

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-2324-2023 (O&M)
Date of decision: 25.04.2023

Vikas

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sube S. Kaushik, Advocate for the petitioner.

Mr. Sunil Kumar Vashisth, DAG Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the order dated 30.12.2022 (Annexure P-22) whereby claim of the petitioner seeking transfer on medical grounds, has been rejected.

Learned counsel for the petitioner contends that earlier, the petitioner approached this Court by way of CWP-11261-2022, and that vide order dated 24.05.2022, the said writ petition had been disposed of with a direction to the competent authority, to decide the representation dated 17.03.2020, by passing a speaking order, within two months from the date of receipt of copy of the order.

Learned counsel further contends that the petitioner is suffering from hypertension and chronic kidney disease, and that Clause 5 of the Procedure framed under the Cadre Change Policy for District Cadres, would read as under:-

“5. Teachers suffering from

a. 90% or more Physically handicap; or

b. currently suffering from cancer; or

c. Having undergone bye-pass heart surgery; or

d. kidney transplant; or

e. currently undergoing dialysis.

Shall be assigned the district of their choice irrespective of the vacancy position in the district.

Note:- The certificate of cancer should not be more than six months old.”

Learned counsel further contends that vide impugned order dated 30.12.2022, respondent No.2 decided the representation filed by the petitioner, but the fact remains that medical status/illness of the petitioner and the aforesaid Clause 5 of the Procedure framed under the Cadre Change Policy for District Cadres, was not considered, and the petitioner was merely directed to participate in the upcoming counselling mandatory as he had not been allocated district permanently.

Affidavit dated 20/25.04.2023 of Director Secondary Education Haryana, on behalf of respondent No.2 submitted by the learned State counsel in the Court is taken on record.

Learned counsel for the petitioner draws the attention of this Court towards Para No.4 of the aforesaid affidavit, wherein it has been admitted in the affidavit that the claim of the petitioner was considered at the administrative side, however, proper reasoning was inadvertently not mentioned in the impugned speaking order dated 28.12.2022. He also draws the attention of this Court towards Para No.6 of the affidavit, stating therein that there is no intentional or deliberate lapse on the part of respondent-

Department while passing the said order.

Learned State counsel submits that it is open for the petitioner to participate in the upcoming counselling which is going to start soon and submit the preferences for allocation of District on permanent basis.

I have heard the learned counsel for the parties and have also gone through the paper-book.

The petitioner is suffering from hypertension and chronic kidney disease and his case is fully covered by Clause 5 of the Procedure framed under the Cadre Change Policy for District Cadres. It has also been admitted by respondent No.2 that the claim of the petitioner on the basis of medical ground was considered on administrative side, while passing the speaking order dated 28.12.2022 (Annexure P-22).

In view of the above, the impugned order dated 28.12.2022 (Annexure P-22) is quashed with liberty to respondent No.2 to pass a fresh speaking order qua the claim of the petitioner, in view of the medical status of the petitioner.

Disposed of.

(HARNARESH SINGH GILL)
JUDGE

25.04.2023
Mangal Singh

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No