

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4552 of 2022 (O&M)

Date of Decision:08.03.2022

Ghanshyam and others

.....Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Kanwal Goyal, Advocate
for the petitioners.

Mr. Harish Nain, AAG., Haryana.

LISA GILL, J(Oral).

Petitioners in this writ petition are stated to be working on the posts of Primary Teachers on regular/officiating basis in District Yamuna Nagar up to full satisfaction of their superiors in the hierarchy under School Education Department, Government of Haryana.

Prayer in this writ petition is as under:-

“Civil Writ Petition under Article 226 of the Constitution of India for issuance of a writ/order, especially in the nature of certiorari for quashing the impugned criteria defined under Clause-6 (ii) of the “Teachers’ Transfer Policy 2016” dated 29.06.2016 (P-3) as mentioned on 05.06.2017(P-4) and thereafter time to time whereby age has been made the prime factor for drawing up the merit list for transfers of teachers against a vacancy, as is evident from whereby age of teacher concerned has been given weightage of 60 points out of 80 points, instead of giving weightage to experience gained by an employee during his/her service tenure and/or balancing age

with experience for giving equal opportunity to experienced employees for securing higher merit vis-à-vis their transfer and get a station of their choice;

Issuance of a writ/order/direction in the nature of mandamus directing the respondents to grant points of experience to petitioners in place of age in the composite score of Teachers Transfer Policy and total composite points be accordingly modified so that the age is not made as a primary factor for the purpose of drawing up merit;

Issuance of order/direction staying the schedule or reschedule of transfer of teachers initiated vides order No. 3/20-2014 GS (1) dated 08.11.2021 (P-5) and rescheduled thereafter under impugned clause-6 (ii) of “Teachers’ Transfer Policy 2016” during the pendency of present writ petition.”

Learned counsel for the petitioners submits that Clause-6 (ii) of the “Teachers’ Transfer Policy 2016” leads to clear cut discrimination inasmuch as employees with much more experience in a Government department are put to a disadvantage whereas employees with much less experience, having rendered fewer years of service by virtue of entering service when they were much older, are able to get posting of their choice under the “Teachers’ Transfer Policy 2016”. It is submitted that employees like the petitioners who have rendered many more years of service are put to disadvantage due to their age. Learned counsel referred to details regarding the petitioners as tabulated in para no.4 of the writ petition and details regarding certain other employees as mentioned in para no.15 of the writ petition. It is submitted that the petitioners having a minimum of ten years service and maximum of 26 years of service are put to clear cut disadvantage and are in-fact being subjected to discrimination *qua* the employees mentioned in the table in para no.15 of the writ petition, who have experience of 2 to 4 years only. Such employees by virtue of their age are

able to secure postings at places of their choice whereas petitioners despite having served for longer years are left high and dry. It is submitted that age for entry in service was raised from 35 years to 40 years in accordance with Haryana Government Notification No. 3/3/99-1 GSIII, dated 22.09.1999. Thereafter, Haryana Primary Education (Group-C) District Cadre Service Rules 1994 were repealed and the Haryana Primary School Education (Group-C) District Cadre Service Rules, 2012, were notified on 11.04.2012. As per Rule 5 of the said Service Rules 2012, it was provided that recruitment would be of candidates from 18 to 40 years. The maximum age of entry was then raised from 40 years to 42 years vide notification dated 26.08.2014 and further relaxation of 5 years in age was kept intact for candidates belonging to the reserved categories.

Learned counsel for the petitioners while referring to Clause 7 of the “Teachers’ Transfer Policy 2016”, submits that maximum points of 60 have been kept dependent on the age of the employee with the eldest person getting maximum points. It is submitted that this clause works most unfairly and employees who have put in so many years of service, are put to a positive disadvantage leading to much heartburn and the same is a positive discrimination qua the employees. In this respect, representation dated 22.01.2022, Annexure P-10, by Rajkiya Prathmik Adhyapak Sangh, District Yamuna Nagar, was also submitted, but no action is being taken by the authorities. It is thus prayed that the said clause be quashed and in the meantime, transfer of the petitioners be stayed.

Learned counsel for the respondent-State to whom an advance copy of the writ petition has been supplied has stoutly defended the criteria which has been formulated and laid down by the State. Learned counsel for the State submits that there is a clear cut effort on the part of the State to

implement the Directive Principles of State Policy. It is submitted that the criteria has been evolved after due thought, consideration and study, to ensure equitable development based distribution for teachers and head teachers to protect the academic interest of students as well as optimized job satisfaction amongst the employees in a fair and transparent manner. It is submitted that merely because length of service is not a criteria cannot be a ground to scrap the criteria carved out by the State or to stay the transfer of the petitioners. Learned counsel for the respondent-State submits that due weightage has been provided for the relevant categories as is evident from a reading of Clause 7 of the Teachers Transfer Policy 2016. It is thus prayed that this writ petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance and keeping in view the factual matrix, I do not find it necessary to call upon the respondents to file the written statement.

The applicable service rules with the minimum and maximum age of entry in service is a matter of record. Respondent-State, in order to ensure equitable, demand based distribution of teachers/heads to protect academic interest of students and optimize job satisfaction amongst its employees in a fair and transparent manner, notified the Teachers Transfer Policy-2016. The time schedule and criteria for transfers has been promulgated therein. Clause 7 of the “Teachers’ Transfer Policy 2016” deals with the merit criteria for allotment of posts and relevant portion thereof reads as under:-

“7. Merit criteria for allotment of posts:

- (i) Decision of allotment to a vacancy shall be based on the total composite score of points earned by a

teacher, out of 80 points as described below. The teacher earning highest points shall be entitled to be transferred against a particular vacancy.

- (ii) Age shall be the prime factor for deciding the claim of the teachers against a vacancy since it shall have weightage of 60 points, out of total 80 points.
- (iii) However, to take care of categories like women, women headed households, widows, widowers, differently abled persons, serious ailment, and teachers showing improvement in results, a privilege of maximum 20 points can be availed by the teachers of these categories (hereinafter to be referred as Special Category). The division of points shall be as given in para 7 (iii) (a) and 7(iii) (b) below:-

a) Age.

SN	Major factor	Sub-factor	Max. Points	Criteria for calculation
1	Age (present date minus Date of birth)	Eldest person shall get maximum points	60	Age in number of days+365 (maximum four decimal points only)

b) The second set of merit points will come from the special factors enumerated hereinafter:

SN	Major factor	Sub-factor	Max. points	Explanation
1.	Gender	Female	10	10 points shall be given to all female teachers
2.	Special category female teachers	Widow/divorced/separated unmarried female teacher more than 40 years of age/ wife of serving Military personal/ Paramilitary personal working outside the State	10	All female of this category shall be given 10 marks only
3.	Special Category male teachers	Widower who has not re-married and has one or more minor children and/ or	5	Eligible widowers shall be given 5 points

		unmarried daughter (s)		only.
4.	Differently abled persons	<u>Vision</u> <u>Locomotors</u> <u>Deaf & Dumb</u>	<u>20</u> <u>20</u> <u>20</u>	40% to 60 % Disability= 10 Marks. Above 60% to 80% = 15 marks Above 80% =20 Marks
5.	Diseases of “Debilitating Disorders”	Self	10	Valid certificate issued during last one year by AIIMS (including its branches in Haryana), PGI Rohtak, PGI, Khanpur Kalan, Kalpana Chawla Medical College, Karnal, PGI Chandigarh or duly constituted Medical Board only.
6.	Differently abled or mentally challenged children	Men/women having mentally challenged or 100% differently abled child	10	Men/women teachers having mentally challenged or 100% differently abled children shall be provided maximum 10 points
7.	Couple case	Only female spouse	5	Employees’ spouses working in state govt., center Govt., PSUs

				created under acts or rules
8.	State Award/National Award	State awardee/National awardee teachers	5	To recognize academic contribution of State/National Awardee Teachers
9.	Academic performance	Teachers giving good results in the last board exam	5	For results, following shall be the criteria for entitlement of points: 75% to 80%= 1 80% to 85%= 2 85% to 90%= 3 90% to 95%= 4 95% to 100%=5

It is a settled position that the Courts would always be slow in interfering in policy matters as undisputedly in framing of policies various inputs are required and until and unless a policy is found to be patently, discriminatory or arbitrary, no interference would be called for therein. Sum and substance of arguments addressed by learned counsel is that age should not be the primary criterion while allocating the score or drawing up merit for transfers as the petitioners who being in service since the last ten to twenty six years, now nurse a grievance that due benefit of length of service is not being afforded at the time of transfer. The Hon’ble Supreme Court in **Satya Dev Bhagaur and others Vs. The State of Rajasthan and others, 2022 (1) S.C.T 732**, has held that Courts should be slow in interfering in policy matters unless the policy is found to be palpably discriminatory and arbitrary. In **Satya Dev Bhagaur’s case (supra)**, the Hon’ble Supreme Court has observed as under:-

“16. It is trite that the Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This court would not interfere with the policy decision when a State is in a position to point out that there is intelligible differentia in application of policy and that such intelligible differentia has a nexus with the object sought to be achieved.

17. This Court in the case of **Krishnan Kakkanth vs. Government of Kerala and others (1997) 9 SCC 495** has observed thus:

"36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid "embarking on uncharted ocean of public policy"."

18. A three Judge bench of this Court in **Sher Singh and Others vs. Union of India and Others, (1995) 6 SCC 515** has observed thus:

"As a matter of fact the courts would be slow in interfering with matters of government policy except where it is shown that the decision is unfair, mala fide or contrary to any statutory directions."

In **Satya Dev Bhagaur's** case (Supra), State of Rajasthan had issued a notification dated 30.05.2018 providing that candidates applying for the post of Nurse, Compounder Junior Grade, who had worked under the Government and certain societies like AIDS Control Society, National TB Control Program, Jhalawar Hospital and Medical College Society etc.,

would be entitled to bonus marks as per the experience attained. It was provided that only such of the candidates having experience certificate from the competent authority as mentioned in the said advertisement would be entitled to the bonus marks. Aggrieved persons approached the High Court of Rajasthan seeking a direction to the State to accept their experience certificates which were issued by NRHM authorities of different States so as to qualify them for getting bonus marks. Their writ petitions were allowed by the Single Judge of the High Court, whereas the Division Bench allowed the appeal filed by the State of Rajasthan. Appeal filed by the aggrieved persons was dismissed by the Hon'ble Supreme Court.

Learned counsel for the petitioners, at this stage, submits that representation dated 22.01.2022, submitted by Rajkiya Prathmik Adhyapak Sangh, District Yamuna Nagar, is not being considered, therefore at this stage time bound directions be given to the competent authority to decide the said representation. However, I do not find any ground to issue any such direction at the instance of the petitioners. It is to be noticed that the said body is not before this Court and neither is there any detail thereof available. Furthermore, there is nothing on record to indicate whether petitioners are members of this body or Sangh.

Keeping in view the facts and circumstances of the case, I do not find any ground to interfere in this writ petition at the instance of the petitioners, at this stage. Needless to say, it is open to the petitioners to pursue the matter with the authorities in accordance with law, if so advised.

Writ petition is accordingly disposed of.

[LISA GILL]
Judge

08.03.2022
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.