

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

116

CWP-11976-2023

Date of Decision: 14.11.2023

Ramesh Kumar

...Petitioner

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Shashi Kumar Yadav, Advocate for the petitioner

Mr. Gaurav Pathak, Advocate for respondent No.2

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Condition No.3 of transfer letter dated 19.02.2016 (Annexure P-4) and letters dated 04.07.2018 (Annexure P-9), 24.08.2021 (Annexure P-10) and 13.11.2021 (Annexure P-11) whereby application of the petitioner seeking pay protection has been rejected.

2. The petitioner is working with Sainik School, Rewari. The petitioner was initially appointed as Lower Divisional Clerk at Sainik School, Chittorgarh in regular pay scale of ₹5200-20200 with Grade Pay ₹1900/- plus allowances as admissible from time to time. Respondent No.2 addressed a letter to all Principals of Sainik Schools with respect to one vacant post of Lower Divisional Clerk which was to be filled up on inter-school transfer

basis. The petitioner applied for transfer from Sainik School, Chittorgarh to Sainik School, Rewari. The application of the petitioner came to be allowed and he was transferred from Chittorgarh to Rewari. The petitioner at that point of time was on probation and on joining at Rewari, his fresh probation period commenced. The petitioner was issued letter dated 19.02.2016 (Annexure P-4) wherein terms and conditions on inter-school transfer were jotted down. The petitioner completed fresh probation period and asked for pay protection. The petitioner authored various letters to respondents, however, all representations of the petitioner came to be rejected holding that he is not entitled to pay protection.

3. Learned counsel for the petitioner *inter alia* contends that petitioner is entitled to pay protection though he was not entitled to seniority on joining at Rewari. In support of his contention, he relies upon clause (d) of Rule 6.24 of Sainik Schools Society Rules (for short '**Rules**'), which are governing recruitment and conditions of service of the petitioner.

4. Learned counsel for the respondents submits that pay protection is available to a permanent employee and petitioner was on probation, thus, he was neither entitled to protection of seniority nor of pay. The petitioner, at the time of joining at Rewari, accepted terms and conditions, thus, he cannot take a somersault. The representation of the petitioner was rejected from time to time, however, the petitioner has approached this Court after five years even from the date of completion of probation. The first representation of the petitioner was rejected in July' 2018 whereas he approached this Court in May' 2023.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. The dispute lies in the narrow compass. As per the petitioner, he is entitled to pay protection whereas respondent has declined claim of the petitioner on the ground that he was on probation. Rule 6.24 & 6.25 of the Rules deal with inter-seniority of staff members as well as inter-school transfers. The relevant extracts of Rule 6.24 & 6.25 are reproduced as below:

“6.24	XXXX	XXXX	XXXX
(a)	XXXX	XXXX	XXXX
(b)	XXXX	XXXX	XXXX
(c)	XXXX	XXXX	XXXX
(d)	<i>The seniority of an employee moving from one school to another shall be counted in the new school from the date of his joining that school though his pay and other benefits will be protected. This is so because each Sainik School has to be treated as a separate unit for purposes of recruitment, retrenchment and promotion and inter-transfer of employee has to be discouraged as a normal rule.</i>		

INTER SCHOOL TRANSFERS

6.25 *In exceptional circumstances, if the Principals of the two Sainik Schools involved, i.e. the one from which the employee seeks change and the other to which change is sought, are both agreeable, proposals of inter-school transfers may be considered by the Honorary Secretary and approved subject to the following conditions:-*

- i) *The individual on transfer will be treated as a fresh entrant in the school to which*

change is sought, in matters of seniority and seniority in the new school will be from the date on which duty is resumed in the new school;

- ii) No joining time or TA/DA will be admissible.*
- iii) The individual will tender resignation from the post held by him in his parent school.*
- iv) The pay drawn by the employee will be protected as a special case.”*

7. From the perusal of above quoted Rules, it comes out that an employee on transfer from one school to another is not entitled to seniority. As soon as an employee is transferred from one school to another, he loses his seniority, however, the said employee is entitled to protection of pay. The purpose of forfeiting seniority is to discourage inter-school transfer.

In the case in hand, it is not a case that petitioner sought inter-school transfer whereas Principal, Sainik School, Rewari informed Principals of different Sainik Schools with respect to vacancy and proposal that vacancy would be filled through inter-school transfer. The petitioner availed the opportunity. In terms of Rules, he is not entitled to seniority, however, he cannot be deprived of pay protection especially when his transfer was approved by Secretary and his transfer occasioned on account of vacancy at Sainik School, Rewari which was to be filled by inter-school transfer. The contention of respondent that pay protection is available to permanent employees cannot be countenanced because there is no rule which provides that pay protection would be available only to permanent employees. It is well

known fact that seniority relates back to date of joining and it does not relate back to date of confirmation. There cannot be admission against law, thus, acceptance of terms and conditions on transfer is irrelevant.

8. Considering the fact that representation of the petitioner was rejected in 2018 and appointment letter jotting down terms and conditions was issued in 2016, however, the petitioner approached this Court in May’ 2023, it would not be in the interest of justice and fitness of things to ask the respondents to pay arrears arising on account of re-fixation of pay of the petitioner.

9. In the wake of above discussion and findings, respondent No.2 is directed to extend benefit of pay protection to the petitioner. The respondent shall re-fix pay of the petitioner within 3 months from today.

The petition stands disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

14.11.2023
Mohit Kumar

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