever is earlier.”

(9) Paper-book reveals that vide letter dated 27.05.2020, pre-condition of three years’ stay for directly appointed Centre Head Teacher and Head Teacher was dispensed with in the following terms:-

“3.0 *Direct recruited centre head teacher and Head teacher who has not completed three years at the present station has taken the plea and has requested that before recruited as Centre Head teacher and Head Teacher they have worked more than three years in the department. According to Item No.8(IV) of Teacher Transfer Policy 2019 stay of three years in the School for newly appointment teacher is essential and it is applicable for those who came in service first time and those do not have any experience in the education department. But these have worked in the department as teachers for more than three years. Besides this, these newly appointed on Administrative posts as Head Master, Principal, Block Primary Education Officer has been considered for transfer and these are not covered under Teacher Transfer Policy 2019. Keeping in view these reasons, directly appointed Centre Head Teacher and Head Teachers be given exemption from condition mentioned at item No.8(IV) of Teacher Transfer Policy 2019.*

4.0 *After considering the above, it is decided that newly appointed Centre Head Teacher and Head Teacher are exempted from the condition of three years stay mentioned at item No.8 (iv) of Teacher Transfer Policy 2019.”*

(10) Again, vide communication dated 12.07.2021, the exemption granted on 27.05.2020 has been withdrawn and the same reads as under:-

“1.0 *In reference and subject cited above newly Centre Head Teachers and Head Teachers were exempted from stay of 3 years*

under clause 8(iv) of Teacher Transfer Policy-2019, it is withdrawn.”

In view of the above, it is apparently clear that as on today, clause 8(iv) of the transfer policy stands restored to its original form.

(11) As per Clause 8(iv) of the transfer policy, before seeking transfer, a Teacher/Head Teacher should have completed minimum stay of two years at his place of posting; but concededly, none of the petitioners had completed that pre-condition at the time of seeking transfer. Although, it was claimed on behalf of the petitioners that requirement of two years' stay was exempted by the respondents vide letter dated 27.05.2020; but that has also been withdrawn by the respondents on 12.07.2021. Moreover, that exemption was made applicable only to directly appointed Centre Head Teachers/Head Teachers and not meant for the promotees. Hence, petitioners cannot take any benefit of the same.

(12) In para No.3 of the affidavit dated 15.09.2021, filed by Ms. Harinder Kaur, Director Public Instructions (EE), Punjab, it has been categorically submitted that the petitioners did not fulfill the pre-condition of two years' stay in terms of the clause 8(iv) of the transfer policy, but inadvertently, the BPEO approved the data pertaining to their transfer and sent the same to the deponent for making their transfer. The affidavit further reveals that deponent has already initiated the process for disciplinary action against the officers/officials, working at block primary level, who allowed the present petitioners to apply for online transfer contrary to the transfer policy and entire data along with service records of the employees are being checked-out.

Again in para 6 of the affidavit, it is clarified that due to pendency of the present writ petition, the error in passing the transfer orders dated

09.04.2021 & 22.03.2021 could not be rectified; but now, fresh orders dated 08.09.2021 have been passed. The Director has specifically undertaken that as and when the petitioners complete the minimum tenure of two years at the existing place of posting, their transfer orders shall be implemented without any delay.

(13) Although, learned Counsel for the petitioners vehemently contended that similar transfer orders were issued in favour of their co-employees, who did not complete minimum stay of two years; but the respondents while filing an additional affidavit of Ms. Prabhjot Kaur, DEO (EE), Sri Muktsar Sahib clarified that transfer orders of Manjit Singh and Manjit Kumar, Head Teacher/Center Head Teacher, respectively, have also been cancelled by the competent authority on 02.09.2021 and para 7 thereof reads as under:-

“That it is worthwhile to submit that the answering respondent sent a proposal to the Director Public Instructions (EE), Punjab, SAS Nagar, for cancellation the transfer order of the teachers who do not fulfill the condition no.8(iv) of the teacher transfer policy, 2019 and has successful for make the transfer. The Director Public Instructions (EE) Punjab, SAS Nagar vide its Order no.DPIEE-EST103/140/2021-ESTABLISHMENT-2-DPIEE dated 02.09.2021 and Order no.DPIEE-EST103/140/2021-ESTABLISHMENT-2-DPIEE dated 02.09.2021 has cancelled the transfer order of the aforementioned both teachers (A copy of the cancellation Order dated 02-09-2021 is annexed herewith as Annexure R-1 and R-2).”

(14) Undisputedly, the transfer orders in question of the petitioners have been modified by the Director while passing the identical modified orders on 08.09.2021 and relevant part of the order relating to petitioner No.1 reads as under:-

“In continuation of the Order/Application No.280299156021, dated 09-Apr-2021, these orders were passed in contrary to Transfer Policy 2019 inadvertently. Therefore, in order to rectify the error being committed earlier, the aforesaid order shall be deemed to be modified to the extent that the said orders shall be implemented whenever, the teacher would complete the two years tenure at existing place of posting as per Clause 8(iv) of Teacher Transfer Policy 2019.”

(15) A *fortiori*, law is well settled that transfer policies are mere guidelines for internal working of the department. This Court, after relying upon the judgments of the Hon’ble Supreme Court, reported as **(i) Shilpi Bose (Mrs.) and others Versus State of Bihar and others, 1991 Supp (2) SCC 659;** **(ii) Union of India and others Versus S.L. Abbas, (1993) 4 SCC 357** and **(iii) State of U.P. and others Versus Gobardhan Lal, (2004) 11 SCC 402**, while deciding CWP No.13925 of 2021, titled as “Ravinder Kumar and others Versus State of Punjab and others” vide order dated 28.07.2021, in para 21, *inter alia*, came to the conclusion that: -

“Transfer policy is merely a set of guidelines for the authorities concerned, without there being any legal backing; thus, the same is not legally enforceable under Article 226 of the Constitution except in the circumstances mentioned in para 10 (supra).”

For reference, the exceptional circumstances enumerated in para 10 of the order dated 28.07.21 can be recapitulated as under:-

- (i) where the transfer orders were made in violation of the Service Rules or;*
- (ii) based on mala fide ;*
- (iii) detrimental to the career of the employees;*
- (iv) any other analogous reason(s).*

Again in para 12 of the above order, it was observed that *“It is for the competent authority to decide as to who should be transferred; where to be transferred; and when to be transferred. Even if a transfer order is issued dehors the transfer policy or the policy has been ignored by an officer, the recourse open for the employee is to approach the higher authority. In case the superior authority comes to the conclusion that there is a violation of the transfer policy or the subordinate officer has disregarded the order passed by the higher officer without any justification, he may expose himself to the departmental action as per law.”*

(16) As a result of the above discussion, it is held that for smooth functioning of the administration, instead of interfering with transfer matters in routine, it would be appropriate to leave this arena to the competent authority until and unless the action complained has caused manifest injustice to the aggrieved person or non-interference by this Court shall result into failure of justice.

In the present case, petitioners have failed to substantiate that they have suffered an element of manifest injustice or non-acceptance of their prayer will result into failure of justice in any manner.

(17) Even otherwise, the petitioners are going to complete minimum stay of two years at their present places of postings in the month of March, 2022, therefore, this Court does not deem it appropriate to issue any mandate for implementation of the transfer orders dated 09.04.2021 & 22.03.2021.

(18) Consequently, after taking into consideration the affidavit dated 15.09.2021, filed by the Director, present writ petition is disposed off with direction to the respondents that both petitioners be allowed to join duties at

transferred places in terms of their respective modified orders dated 08.09.2021
after completion of two years’ stay.

Ordered accordingly.

Pending application(s), if any, shall also stand disposed off.

November 23, 2021

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes