

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

(1.)

CWP-17718-2020 (O&M).
Date of Decision:-10.02.2021.

Rajesh Kumar and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

(2.)

CWP-18302-2020

Ajay Saini and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

(3.)

CWP-18313-2020

Pardeep Kumar and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

(4.)

CWP-18045-2020 (O&M)

Rakesh Kumar and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

(5.)

CWP-20053-2020 (O&M)

Bhagirath and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. R.K.Malik and Mr. Vikas Bahl, Senior Advocates, assisted by Mr. Amit Jhanji and Ms. Aakritee Raj, Advocates, for the petitioners in CWP Nos.17718, 18302 and 18313 of 2020.

Mr. Sanjiv Gupta, Advocate, for the petitioners in CWP Nos.18045 and 20053 of 2020.

Mr. B.R. Mahajan, Advocate General, Haryana, with Mr. Jagbir Malik, Additional Advocate General, Haryana.

Ms. Mehak Sawhney, Advocate, for respondent No.10 in CWP-17718-2020.

SANJAY KUMAR, J. (Oral)

Grievances of the petitioners in these cases being on similar lines and directed against the same authorities, these writ petitions are amenable to final disposal by way of this common order.

CWP-17718-2020

The petitioners are 10 in number. 06 of them are Transport Sub-Inspectors and the other 04 are Transport Inspectors in the Regional

Transport Authorities (RTAs) at various locations in the State of Haryana. They assail the order dated 17.10.2020 passed by the Transport Commissioner, Haryana, whereby they, along with others, were deployed/deputed in the offices of the General Managers of Haryana Roadways at the same locations for a period of one year. They also assail another order dated 17.10.2020 passed by the Transport Commissioner, Haryana, deploying Clerks from the offices of the General Managers of Haryana Roadways at various locations against their vacant posts of Transport Inspectors and Transport Sub-Inspectors at the RTAs at the same or other locations and also the office of the Transport Commissioner, Haryana.

By order dated 27.10.2020, this Court stayed the operation of both the impugned orders dated 17.10.2020. Out of the Clerks deployed at the RTAs, *vide* the second impugned order, 12 have been impleaded as respondent Nos.4 to 15. Despite service of notice, none of these respondents, except respondent No.10, chose to enter appearance before this Court and oppose the petitioners' prayer. Ms. Mehak Sawhney, learned counsel for respondent No.10, would state that her client also does not wish to contest the matter and would abide by the decision of this Court.

CWP-18302-2020

The petitioners are 13 in number. 03 of them are Transport Inspectors and the remaining 10 are Transport Sub-Inspectors. They assail the order dated 19.10.2020 passed by the Transport Commissioner, Haryana, whereby they, along with others, were deployed/deputed from the present place of posting, *viz.*, RTAs at different locations in the State of

Haryana, to the offices of the General Managers of Haryana Roadways at the same locations. They also assail the order dated 20.10.2020 passed by the Transport Commissioner, Haryana, deploying Clerks from the offices of the General Managers of Haryana Roadways at various locations in the State of Haryana to the vacant posts of Transport Inspector/Assistant or Transport Sub-Inspector/Clerk at the RTAs, mostly at the same locations.

By order dated 04.11.2020, this Court noted the contention of the learned Advocate General, Haryana, based on instructions, that the petitioners had already been relieved and had joined the department where they had been sent on deputation and the assertion to the contrary made by Mr. Vikas Bahl, learned senior counsel for the petitioners, and made it clear that in case the petitioners had not been relieved and/or had not joined the department where they had been sent on deputation, *status quo* existing as on that date should be maintained. Out of the Clerks deployed at the RTAs, under the impugned order dated 20.10.2020, 22 have been impleaded as respondent Nos.4 to 25. Despite service of notice, none of them entered appearance before this Court.

CWP-18313-2020

The petitioners are 09 in number. They are Assistant Secretaries at various RTAs in the State of Haryana. They assail the order dated 17.10.2020 passed by the Transport Commissioner, Haryana, whereby they, along with other Assistant Secretaries, were deployed in the office of the Director, State Transport, Haryana, for a period of one year. They also assail the order dated 26/27.10.2020 passed by the Director, State Transport,

Haryana, posting/adjusting 12 of the 14 Assistant Secretaries mentioned in the order dated 17.10.2020 against vacancies in the Establishment Branches and the Offices of the General Managers of Haryana Roadways at the named locations. Interim relief was granted in this writ petition on 04.11.2020 on the same terms as in CWP-18302-2020.

CWP-18045-2020

The petitioners are 12 in number. They are Drivers. They assail the order dated 17.10.2020 passed by the Transport Commissioner, Haryana, whereby they, along with other Drivers, were repatriated to Haryana Roadways. This order was passed in continuation of the letter dated 17.10.2020 addressed by the Director, State Transport, Haryana, to the Transport Commissioner, Haryana, informing him that directions were issued that the 22 Drivers who had come on deputation to the office of the Transport Commissioner from the Haryana State Transport be sent back with immediate effect to their original depots and in their place, 22 Drivers made available by the Haryana Staff Selection Commission during the year 2018 be sent on deputation basis to the office of the Transport Commissioner. The letter also furnished the details of the 22 Drivers who were sent on deputation. The said letter is also subjected to challenge. In addition thereto, the petitioners challenge the consequential order dated 17.10.2020 passed by the Transport Commissioner, Haryana, whereby postings were allotted to the Drivers sent on deputation by the Director, State Transport, Haryana, under letter dated 17.10.2020.

By order dated 30.10.2020, this Court stayed the operation of the impugned orders and the letter dated 17.10.2020. After the filing of the writ petition, 07 of the Drivers brought on deputation basis were impleaded as respondent Nos.4 to 10 in this writ petition. Despite service of notice, none of them entered appearance before this Court.

CWP-20053-2020

The petitioners are 10 in number. They are also Drivers. They assail the very same orders and the letter dated 17.10.2020 impugned by the petitioners in CWP-18045-2020. They also impleaded some of the Drivers brought on deputation as respondents No.4 to 10, after the filing of the writ petition. Despite service of notice, respondents No.4 to 10 did not chose to enter appearance before this Court. No interim orders were granted in this writ petition as Mr. Jagbir Malik, learned Additional Advocate General, Haryana, informed this Court that certain crucial aspects were not brought out at the time interim relief was granted in CWP-18045-2020.

BACKGROUND

The Transport Department of the Government of Haryana consisted of two separate wings, viz., the Regulatory Wing and the Commercial Wing (Haryana Roadways) but remained a single unit till the year 2002. It was only on 20.09.2002 that this Department was separated at least at the helm. This division was occasioned by the decision of the Supreme Court in ***'The Mor Modern Cooperative Transport Society Limited Vs. Financial Commissioner and Secretary to Government, Haryana, and another'*** (Civil Appeal No.6974 of 2001 dated 09.07.2002).

Pursuant to such division, the Regulatory Wing came to be headed by the State Transport Controller, a post created on 14.03.2003, and the Commercial Wing (Haryana Roadways) was under the control of the Transport Commissioner, Haryana. In March, 2010, the designation of the State Transport Controller was changed to Transport Commissioner (Regulatory Wing) while the post of Transport Commissioner in the Commercial Wing was changed to Director General, State Transport (Commercial Wing).

However, the staff of the two wings was not separated till the year 2013. A decision was taken only on 14.05.2013 to allocate the existing staff to the two wings by draw of lots. Aggrieved by the proposed methodology of allocation, some of the employees of the Haryana Transport Department filed **CWP-10568-2013**, titled **Baljinder Singh and others Vs. State of Haryana and others**, before this Court. The said writ petition was allowed on 18.04.2017 and the authorities were directed to allocate the employees only after inviting options.

In this regard, reference may be made to the letter dated 03.02.2017 of the Transport Commissioner, Haryana, addressed to the employees of the Regulatory Wing, stating that the Transport Department had been working in two wings since 2003, viz., the Commercial Wing and the Regulatory Wing, and that the staff position and Administrative Officers of both the wings were different. He affirmed that the working style of the Regulatory Wing was totally different and that, since the year 2003, equal staff was working in both the wings. He then referred to the aforestated

order in **CWP-10568-2013** and stated that it had become necessary to obtain options from interested employees working in his office as to whether they wished to work in his office or wanted to be adjusted in the office of the Director General, State Transport, Haryana. On the same lines, by his letter dated 04.04.2018, the Director General, State Transport, Haryana, informed the Transport Commissioner, Haryana, and all the Secretaries of the RTAs in Haryana, that the allocation of employees/staff working in the common cadre in both the wings, viz., the Commercial Wing and the Regulatory Wing, was yet to be done and requested that in case any official adjusted in the Regulatory Wing wanted to give his option for induction/adjustment in the Commercial Wing, he should ensure that his option was forwarded/received in writing by his office on 06.04.2018 and in the event they did not submit any options in writing in this regard, it would be considered that they had agreed to their present adjustment. Permanent allocation was thereupon effected in May, 2018, and the employees of the two wings were separated and segregated. While so, by way of the impugned orders, employees working in the two wings are now sought to be shuffled, be it in the name of deputation, deployment or repatriation.

LEGAL REGIME

Before turning to the various contentions urged on behalf of the petitioners and the responses thereto advanced by the State, it would be appropriate to take note of the Rules applicable to the Haryana Transport Department. The Haryana Transport Department (Group 'B') Service Rules, 1992, were framed in exercise of power conferred by the *proviso* to Article

309 of the Constitution and were applicable to the Haryana Transport Department (Group 'B' Service), comprising the posts shown in Appendix 'A' thereof. Appendix 'A' demonstrates that none of the posts involved in this litigation find mention therein. The said Rules would therefore have no relevance but it may be noted that Rule 12 of these Rules pertaining to 'Liability to Serve' is the same as in the later Rules of 1998, referred to *infra*. The posts at Serial Nos.7 and 8 of Appendix 'A' also make it clear that the posts covered by these Rules were at the Head Office of the Transport Department as well as the Roadways Wing.

Then come the Haryana Transport Department (Group 'C') Haryana Roadways Service Rules, 1995 (for short, 'the Rules of 1995'), which were also framed in exercise of power under the *proviso* to Article 309 of the Constitution. Rule 41 of these Rules provided that any rule applicable to the service and corresponding to any of these rules, which was in force immediately before the commencement of these rules, stood repealed. These Rules were applicable to the service comprising the posts shown in Appendix 'A' thereof. Appendix 'A' detailed the posts in separate categories of Ministerial Staff, Operational Staff and Technical Staff. The posts of Assistants, Accountants and Clerks find mention under the heading 'Ministerial Staff', while the posts of Inspector and Sub-Inspector find place under the heading 'Operational Staff'. Light Car Drivers and Heavy Vehicle Drivers also find mention under the same heading. However, it may be noted that these Rules, going by their very nomenclature, were applicable only to the Haryana Roadways, *viz.*, the Commercial Wing.

Last come the Haryana Transport Department (Group 'C') Transport Commissioner's Office Service Rules, 1998 (for short, 'the Rules of 1998'). These Rules also source their origin in the *proviso* to Article 309 of the Constitution. These Rules applied to the service comprising the posts shown in Appendix 'A' thereof, which was split up thus – Ministerial Staff, Operational Staff and Technical Staff. Assistant Secretaries, Assistants, Accountants, Transport Sub-Inspectors and Clerks find mention under the heading 'Ministerial Staff'. Staff Car Drivers find mention under the heading 'Operational Staff'. These Rules, going by their title, applied to the Transport Commissioner's Office. This is emphasized by Rule 2(f), wherein 'Service' was defined to mean the Haryana Transport Department (Group 'C') Transport Commissioner's Office Service. However, a lot remains to be said about these Rules.

CONTENTIONS

Arguments advanced by Mr. R.K. Malik and Mr. Vikas Bahl, learned senior counsel, assisted by Mr. Amit Jhanji and Ms. Aakritee Raj, learned counsel for the petitioners in CWP Nos.17718, 18302, 18313 of 2020, and Mr. Sanjeev Gupta, learned counsel for the petitioners in CWP Nos.18045 and 20053 of 2020, may now be considered.

Primarily, it is contended that after the bifurcation of the two wings and the allocation of employees on a permanent basis, it is not open to the authorities to deploy/depute employees of one wing in the other wing and all the more so, without their consent. Secondly, it is contended that the authorities did not even verify as to whether the petitioners who were

working as Transport Inspectors, Transport Sub-Inspectors and Assistant Secretaries in the Regulatory Wing could have been deployed to the Commercial wing, wherein no such posts existed. According to the petitioners, they could not be made to work in the posts existing in the Commercial Wing as per the applicable Rules.

That apart, they contend that they would have to work under those who were their juniors at the time both the wings were treated as one. Reference is also made to the fact that the deputation orders do not even indicate as to where the deputed/deployed employees were to work, but the other orders, whereby those from the Commercial Wing were brought to the Regulatory Wing, furnished such details.

It is pointed out that no reason is forthcoming from the impugned orders of deputation/deployment as to why this kind of exercise was undertaken but in the written statement, the authorities had stated that this was done in public interest owing to complaints received with regard to the functioning of the Regulatory Wing. It is further pointed out that the authorities claimed to have undertaken this exercise so as to streamline the system but no details are forthcoming as to the nature of the complaints received and the persons against whom such complaints were made. The petitioners assert that the authorities ought not to have undertaken such deputation/deployment without coming clean, inasmuch as the action is stigmatic in nature. In the alternative, it is pointed out that if no specific complaints were received against named individuals, the authorities had to explain as to how they went about picking and choosing particular

employees from the Regulatory Wing so as to subject them to deputation/deployment for one year. It is also contended that the promotional opportunities of the petitioners would be adversely affected by their deputation/deployment.

In the cases of the Drivers, they asserted that prior to the allocation of employees between the two wings on a permanent basis, all the Drivers in the department were common, but options were not obtained from any of them. They contended that in terms of the policy adopted by the authorities, the Drivers were to be allocated on an 'as is where is' basis in keeping with the letter dated 04.04.2018. It is pointed out that CWP-13102-2018 was filed by some of the Drivers working in the Regulatory Wing when the authorities issued Communication/Circular dated 12.04.2018 seeking to fill up the posts of Drivers in the Regulatory Wing on transfer basis, by replacing them. They assailed the same and also sought a direction to the authorities to allow them to continue in the Regulatory Wing. While so, the Communication/Circular dated 12.04.2018 was withdrawn by the authorities themselves and in the light thereof, the writ petition came to be dismissed on 01.03.2017 as having been rendered infructuous. However, CM-7107-2019 was then filed in the said writ petition seeking recall of the dismissal order dated 01.03.2017 and praying for a direction to the authorities to allow the petitioners therein to continue in the Regulatory Wing. This application is still pending consideration.

It is contended that as the claim of Drivers that they already stood absorbed in the Regulatory Wing is yet to be adjudicated in the

pending writ petition, it is not open to the authorities to repatriate them to their so-called parent department, ignoring the fact that they have been working in the Regulatory Wing since a very long time. It is asserted that though the authorities claim that there was no division of Drivers between the two wings, their actions demonstrate to the contrary.

Responding to the aforestated contentions, the learned Advocate General, Haryana, would contend that deputation of the petitioners from one wing to the other did not require their consent. He would rely upon Rule 12 of the Rules of 1998 and also Rule 108 of the Haryana Civil Services (General) Rules, 2016 (for short, 'the Rules of 2016'). He would assert that the Rules of 1998 have application to the Commercial Wing and also the Head Office of the Transport Commissioner, viz., the Regulatory Wing, while the Field Offices of the Regulatory Wing would be governed by the Rules of 1995. He would state that separate rules are yet to be framed and in the interregnum, the Rules of 1998 would apply to both wings. He would point out that the present deployment is only for a limited period of one year and assert that this measure was adopted in public interest so as to streamline the administration, owing to complaints about the functioning of the Regulatory Wing. He would state that such complaints were not made against specific individuals and that is the reason why general orders of deputation/deployment were passed, which could not be treated as stigmatic. Learned Advocate General would also assure this Court that none of the petitioners would be made to work under their juniors or suffer any adversity in terms of their pay-scales or equivalence of posts

due to their being posted in the Commercial Wing. He would further state that their promotional opportunities would not be impacted by this arrangement for a period of one year.

In the cases pertaining to the Drivers, Mr. Jagbir Malik, learned Additional Advocate General, Haryana, would state that they were all appointed under the Rules of 1995 inasmuch as the Rules of 1998 made no mention of Heavy Vehicle Drivers. He would state that the Transport Department should be treated as three separate units - the Regulatory Wing comprising the RTAs, the Commercial Wing comprising Haryana Roadways, and the Head Offices of both these wings. He would state that the Head Office of the Regulatory Wing was governed by the Rules of 1998 and also the Field Offices of the Commercial Wing and only the General Manager (Roadways) would be governed by the Rules of 1995. He would further state that only the Head Office was bifurcated pursuant to the judgment of the Supreme Court and assert that the Drivers were sent on deputation to the Regulatory Wing from the Commercial Wing though the orders speak of it as a transfer.

POINT

Whether or not the petitioners would have to work under their juniors and whether or not their promotional opportunities would be impacted, apart from the nature of duties that they would have to discharge in the Commercial Wing, where posts of the same designation do not even exist, are secondary issues. This Court would have to address, in the first instance, the preliminary issue of the very legality of the impugned orders

whereby deputation/deployment/repatriation and postings have been effected by the authorities. Secondly, this Court would also have to examine as to whether this administrative exercise was reasonable, rational and free from arbitrariness.

At the outset, it may be noted that there is no clarity as to the Rules applicable at different levels of the two wings of the Transport Department. As already pointed out *supra*, the Rules of 1992 are of no relevance but indicate that they applied to both wings. The Rules of 1995, going by their nomenclature, could have no application to the Regulatory Wing. The argument to the contrary needs mention only to be rejected. It is not open to the authorities to whimsically extend the Rules of 1995 to the Field Staff of the Regulatory Wing, i.e., the staff working in the RTAs.

When it comes to the Rules of 1998, the title leads one to the impression that they are applicable only to the office of the Transport Commissioner. At that stage, in the year 1998, the Transport Department was undivided and both the wings formed part of one Department, being under the control of one head, viz., the Transport Commissioner. Significantly, these Rules denoted the post of Transport Sub-Inspector under 'Ministerial Staff'. There were no such permanent posts and only 33 temporary posts were available. The post of Motor Vehicles Inspector was shown as part of 'Technical Staff' and there were 3 such permanent posts and 3 temporary posts. Further, Rule 9(8) of these Rules, dealing with the method of recruitment, provided that the posts of Assistant Accountant, Junior Auditor, Transport Sub-Inspector, Assistant-cum-Cashier and Office-

cum-Ledger Assistant could be filled by promotion of Junior Scale Stenographers, Steno-typists, Clerks, Store Purchase Clerks and Computer Operators, apart from by way of transfer. The 'Note' thereunder clarified that posts of Assistant and Transport Sub-Inspector were interchangeable.

This being the position under the Rules of 1998, it is the contention of the authorities that these Rules would have application to the petitioners also. It is significant to note that, by Memo dated 26.09.2016 addressed to the Transport Commissioner, Haryana, the Additional Chief Secretary, Transport Department, Government of Haryana, stated that sanction of the Government was accorded to change the nomenclature of certain posts in the Regulatory Wing in the office of the Transport Commissioner, Haryana. Thereunder, it was provided that the post of Assistant/Accountant would be called as Transport Inspector while the post of Clerk would be called as Transport Sub-Inspector. Pursuant thereto, the Transport Commissioner, Haryana, issued Memo dated 27.09.2016 informing the Director, State Transport, Haryana, and all the Secretaries of the RTAs in the State, that the nomenclature of the posts of 117 Clerks and 67 Assistants/Accountants had been changed to Transport Sub-Inspectors and Transport Inspectors respectively. This change of nomenclature was not in keeping with the Rules of 1998, if at all they were applicable, as Rule 9(8) thereof made it clear that the posts of Transport Sub-Inspector and Assistant were interchangeable. Surprisingly, the Government, without even amending the said Rules, if applicable, equated the post of Clerk with that of Transport Sub-Inspector. Significantly, Clerks formed part of the feeder

category for promotion to the post of Transport Sub-Inspector! Thus, there is complete lack of clarity and application of mind on the part of the authorities with regard to the two wings and the rules applicable to them, despite the move to bifurcate the two units being initiated as long back as in the year 2003. To put it mildly, the *ad hoc* approach adopted by the authorities in dealing with these two wings and the employees working therein leaves a lot to be desired. Be it noted that the letter dated 03.02.2017 addressed by the authorities themselves made it clear that these two wings were to be treated as separate and independent units. Therefore, appropriate rules ought to have been put in place to govern them independently. That not being done, the approach of the authorities in coming up with new classes of equivalence contrary to the rules, which have application according to them, led to further confusion. That apart, it may be noted that the post of Transport Inspector does not even exist in the Rules and it appears that this post has been concocted out of thin air.

It may also be noted that the impugned orders of deputation are completely bereft of rationale. There is no indication as to on what basis select employees of the Regulatory Wing have been subjected to deputation/deployment. Though the learned Advocate General would state that this is an ongoing exercise and others would also be subjected to similar deputation/deployment, he is unable to explain as to on what basis these particular employees have been selected for such deputation/deployment in the first instance. It is an admitted fact that out of 99 Transport Sub-Inspectors in the Regulatory Wing, 55 have been subjected to

deputation/deployment. Similarly, out of 82 Transport Inspectors, 48 have been sent on deputation/deployment and out of 21 Assistant Secretaries, 13 have been deputed/deployed to the Commercial Wing.

In their replies filed in these writ petitions, the authorities have stated that the present measure has been adopted in public interest owing to complaints having been received of corruption. According to them, the present exercise has been undertaken to streamline the system of checking of commercial vehicles. The complaints have not been placed on record. Further, it is not explained as to how, by bringing in employees from the Haryana Roadways to undertake the duties of the Transport Inspectors, Transport Sub-Inspectors and Assistant Secretaries in the Regulatory Wing, the system of checking of commercial vehicles would be streamlined. If it is the case of the authorities that complaints were directed against named individuals, it was incumbent upon them to initiate disciplinary proceedings against them, so as to weed out corrupt employees from the department altogether rather than shifting them from one wing to another. There is no justification offered as to how the present exercise would benefit the system, let alone the public at large. It is well settled that any administrative action must satisfy the Wednesbury principles of reasonableness. Therefore, even on this count, the exercise undertaken by the authorities is unsustainable.

Further, Rule 12 of the Rules of 1998, titled 'Liability to Serve', even if it can be said to have any application to the posts of Transport Inspectors, Transport Sub-Inspectors and Assistant Secretaries in the Regulatory Wing, also does not come to the aid of the authorities. This

Rule can be split up into four segments. Firstly, under Rule 12(1), a member of the service is liable to serve at any place, whether within or outside the State of Haryana, upon being ordered to do so. This does not contemplate his leaving the parent service and migrating to a foreign service. It only posits that a member of such service would have to serve at any place, be it within the State or outside. Secondly, under Rule 12(2)(i), a member of the service may be deputed to serve under a company, an association or a body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the State Government, a municipal corporation or a local authority or university within the State of Haryana. Thirdly, under Rule 12(2)(ii), a member of the service may also be deputed to serve under the Central Government or a Company, an association, or a body of individuals, whether incorporated or not, wholly or substantially owned or controlled by the Central Government. Fourthly, under Rule 12(2)(iii), a member of the service may also be deputed to serve under any other State Government, an international organization, an autonomous body not controlled by the Government or a private body. The *proviso* states that no member of the service shall be deputed to serve the Central or other State Governments or any other organization or body referred to in Rules 12(2)(ii) and 12(2)(iii) except with his consent. It is the contention of the learned Advocate General that Rules 12(1) and 12(2)(i) have application presently and therefore, the consent of the petitioners is not necessary.

The petitioners, being part of the Regulatory Wing of the Transport Department, have been deputed/deployed to the Commercial

Wing, viz., Haryana Roadways, which cannot be said to be part of the same parent unit as the authorities, in their wisdom, bifurcated these two wings into separate and independent units within the same Department. Further, the Commercial Wing is admittedly not a body corporate as per the argument advanced by the authorities themselves before the Supreme Court. They had specifically argued that it was only a departmental unit. It cannot therefore be said to be a company, an association or a body of individuals which would fall within Rule 12(2)(i). Therefore, the Rule, as framed and existing, does not come to the rescue of the authorities. It is not for this Court to add or supplement words in the said Rule, when it does not lend itself to such interpretation. Significantly, Rule 108 of the Rules of 2016 specifically provides that a Government employee may be transferred in public interest on deputation to any organization/department under the control of the Haryana Government. This Rule specifically speaks of deputation to any department under the control of the Government. This phrase is missing in the Rules of 1998 and, in its wisdom, the State did not choose to amend the said Rule to bring it on par with the general rule obtaining under Rule 108 of the Rules of 2016. Further, this Court finds merit in the contention of the learned senior counsel representing the petitioners that the general rule obtaining under the Rules of 2016 cannot be pressed into service once special rules occupy the field. It is the case of the authorities themselves that the Rules of 1998 apply presently to the cases of the petitioners, other than the Drivers. Therefore, they are not at liberty to

take recourse to the general rule. In effect, neither Rule 12 of the Rules of 1998 nor Rule 108 of the Rules of 2016 is of any avail to the authorities.

That apart, this Court finds that the exercise undertaken by the authorities suffers from a far graver defect that is fatal to its very validity. It is an admitted fact that after the bifurcation of the Transport Department into two wings and allocation of staff on permanent basis, they became separate and independent units even if they formed part of the same Transport Department. Haryana Roadways, being the Commercial Wing, could therefore have nothing to do with the Regulatory Wing. That was the very basis of the judgment of the Supreme Court. Be it noted that it was contended before the Supreme Court that the Haryana Roadways was neither a Company nor a statutory Corporation and was being run as a departmental entity, being a wing of the Transport Department. The Supreme Court specifically noted that it had been faintly urged that as Haryana Roadways was not a Company, as is the case in other States, it could not be considered to be an undertaking within the meaning of Section 68(2) of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988'). This submission was rejected as being devoid of force and the Supreme Court pointed out that Section 68(2) of the Act of 1988 mandated that no person who had any financial interest in any Transport Undertaking should be appointed as a member of a Regional Transport Authority. It was on this basis that the Supreme Court ultimately held that the Transport Commissioner, being an officer of the Haryana Roadways, would have a financial interest in that undertaking within the meaning of Section 68(2) of

Act of 1988 and, therefore, he could not be appointed as the Chairman of the Regional Transport Authority. Be it noted that the appointment of the District Transport Officer as the Member Secretary of the Regional Transport Authority was not set aside only on the ground that it was not under challenge. Otherwise, the same logic would have been applicable to him also. Once this distinction is drawn at the helm of the two wings, it would be antithetical to state that the two wings can continue to remain merged at the lower levels. Logically, there cannot be any overlapping of interests between the two wings, be it at any level. That is perhaps the reason why the authorities ultimately got around to bifurcating the two wings in their entirety and effected allocation of employees on permanent basis to the two wings. This being the factual position, the question of deputing or deploying employees of the Commercial Wing, whose loyalties would lie with it, to the Regulatory Wing, and *vice versa*, does not arise. A Clerk from Haryana Roadways, who is now asked to check commercial vehicles on the roads in the capacity of a Transport Inspector or Transport Sub-Inspector, can hardly be expected to be unbiased and objective while checking a vehicle of the Haryana Roadways, to which he owes allegiance and to which he would return in due course of time. The entire exercise therefore falls foul of the basic principle on the strength of which the Supreme Court held against the State in the earlier case. The orders of deputation/deployment impugned in CWP Nos. 17718, 18302 and 18313 of 2020 are therefore liable to be set aside straightaway on this ground.

As regards the Drivers who are sought to be repatriated, it is their contention that they are deemed to have been allocated permanently to the Regulatory Wing owing to the letter dated 04.04.2018. It is also to be noted that most of them were posted on 'transfer' basis in the Regulatory Wing as long back as in the year 2008. Further, the order dated 14.08.2016, whereby the Additional Transport Commissioner, Haryana, transferred/posted not only Assistants and Clerks from one RTA to another but also one Satbir Singh, Driver No.224, who was working in Haryana Roadways at Karnal to the RTA at Yamunanagar, belies the contention of the authorities that the Drivers in both wings were not treated as common. If Satbir Singh did not form part of the same department, the question of transferring him would not have arisen. The feeble argument that they were sent on deputation to the Regulatory wing needs mention only to be rejected. The orders categorically state to the effect that they were transfers. That apart, deputation, by its very nature, would have to be for a limited period and cannot be continued for over a decade! In addition thereto, as the claim of the Drivers that they are entitled to be retained in the Regulatory Wing is still pending consideration before this Court in the other writ petition, wherein a recall application is pending, it was premature on the part of the authorities to treat the issue as a closed one, whereby they could unilaterally treat them as part of Haryana Roadways and subject them to repatriation.

In any event, there is no explanation forthcoming from the orders under challenge as to why the situation that was obtaining since over a decade suddenly had to be subjected to change, whereby the petitioners

were sought to be displaced. This exercise is also equally bereft of application of mind and rationale.

Before concluding, it may be noted that an abundance of case law was pressed into service by both sides on general principles relating to deputation, repatriation, etc. However, this Court does not deem it necessary to burden this judgment with references to precedents as this adjudication essentially turned upon the peculiar facts obtaining in these cases.

On the above analysis, this Court finds that the action of the authorities of the Transport Department, State of Haryana, in deputing, deploying or repatriating employees working in one wing to the other wing, and *vice versa*, is unsustainable in law and on facts on grounds more than one.

The writ petitions are accordingly allowed setting aside all the impugned proceedings. Pending miscellaneous applications shall stand closed in the light of this final order.

There shall be no order as to costs.

(SANJAY KUMAR)
JUDGE

February 10, 2021.

sandeep

Whether speaking/reasoned:-

Yes

Whether Reportable:-

Yes