

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111)

CWP-22233-2022

Date of Decision : November 14, 2022

Aunkari Yadav and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sajjan Singh, Advocate, for the petitioners.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition, the challenge is to the order dated 28.08.2022 (Annexure P-3) as well as the transfer order dated 06.09.2022 (Annexure P-5) on the ground that the same is contrary to the transfer policy which was to be adhered to while effecting the transfers and further, the transfers have been effected on the basis of a notification which was circulated on 29.08.2022 (Annexure P-4) subsequent to the transfer, which act on the part of the respondents is totally arbitrary and illegal.

In the present petition, the decision of the respondent-Department dated 29.08.2022 (Annexure P-4) is also under challenge on the ground that the said decision is not within the jurisdiction of the respondent-Department as the same was liable to be taken by the Government itself and not the Department keeping in view the provisions of the Rules of Business of the Government of Haryana issued in the year 1977.

The petitioners are employees of the Education Department in

the Government of Haryana, have approached this Court challenging their transfers citing the discrepancies in implementation of transfer policy, which was to be adhered to while effecting the transfer on the ground that the same has either been violated or the interpretation of the provisions of the policy, on which the decision of the respondents to effect the transfer is based, suffers from one or the other procedural defect.

The first argument being raised by learned counsel for the petitioner to challenge the order of transfer is that as per the transfer policy of the year 2016 as amended on 01.06.2017, which has been made applicable for effecting the transfer, transfers were to be effected by evaluating the entitlement of a candidate qua the choice of posting as opted by the employee concerned on marks which an employee would have got on the basis of certain aspects, as envisaged in the said policy. An employee having higher marks was entitled for the option given by the said employee in preference to other employee having lesser marks and in the present case, the petitioners have been discriminated as the stations which have been opted by the petitioners, who are working as TGT (Trained Graduate Teachers), which is a State cadre, have been offered to the Classical and Vernacular Teachers, who belongs to a District cadre, despite the fact that C&V Teachers have less marks in comparison to the petitioners.

Learned counsel for the petitioners argues that as per the policy, once a candidate having higher marks is entitled to the choice of posting as opted by him/her, offering the choice of stations opted by the petitioners to the Classical and Vernacular Teachers, despite they having lesser marks than the petitioners is not only contrary to the policy but causes prejudice the right of the petitioners to claim posting at a particular station.

The said argument is to be dealt with keeping in view the rules governing the service.

It is a conceded fact that as per 2012 Rules which governs the service of the post of Classical and Vernacular Teachers as well as the TGT, Classical and Vernacular Teacher is a District cadre meaning thereby that they cannot be posted outside the District in which they have been appointed. TGT Teachers i.e. the cadre to which the petitioners belong, is a State cadre and the petitioners can be posted anywhere in the State keeping in view the rules governing the service. That being so, the grievance of the petitioners, as recorded hereinbefore, needs to be evaluated by keeping in mind the said Rules.

Once, Classical and Vernacular Teachers cannot be posted outside the District, the first preference of the posting had to be given to the said cadre otherwise, there will be no post to accommodate them within the cadre in case, the posts are given to the TGT candidate having higher marks. The said proposition, if not implemented, will create anomaly as then TGT Teachers will occupy a particular station in a District on the basis of the higher marks and Classical and Vernacular Teachers will have to be posted out of the District concerned to accommodate the choice of posting given by TGT Teachers. Once, as per the rules governing the service, Classical and Vernacular Teachers cannot be posted outside the District in which they have been appointed, the transfer policy has to be operated in a manner that it remains in consonance with Rules governing the service, hence, even if Classical and Vernacular Teacher has lesser marks, he/she has to be given a preference over the TGT Teachers with regard to the posting in a particular District otherwise it will lead to a situation in which there might not be a

post to accommodate C&V Teachers in the district he/she is already working keeping in view the fact that all the vacant posts in that district are allocated to TGT Teachers, and there is also no other option with the Department but to post C&V Teachers outside the District concerned which will amount to nullifying 2012 Rules. Therefore, the grievance which is being raised by the petitioners qua the transfer policy that a Classical and Vernacular Teacher having lesser marks has been preferred over and above the petitioners, who belong to TGT cadre, cannot be accepted.

Further grievance of the petitioners is that the said decision has been taken by the respondents after effecting the transfers.

There can be instances where while implementing a policy, certain difficulties comes to the notice of the Department and needs to be rectified so as to ensure that there is no anomaly which comes to into force by the implementation of the said policy and implementation of transfer policy becomes inconsonance with the Rules governing the service. Rules governing the service being on a higher pedestal are to be followed when compared to a transfer policy. Hence, non-adhering of a provision of transfer policy so as to prevent violation of the statutory rules governing the service cannot be faulted with.

Further prayer of the petitioners is that the decision dated 29.08.2022 which has been taken after the transfer of the petitioners, copy of which has been appended as Annexure P-4, was beyond the jurisdiction of the Department as the same can only be taken by the Government keeping in view the Rules of the Business of the Government of Haryana issued in the year 1977, copy of which has been appended with this petition

as Annexure P-6.

A bare perusal of the clause 15 of the Schedule I, which is being relied upon, shows that the proposal involving any important change of policy or practice, the same will be dealt with by the Government at its own level in accordance with the rules of Business of the Government of Haryana issued in the year 1977.

The said argument is to be tested by keeping in view certain facts.

The policy in question which needs to be changed or a practice which needs to be changed as required under the Rules of business, should be such policy or practice that it creates a right within a person, who is claiming prejudice upon the change of the said policy or the practice.

For the said purpose, first it has to be adjudicated upon whether the transfer policy creates a right with an employee to claim the benefit under the said policy or not. It is a settled principle of law that a transfer policy is merely a guideline and does not give a right to claim the benefit even if the said policy is being violated. The said question of law has been answered by the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court of India in the recent judgment in ***Civil Appeal No.1243 of 2022 titled as S.K Nausad Rahaman and others vs. Union of India and others, decided on 10.03.2022*** has held that the transfer policy is not justiciable and no right is created in an employee to claim a benefit even if the said transfer policy is violated as the said policy is only a guideline. The relevant paragraph of the said judgment is as under:-

“24. First and foremost, transfer in an All India Service is an incident of service. Whether, and if so where, an

employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting of their choice.

25. Second, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration.

26. Third, policies which stipulate that the posting of spouses should be preferably, and to the extent practicable, at the same station are subject to the PART D requirement of the administration. In this context, Justice JS Verma (as the learned Chief Justice then was) speaking for a three-judge Bench of this Court in [Bank of India v. Jagjit Singh Mehta, \(1992\) 1 SCC 306](#) held :

“5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice

at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. [...] No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.”

27 *The above principle was cited with approval in [Union of India v. SL Abbas](#) 25 where the Court held that transfer is an incident of service:*

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

28. Fourth, norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in:

(i) A law enacted by the competent legislature;
(ii) Rules made under the proviso to Article 309 of the Constitution; and (iii) Executive instructions issued under [Article 73](#) of the Constitution, in the case of civil services under the Union and [Article 162](#), in the case of civil services under the States.

Fifth, where there is a conflict between executive instructions and rules framed under [Article 309](#), the rules must prevail. In the event of a conflict between the rules framed under [Article 309](#) and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules.

Keeping in view the settled principle of law cited hereinbefore, it can be safely held that transfer policy is not justiciable and is only a guide law and no benefit under the transfer policy can be claimed as matter of right and if transfer policy is in consonance with the rules governing the service, Rules will prevail with the policy, hence, the claim, as raised in the present petition is covered against the petitioners and cannot be accepted.

Not only this, a Division Bench of this Court in ***LPA No.247 of 2020 titled as Nisha vs. State of Haryana, decided on 24.02.2020*** held that the transfer policy is not justiciable and no right is created with an employee to claim a benefit under the transfer policy. The relevant paragraph of the said judgment is as under:-

“We have extensively heard the learned counsel for the appellant. The learned Single Judge, while taking into consideration the provisions of the transfer policy, has held

that the petitioner has been transferred in accordance with the transfer policy and that the petitioner, if aggrieved, could approach the authorities by filing a representation. The learned Single Judge, while deciding the petition, has taken into consideration the provisions of the transfer policy as well as the stand taken by the respondents in their return to the effect that transfers could be resorted to in public interest at any point of time in spite of regular tenure mentioned in the transfer policy and that a person, like the petitioner, who occupies a temporary manual posting due to non availability of online transfer drive, has to be treated as a person working on a deemed vacancy for the purpose of transfer drive, and accordingly, the petitioner was required to participate in the drive, and has been transferred. The learned Single Judge, while taking the aforesaid aspect into consideration, has recorded a finding that contention of the petitioner regarding forcible participation in the transfer drive, is misplaced and misconceived. The learned Single Judge, after recording aforesaid finding, has also granted liberty to the petitioner to pursue the remedy, in accordance with law, in view of letter dated 27.8.2019.

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It is to be noted that in view of the law laid down by the Supreme Court in the cases of 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, transfer policy is not enforceable and an order of transfer in violation thereof cannot be assailed on that ground. It is also evident that learned Single Judge has dismissed the petition, granting liberty to the petitioner to avail of the remedies available to her under letter dated 27.8.2019.”

Keeping in view the above, as a transfer policy is not justiciable

and no right is accrued even if the same is not followed, then the change in the said policy will also not given any right to the petitioner to claim any benefit. That being so, the transfer policy which is non-justiciable, even if amended or changed by the Department at their level, will not give any right to the petitioners challenging the said action. Hence, the challenge of the petitioners to the notice dated 29.08.2022 (Annexure P-4) cannot be sustained in view of the settled principle of law and facts noticed hereinbefore.

Last but not the least, learned counsel for the petitioners submits that after effecting of the transfers, the petitioners had approached the respondents raising the grievance as raised in the present petition that the transfer policy has been violated by the respondents while effecting the transfer and the said grievance has been rejected by the respondents by a non-speaking order.

Though, it is expected that once a grievance has been raised, the same should be decided by a speaking order giving the reasons for the same. But, once a claim has been raised under a policy, which is non justiciable, whether a detailed order needs to be passed separately with respect to a grievance raised online and whether the same grievance needs to be replied online and that too only on the MIS portal of each concerned employee, if the same is feasible or not is to be adjudicated.

Keeping in view the various administrative exigencies and the difficulties of passing and posting a detailed order on MIS portal, coupled with the fact that the grievance raised was under a policy, which is non-justiciable, once a reason has been given for not accepting the plea of the petitioners and the same has been informed to the petitioners, the same

satisfies the settled principle of law. The rules of natural justice have to be implemented keeping in view the facts and circumstances of each and every case and in the facts and circumstances of the present case, by giving reason on MIS portal, where detailed order cannot be posted, once a reason has been given for not accepting the grievance of the employee, the same will suffice the requirement of the rules of natural justice in the facts and circumstances of the case.

The last objection which has been raised by the learned counsel for the petitioners is qua the petitioner No.17.

Learned counsel for the petitioners submits that the petitioner No.17 is a physically handicapped employee having 55% Locomotor disability of permanent nature.

Learned counsel for the petitioners also concede to the fact that with respect to the representation filed by the employee concerned, a detailed separate order has been passed by the Department and it is only when objection was raised by an employee on MIS portal, same has been replied by giving the exact reason for not accepting the same.

Learned counsel for the petitioners concedes that for the said kind of employees, there is a provision already in the policy itself but submits that the petitioner has to be given benefit under the Right of Persons with Disabilities Act, 2016. Section 20 of the said Act is being relied upon by learned counsel to claim that petitioner No.17, who is specially abled employee, should not be discriminated against and the Government needs to frame appropriate policy for posting and of transfer of employee with such disability.

Once, the policy which has been made effective by the respondents for effecting the transfer, has taken into account Section 20 (5) of 2016 Act, and has incorporated a special provision for the specially abled persons, the petitioners cannot claim the violation of Section 20 (5) of the 2016 Act. The claim that the petitioner No.17 cannot be transferred or should be transferred only to a post of his choice, cannot be accepted. Once, the policy in question envisages special treatment for specially abled person and extra marks have been given to such kind of employee, the same would suffice the requirement of Section 20 of 2016 Act, hence, no grievance can be raised by the petitioners.

Learned counsel for the petitioners submits that giving a benefit/preference to C&V Teachers to remain at a particular District, has violated Section 20 (5) of 2016 Act qua specially abled Teachers.

This argument is also fallacious.

The benefit to a specially abled person is to be given but the same has to be within the four corners of the rules governing the service. The benefit on ground of special condition can only be given against similarly situated person of the same cadre in which an employee is working. The benefit given to an employee of a separate cadre, cannot be claimed by a specially abled employee who is working in a different cadre. The petitioner No.17, though working as TGT, is raising a claim with regard to employees, who are working in a different cadre i.e. Classical and Vernacular Teachers and therefore, the basis of the grievance is fallacious keeping in view the provisions of 1996 Act coupled with the 2012 Rules governing the service.

Keeping in view the above, no interference is called for by this Court in the present petition and the writ petition is dismissed accordingly.

November 14, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes