

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

(245)

CWP-24604-2019

Date of Decision : August 03, 2022

Naresh Kumar and others

.. Petitioners

Versus

State of Haryana and another

.. Respondents

(245-2)

CWP-15210-2021

Shashi Bala and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

(245-3)

CWP-15394-2021

Harsh Dev and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Jhanji, Senior Advocate, with
Mr. Anshul Gupta, Advocate, for the petitioners,
in CWP No.24604 of 2019 and CWP No.15210 of 2021.

Mr. Kanwal Goyal, Advocate with
Mr. Paramjit Singh, Advocate, for the petitioners
in CWP No.15394 of 2021.

Mr. Sandeep Singh Mann, Additional Advocate General,
Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, three writ petitions, the details of which have been given in the heading of the order, are being decided as all the writ petitions involve the same question of law on similar facts.

The prayer of the petitioners in the present petitions is that they are working as Guest/Contractual/Adhoc Teachers within the State of Haryana and they are being discriminated viz a viz regular employee while effecting the general transfer in accordance with the transfer policy, which has been framed by the respondents.

Learned Senior counsel for the petitioners argues that as per the letter dated 28.06.2021, a copy of which has been appended as Annexure P-15 with the petition i.e. CWP No.15394 of 2021, the post being held by the Guest/Contractual/Adhoc Teachers is to be treated as vacant and the said clause of the transfer policy is causing prejudice to the petitioners. Learned Senior counsel for the petitioners further submits that another grievance of the petitioners is that Guest Teachers are only to be accommodated against the posts, which remain vacant after transferring the regular employees hence, clause 8 (ii) as well as 9 (xviii) of the transfer policy is liable to be set aside.

Learned senior counsel for the petitioners submits that as per the transfer policy which has been issued by the respondent-State, the post on which Guest Lecturers are working, is to be treated as a deemed vacancy

always and they can be transferred in case, any regular incumbent is to be posted at a place where guest faculty lecturer is working, however, the Guest Lecturer needs to be given parity with regular Lecturer while effecting transfer.

Learned senior counsel for the petitioners argues that once the guest faculty lecturers are entitled to continue till they attain the age of superannuation, they should be given option for transfer along with the regular employees against all the deemed vacancies, which are formulated by the State and their claim should not be restricted to the posts/vacancies which remain vacant after transferring all the regular employees. Learned senior counsel for the petitioners submits that the claim arises from the definition of teachers, which have been given in the policy, according to which the guest faculty lecturer is to be treated as teacher so as to be considered for transfer. Learned senior counsel for the petitioners further submits that in case, the petitioners are not treated at parity with the regular employees, they will suffer more prejudice for the reason that as they are not getting any allowances in their fixed salary, the financial burden upon them will be more.

Learned counsel for the respondents submits that the status of a guest faculty lecturer as compared to a regular incumbent already stands decided by a Coordinate Bench of this Court while passing order in ***CWP No.17240 of 2016 titled as Anand Kumar versus State of Haryana and others, decided on 10.11.2017*** wherein, it has been held that the posts which are being held by the guest faculty lecturers is to be treated as a vacancy so as to consider the claim of a regular employee. Hence, the guest faculty lecturers, cannot claim parity qua the regular incumbent working in

the same cadre. Learned counsel for the respondents further submits that the safeguards in the said transfer policy have already been adopted to ensure that in case any regular lecturers gets transfer on the posting where a Guest Lecturer is working, the said guest faculty lecturer will be adjusted on suitable post.

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

In the present petition at the first instance, it has to be seen whether, the Guest Faculty Lecturer, who are working in the State of Haryana, are entitled to invoke the jurisdiction of this Court for challenging the transfer policy, which is primarily effecting the transfer of regular employees, who are working within the State of Haryana against the regular sanctioned posts/vacancies. The guest teachers, are only supplementing the strength temporarily without there being any right to occupy a cadre post. The respondent-State has framed the Haryana Guest Teacher Service Act, 2019 to regulate the condition of service of the guest faculty lecturers. The position with regard to the status of the guest faculty lecturer is clear from the said Act as per which they are temporarily supplementing the requirement till the posts are filled on regular basis, meaning thereby that the guest faculty lecturers are only a stop gap arrangement and cannot be treated as part of a regular strength of the cadre in which they are working.

A Coordinate Bench of this Court in ***CWP No.17240 of 2016 titled as Anand Kumar versus State of Haryana and others, decided on 10.11.2017*** has given a direction that the posts held by Guest/ Faculty Teachers are to be treated as vacant posts for effecting transfer of the regular employees. In the light of the same, the stipulation in the transfer

policy that the posts occupied by the Guest Faculty Lecturers are to be treated as vacant for effecting transfer cannot be faulted with which is rather in compliance of a direction given by this Court and therefore the plea of the petitioner that the posts held by Guest Faculty Lecturer not be treated as vacant post, is denied.

The second argument of the learned Senior counsel for the petitioners is that the petitioners, who are working as Guest Faculty Lecturers should be treated at par with the regular employees for effecting transfers and the Guest Faculty Lecturers should not only be accommodated on the posts which remain vacant after adjusting all the regular employees and they be considered for transfer on equal footing, the same cannot be accepted on the ground that the petitioners are trying to claim parity with regular employees, which is not permissible.

Keeping in view the status of a guest faculty lecturer, there is a no parity between the guest faculty lecturers and a regular employee, hence, the prayer of the petitioners that they should be treated at par with the regular lecturers for effecting the general transfer, cannot be accepted. The regular employee has a preferential right to claim transfer under the transfer policy and the guest faculty lecturer, who is working only as a stop gap arrangement and is to hold the post till the regular incumbent joins, hence, Guest Lecturer cannot claim parity with a regular employee.

In case the prayer of the petitioners is accepted that they should be treated at par with regular employees for effecting transfers, then the situation can arise where Guest Faculty Lecturers, who are working as stop gap arrangement will be dislodging the regular employees from the post on which they are working by way of transfer, which is not permissible. A

regular employee is on higher footing as compare to Guest Faculty Lecturers, who are only working due to the fact that there is a shortage of regular employees in the department.

Further, this Court has already held by passing order in **Anand Kumar's case (supra)** that even the post which a guest faculty lecturer is holding is to be treated as a deemed vacancy which makes it clear that the guest faculty lecturers cannot claim preference even to hold a post on which they are working and the regular employee can claim transfer on the said post if eligible under the transfer policy. Once, a finding has already been recorded qua the said fact by this Court, the prayer of the present petition claiming parity with the regular employee cannot be granted.

It is not the case that the guest faculty lecturers have not been given option for transfer but the same has only been limited to the post which remain vacant after effecting the general transfer in respect of the regular employees, hence, no grievance can be raised by the petitioners in this regard keeping in view their status qua regular incumbent.

Learned Senior counsel for the petitioners submits that as per the definition of the teachers which also includes Guest Faculty Lecturers the parity has been given by the Government itself.

The said interpretation of the petitioners is faulty. The definition of teacher includes Guest Faculty Lecturers only to define that the post held by the Guest Faculty Lecturers is also part of the transfer drive and the same is to be treated as vacant for the purpose of effecting transfer of regular employees as per **Anand Kumar's case (supra)**. Therefore, the ground being raised by the petitioners to claim parity is by miss interpreting the definition of teachers as defined under the transfer policy.

Learned senior counsel for the petitioner submits that some of guest faculty lecturers are specially abled persons and therefore, they should be given appropriate treatment while effecting the transfer. The argument is specific in nature and not general.

No doubt in case, any guest faculty lecturer has a special circumstance, the State will be well within their jurisdiction to consider the said claim of the said employee while effecting the transfer against the vacant post which remain vacant after transferring all the regular employees but in preference to the other Guest Faculty Lecturer.

Keeping in view the above, the challenge to the action of the respondents in giving the preference of posting in the transfer policy to the regular employees over a guest faculty lecturer, cannot be faulted with. No valid ground has been cited to interfere with the policy of the State with regard to the transfer.

Accordingly, all the writ petitions are dismissed.

A photocopy of this order be placed on the files of other connected cases.

August 03, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes