

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

211

**CWP No.15108 of 2021 and other
connected cases
Decided on : 24.08.2021**

Vikram Singh and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

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

Ms. Rajni Gupta, Addl. AG, Haryana.
Mr. Saurabh Mohunta, DAG, Haryana.
Ms. Kirti Singh, DAG, Haryana.
Mr. Harish Kumar Nain, AAG, Haryana.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of 24 petitions i.e. CWP Nos. 15108, 15567 and 15668 of 2021, CWP Nos.24702, 26329, 26545, 26688, 27265, 27895, 28339, 28453, 28620, 28761, 28877, 28923, 29005, 29123, 23771, 24023, 24589, 26315, 34783, 27387 and 27468 of 2019. The facts are being taken from CWP No.15108 of 2021.

The petitioners in the present writ petition filed under Article 226/227 of the Constitution of India seek quashing of the notice dated 15.07.2021 (Annexure P-9), whereby the revised schedule of the online general transfer drive of the teachers transfer policy was notified.

The grouse of the petitioners are that they are not being

permitted to participate in the teachers drive (Annexure P-10) on account of the fact that they have got stay orders in the writ petitions they had filed and, therefore, they are dis-entitled for taking part in the transfer drive as per Online Teachers Transfer Policy 2016 (as amended on 01.06.2017) {Annexure P-1}.

It is to be noticed that the petitioner-Vikram Singh who was petitioner no.28 in **CWP No.26329 of 2019 'Deepak Kumar & others Vs. State of Haryana & another'**, which was also filed by Mr. Sajjan Singh, Advocate. In the said case, vide interim order dated 17.09.2019, the relieving orders qua the said petitioner alongwith other petitioners were ordered to be stayed. Similar is the situation of other petitioners herein who have also initiated litigation on an earlier occasion two years earlier in the year 2019 aggrieved against the then transfer policy.

This Court being aware of the background of the litigation as such had asked the respondents that as to why not the persons who had got stay orders way back in 2019 be also involved in the transfer policy, vide order dated 10.08.2021, which reads as under:-

“Inter-alia contends that on account of stay orders obtained earlier by various teachers on transfer issue, their cases are not being considered in Online Teachers Transfer Policy 2016 as amended on 01.06.2017, as per the Schedule dated 15.07.2021 (Annexure P-9). Further submits that as a matter of principle, respondents have taken a call (Annexure P-10) that employees with stay orders cannot be allowed to take part in the transfer drive. He further submits that in the absence of any such condition in the policy, the decision of the respondents is not justified.

Notice of motion.

Ms. Kirti Singh, D.A.G. Haryana accepts notice on behalf of respondents and prays for time to seek instructions as a matter of policy as it would help in reducing the litigation, which this Court is now facing on account of schedule drawn up for the transfers, which are taking place as per the policy. It would also help in disposing of large number of cases pending for the last two years in this Court especially pertaining to the year 2019 when transfers had been made and interim orders have been passed by this Court. It is hoped that the respondents shall keep an overall larger picture in mind so that the transfer policy is also put into effect by involving the maximum number of employees, who are eligible which will also open up a large number of vacancies for employees who are voluntarily participating.

To come up on 13.08.2021.”

Counsel for the State had then submitted that she would have no objection to the suggestion put forth by this Court. Resultantly, she has referred to the affidavit dated 18.08.2021 filed by Shri J. Ganesan, Special Secretary. Relevant part of the said affidavit reads as under:-

“5. That the answering Department wants to end the unnecessary litigation and is ready to include the petitioners mentioned in the cases at Annexure R1 and also ready to allow them to fill their preferences so that they will be able to compete with other employees on merit. If the stay is vacated by the Hon'ble High Court in terms of order dated 11.08.2021 passed in similar matter in **CWP-28284-2019** and **CWP-15042-2021** titled as **Preeti Vs. State of Haryana**, operative part of the same is reproduced as under for the ready reference of this Hon'ble High Court.

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In view of the submissions made above, it is, therefore,

respectfully prayed that stay may kindly be vacated in all similar cases available with the Department till date, mentioned in Annexure R1 in terms of order dated 11.08.2021 passed in the similar matter in **CWP-28284-2019** and **CWP-15042-2021** titled as **Preeti Vs. State of Haryana** to enable the deponent to include the petitioners in the present transfer drive.”

In pursuance of the said affidavit, vide order dated 19.08.2021, office was directed to list all cases mentioned in Annexure R-1, which was supplied by the State alongwith the affidavit, wherein details have been given. The said cases have been accordingly listed after obtaining necessary orders from Hon'ble the Chief Justice.

Keeping in view the litigation which mainly pertained to transfers and the fact that the petitioners have enjoyed stay orders from the last more than two years, there is no valid reason as such to further extend the stay orders if the petitioners are eligible to be involved in the teachers transfer policy. At that point of time the stay had also been granted on account of the fact that the petitioners in a large number of cases as such had been transferred out of cadre to Mewat and that was the reason for this Court to interfere in the large scale transfers which had taken place at that point of time. By virtue of the said orders, the petitioners have stayed at their earlier posting for almost two years in addition to the period spent earlier.

Now in the present set of litigation, if the benefit of interim orders are vacated and the petitioners are allowed to participate in the transfer drive a large number of vacancies shall be opened up which are

now blocked on account of the stand which had been taken by the State that the said persons are not to be allowed to participate in the transfer drive.

Needless to say that the State shall also kept in mind Clause 6 of the Teachers Transfer Policy (Annexure P-1) as amended on 01.06.2017 which provides protection to every teacher not completing five years stay in a particular school/zone of any district. Thus, this order will not give a carte blanche to the State to transfer all the persons who had got the stay orders. The State shall also examine the aspect whether the persons had completed five years period on the post before they are to be treated as a 'Deemed Vacancy' under Clause 8 (i) (b) of the policy.

The argument raised by Mr. Sajjan Singh, that the guest teachers are also blocking the posts as such is without any basis, in view of the amendment which has been carried on 28.06.2021, whereby after transfer of regular teachers, the drive is to be run for other Guest/Contractual/Ad hoc teachers, as per Clause 9 (xviii). As per Clause 8 (i) (b) it has also been clarified that there is a deemed vacancy for the posts occupied by a Guest teacher.

It is to be noticed that the Guest teachers had also approached this Court in **CWP No.15210 of 2021** titled as '**Shashi Bala and others Vs. State of Haryana and others**' seeking consideration for transfer, which was declined vide interim order dated 10.08.2021, though notice of motion has been issued.

Similarly, as per Clause 9 (ii) whereby National Cadet Corps

(NCC) program is going on, the benefit will be granted if the Associate NCC Officers are not willing to participate in the online transfer drive.

The argument that the transfer process was to take place in March, 2021 is without any basis. The factual aspect cannot be lost sight off that the whole world was dealing with the second wave of Covid-19 pandemic and, therefore, if at that point of time transfer policy was not given effect to and has now given effect, the petitioners can have no grouse as such. It is thus a matter of record that for the year 2020 also the transfer has not been effected in view of the pandemic and, therefore, employees have been posted at the same stations since then.

Accordingly, the present writ petitions are disposed of with the directions to the respondents to consider the case of the petitioners as per their eligibility in the transfer drive as per the policy, which is on going and they will permit them to give option within a period of five days. The respondents shall ensure that the portal is opened for the petitioners to exercise their option for transfer.

The stay granted on earlier occasion will continue to operate in the favour of the petitioners till the date when they get their transfer orders on the completion of the transfer drive. It is also clarified that the portal shall also show the said post as 'Voluntary Deemed Vacancy' for other eligible persons to exercise their options. Similarly, the posts against which the petitioners were posted will also be treated as 'Voluntary Deemed Vacancy' as per the transfer policy. The State shall also take appropriate steps to revise the schedule accordingly, so that all

concerned can take advantage of the opening of additional seats.

The writ petitions are, accordingly, disposed of, in the above said terms.

August 24, 2021
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(G.S. SANDHAWALIA)
JUDGE

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