

CWP-13925-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13925-2021 (O&M)
Date of decision : 28.07.2021

Ravinder Kumar and others

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. H.C. Arora, Advocate,
for the petitioners.

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 Certiorari for quashing the offending part of impugned orders (P-5/1 to P-5/26) whereby requests of petitioners for cancellation of transfer orders were accepted, but they have been “*debarred for applying for transfer again for the next three years*”.

2. Petitioners (total 26) are working as school teachers within the State of Punjab. On 25.06.2019, Government of Punjab, Department of School Education, framed Teachers Transfer Policy-2019 (P-2) (for short “transfer policy”). In pursuance of said policy, various teachers, including petitioners were transferred to different schools vide orders dated 24.03.2021 & 09.04.2021. Aggrieved against the transfer orders, some of the teachers felt aggrieved and as a result thereof, respondents issued public notice dated 13.04.2021 (P-3) for

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considering the requests of teachers for cancellation of transfer orders.

Last date for submission of online objections was fixed as 14.04.2021

and subsequently, extended uptill 02.07.2021 (P-4).

3. In pursuance of the above public notices (P-3 and P-4), petitioners made requests for cancellation of their transfer orders, which were accepted by respondents (P-5/1 to P-5/26); but they have been debarred from applying for transfer for a period of next three years; for reference, relevant part of P-5/1 is extracted as under:-

“O/o Director Public Instructions (EE), Punjab

Order No. : 913199163830-1

Date: 07-Jul-2021

Order

1.0 Sh./Smt. RAVINDER KUMAR has submitted online request for cancellation of his / her transfer vide order No.913199163830 dated 09-April-2021.

2.0 Keeping in view the above transfer of Sh. / Smt. RAVINDER KUMAR has been accepted with the condition that Sh. / Smt RAVINDER KUMAR is debarred for applying for transfer again for the next three years as per the Teacher Transfer Policy.

3.0 Orders issued by the department vide order No.913199163830 dated 09-April-2021 as per details below stands cancelled.

<i>S. No.</i>	<i>Staff ID</i>	<i>Name & Designation</i>	<i>From (Name of the school, District)</i>	<i>To (name of the School, District)</i>
<i>1</i>	<i>338416114</i>	<i>RAVINDER KUMAR – PRIMARY cadre (JBT/ETT)</i>	<i>GPS GHOLIA KHURD – MOGA</i>	<i>03150301805 GPS DHINGAR EGS - MANSA</i>

SD/-

Director Public Instructions (EE), Punjab

Date : 07-Jul-2021”

4. The only grievance of the petitioners is against the imposition of condition to apply for transfer for a period of next three years and not against the cancellation of their transfer orders.

5. Hence, the present writ petition.

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6. Learned counsel for the petitioners made following submissions:-

- (i) There is no provision under the transfer policy that in case a teacher seeks cancellation of transfer order, he/she would be debarred from applying for transfer for the next three years;
- (ii) In pursuance of public notices (P-3 and P-4), petitioners requested for cancellation of transfer orders, but were never made aware about the fact that they would be debarred to apply for transfer for a period of next three years; thus petitioners have been taken by surprise and as such the action of respondents is in violation of the principle of natural justice;
- (iii) In recent past, no such conditions have been imposed upon other similarly situated teachers while cancelling their transfer orders; hence the impugned orders are liable to be set aside being discriminatory in nature;
- (iv) Imposition of above condition for a period of three years is not only too harsh, but unconscionable also.

7. Heard learned counsel for the petitioners and perused the paper-book.

8. Petitioners are working as teachers on the post of *Elementary Trained Teachers (ETT), Center Head Teacher (CHT),*

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Masters/Mistresses and Lecturers; and they can be divided into following four categories:-

Category	Petitioner numbers	Post/Designation
A.	1, 2, 5, 6, 7, 10, 11, 13 16, 17, 19, 25, 26	ETT
B.	8	CHT
C.	3, 4, 9, 12, 14, 15, 18, 20	Masters/Mistresses
D.	21, 22, 23, 24	Lecturers

9. Service conditions of petitioners falling under categories 'A' & 'B' mentioned above are governed by ***Punjab State Elementary Education (Teaching Cadre) Group C Service Rules, 2018***; category 'C' is governed under ***Punjab Educational (Teaching Cadre) Group C Service Rules, 2018***; whereas category 'D' is covered by ***Punjab Educational Service (School and Inspection) Group B Service Rules, 2018*** (for brevity, above three sets of rules would be referred as “service rules”).

Also relevant to mention here that by virtue of Rule 9(1) of service rules of categories A & B as well as Rule 10(1) of categories C & D, common conditions of service have been prescribed for members of service under **Punjab Civil Services (General and Common Conditions of Service) Rules, 1994** (for short “common rules”); and above Rule 9(1) and Rule 10(1) of service rules being verbatim would read as under:-

“Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994. -
(1) In respect of the matters, which are not

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specifically provided in these rules, the members of the Service shall be governed by the provisions of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time.”

10. Since service rules applicable to the members of all four categories (A, B, C & D as mentioned in para 8 of this order) are silent about liability to serve, therefore, Rule 10 of common rules being most relevant can be pressed into service and which is as under:-

“10. Liability to serve - *A member of the Service shall be liable to serve at any place, whether within or out of the State of Punjab, on being ordered so to do by the appointing authority.”*

Perusal of Rule 10 of common rules makes it apparently clear that member(s) of service shall be liable to serve at any place i.e. within or outside the State of Punjab on being so ordered by the appointing authority. Undisputedly, service rules as well as common rules mentioned above have been framed under proviso to Article 309 of the Constitution; thus, being statutory in nature, are binding on the petitioners. In view of Rule 10 discussed hereinabove, so long as petitioners are members of service, they can be transferred by the competent authority at any point of time and petitioners would be bound to obey the same, until and unless, the transfer orders are made in violation of service rules or based on *mala fide* or detrimental to their career or any other analogous reason(s). It is nowhere discernable either from service rules, or from common rules that after a particular period,

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member(s) of service would be entitled for transfer at different place as a matter of right; rather it is for the competent authority to transfer any teacher(s) in the exigency of service.

11. Although, State of Punjab has framed transfer policy, but the same is not having any legal backing for seeking enforcement at the hands of petitioners by way of present writ petition. It is well settled that such policies are administrative in nature, just for guidance of the concerned authorities, but do not create any legally enforceable right in favour of an aggrieved person; except in the circumstances narrated in the previous para of this order i.e. in case of violation of statutory rules or *mala fide* etc. There is no argument raised on behalf of the petitioners that impugned orders have been passed in breach of the service rules or common rules applicable to the post(s) in question. In fact, the grievance has been raised that under transfer policy there is no such provision to impose the condition of debarring the petitioners for applying for transfer for a period of three years. Since there is neither any breach of service rules, nor of common rules, therefore, the condition imposed while issuing the impugned orders, would not give any cause of action to the petitioners for challenging the same under Article 226 of the Constitution.

12. It is for the competent authority to decide as to who should be transferred; where to be transferred; and when to be transferred. Even where transfer order is issued in contravention of the transfer policy or guidelines, the only recourse open for the aggrieved person would be to make a representation before the officer who issued the order or to the superior authority. In case, the superior authority comes

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to the conclusion that while issuing transfer order, the officer has disregarded the transfer policy without any justification, he/she may, invite the risk of departmental action; but undoubtedly, such violation of transfer policy would not give any legally enforceable right in favor of the employee.

13. Hon'ble Supreme Court while dealing with transfer matter of primary school teachers in **Shilpi Bose (Mrs.) and others Vs. State of Bihar and others, 1991 Supp (2) SCC 659** held as under:-

“4. In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders.”

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14. Reference can also be made to **Union of India and others Vs. S.L. Abbas, (1993) 4 SCC 357**, and para 7 of the same reads as under:-

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.”

15. Again Hon’ble Supreme Court while reiterating the legal position while dealing with transfer matters in **State of U.P. and others Vs. Gobardhan Lal, (2004) 11 SCC 402** held as under:-

“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as

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an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

16. Clause 8(iv) of the transfer policy talks about minimum stay for seeking transfer by a teacher and which is extracted hereunder:-

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“Minimum stay at a particular school for seeking transfer shall be two years. For newly appointed teachers minimum stay in the school will be three years or probation period whichever is earlier.”

Perusal of sub-Clause (iv) reproduced hereinabove reveals that minimum stay of two years is required for teacher(s) at a particular school before seeking transfer and for newly appointed teacher(s), this period has been fixed for three years. Under this sub-clause, there is no guidance available that after stay of two or three years or even more, teacher(s) would be entitled for transfer as a matter of right at another place. As a result thereof, in the opinion of this Court, there is no violation of transfer policy by respondent Nos.3 and 4 while passing the impugned orders.

17. Although, learned counsel for the petitioners contended that in recent past, the condition of debarring for three years has not been imposed upon other similarly situated teachers whose transfer orders were cancelled, but there is no such material available on record to substantiate this argument. Hence, the contention is liable to be rejected being unfounded.

18. Submission that petitioners were not made aware in advance about the imposition of condition of three years is also liable to be rejected; as this is not the case of petitioners that action of respondents will adversely affect their career prospects in any manner, including seniority, pay scale or secured emoluments. Thus, debarring the petitioners for applying for transfer for a period of three years will

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not result in any civil consequences and as such, the same cannot be said to be in violation of principle of natural justice.

19. There is another aspect of the matter that petitioners were transferred between 24.03.2021 to 09.04.2021, but tabulation (P-1) reveals that none of them have joined till 22.07.2021. Law is well settled by Hon'ble Supreme Court that when a public servant is transferred, he must comply with the order and in case there is any genuine difficulty for joining at the transferred place, he may make a representation to the competent authority for stay, modification or cancellation of the transfer order, but in case, the order is not stayed, modified or cancelled, the public servant must carry out the order of transfer. If he fails to proceed on the transfer in compliance of the transfer order, he would expose himself to disciplinary action under the relevant rules and reference in this regard can be made to **Gujarat Electricity Board Vs. Atmaram, 1989(2) SCC 602**, which reads as under:-

“4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but

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if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.”

20. Again in case of **S.C. Saxena Vs. Union of India and others, (2006) 9 SCC 583**, Hon’ble Supreme Court in para 6 observed:-

“6.We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This

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tendency of not reporting at the place of posting and indulging in litigation needs to be curbed....”

21. In view of the facts and circumstances discussed hereinabove, the irresistible conclusions would be as under:-

- i) 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);
- ii) Even if the transfer order has been issued in violation of transfer policy, that will not give any cause of action to the employee(s) for invoking writ jurisdiction until the same is found to be in violation of service rules, or based on mala fide or detrimental to his/her career or any other analogous reason(s);
- iii) Action of respondent Nos.3 and 4 while debarring the petitioners from applying for transfer for a period of next three years has not resulted into civil consequences in any manner; thus, principle of natural justice is not attracted;
- iv) Petitioners have failed to point out any material on record to the effect that condition of debarring to apply for transfer for a period of three years was not imposed upon other similarly situated employees while cancelling their transfer orders. Even otherwise, in view of the conclusion

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arrived at Serial No.(i) *ibid*, such a contention will pale into insignificance;

- v) Petitioners have approbated part of the impugned orders (P-5/1 to P-5/26) whereby, their transfers were cancelled but they are reprobating the condition attached with the said cancellation.

22. As a result of the above conclusions, there is no option before this Court except to dismiss the writ petition.

23. Ordered accordingly.

24. It is clarified that in case, respondents wish to consider the representation(s) of the petitioner(s) at their own level, while examining individual hardship(s), this order be not treated as a bar for the same.

28.07.2021
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No