

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-27860-2022

Date of Decision :19.12.2022

Virender Singh

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vineet Kumar Jakhar, Advocate for the petitioner.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance of the petitioner is against the order dated 06.09.2022 (Annexure P/16) and order dated 15.11.2022 (Annexure P/19) passed by the respondents by which, the petitioner has been transferred from Government Girls High School Chimni Jhajjar to Government High School Dharwan Bass Bhiwani.

Learned counsel for the petitioner submits that aggrieved by the said transfer order, the petitioner approached this Court by way of filing CWP-20828-2022, which was disposed of by this Court vide order dated 13.09.2022 with a direction to the respondents to decide the representation, which the petitioner had filed raising the grievance against the said order of transfer and now by the impugned order dated 15.11.2022 (Annexure P/19), the said representation has been rejected by the respondents by taking into consideration the incorrect facts.

Learned counsel for the petitioner argues that the reason given

by the respondents for the transfer of the petitioner is that as the petitioner had already completed 05 years at Jhajjar hence, he was within the zone of being transferred from the said place of posting as he had undergone maximum stay at Jhajjar. Learned counsel for the petitioner submits that the petitioner never filled any preference of the station to be allocated to him, keeping in view the fact that the respondents have changed the vacancy position more than once and very less time was given to the teachers to submit their option of the station, the petitioner failed to submit his option for being posted at a particular station hence, the action of the respondents in transferring the petitioner from Jhajjar to Bhiwani is totally arbitrary and illegal.

As per the respondents, the petitioner though, filled his preferences qua stations but did not lock the said preferences so that the same could be taken into consideration by the respondent-department while effecting transfer of the petitioner but in the second round, the petitioner had opted for 24 preferences out of which, first preference was allocated to him. The said fact is not being disputed by the learned counsel for the petitioner that in the second round, the petitioner opted for 24 preferences but the grievance of the petitioner is with regard to the first round of transfers when the petitioner was not given enough time to opt preferences and that it has wrongly been mentioned by the respondents in the speaking order that the petitioner opted for 32 preferences but did not lock the same.

In respect of the above argument, it may be noticed here that the petitioner is liable to serve anywhere in Haryana. It is also conceded position that the petitioner had already completed 05 years at Jhajjar. The

fact whether the petitioner had opted for certain preferences in first round or not is being disputed but as a question of fact is being disputed by the petitioner, which fact is stated to be the reason given by the respondents while rejecting the claim of the petitioner, same cannot be considered by this Court in the present writ petition as this Court has no mechanism to ascertain the said fact.

Further grievance of the petitioner that enough time was not given to him to opt for preferences while effecting first round of transfers, cannot be taken as a ground to challenge the transfer order as there were large number of teachers, who opted for the stations in pursuance to the same notice within the time frame granted and once the large number of teachers have given their options in pursuance to the same notice, the petitioner cannot be permitted to say that the time period allotted to him was less so as to exercise the option in pursuance to the said notice.

The transfer policy is not justiciable in nature keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India 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.*** The relevant paragraphs of this judgment are as under:-

“23. While analyzing the rival submissions, certain basic precepts of service jurisprudence must be borne in mind.

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 ART 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](#) 24 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.

29. Sixth, a policy decision taken in terms of the power conferred under Article 73 of the Constitution on the Union and Article 162 on the States is subservient to the recruitment rules that have been framed under a legislative enactment or the rules under the proviso to Article 309 of the Constitution.”

Further, a Division Bench of this Court in *LPA No.247 of 2020*

titled as Nisha vs. State of Haryana, decided on 24.02.2020 has reiterated the view with respect to non-justiciability of transfer policy. The relevant paragraphs of this judgment are as under:-

“6. It is also submitted by learned counsel for the appellant that the impugned orders of transfer are in violation of the transfer policy and that the appellant was forcibly asked to participate in the transfer drive, even though she did not fall within the parameters of voluntary deemed vacancy, as prescribed in the transfer policy.

7. 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.

8. In the circumstances, we find no reason to entertain the appeal or to set aside the orders of transfer, which are alleged to be in violation of the transfer Policy. Consequently, the appeal is dismissed. Since the main appeal itself has been dismissed, no orders are required to be passed in CM-652-LPA-2020, for adducing additional evidence.”

That being so, the petitioner cannot raise any grievance with regard to the transfer order dated 06.09.2022 (Annexure P-16).

Keeping in view the above, no ground is made out to allow the prayer of the petitioner as made in the present writ petition.

Dismissed.

December 19, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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