

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1). CWP No. 15099 of 2021 (O&M)
Date of Decision: May 07, 2022

ASHISH BALA Petitioner(s)
Versus
STATE OF HARYANA AND ANOTHER Respondent(s)

(2). CWP No. 15195 of 2021 (O&M)

SATISH KUMAR Petitioner(s)
Versus
STATE OF HARYANA AND OTHERS Respondent(s)

(3). CWP No. 15234 of 2021 (O&M)

POONAM RANI Petitioner(s)
Versus
STATE OF HARYANA AND ANOTHER Respondent(s)

(4). CWP No. 16032 of 2021 (O&M)

JASBIR SINGH Petitioner(s)
Versus
STATE OF HARYANA AND ANOTHER Respondent(s)

(5). CWP No. 15844 of 2021 (O&M)

MANISHA SINGH AND ANOTHER Petitioner(s)
Versus
STATE OF HARYANA AND OTHERS Respondent(s)

(6). CWP No. 15380 of 2021 (O&M)

RAKESH KUMAR Petitioner(s)
Versus
STATE OF HARYANA AND OTHERS Respondent(s)

(7). CWP No. 15952 of 2021 (O&M)

KASHMIR SINGH Petitioner(s)
Versus

STATE OF HARYANA AND OTHERS Respondent(s)

(8). CWP No. 15249 of 2021 (O&M)

SHIV KUMAR Petitioner(s)
Versus

STATE OF HARYANA AND ANOTHER Respondent(s)

(9). CWP No. 20337 of 2021 (O&M)

PRIYANKA Petitioner(s)
Versus

STATE OF HARYANA AND OTHERS Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sajjan Singh, Advocate,
Mr. Anurag Goyal, Advocate,
Mr. Jasbir Mor, Advocate,
Mr. D.K. Tuteja, Advocate,
Mr. Ashok Bhardwaj, Advocate,
Mr. Jawahar Lal Goyal, Advocate,
Mr. Parth Goyal, Advocate and
Mr. Anil Kumar Sharma, Advocate
for the petitioner(s).

Mr. Baldev Raj Mahajan, Advocate General, Haryana with
Mr. Harish Nain, AAG, Haryana.

LISA GILL, J.

This order shall dispose of CWP-15099-2021, CWP-15195-2021, CWP-20337-2021, CWP-15234-2021, CWP-15249-2021, CWP-15380-2021, CWP-15844-2021, CWP-15952-2021, and CWP-16032-2021, as an identical question arises for consideration in all these nine writ petitions, which have been taken up together for hearing and decision with consent of learned counsel for the parties.

Petitioners in all these writ petitions are Teachers/Principals serving the State of Haryana. They are aggrieved of being made to participate in the transfer drive mandatorily despite their not having completed five years on the post on which they are working. Said act is stated to be in violation of the Teachers Transfer Policy, 2016 as amended.

Brief facts as pleaded in each of the writ petitions are mentioned as here under:-

CWP-15099-2021

ASHISH BALA

VS.

STATE OF HARYANA AND ANOTHER

Prayer in this writ petition is for quashing of MIS status of petitioner whereby she is not permitted to fill in the option of not participating in the transfer drive to be carried out pursuant to notice dated 15.07.2021 with a further prayer to direct the respondents to carry out necessary changes in the MIS portal to enable the petitioner to opt out of the transfer drive. Petitioner in this case (PGT Hindi), it is stated was offered appointment and posted at Government High School Risalu, Block Panipat, District Panipat on 31.01.2019 and was forced to participate in the transfer drive in 2019. She was transferred to Government Senior Secondary School, Fatehpur Tagga, Block Ballabgarh, District Faridabad, vide order dated 22.08.2019. However, on recommendations of District Level Committee, she was transferred from Government Senior Secondary School, Fatehpur Tagga to Government Senior Secondary School, Malikpur, District Sonapat against a vacant post on medical ground vide order dated 28.05.2020. It is

stated that petitioner opted not to participate in the transfer drive subsequent to notice dated 25.06.2021. However, subsequent to notice dated 15.07.2021, petitioner could not opt in the negative. Hence, aggrieved writ petition has been filed.

CWP No. 15195 of 2021

SATISH KUMAR

Versus

STATE OF HARYANA AND OTHERS

Prayer in this writ petition is for not compelling the petitioner to mandatorily participate in the transfer drive pursuant to notice dated 25.06.2021 and 15.07.2021. It is stated that petitioner (TGT Master Maths) joined service on 07.11.2008. He was promoted to the post of PGT/Lecturer Maths on 14.11.2013. It is further stated that petitioner was transferred from Government Senior Secondary School, Sarhaul, District Gurugram to Government Senior Secondary School, Mouri, District Charkhi Dadri on 03.08.2017. Petitioner represented before the authorities for being transferred to a station which has proper facilities for care of his mentally retarded child (97%). It is averred that such facility is available only at Chandimandir (Panchkula), Gurugram and Hisar. Looking to the circumstances of petitioner, he was transferred to Panchkula on 21.12.2018 with a rider that he would participate in the next transfer drive. It is submitted that petitioner secured admission of his mentally retarded child in the Asha School at Chandimandir, Panchkula, therefore, he should not be forced to participate in the transfer drive in the given circumstances.

CWP No. 15234 of 2021

POONAM RANI

Versus

STATE OF HARYANA AND ANOTHER

Petitioner is aggrieved of not having an option to opt out of participation in the transfer drive to be carried out pursuant to notice dated 25.06.2021 and 15.07.2021. It is stated that petitioner joined service as Lecturer Hindi at Government Girls Senior Secondary School, Behlaba, District Rohtak on 22.08.2012. She was transferred to Government Senior Secondary School, Padhana, Block Nilokheri, District Karnal on 21.12.2016, thereafter to Government Model Sanskriti Senior Secondary School, Chhachhrauli at Yamuna Nagar and then to Government High School, Sandeel, Block Alewa, District Jind on 04.12.2017. Petitioner, it is submitted, was again transferred to Government Senior Secondary School, Gharora, District Faridabad on 22.08.2019 and yet again to Government Girls High School, Abubshahar, Block Dabwali, District Sirsa on 13.09.2019. A representation was submitted by petitioner, on which she was transferred to Government Girls Senior Secondary School, Meham, District Rohtak on 18.09.2019. It is, thus, submitted that petitioner should now not be forced to participate in the transfer drive.

CWP No. 16032 of 2021

JASBIR SINGH

Versus

STATE OF HARYANA AND ANOTHER

Petitioner in this case is also aggrieved of not being provided an option of not participating in the transfer drive pursuant to notice dated

25.06.2021/15.07.2021 Petitioner (PGT/Lecturer Hindi) is stated to have joined service on 16.12.2015. It is stated that petitioner was transferred from Government Senior Secondary School, Rasina, District Kaithal to Government Senior Secondary School, Khizrabad, District Yamuna Nagar, vide order dated 22.08.2019 against one Mrs. Renu Rani, Lecturer in English, wrongly showing her post to be that of Lecturer in Hindi. When petitioner went to join at Government Senior Secondary School, Khizrabad, it was revealed that there was wrong updation of data on the MIS profile of Mrs. Renu Rani (a Lecturer in English), who had been transferred to Government Senior Secondary School, Ledi, against the post of Lecturer Hindi. Consequently, order dated 05.11.2019 was issued wherein petitioner was transferred from Government Senior Secondary School, Khizrabad (Partap Nagar, Yamuna Nagar) to Government Senior Secondary School, Mirzapur, District Kurukshetra. In this situation, it is submitted, petitioner be not forced to participate in the transfer drive.

CWP No. 15844 of 2021

MANISHA SINGH AND ANOTHER
Versus
STATE OF HARYANA AND OTHERS

Petitioners Manisha Singh and Kusum Lata in this writ petition are aggrieved of being asked to participate mandatorily in the transfer drive. They also seek setting aside of the note appended in their transfer order to the effect that they shall participate in the next transfer drive compulsorily. It is stated that petitioner no.1 - PGT (Biology) and petitioner no.2 – PGT (Political Science) had been transferred on 22.08.2019 in the transfer drive

in 2019. Petitioner no.1 was transferred from Government Senior Secondary School, Mohammed Pur Ahir, Block Taoru District Nuh to Government Senior Secondary School, Rajgarh Dobhi, Block Narwana, District Jind and petitioner no.2 was transferred from Government Senior Secondary School, MP Ahir, District Nuh to Government Senior Secondary School, Panchgaon, Mewat. Since the said transfer was stated to be in violation of the terms and conditions of the Transfer Policy, 2016, petitioners filed CWP-31895-2019 being aggrieved thereof. Said writ petition was disposed of on 04.11.2019 directing the respondents to decide the objections submitted by petitioners within a period of one month. Considering the objections of petitioners, petitioner no.1 was transferred from Government Senior Secondary School, Rajgarh Dhobi, District Jind to Government Senior Secondary School, Khor Basai, Nuh (Mewat) and petitioner no.2 was transferred to Government Senior Secondary School, Panchgaon, Mewat to Government Senior Secondary School, Bissar Akbarpur, Nuh (Mewat). Petitioners, it is stated, joined at the said schools after passing of order dated 20.10.2020 endorsed on 03.11.2020. Therefore, petitioners should not be made to participate compulsorily in the transfer drive.

CWP No. 15380 of 2021**RAKESH KUMAR****Versus****STATE OF HARYANA AND OTHERS**

Petitioner in this case is also aggrieved of compulsory participation in the transfer drive pursuant to notice dated 15.07.2021. It is

stated that petitioner who had joined as TGT Social Study, on adhoc basis on 26.02.1996 with his services being regularized w.e.f. 01.10.2003, was promoted as Principal on 28.04.2012. He served at Government Senior Secondary School, Alipur, District Ambala as Principal till 22.08.2019 and was transferred to Government Senior Secondary School, Cheeka, District Kaithal on 22.08.2019. Pursuant to petitioner's participation in the Grievance Redressal Transfer drive, he was transferred to Government Model Sanskriti Senior Secondary School, Shahpur Nurad, District Ambala on 13.09.2019. It is, thus, prayed that he should not be forced to compulsorily participate in the transfer drive.

CWP No. 15952 of 2021

KASHMIR SINGH

Versus

STATE OF HARYANA AND OTHERS

Petitioner in this case is stated to have joined service as Science Master on regular basis on 14.09.1993 and posted in Zone-7 from 1993 till 31.01.2008. He was selected and appointed as Head Master High School and he joined at Government High School, Lohar Majra, District Kurukshetra on 31.01.2008 and remained posted there upto 15.01.2014. It is stated that petitioner was promoted as Principal and posted at Government Senior Secondary School, Bodhni, District Kurukshetra (Zone-6) w.e.f. 15.04.2014 to 24.08.2019. Petitioner was then transferred to Government Model Sanskriti Senior Secondary School, Thana, District Kurukshetra on 22.08.2019. One Mr. Om Parkash, Principal was, however, allotted

Government Model Sanskriti Senior Secondary School, Thana, due to which petitioner was relieved and petitioner adjusted at Government Senior Secondary School, Balahi, District Kurukshetra vide order dated 23/27.07.2021 wherein it is mentioned that petitioner would compulsorily participate in the next transfer drive. It is submitted that though petitioner was allotted Government Senior Secondary School, Balahi, District Kurukshetra, in July 2021 itself, he should not be forced to participate in the transfer drive pursuant to notice dated 27.07.2021.

CWP No. 15249 of 2021

SHIV KUMAR

Versus

STATE OF HARYANA AND ANOTHER

Petitioner in this case is stated to have been promoted to the post of Principal on 31.05.2017 and posted at Government Senior Secondary School, Kalayat, District Kaithal in the transfer drive in June, 2017. Petitioner was allotted Government Model Sanskriti Senior Secondary School, Hodal, District Palwal. It is stated that petitioner alongwith other promoted Principals represented before the authorities and on their request one Online Grievance Transfer Drive was started, in which petitioner again participated online and was allotted Government Senior Secondary School, Patti Kalyana, District Panipat. Petitioner is again stated to have been put to transfer drive in the month of August, 2019 and allotted Government Model Sanskriti Senior Secondary School, Radaur, District Yamuna Nagar. However, vide order dated 02.07.2021, one Devender Kumar who was

working at Karnal, was transferred against petitioner and petitioner was ordered to be adjusted after 21 days at Shaheed Naveen Vaidh Government Senior Secondary School, Model Town, Rohtak vide order dated 23.07.2021. In these circumstances, petitioner it is stated, should not be made to participate compulsorily in the transfer drive pursuant to notice dated 25.06.2021.

CWP No. 20337 of 2021

PRIYANKA

Versus

STATE OF HARYANA AND OTHERS

Petitioner working as PGT (English), it is submitted, was transferred even before completion of her five years in the Government Senior Secondary School, Khedi Sadh, District Rohtak to Government Senior Secondary School, Anwali, Block Gohana, District Sonapat on 08.03.2019. It is submitted that petitioner has merely completed 2½ years at the School in question, therefore, she should not be forced to participate in the transfer drive.

Brief facts necessary for adjudication of all the matters are that to regulate transfers of Teachers in the State of Haryana, Teachers Transfer Policy, 2016 was formulated by the State. This policy is stated to be framed with a vision to ensure equitable demand based distribution of Teachers/Heads to protect academic interest of the students and optimize job satisfaction amongst its employees in a fair and transparent manner. Apart from providing for the time schedule, zoning and categorisation of the Core and Non-Core posts, Merit Criteria for allotment of the posts has been

provided. Said policy has been amended from time to time. Clause 6 of the Policy as amended in 2017 and as it stands as of now reads as under:-

“6. **Basic Principles:**

The option once availed and confirmed shall be final and can be changed only under the provisions of this policy. Unless protected under a provision of this policy, every teacher completing 5 years stay/tenure in a particular school/zone of any district(s), whether independently in a district or cumulatively of more than one district, of the State shall be transferred.”

A detailed merit criteria for allotment of posts is provided 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 unmarried daughter(s)	5	Eligible widowers shall be given 5 points only.
4.	Differently abled persons	Vision20 Locomotors20 Deaf and Dumb20		40% to 60% disability = 10 Marks. Above 60% to 80% = 15 Marks Above 80%=20 Marks
5.	Diseases of "Debilitating Disorders"	Self Spouse/ unmarried Children	10 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
A detailed circular containing guidelines for measuring academic performance shall be issued by the competent authority from time to time.				

Note:

- (i) Cap of maximum points for age factor will be removed however teachers claiming merit points under "Special Category" shall be entitled to maximum 20 points only, depending upon the factors such teachers belong to.
- (ii) Only notified diseases shall be considered for merit points under the category of "Diseases of Debilitating Disorders".
- (iii) For teachers teaching both 10th and 12th classes, average of the two pass percentages will be taken for calculation of the privilege points.
- (iv) If husband and wife, both are working in School Education Department, the benefit of 10 points under para 7(iii)(6) above can be claimed by only anyone of them.

Clause 8, which provides definition of vacant posts as amended in 2017 reads as under:-

“8. Definition of vacant posts:

- (i) There shall be two types of vacancies as under:
- a) **Actual Vacancy:** A post not occupied by any teacher whether serving in regular capacity or by a temporarily employed teacher like a guest teacher.

b) **Deemed Vacancy:**

(i) Involuntary deemed vacancy:

A post of any cadre (whether teaching or non-teaching), held by a teacher previously or presently in the school education department in a regular capacity for a period of five years or more on the qualifying date in present zone of posting; or

A post occupied by a teacher given temporary manual posting due to non-availability of online transfer drive or technical problems or compulsions of administrative or litigational nature. However, it will not include the posts occupied by teachers who become duly posted as an outcome of the grievance redressal mechanism of a general transfer drive.

(ii) Voluntary deemed vacancy: A post occupied by such teacher who has been adjudged eligible and allowed to participate in general transfer drive even if he is not eligible otherwise on the minimum tenure criteria.

(iii) Some vacancies of all categories of teachers may remain unfilled at any given point of time due to shortage of teachers in the department. To avoid disproportionate concentration of teachers in some schools, the department may block some actual vacant posts to be kept vacant in the transfer drive.”
- Government of Haryana then approved the following amendment in Clause 8(i)(b)(ii) as notified on 10.11.2020:-
- | | | |
|-------------|--|--|
| 8(i)(b)(ii) | (ii) Voluntary deemed vacancy: a post occupied by such teacher who has been adjudged eligible and allowed to participate in general transfer drive even if he is ot eligible otherwise on the minimum tenure criteria. | 'Teacher' may be substituted with “regular/adhoc teacher”. |
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An amendment was again carried out in Clause 8(i)(b)(i) on 28.06.2021 and the provision would read as under:-

8(i)(b) Deemed Vacancy:

- (i) **Involuntary deemed vacancy:** A post of any cadre (whether teaching or non-teaching), held by a teacher previously or presently in the school education department in a regular capacity for a period of five years or more on the qualifying date in present zone of posting; or
- (ii) A post occupied by a guest/contractual/adhoc teacher.

Some of the present writ petitions were filed at this stage.

Corrigendum dated 25.08.2021 was issued with the clarification, which reads as under:-

“In continuation of this office memo No. 8/2-2020 CO-I(2) dated 28.06.2021 on the subject cited above.

It is clarified that the para No. 8(i)(b)(i) may be read as under:-

Involuntary deemed vacancy: A post of any cadre (whether teaching or non-teaching), held by a teacher previously or presently in the School Education Department in a regular capacity for a period of five years or more on the qualifying date in the present zone of posting; or

A post occupied by a teacher given temporary manual posting due to non-availability of online transfer drive or technical problems or compulsion of administrative or litigational nature or on new appointment or on promotion or otherwise.”

Provisions regarding Involuntary Deemed Vacancy to include a post occupied by a teacher given manual posting was included again in Clause 8 (i)(b)(i) of the Policy by way of this corrigendum.

Controversy in these petitions revolves around the issue, whether a post occupied by a teacher given manual posting whether due to non-availability of online transfer drive or technical problems or any of the eventualities as stated in the clause notified in the corrigendum can be termed Involuntary Deemed Vacancy.

Learned counsel for the petitioners had vehemently argued that in view of specific provisions regarding deemed vacancy in the Transfer Policy as amended on 28.06.2021, before issuance of corrigendum, there is no question of petitioners being made to participate mandatorily in the transfer drive. It was argued that issuance of corrigendum with amendment being carried out during pendency of these writ petitions is absolutely illegal, arbitrary and not in accordance with provisions of law as it has not been carried out by a competent authority. Learned counsel for the petitioners submitted that merely because petitioners were posted pursuant to manual transfer, cannot be a reason for forcing them to participate compulsorily in the transfer drive. It was further contended that once posting by way of manual transfer is an outcome of a grievance redressal mechanism, compelling the petitioners to participate yet again in the subsequent transfer drive is a totally contradictory step which negates the earlier redressal of their grievance. Learned counsel delienated on the individual grievances of the petitioners in all the petitions as have been described in the foregoing paras. It is, thus prayed that these writ petitions be allowed.

Learned Advocate General, Haryana, while refuting the arguments raised on behalf of petitioners submits that matter regarding

participation of employees who were posted through manual transfers is squarely covered by a decision of this Court in *Manish Kumar Vs. State of Haryana and others, in CWP-28707-2019*, which has been upheld by a Division Bench in LPA-247-2020. Learned Advocate General, however, submits that case of petitioners in CWP Nos.15099, 15234, 15844, 15380, 15195 and 16032 of 2021, who have pleaded individual genuine hardship and having been earlier accommodated by manual transfers, shall be considered as a one time measure to resolve the issue, though not to be treated as a precedent. Nevertheless said petitioners are required to participate in the online transfer drive as per provisions of Clause 8 of applicable Teachers Transfer Policy. However, in case they do not get posting at the same station, they may submit applications within 15 days of their transfer which shall be considered and petitioners therein shall be accommodated in the same district where they are presently posted. Their applications shall be decided within a stipulated period of time.

In respect to petitioners in remaining three cases (CWP No.15249 of 2021, CWP No.15952 of 2021, CWP No. and CWP No. 20337 of 2021), it is submitted that no ground for any interference is made out and all the writ petitions should be dismissed. Petitioner Shiv Kumar (in CWP-15249-2021) is stated to have participated voluntarily in the transfer drive and he was ultimately allotted Government Model Sanskriti Senior Secondary School, Radaur, District Yamuna Nagar on 22.08.2019. Thereafter, Government of Haryana took a decision that the Model Sanskriti Schools shall be affiliated with the Central Board of Secondary Education and a procedure was developed for appointment of the candidates.

Applications of eligible Principals were invited along with their preference of choice from willing candidates through online portal of the Department. Candidates were then screened by the specially constituted Committees on the basis of the result of the Board/non-Board classes etc. Mr. Devender Kumar, Principal was selected and posted as Principal of the Government Model Sanskriti Senior Secondary School as a result of this exercise. Petitioner, it is submitted did not participate in the selection process. Therefore, after appointment of Devender Kumar, petitioner was adjusted at Shaheed Naveen Vaidh Government Senior Secondary School, Model Town, Rohtak vide order dated 23.07.2021, subject to the condition that he would participate in the next transfer drive. It is further submitted that as per the MIS profile of petitioner, he had served for more than 14 years at District Yamuna Nagar.

Similarly in the case of petitioner Kashmir Singh (in CWP-15952-2021) it is submitted that Government Senior Secondary School Thana, Kurukshetra, where he was serving as Principal was converted to Government Model Sanskriti Senior Secondary School. After the screening process Mr. Om Parkash was posted as Principal at the said Sanskriti School with the petitioner not even having participated in the selection process. Petitioner was adjusted at Government Senior Secondary School, Balahi subject to the condition that he would participate in the next general transfer drive. Moreover, the petitioner, it is stated has remained in District Kurukshetra for 15 years of his service and for 13 years in adjoining districts of Kurukshetra. Reference is made to the table regarding the service record as contained in para no.11 of the affidavit dated 17.12.2021 of respondent

no.2 in the said writ petition. In respect to petitioner Priyanka (in CWP-20337-2021), it is pointed out that petitioner was transferred from Government Senior Secondary School, Khedi Sadh, Rohtak to Government Senior Secondary School, Anwali, District Sonipat through manual mode and a condition was specifically imposed that she would participate in the next transfer drive compulsorily.

Learned Advocate General, Haryana submits that once petitioners were transferred through the manual mode, condition was specifically imposed that they would have to participate in the next transfer drive compulsorily. This condition was accepted by the petitioners and never challenged by them. Therefore, present writ petitions it was submitted should be dismissed as transfer being an incidence of service, an employee does not have any vested right for being transferred to or not being transferred from a particular place.

I have heard learned counsel for the parties at length and have gone through the files with their able assistance.

In so far as question of petitioners being asked to participate in the general transfer drive compulsorily, despite not having completed a period of five years on the transferred post merely on the ground that their appointment was through manual mode indeed stands conclusively settled vide decision dated 17.01.2020 in CWP-28707-2019, titled ***Manish Kumar Vs. State of Haryana and others*** and other connected matters. Petitioners in CWP-28707-2019 and other connected writ petitions had raised this very question that they were being forced to participate in the transfer drive

despite not having completed five years of service at the school in question. Co-ordinate Bench while considering the facts and circumstances held that in view of Clause 8 (i)(b) & (ii) of the Transfer Policy dated 05.06.2017, even if the employee had not completed five years service in a particular school, he was rightly asked to participate in the general transfer drive and the vacancy on which such employee was posted temporarily, would be taken to be a Involuntary Deemed Vacancy as he had been adjusted thereon through the manual mode.

Decision dated 17.01.2020 was upheld by a Division Bench of this Court on 24.02.2020 in LPA-247-2020, titled **Nisha Vs. State of Haryana**. Division Bench of this Court while referring to judgments of the Hon'ble Supreme Court in **Mrs. Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 Supreme Court 532; Union of India and others Vs. S.L Abbas, AIR 1993 Supreme Court 2444, and National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and another, AIR 2001 Supreme Court 3309**, held that a transfer policy is not enforceable and an order of transfer in violation thereof cannot be assailed on that ground.

In the present cases much stress has been laid by learned counsel for the petitioners on the fact that as per the Teachers Transfer Policy, 2016 as amended in June, 2021, Involuntary Deemed Vacancy included only a post of any cadre (whether teaching or non-teaching), held by a teacher previously or presently in the school education department in a regular capacity for a period of five years or more on the qualifying date in

the present zone of posting; or a post occupied by a guest/contractual/adhoc teacher. It is submitted that this Clause did not include the post occupied by a Teacher given temporary manual posting due to non-availability of online transfer drive or technical problems or compulsion on administrative or litigational nature or on new appointment or on promotion or otherwise. It was argued that this amendment has been brought about in an illegal manner during pendency of these writ petitions and is not applicable.

Though attractive at first flush, a close perusal and consideration reveals no merit in this argument. Clause 8(i)(b)(i) as it stood in the amended policy of 2017 and then notified in June, 2021 as well as corrigendum issued on 25.06.2021 has been reproduced in the foregoing paras and is not being reproduced again for the sake of brevity. It is succinctly explained in the affidavit dated 30.09.2021, filed in CWP-15099-2021 (as well as the reply/written statements filed in other writ petitions) that provision regarding posts occupied by teachers through manual posting in Clause 8(i)(b)(i) which was there in the Teachers Transfer Policy notified earlier was somehow left out due to an inadvertent mistake while carrying out the amendment in June, 2021. Same was incorporated again by issuance of a corrigendum. During the course of hearing photocopies of the record were produced in Court to indicate movement of the file for rectification up to the Worthy Chief Minister of the State prior to issuance of the corrigendum. Reference has been made to the manner and method of amendment carried out in June, 2021 relied upon by the petitioners and that of the corrigendum. Learned counsel for the petitioners are unable to point out any infirmity or illegality therein.

It is a matter of record that Clause 8 (i)(b) of the policy as amended in 2017 while defining Deemed Vacancy included a post occupied by a teacher given temporary manual posting due to non-availability of online transfer drive or technical problems or compulsions of administrative and litigational nature apart from a post of any cadre whether non-teaching or teaching held by a teacher previously or presently in the School Education Department in regular capacity for a period of 05 years or more on the qualifying date in the present zone of posting.

In the amendment carried out on 28.06.2021 Involuntary Deemed Vacancy included only the post of any cadre held by a teacher previously or presently in the School Education Department in a regular capacity for a period of five years or more on the qualifying date in the present zone of posting or a post occupied by a guest/contractual/adhoc teacher.

Provision regarding the post occupied by a teacher given temporary manual posting was missing. It is to be noticed that provision regarding the post occupied by the teachers given temporary manual posting was again inserted by way of Corrigendum dated 25.08.2021. To read any kind of mala fides in this exercise as is sought to be urged by learned counsel for the petitioners, is not possible in the given factual matrix and neither have learned counsel been able to indicate any such aspect from the record.

Much stress was laid during arguments on the aspect that in the policy as it existed in 2017 provided that posts occupied by teachers given temporary manual posting who were duly posted as an outcome of the

Grievance Redressal mechanism of a general transfer drive would not be included and non-inclusion of this clause in the corrigendum vitiates the same. This aspect has been succinctly explained by the learned Advocate General, Haryana while submitting that as per experience, very often participation in or invocation of Grievance Redressal mechanism itself had become a vehicle of mis-use in a manner where an employee would manage a posting through the manual mode a short time before the general transfer drive thereby managing to escape participation therein. It is submitted that it is in this view of the matter that this clause was not included in the corrigendum.

Be that as it may, it is to be noted that the policy or the corrigendum as such is not under challenge in this writ petition. Petitioners are clearly governed by the policy including the corrigendum dated 25.08.2021. It is clearly provided that Involuntary Deemed Vacancy shall include a post occupied by a teacher given temporary manual posting due to (i) non availability of online transfer drive, or (ii) technical problems or (iii) compulsion of administrative or litigational nature or (iv) on new appointment or (v) on promotion or (vi) otherwise.

During the course of hearing, learned Advocate General while referring to the reply filed in all the writ petitions, succinctly explained various reasons/exigencies for which the Department resorts to transfer of an employer through manual mode as under:-

1). New appointment:-

It is stated that when a new employee joins a Department, there

are less chances with the Department to grant posting through the online mode, therefore, temporary station is allocated with a condition that employee shall participate compulsorily in the next online drive.

2). Promotion cases:-

When an employee is promoted to the next promotional post, it is stated he has to be posted on a fresh station. Said exercise is conducted manually again with a condition that employee shall participate compulsorily in the next transfer drive.

3). Court cases:-

It is stated that whenever interim orders are granted by any Court, manual transfer orders have to be issued qua the said employee for conversion of normal schools to Model Sanskriti Schools. It is stated that the Department converted some normal schools to Model Sanskriti Schools to provide quality education to the students wherein students are to be taught as per the CBSC pattern. Teachers are selected through the screening process in the schools. Therefore, employees who did not apply for the Model Sanskriti Schools or were selected for the interview process, were adjusted manually to the other schools with the rider that they would participate compulsorily in the next transfer drive.

4). Administrative grounds:-

It is explained that in certain cases for the purpose of conducting a fair inquiry, an employee may have to be transferred to another station manually or some persons who by some means were able to get relaxation in the policy are also liable to participate mandatorily in the next transfer drive.

It is relevant to note at this stage that petitioners Shiv Kumar and Kashmir Singh in CWP-15249-2021 and CWP-15952-2021 were allocated their present place of posting through the manual mode on account of the schools where they were posted being designated as Model Sanskriti Schools wherein Principals were to be appointed through the designated mode of selection. Admittedly, said petitioners did not come forward to participate in the said selection process for being appointed at the Sanskriti Schools. They were adjusted through the manual mode after duly selected Principals were appointed at the respective stations. Moreover, both the said petitioners have admittedly been posted for considerable number of years in the district concerned. Petitioner in CWP 20337-2021 was transferred to Government Senior Secondary School, Anwali, District Sonipat admittedly through the manual mode. Likewise it is a matter of record that all the petitioners were posted through the manual mode.

Learned counsel for the petitioners in some of the cases have also raised a ground that the transfer orders handed over to them do not contain the rider that they would have to participate compulsorily in the transfer drive whereas order uploaded on the MIS portal contained a note that the officer shall participate in the next transfer drive compulsorily.

During the course of hearing, it has been succinctly explained that there is a specific provision in the policy for mandatory participation in the case of manual mode of transfer, therefore, even if there is no mention of mandatory participation in the transfer order, same would be inconsequential. Updation of particulars on the portal has been provided in

such a manner to automatically provide for the said note to appear. Explanation set forth is in consonance with the factual position and no benefit can be availed therefore of by petitioners on this account.

It is further to be noted that the transfer policy or its provisions are not under challenge before this Court, therefore, no occasion arises for any adjudication thereon. It is a settled position of law that an employee has no vested right to seek transfer to a particular place or seek not to be transferred from a particular station. It has been held by the Hon'ble Supreme Court in *S.K. Naushad Rehmand and others Vs. Union of India and others*, Civil Appeal No.1243 of 2022, decided on 10.03.2022 that an employee has no fundamental right or for that matter a vested right to claim transfer or posting of his/her choice. It is further held that executive instructions and administrative directions concerning transfers and posting do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons, who are employed in service, is subject to overreaching needs of the administration. Coordinate Bench in the case of **CWP-15984-2021** titled '**Inderjit Pahwa Vs. State of Haryana and another**', rejected the claim of the petitioner therein who was a Teacher seeking setting aside of action of the respondents in insisting on mandatory participation in Teacher Transfer Drive on the ground that he had only completed two years at the place of posting and that he should not be subjected to compulsory participation in the drive before completion of five years. While referring to Clause 6 of the Policy, Court refused to interfere in the absence of any arbitrariness and malafides. Similarly in the present writ petitions no ground for any interference is made out as such.

Keeping in view the facts and circumstances, all the petitioners are eligible to participate in the general teachers transfer drive to be held pursuant to notice dated 25.06.2021 and any other subsequent notices as may be issued by the State, keeping in view Clause 8(b)(i) & (ii) of Teachers Transfer Policy in view decision dated 27.01.2020 in CWP-28707-2019, titled *Manish Kumar Vs. State of Haryana and others*, which has been upheld by Division Bench in LPA-247-2020. However, in case petitioners in CWP Nos.15099, 15234, 15844, 15380, 15195 and 16032 of 2021 do not get posting at the same station/district where they are posted, they shall represent before the Department within 15 days of their transfer and in terms of the statement made by learned Advocate General before this Court, said petitioners shall be accommodated in the same district where they are presently posted, within a stipulated period of time as determined by the respondents. Till then status quo regarding posting of said petitioners only shall be maintained. Needless to say petitioners in the remaining three writ petitions are at liberty to seek redressal of their grievance if any within 15 days of transfer order in consonance with Clause 9(xvii) of Teacher Transfer Policy.

No other argument has been addressed.

Keeping in view the facts and circumstances as above, CWP Nos.15099, 15234, 15844, 15380, 15195 and 16032 of 2021 are disposed of and CWP Nos.15952, 15249 and 20337 of 2021 are dismissed. Pending applications, if any, are disposed of accordingly.

May 07, 2022

**(Lisa Gill)
Judge**