

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 14.09.2022

Sr. No.106+282

CM-18742, 17878 & 7354-CWP-2021 in/and
CWP-10692-2021 (O&M)

Puneet Kumar and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.103+285

CM-18198-CWP-2021 in/and
CWP-17377-2021 (O&M)

Mukesh

.... Petitioner

Versus

State of Haryana and others

... Respondents

Sr. No. 104+287

CM-18355 & 18849 -CWP-2021 in/and
CWP-17556-2021 (O&M)

Sunil Dutt and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.287

CWP-17602-2021

Rajesh Kumar and another

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.105+284

CM-18740-CWP-2021 in/and
CWP-17232-2021 (O&M)

Jagat Pal and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

CWP-10692-2021 along with similar petitions

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Sr. No.284

CWP-17126-2021 (O&M)

Ritu Kamboj and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.284

CWP-17784-2021

Yogesh Kumar and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.284

CWP-17892-2021

Ravinder and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.284

CWP-17904-2021

Hanuman Singh and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.284

CWP-18708-2021

Vijay Kumar and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.282

CWP-11515-2021

Mahipal and another

.... Petitioners

Versus

State of Haryana and another

... Respondents

Sr. No.282

CWP-11637-2021

Santosh Kumari and others

.... Petitioners

Versus

State of Haryana and another

... Respondents

CWP-10692-2021 along with similar petitions		3
<u>Sr. No.282</u>	<u>CWP-11794-2021 (O&M)</u>	
Suman Kumari and others	Versus	 Petitioners
State of Haryana and another		... Respondents
<u>Sr. No.282</u>	<u>CWP-12596-2021</u>	
Hemant Kumari and others	Versus	 Petitioners
State of Haryana and another		... Respondents
<u>Sr. No.282</u>	<u>CWP-12952-2021</u>	
Hemlata Rani and others	Versus	 Petitioners
State of Haryana and another		... Respondents
<u>Sr. No.282</u>	<u>CWP-13151-2021</u>	
Satish Kumar Ranga and another	Versus	 Petitioners
State of Haryana and another		... Respondents
<u>Sr. No.282</u>	<u>CWP-11906-2021 (O&M)</u>	
Anil Kumar and others	Versus	 Petitioners
State of Haryana and another		... Respondents
<u>Sr. No. 113+290</u>	<u>CM-14387-CWP-2022 in/and CWP-21994-2021 (O&M)</u>	
Madhu Bala	Versus	 Petitioner
State of Haryana and another		... Respondents

Sr. No.290

CWP-22927-2021

Jaiveer

.... Petitioner

Versus

State of Haryana and another

... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Gitanjali Chhabra, Advocate and
Mr. Raman B.Garg, Advocate
for the petitioners in CWP-17377-2021.

Mr. Tejpal Singh Dhull, Advocate
for the petitioners in CWP-17556-2021, CWP-17602-2021,
CWP-17232-2021, CWP-17126-2021, CWP-17784-2021,
CWP-17904-2021, CWP-18708-2021, CWP-10692-2021,
CWP-11515-2021, CWP-11637-2021, CWP-11794-2021,
CWP-12596-2021, CWP-12952-2021, CWP-13151-2021,
CWP-11906-2021 and CWP-21994-2021.

Mr. Jasbir Mor, Advocate
for the petitioners in CWP-17892-2021 and CWP-22927-2021.

Mr. Harish Nain, AAG, Haryana.

Mr. Kanwal Goyal, Advocate and
Mr. Govind Tanwar, Advocate
for the respondents-HSSPP.

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-18198-CWP-2021 in CWP-17377-2021 and
CM-18355 & 18849-CWP-2021 in CWP-17556-2021

Applications are allowed as prayed for.

CWP-10692-2021 along with similar petitions

By this common order, all the petitions, the details of which have been mentioned in the heading, are being disposed of as all of them involve similar question of law on similar facts.

For the facility of this order, as prayed for by the learned counsel for the parties, the facts are being taken from CWP No.10692 of 2021 titled as Puneet Kumar and others versus State of Haryana and another.

The respondents had advertised posts of Block Resource Persons (BRPs) as well as Assistant Block Resource Coordinators (ABRC) to be filled up on contract basis for a period of one year, extendable on yearly basis keeping in view the performance of a selected candidate. These posts were advertised in the year 2019 and the petitioners who claim themselves to be eligible for these posts, applied for and competed against the advertised posts to be selected. After undergoing the selection process, the respondents selected the candidates against the advertised posts of BRPs as well as ABRCs and the petitioners were among the successful candidates. After being selected, the petitioners were to be posted at a particular station where their services were needed. The process of posting was undertaken on the basis of a criteria according to which marks were allocated and the stations was offered to the petitioners keeping in view the marks obtained by them, vide order dated 13.09.2019, a copy of which order has been appended as Annexure P-2 with the present petition. Thereafter, the said order became the bone of contention between the selected candidates as objections were raised by the selected candidates with regard to the stations allotted to them as well as the criteria formulated for giving marks by the respondents for allotment of the stations and some of the candidates also filed writ petitions raising one grievance or the other. In the meantime, the select list of the candidates was revised due to which certain candidates were given appointment, who were also to be posted.

Keeping in view the grievances raised coupled with the fact that certain candidates who joined after the revision of the select list, were also to be posted, the respondents decided to re-allot the stations to the selected candidates by formulating a fresh criteria for which a notice dated

25.06.2020 was issued by the respondents, a copy of which notice has been appended as Annexure P-3. According to the fresh criteria, marks were to be given and the candidates were asked to fill up their choices of stations again so as to be considered for allotment. In the said notice, it was duly mentioned that certain stations will be blocked and the same will not be offered to anyone.

After issuance of said notice dated 25.06.2020 (Annexure P-3), as the allotment of stations could not be finalized, another notice dated 08.10.2020 was issued by the respondents i.e. Annexure P-4, wherein the candidates were again given a choice to opt for the stations and the options were to be submitted between 08.10.2020 and 13.10.2020. Along with this, a list of the vacant stations to be offered to the BRPs as well as ABRCs was also published so that the candidates could fill up the place of their choice to be considered for posting. It is this notice, which is being impugned in the present petition on the ground that once the petitioners have already been allocated a station by order dated 13.09.2019 (Annexure P-2) and the posts are non transferable, allotment of stations afresh can not be undertaken by the respondents especially by curtailing or blocking the station, where the postings have already been made vide order dated 13.09.2019.

After notice of motion, the respondents have filed reply wherein the respondents have stated that initially after selection, stations were allotted to the candidates on 13.09.2019 but, as a lot of objections had come qua allotment of stations from the selected candidates themselves and the writ petitions were filed challenging the same, therefore, the competent authority decided to redo the allotment of stations so as to remove the grievance of the selected candidates by adopting a transparent manner. As

per the reply, in order to smooth line the allotment of stations, a criteria was framed vide notice dated 08.10.2020 and the candidates selected were to be evaluated as per the said criteria and the postings were to be made to the stations, which were also made known to the candidates. As per the respondents, postings were made as per the criteria dated 25.06.2020 (Annexure P-3) supplemented by letter dated 28.08.2020 (Annexure P-9) keeping in view the options given by candidates in pursuance to the notice dated 08.10.2020 and the postings have been effected against the posts where the competent authority needed the deployment of the selected ABRCs as well as BRPs. As per the respondents, prior to the filing of the present petition, after the notice was issued for redoing the postings, a similarly situated candidate approached this Court raising the grievance with regard to redoing of the postings, which CWP No.17337 of 2020 came to be decided on 20.04.2020, wherein not only the criteria for postings was upheld but it was also held that a candidate does not have any right of a particular place of posting, hence, the claim of the petitioners in this petition for a particular station for posting, which station was allotted to them at the initial stage temporarily, is liable to be rejected.

Learned counsel for the petitioners submits that the respondents have misconstrued the prayer of the petitioner as the petitioners are not challenging the criteria which has been fixed for effecting the postings of the selected BRPs and ABRCs but the grievance of the petitioners is that the stations which were open for them initially and allotted to them on 13.09.2019, have been closed by the respondents while effecting the postings in pursuance to the criteria dated 25.06.2020 supplemented with letter dated 28.08.2020, hence, in case all the stations, which were made

available initially on 13.09.2019, are made available again to the petitioners, the petitioners have no grievance in case the petitioners are posted to a station as per his/her entitlement as per the marks secured by them in accordance with the revised criteria.

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

The primary contention of the petitioners is that once they were posted after their selection on 13.09.2019, the said process can not be undertaken again keeping in view the rules governing the service. As per the petitioners, once a station has been allocated to them, the post being non transferable, the posting of the petitioners can not be changed, hence, posting of the petitioners now by applying criteria dated 25.06.2020 supplemented by letter dated 28.08.2020 is totally arbitrary, illegal and beyond the jurisdiction of the respondents as the same amounts to transfer, which is not permissible.

Qua the said argument, the position to be seen is whether allotment of stations to the petitioners which were made on 13.09.2019, were final or not. Though, the said postings were effected after following a particular criteria and that too on the posts which the respondents wanted to fill but circumstances forced the respondents to redo the said exercise of posting the selected candidates once again keeping in view the fact that various grievances with regard to the posting done by the respondents on 13.09.2019 were raised by a number of selected candidates themselves. Not only this, after the said postings were effected on 13.09.2019, even the merit list was redone by the respondents wherein certain candidates who came to be selected afresh after the passing of the said order dated 13.09.2019, who

were also to be adjusted by giving them suitable postings in accordance with their merit. Keeping in view the said fact, the subsequent exercise of allotment of stations to all the selected candidates afresh which is being undertaken by the respondents, as being termed as transfer by the petitioners, is incorrect. As the respondents are undertaking the process of postings afresh in view of the administrative exigencies, same can not amount to transfer of the petitioners. The rule which is being relied upon by the petitioners is that their post is non transferable, the benefit of the same is not available to them keeping in view the facts and circumstances of the present case.

The next grievance of the petitioners is that once postings have already been effected on 13.09.2019, the same process can not be undertaken by the respondents even if there was a grievance by certain candidates or the merit list is amended as the petitioners had acquired a right to continue on the said place of postings. In this regard, the Coordinate Bench of this Court has already passed an order on 20.04.2021 in **CWP No.17337 of 2020** titled as **Upasana versus State of Haryana and others**. In the said petition, the same grievance as being raised by the petitioners herein, was raised with regard to redoing of the posting of the candidates who were selected and posted on 13.09.2019, by again inviting options from selected candidates by forming a new criteria subsequent to the date of initial allotment of station for posting. The said writ petition was dismissed by holding that there is no infirmity in the act of the respondents in undertaking the postings of selected BRPs and ABRCs by formulating a new criteria. The relevant paragraph of the said judgment reads as follows:-

“xxx

xxx

xxx

xxx

Learned counsel for the petitioner contends that the petitioner has been appointed on contractual basis and under the garb of the revised criteria, she may be posted at a place far away from her home town. He contends that the petitioner is an unmarried girl, staying with her parents.

Learned counsel for the respondents submit that a uniform criteria has been adopted and in the absence of any illegality or perversity in the criteria adopted, an employee can not insist on a particular place of posting.

Having considered the arguments of learned counsel for the parties, this Bench is of the view that there is no substance in the present writ petition. No doubt, the petitioner and the other employees have been appointed on contractual basis. However, they do not have a right to a particular place of posting. On careful perusal of the aforesaid criteria, which is extracted above, it is apparent that the respondents have adopted a reasonable criteria and the Court, in the absence of any perversity or arbitrariness in the procedure, does not find it appropriate to interfere.

Hence, the writ petition is dismissed.”

Keeping in view the said order of Coordinate Bench, no grievance can be raised by the petitioners with regard to the fresh action being undertaken by the respondents for effecting the postings of the selected BRPs and ABRCs.

The said action has already been upheld and can not be agitated once again in the present petition and the prayer of the petitioner will also be covered by the decision in Upasana's case (supra).

The other grievance of the petitioners is that certain stations

dated 13.09.2019, have been blocked by the respondents now while effecting the postings of the BRPs and ABRCs vide impugned notice dated 08.10.2020 (Annexure P-4). The said claim is being made by the petitioners on the assumption that they have a right to claim a posting at a particular station after being selected. It is a conceded fact that at the time of the advertisement, in pursuance to which the petitioners were selected, no particular stations were formulated or specified to be given to the selected candidates for their posting. Petitioners were not appointed on contract basis against a particular post for performing certain duties. It is the duty of an employer to ascertain and decide where the petitioner can serve the best keeping in view the interest of the institutions as well as the students concerned. That being so, though it might be that on 13.09.2019, some stations might have been offered to the petitioners as a temporary posting but once, a conscious decision was taken by the respondents to post the selected BRPs and ABRCs on the subsequently identified stations only so as to take best possible service from the petitioners, no grievance can be made by the petitioners.

The Coordinate Bench of this Court while passing order in *Upasana's case (supra)* has already held that the petitioners, who are contractual employees, do not have a right to a particular place of posting. That being so, non opening of certain stations which are to the liking of the petitioners while effecting postings, can not be a ground to challenge the postings which have been given to the petitioners.

Further, the decision of posting of an employee to a particular station needs to be left to the employer only substantially. The management of an institution is to be done by the government and not by the High Court.

The Courts are only to interfere in the action of the respondents if proved blatantly contrary to the rules governing the service or settled principles of law. Once the employer being the administrator, has taken a decision to post the selected candidates on particular stations wherever she/he can serve the best, which is also in the interest of the institution as well as the students, this Court will restrain from interfering in the said act though, the same might cause discomfort to the employee concerned.

Learned counsel appearing on behalf of the petitioner in CWP No.17337 of 2020 argues that the petitioner whose husband is working in an aided institution, has not been given marks being a couple case though, the similar marks have been allowed in favour of the other candidates whose spouses are working in the government department, public undertakings, para military forces and the military services. Though the criteria has already been upheld by this Court while passing order in Upasana's case (supra) but the petitioner in CWP No.17337 of 2020 be given opportunity to approach the respondents that in case any such representation is filed by the petitioner, the respondent-department shall look into the said aspect and decide whether the grievance of the petitioner can be redressed in any manner or not.

Learned counsel further submits that the petitioner had already made representation qua the said fact.

Learned counsel for the respondents submits that the said plea of the petitioner was considered and the petitioner was given option out of the available stations to give her option and the petitioner gave the option for District Mahendergarh, which station was given to the petitioner. In these circumstances, the grievance raised by the petitioner is not at all valid and needs no interference.

Learned counsel for the petitioners further submits that vide order dated 18.11.2021, one Mr. Balram has been posted as Assistant Block Resource Coordinator in Charkhi Dadri where the petitioner was claiming posting. Firstly the said Balram is not a party to the petition, hence his posting at Charkhi Dadri can not be brought into question in the present proceedings. Further, learned counsel for the respondents submits that the said Balram was appointed subsequent to the appointment of the petitioners keeping in view the order passed by this Court in CWP No. 28000 of 2019 as well as COCP No.1838 of 2021 and as the earlier stations notified had already been filled up, the respondents did not have any option but to offer the said station to Balram, though, the same was blocked initially when the petitioners' transfers were effected, hence, there was no malafide intention but the allotment of a station to Balram is due to administrative exigency. Keeping in view the submission of learned counsel for the respondents that appointment of Balram at Charkhi Dadri is due to administrative exigency so as to accommodate him keeping in view the order passed by this Court, no grievance can be raised by the petitioner qua the said postings.

One of the ground which has been raised by the learned counsel for the petitioners is that the petitioners are working on a consolidated salary which as of now is Rs.16,000/- per month. The respondents being an employer just has not to look after the interest of the institution or the students but also the teachers. The fact whether a teacher will survive within the resources being given by the department is a factor which needs to be kept in mind. That being so, though, the respondents have already issued the order of postings but in case, any of the petitioners represents to the respondents, giving details of the post where his/her job can be utilized at

the most given his/her own circumstances, the department be directed to give it a fair consideration and pass appropriate orders.

Though, the decision to accept or to reject the same will of the employer only. Hence, though the Court is not interfering into the postings effected by the respondents but a chance is given to the petitioners to approach the respondents by filing appropriate representation giving the details of the stations which are still lying vacant where the services of the petitioners can be best utilized and minimum harassment is caused to them. In case, any such representation is filed by the petitioners, the respondents are directed to consider the said grievance with an open mind and by considering the factual aspect that whether a teacher, who is getting only Rs.16,000/- per month, can be accommodated at the station where the work still exists, which might be more convenient to him/her. This liberty is being given to the petitioners only on the ground that in the year 2021, in order to implement the decision of this Court, by way of an administrative exigency, the stations which were earlier kept vacant, have been offered to some of the candidates/petitioners.

As the petitioners have already got interim order in their favour and are continuing at the present place of posting for the last about 2 ½ years, in case any of the petitioners raises any grievance, by placing reliance upon the decision being rendered in the present petitions, the respondents are directed to decide the said grievance within a period of 4 weeks from receipt of any such grievance. The petitioners in case, intend to avail the said opportunity, are directed to file their representation within a period of 7 days along with the copy of this order and in case any such representation is filed, the same will be decided within a period of 4 weeks from the receipt

of any such representation and till the decision of the said representation, the petitioners be allowed to continue at the present place of postings where the petitioners are already continuing working.

As the main petitions have been disposed of, all the pending civil miscellaneous applications bearing No.CM-18740-CWP-2021, CM-18742-CWP-2021, CM-14387-CWP-2021, CM-17878-CWP-2021, CM-7354-CWP-2021, CM-17877-CWP-2021 and CM-14989-CWP-2021 also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

14.09.2022
Maninder

Whether speaking/reasoned : Yes
Whether reportable : Yes