

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118/1

CWP No.22244 of 2023
Date of Decision: 16.10.2023

Ravinder Rathee and Others

...Petitioners

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Anurag Goyal, Advocate for the petitioners
Ms. Shruti Jain Goyal, Sr. DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed seeking a writ of *certiorari* quashing condition no.14 in the petitioners' letter of appointment dated 11.03.2019, Annexure P-9, stipulating that in near future they can be re-allotted to another district because of rationalization of posts or any other decision taken by the Government. The petitioners are also seeking quashing of guideline no.2 in the General Notice, dated 13.09.2023, Annexure P-13, making it compulsory for them to participate in the Cadre Change Drive.

2. Learned counsel for the petitioners has contended that the petitioners were appointed as Primary Teachers pursuant to Advertisement no.2 of 2012, dated 08.11.2012 (herein after being referred to as '2017 Batch PRTs'). The post of Primary Teacher is a district cadre post. The petitioners were qualified as they possessed the requisite qualification on the last date of submission of applications, and had cleared the Haryana Teacher Eligibility

Test ('HTET') also prior thereto. The selection process was embroiled in litigation before this Court which was finally settled by the Supreme Court in Civil Appeal No.7136 of 2022, *Vikas Kumar and Others v. The State of Haryana and Others* by order dated 13.09.2022, whereby it was, *inter alia*, directed that total number of advertised posts, i.e., 9870, are to be filled-up first from the selected candidates as per the result declared on 14.08.2014. After filling-up these posts, 2233 candidates, who qualified HTET after the cut-off date, will be appointed below the first category as per their *inter se* merit.

2.1. He further contends that the petitioners were fully eligible before the cut-off date, and fall in the first category of appointees against 9870 posts. They were appointed during pendency of litigation before this Court during 2018-19, initially on ad-hoc basis and allotted districts temporarily, as has been mentioned in the letters of appointment also. Later, regular appointments were given to all of them. Therefore, the impugned condition no.14 stipulating that they can be re-allocated to other districts due to rationalization of posts etc. is not sustainable. Ever since their appointment, the petitioners have been working in the districts they were allotted to, and have been confirmed in service also. Accordingly, guideline No.2 in the General Notice, dated 13.09.2023, Annexure P-13, whereby their participation in the Permanent District allotment has been made compulsory, is also not sustainable. Compulsory participation in the district allotment drive will re-allocate them to different districts. As Primary Teacher is a district cadre post, their seniority will be disturbed, which will be violative of the directions issued by the Supreme Court. Therefore, the impugned condition as well as the guideline need to be set-aside being contrary to law. The petitioners'

participation in the Cadre Change Drive should only be voluntary, like it is for other batches of 2004, 2008 & 2011 appointees, and not compulsory.

3. Short reply, dated 16.10.2023, filed on behalf of the respondents by Director Elementary Education/respondent No.2, is taken on record. By referring to it, learned State counsel contends that petitioners were randomly appointed during pendency of litigation questioning their selection, only on the basis of interim orders passed by this Court from time to time which was beyond the respondents control. The appointment was not in accordance with merit positions. That is the reason specific condition no.14 was incorporated in the petitioners' appointment letters, that they were being allotted the district temporarily, which would be subject to change in near future. Besides, there is no delay on the respondents' part in issuing the General Notice regarding permanent district allotment for 2017 Batch PRTs, which includes the petitioners, as it could only be issued after the final order, dated 13.09.2022, in *Vikas Kumar* case (*supra*). She further submitted that insofar as the petitioners are concerned, they are being allotted district permanently by the impugned General Notice for the first time, and for them it is not a Cadre Change Drive, since they were never allotted a district permanently earlier. It is also contended that the entire exercise is being undertaken on the basis of affidavit given by the respondents in this Court in CWP No.14553 of 2021, *Sandeep Kumar and others v. State of Haryana and Another*, decided on 02.06.2022.

4. Heard.

5. The order, dated 13.09.2022, passed by the Supreme Court in *Vikas Kumar* case (*supra*) finally closed entire litigation pertaining to the

selection of primary teachers pursuant to advertisement no.2 of 2012 with consent of learned counsel appearing for all the parties in all the matters, in the following manner:

28. In the above facts and circumstances and taking into consideration the stand of the State of Haryana as communicated by its learned counsel, we are of the view that in the present case this litigation of more than a decade could be put to a quietus and the mammoth exercise of holding the selections for 9870 posts in the year 2012 be given its full benefit. We pass the following order:

(i) The total number of advertised posts i.e. 9870 to be filled up first from the selected candidates declared in the result dated 14.8.2014.

(ii) In the event, the selected candidates from the above category do not join, then the remaining vacancies shall be filled up from the list of wait-listed candidates declared alongwith successful candidates on 14.8.2014.

(iii) After filling up of the 9870 vacancies as provided above, the 2233 candidates who qualified the HTET after the cut-off date, sometimes in June 2013 will be appointed as per their inter se merit enbloc below the above 9870 candidates.

(iv) In case, there still remain any wait listed candidates from the wait listed list of 14.8.2014, who could not be accommodated in the advertised posts of 9870, will be appointed enbloc as per their merit below the 2233 candidates.

(v) The seniority will be as per their merit position in their respective lists.

(vi) No dispute for seniority would be entertained of any candidate inter se different lists.

(vii) No claim for seniority or for any arrears would be entertained for any period nor worked by the candidates of any of the above lists.

(viii) Salary would be paid for the period, for which such candidates have actually worked but not paid salary after due verification of their working both from the records and physically.

(ix) The 2012 selections will stand closed with the above arrangement.

(x) Exercising our powers under Article 142 of the Constitution, we increase the number of advertised posts beyond 9870 to accommodate the candidates as directed above and no more.

(xi) All the appeals are disposed of as directed above.

(xii) The impugned judgment shall stand modified to the aforesaid extent.

6. Another litigation relating to the process of Permanent District allocation was pending before a Coordinate Bench of this Court in *Sandeep Kumar* case (*supra*), which was also decided by order, dated 02.06.2022, on the basis of consent of all the parties in the following manner:

Learned counsel for the parties across the board are ad idem that all the aforementioned writ petitions can be disposed of in terms of said affidavit dated 16.03.2022 and particularly in terms of para 10 to 13 thereof, which are reproduced as under:

“10. That after discussion with the Ld. Advocate General, the State Govt. has come to the conclusion that new transfer drive be started in respect of teachers appointed before 2011 by giving them, the clear cut vacancies, deemed/resultant vacancies and vacancies occupied by the Guest teachers/Adhoc teachers. It is pertinent to mention

here that the posts occupied by the teachers appointed in 2017 and onwards in the districts beyond advertised posts at present will also be given to the teachers appointed before 2011 to avoid complications. In this respect, fresh options of 21 districts including new district Charkhi Dadri will be sought from the teachers appointed before 2011. This inter district transfer will be made in groups of teachers appointed in 2004, 2008 and 2011 under 'Cadre Change Policy' dated 06.09.2018 as per scores given in this policy and as per their options. Copy of 'Cadre Change Policy' attached as Annexure-R1. The petitioners in the present petition have also prayed for the same relief.

11. That then the process to allocate the districts to the teachers appointed in 2017 and onwards will be started. The total 8763 would be given to the teachers appointed in 2017 and onwards, which were advertised districts wise under advt. No. 02/2012 for Rest of Haryana Cadre for them for the allocations of the Districts. For example 400 vacancies are advertised for Ambala, only 400 teachers will be allocated the Ambala District as per their merits, whether 600 teachers have given their options for district Ambala and vacancies are available. Further 445 vacancies advertised for Karnal and at present 200 regular teachers are working there and 145 clear cut vacancies are available but vacancies need 445, then 100 vacancies occupied by Guest/Ad-hoc in Karnal will be taken by treating them as vacant posts.

12. That it is worthwhile to mention here that in case of the teachers appointed before year 2011, there will be transfer under cadre Change Policy 2018, which will be as per the scores basis mentioned in the Cadre Change Policy 2018 and in the case of teachers appointed in 2017 and onwards there will be allocations of the districts as per their merits.

13. That then the process to allocate the districts to the teachers appointed in 2017 and onwards will be started only giving vacancies district wise as advertised in 2012 against Advt. No.02/2012 for Rest of Haryana cadre all the teachers appointed on 2017 and onwards will be asked to participate in the districts allocation process online to avoid complications and to end the dispute of junior and senior as the teachers appointed on 2017 and onwards had filed hundreds petitions for allocation the districts as per merits. In those writ petitions in compliance of the directions passed by the Hon'ble High Court, hundreds speaking orders were passed by mentioning that the allocation would be done as per merit. It is also decided that options of 6 districts may be sought for allocation the districts.

Keeping in view the above explained facts in the present short reply, it is requested that the present Writ Petitions may kindly be disposed of to avoid the complications and further litigations as the claim of the petitioners appointed before the 2011 and teachers appointed in 2017 and onwards has been accepted.”

7. Undisputed facts on record are, the petitioners were applicants for the posts of Primary Teachers advertised vide advertisement no.2 of 2012. The entire selection process remained under litigation, firstly before this Court and, thereafter, before the Supreme Court; it was finally decided, vide order dated 13.09.2022, passed in *Vikas Kumar* case (*supra*). The petitioners were given appointment during pendency of the litigation in 2018-19, and not on the basis of seniority. It is conceded case of the petitioners that at the time of joining they were lower in merit *vis-à-vis* other candidates of 2017 Batch PRTs.

8. In view of this factual background, it is apparent that the petitioners, being 2017 Batch PRTs, were never allotted a district permanently, as they were appointed pursuant to interim orders by Court during pendency of the litigation impugning their selection process; besides, the appointments were made before final seniority positions of the batch could be determined. This is the reason condition no.14 was included in the letters of appointment stipulating that they were temporarily being allotted the district which was subject to change. After the litigation questioning the selection process came to an end in terms of order, dated 13.09.2022, passed in *Vikas Kumar* case (*supra*), which upheld the selection and determined their seniority position finally, the respondents have undertaken this drive vide the impugned General Notice for permanent district allotment to 2017 Batch PRTs keeping in view their seniority positions and the options given. This could have been done only after the petitioners' selection was upheld which necessitated their participation in it too. Therefore, there is nothing illegal or irregular either about condition no.14 of appointment or the permanent district allotment drive, as it is being undertaken in the light of aforesaid order passed by the Supreme Court as well as the affidavit submitted by the respondents before this Court in *Sandeep Kumar* case (*supra*).

9. In view of the discussion, there is no merit in the petition and, accordingly, the same stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

16.10.2023
Payal

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