IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-13576-2022 (O&M)
Date of decision: 20.06.2022

NARESH KUMAR AND ORS

....Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present : Mr. S.K. Malik, Advocate
for the petitioners.

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VINOD S. BHARDWAJ. J. (ORAL)

The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the Transfer Drive 2022 to the extent vide which the petitioners are being transferred forcefully as per list dated 10.06.2022 (Annexure P-4).

Learned counsel for the petitioners contends that the Government of Haryana had notified the online transfer policy for Taxation Inspector, Assistant Field Cadre and Clerks of Field Cadre in the Excise and Taxation Department (Annexure P-2). He contends that the said policy prescribes a minimum tenure of 05 years for an employee at a station before he can be transferred under the policy. Reference is made to the following provisions of the online transfer Policy to support the above argument:-

> ***3 (c) 'Prescribed Tenure'*** *means the tenure of appointment for a period of five years. While calculating the tenure of an employee for the purpose of this policy, the date from which someone is working in a zone on 31st March or any other date specified by the Administrative Secretary, Excise and Taxation*

Department of the calendar year of transfer shall be counted irrespective of the period spent in a zone on account of temporary transfer. The time spent in a zone of temporary transfer shall be treated as a period in the zone where an employee was posted prior to the temporary transfer. However, an employee may participate in the transfer drive subject to completion of minimum three years service in a zone.

(d) 'Qualifying date' for the purpose of calculation of vacant post(s) *shall be the 31st March or any other date, specified by the Administrative Secretary, Excise and Taxation Department, of the calendar of transfer.*

(...)

6. Procedure to be adopted:

- *i. The list of vacant posts for transfer will be circulated before each transfer drive, for the benefit of stakeholders.*
- *ii. Where the posts are blocked in a zone, the employee with the longest stay shall have to opt for the transfer drive. In case where more than one employee are having the same period of stay, than the younger employee shall have to opt for the transfer drive.*
- *iii. Only all the Assistants of Field Cadre working on regular basis in the Excise & Taxation Department shall be eligible to participate in the first online transfer drive as such chance has already been given to the Taxation Inspectors and Clerks of field cadre in 2021 at the time of initiation of Online Transfer Policy in 2021. However, the employees who have completed the prescribed tenure of five years at a zone will have to mandatorily participate in the online transfer drive.*
- *iv. In the subsequent online transfer drives, employees who have completed three years at a zone would have the opinion to voluntarily participate in the online transfer*

drive whereas the employees who have completed the prescribed tenure of five years at a zone will have to mandatorily participate in the online transfer drive.

v. *Excise and Taxation Commissioner shall seek options for choice of station in a zone from the eligible employees for transfer. The transfer exercise shall be carried out only through approved web-based application.*

vi. *The option once availed and confirmed by the employees shall be final.*

vii. *An employee who is due for superannuation within one year from the date of circulation of vacant posts shall not be bound to participate in the transfer drive unless he himself desires to participate.*

viii. *Merit criteria for allotment for zone will be as per clause 5 of this policy.*

ix. *All transfers shall be implemented within seven days of their issuance. The Treasury Officers concerned shall not draw the salary of the employees who have not complied with the orders.*

x. *A Committee headed by Deputy Commissioner and comprising of CMO and concerned DETC/JETC, may recommend deputation/temporary transfer of an employee after the transfer drive, on the basis of genuine and compelling reasons. A web portal would be provided for taking online application from the employees for this The Committee will scrutinize such cases and sent their recommendations to the Govt. which will be dealt under relaxation clause of the Transfer policy.*

xi. *Online general transfer due to completion of prescribed tenure of five years shall be treated as 'transfer in public interest' and in such case the joining time and composite transfer grant shall be admissible as per provision in Haryana Civil Services Rules, 2016.*

> *xii. In case of employees who exhaust their preferred choices in the first transfer drive, before posting them under 'Anywhere in the State' option, the department will again seek their options against the remaining available posts at that point of time.'*

By making a reference to the aforesaid provisions, learned counsel has vehemently argued that the petitioners have not completed the prescribed tenure of 05 years as such, they cannot be ordered to be transferred. A special reference is made to Clause 6 (iii) and (iv) to contend that the employee who have not completed the prescribed tenure of 5 years cannot be transferred. No other argument has been raised by the learned counsel. An additional plea was raised about the transfer being a mid-session transfer which is likely to hamper the education of children.

I have heard learned counsel for the petitioners and have also considered the relevant clauses of the online transfer policy referred to by the learned counsel during the course of arguments.

The perusal of the procedure required to be adopted by the State Government and relied upon by the learned counsel for the petitioners shows that the said procedure allows an employee to participate in the online transfer policy upon completion of a stay of 03 years in specific zone and also mandates that in the event of completion of a tenure of 5 years at a given zone, an employee shall have to mandatorily participate in the online transfer policy. The interpretation of the aforesaid clause cannot be given to mean that State Government is prohibited from effecting a transfer of the employees at all prior to a period of five years stay in a zone.

The proposed interpretation of the petitioners is not based on a meaningful reading or proper interpretation of the said transfer policy. There is nothing to suggest that in the process of implementation of the transfer policy, the State Government is prohibited or debarred from effecting any transfers except for in the manner so prescribed under the policy itself.

In the absence of any prohibition contained, no such interpretation or meaning can be assigned to the transfer policy as would reflect impediment on the power of the State. Any impediment/restriction has to be specifically prescribed in a policy/rule or should be available by necessary and natural inference. Any derived inference which is not supported by the plain reading and meaning of the policy, cannot be applied and it would rather amount to imposing prohibition not imbibed in the policy. While interpreting a policy, the High Court does not commit violence to the policy by providing in the policy something that is not contained therein. High Court cannot re-write the policy for the Sate or hold any clause to be badly embodied, more so, when the policy itself is not a subject matter of challenge. Insofar as the additional and parting argument of the petitioners is concerned about the mid session transfer, the said argument is bereft of any particulars or specific details. The petition does not give even a description whether the petitioners have any children or not, whether they are school going or not, about their classes and also as to whether they are admitted in any school or as to when the academic session commenced. There can be no presumption of a factual pleading, which is more a sympathetic plea rather than imposing any limitation to the powers of the State to effect transfers. Needless to mention that the cadre of Taxation Inspector is a State Cadre and transfer and posting is an incidence and condition of service. The prerogative of the State to deploy its resources cannot be steered by the Court. The same is the primary domain of the

Executive unless exercise of such executive discretion is infested with malice, caprice, arbitrariness, inherent lack of jurisdiction or as a means of inflicting punishment or satisfy the judicial conscience about being gross abuse of the authority of law or complete disregard to the Rule of Law. No such aspects have been established or argued.

The instant petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

June 20, 2022
S.Sharma(syr)

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