

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

264

CWP-16988-2021 (O&M)

Date of Decision: 25.01.2023

KULBHUSHAN AND ANR

... Petitioners

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ashok Bhardwaj, Advocate
for the petitioners.

Mr. Rohit Arya, DAG, Haryana.

HARNARESH SINGH GILL, J.(Oral)

Through this petition, the petitioners seek issuance of a writ in the nature of Certiorari quashing Clause 6 of the Notice dated 30.07.2021 (Annexure P-1) issued by respondent No.3, vide which the Post Graduate Teachers (PGTs) of Mewat cadre, have been directed to apply for Government Model Sanskriti Senior Secondary Schools, in the District Nuh only.

Clause 6 of the impugned notice dated 30.07.2021 reads as under:-

*'6. The teachers of Mewat cadre can only apply
for Model Sanskriti Schools situated in Nuh District'.*

Learned counsel for the petitioners submits that petitioner No.1 is working as Post Graduate Teacher (PGT) Hindi in Government Model Sanskriti Senior Secondary School, Raniyala, District Nuh, Mewat and petitioner No.2 as Post Graduate Teacher (PGT) Physics in

Government Senior Secondary School, Jaurasi, District Nuh, Mewat; that respondent No.3 issued a notice dated 30.07.2021, inviting applications directly from the PGTs working on regular basis in Government Schools, who were willing to be posted in Government Model Sanskriti Senior Secondary Schools and that pursuant thereto, the petitioners had applied for the same and given five choices, which are as under:-

Sr. No.	Petitioner No.1 (Registration ID 1BE5CB1)	Petitioner No.2 (Registration ID A355DDC)
1.	GMSSSS Mahendergarh, Mahendergarh	GMSSSS Madina, Sonipat
2.	GMSSSS Charkhi Dadri, Charkhi Dadri	GMSSSS Lakhan Majra, Rohtak
3.	GMSSSS Garhi Bolni, Rewari	GMSSSS Sanghi, Rohtak
4.	GMSSSS Ladain, Jhajjar	GMSSSS Israna, Panipat
5.	GMSSSS, Bhiwani, Bhiwani	GMSSSS Julana, Jind

Learned counsel for the petitioners submits that, though vide impugned notice, applications have been invited, yet the fact remains that the petitioners have been restrained from applying for their posting outside Nuh, Mewat District/Cadre and that the said condition (Clause 6) of the impugned notice is against the provisions of Mewat District School Education (B) Service Rules, 2012, the relevant extracts whereof would read as under:-

'12. Liability to serve.

1. *A member of the Service shall be liable to serve at any place, whether within or outside the State of Haryana, on being ordered so to do by the appointing authority.*
2. *A member of Service appointed by the direct recruitment on contract basis shall be liable to*

serve for a continuous period of five years in the rural area from the date of appointment."

4. *A member of Service appointed by promotion or by transfer shall be liable to serve for a continuous period of three years in the rural area from the date of such appointment, if not already served for a period of fifteen years in the rural area.*

5. *A member of the Service may also be deputed to serve under:-- Pay, leave, pension and other matters. Discipline, penalties and appeals.*

(i) a company, an association or a body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the State Government, a municipal corporation or a local authority or university within the State of Haryana;

(ii) the Central Government or a Company, an association or a body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government; or

(iii) any other State Government, an international organization, an autonomous body not controlled by the Government, or a private body:

Provided that no member of the Service shall be deputed to serve the Central or any other State Government or any organization or body referred to clause (ii) or clause (iii) except with his consent'.

Learned counsel for the petitioners further submits that vide notice dated 17.02.2017 (Annexure P-5), the respondents had invited direct applications from PGTs/PRTs/TGTs working on regular basis in Government Schools in Haryana, who were willing to be posted in Model Sanskriti Schools, in the State of Haryana and that pursuant thereto, though, vide order dated 11.04.2017 (Annexure P-6), the Directorate School Education, had transferred two candidates namely Naveen Gautam (096808) PGT Psychology, GETTI, F.P. Namak, Mewat and Suraksha Devi (096723), PGT (Hindi), GGSSS Touru, Nuh, to GMSSSS, Bilaspur and GMSSSS, Rewari, respectively, yet a specific endorsement has been made at point No.7 that the head of the institution concerned, shall ensure that the PGTs, Mewat Cadre, may not be relieved. He further submits that, against the said endorsement, Naveen Gautam and Suraksha Devi preferred CWP-16549-2017 before this Court, in which the following order was passed on 28.07.2017:-

'Learned counsel for the petitioners submits that though the petitioners belong to the Mewat cadre, there is no bar on their transfer outside district Mewat and as a matter of fact that is why vide the order dated 11.04.2017 (Annexure P-2), the petitioners have been so posted, with the first petitioner posted to Bilaspur (Yamuna Nagar) and the second petitioner to Rewari.

However, it is contended that the endoresement at serial No.7 with that order, to the effect that the teachers of the Mewat cadre would not be relieved, is wholly without rationale, as it negates the

consequence of the aforesaid order, altogether

Notice of motion.

On the asking of the Court, Mr. R.K. Doon, AAG, Haryana, accepts.

A copy of the petition be handed over to him immediately.

Adjourned to 04.08.2017.

In the meanwhile, the two posts in question, at Bilaspur and Rewari, are not to be filled up till the next date of hearing.

To be shown in the urgent list'.

Learned counsel for the petitioners further submits that CWP-16549-2017 has been rendered infructuous as both Naveen Gautam and Surakhsa Devi, were relieved by the Department concerned and allowed to join at their new places of posting, as had been prayed for by them in the writ petition. He, thus, submits that once the candidates of Nuh/Mewat cadre, have already been adjusted, in rest of the State of Haryana, the petitioners cannot be denied the same concession and that the policy of pick and choose adopted by the Department is arbitrary, illegal and unjustified in the eyes of law.

On the other hand, learned State counsel submits that Government of Haryana has issued an order dated 28.01.2020 (Annexure R-1), relevant extract of which is as under:-

- i. 'No teacher from Mewat cadre will be transferred/deputed or deployed to any school out of Mewat cadre, whosoever the case may be.*
- ii. All the earlier transfers/deputation from Mewat Cadre*

to rest of Haryana shall be annulled and the teachers, thus displaced shall be sent back to their previous stations, if it is still vacant and if not, the concerned teacher may report the Directorate to get a station in Mewat Region, as per their credentials'.

Learned State counsel further submits that the Teacher Transfer Policy, 2016 (amended as on 01.06.2017), restrains the teachers of Mewat cadre from being posted outside the Mewat District now called as Nuh District and thus, the claim of the petitioners, is not tenable.

I have heard the learned counsel for the parties.

It is not disputed that the petitioners have been working as PGTs for the past many years. It is also not disputed that vide order dated 11.04.2017 (Annexure P-6), the Directorate School Education, had transferred two candidates namely Naveen Gautam and Suraksha Devi, by making a specific endorsement that the said candidates be not relieved by the head of the institution. Thereafter, Naveen Gautam and Suraksha Devi preferred a writ petition before this Court and this Court vide order dated 28.07.2017 had directed the department not to fill the two posts in question (therein). Naveen Gautam and Suraksha Devi were later on relieved and allowed to join their new places of posting, outside the Mewat, Nuh Cadre. Thus, it is evident that the candidates of Mewat, Nuh District/Cadre have already been allowed to join in the rest of State of Haryana Cadre, though on the interference of this Court. The petitioners cannot be denied the same concession.

As per the appointment order dated 08.07.2013 (Annexure P-11) of petitioner No.1, there is a noting that the Governor of Haryana is pleased to appoint petitioner No.1 as selected candidate as PGT in Hindi (HES-II) in the pay scale of 9300-34800 + grade pay 4800/- plus usual allowance in Mewat cadre as admissible under the State Government Rules 'Mewat District School Education (Group B) Service Rules, 2012' from time to time and there is no other condition estopping/restraining him from applying for transfer/posting in rest of the State of Haryana.

As per the appointment order dated 04.01.2019 (Annexure P-12) of petitioner No.2, verbatim conditions as envisaged in the appointment order dated 08.07.2013 (Annexure P-11) of petitioner No.1, have been stipulated.

As a squeal of the aforesaid discussion, it is clear that initially, when the petitioners were appointed, there was no estoppel as regards their posting outside Mewat, Nuh District/Cadre and thus, condition No.6 of the impugned notice dated 30.07.2021, restraining the petitioners now from applying for transfer outside Mewat, Nuh District/Cadre, is erroneous and arbitrary.

In view of the above, the present petition is allowed. Respondent No.2-Director, Secondary Education, Haryana, is directed to consider the case of the petitioners for posting, as per the five choices given by them, in the next earliest transfer drive.

25.01.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No