

CWP-26852-2022

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

**CWP-26852-2022 (O & M)
Date of decision: 13.03.2023**

Sandeep Kumar Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vinod Bhardwaj, Advocate and
Mr. Nipun Bhardwaj, 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 15.11.2022 (Annexure P-8), vide which claim of the petitioner has been rejected, and to the order dated 17.11.2022 (Annexure P-9), vide which respondent No.4 has been transferred in the office of respondent No.3 in place of the petitioner.

Learned counsel for the petitioner contends that the petitioner was posted as District Mathematics Specialist (DMS) (non-transferable post) in the office of respondent No.3; that the petitioner had been working since 2016; that vide order dated 08.08.2016, transfer order of the petitioner was cancelled; that however vide order passed in CWP-16601-2016, a Coordinate Bench had stayed the operation of the order dated

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08.08.2016, cancelling the transfer order of the petitioner, and that ultimately vide order dated 24.08.2021, the said petition had been disposed of in terms of the observations made in CWP-15108-2021. A relevant extract of the order dated 24.08.2021 passed in CWP-15108-2021, would read as under:

“Accordingly, the present writ petitions are disposed of with the directions to the respondents to consider the case of the petitioners as per their eligibility in the transfer drive as per the policy, which is on going and they will permit them to give option within a period of five days. The respondents shall ensure that the portal is opened for the petitioners to exercise their option for transfer.

The stay granted on earlier occasion will continue to operate in the favour of the petitioners till the date when they get their transfer orders on the completion of the transfer drive. It is also clarified that the portal shall also show the said post as 'Voluntary Deemed Vacancy' for other eligible persons to exercise their options. Similarly, the posts against which the petitioners were posted will also be treated as 'Voluntary Deemed Vacancy' as per the transfer policy. The State shall also take appropriate steps to revise the schedule accordingly, so that all concerned can take advantage of the opening of additional seats.”

Learned counsel for the petitioner contends that the petitioner has been working in the office of respondent No.3, but the aforesaid post was wrongly shown vacant in District Sonipat; that vide notice (Annexure P-1), applications had been invited from the willing candidates for the said post, and that against the aforesaid action of the respondents, the petitioner

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approached this Court by way of CWP-21397-2022, which had been disposed of, vide order dated 19.09.2022, with a direction to respondent No.2 to decide the representation dated 13.09.2022.

Learned counsel for the petitioner further contends that in pursuance of the aforesaid order dated 19.09.2022, respondent No.2 had passed the order, rejecting the claim of the petitioner. A relevant extract of the order dated 15.11.2022 (Annexure P-8) passed by respondent No.2, would read as under:

“....

That in compliance of the aforesaid direction of the Hon'ble High Court, representation of Sh. Sandeep Kumar Sharma has been examined. He was posted as DMS (District Mathematics Specialist) through General Transfer Drive, 2016. However he should not have been transferred as DMS, in DEO Sonipat through general transfer drive as such posting were not to be given through general transfer drive. Such post are allocated through proper screening process. In view of this, a second transfer drive was conducted for cases like the petitioner. However, he did not give any option for that transfer drive, so he was transferred to GSSS Garhi Jhanjhara under “anywhere in state category.

Whereas the Government, while conducting the general online transfer driver-2022 had given option to the petitioner to participate in the transfer driver. However, he did not participated in the transfer driver -2022. Furthermore, he did not even update his MIS portal in order to not to participate in the transfer drive.

Whereas Sh. Sandeep Kumar Sharma (Employee ID 044868) has been posted as DMS without under-going screening process and further in view of order passed by

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Hon'ble Punjab and Haryana High Court in CWP-15108 of 2021, his post is liable to be treated as vacant.....”

Learned counsel for the petitioner further contends that vide impugned order dated 17.11.2022 (Annexure P-9), respondent No.4 has been transferred in place of the petitioner despite the fact that he has been working on the aforesaid post since 2016.

On the other hand, learned State counsel while rebutting the submissions made by the learned counsel for the petitioner, submits that the petitioner was given option to participate in the transfer drive-2022, but he had not done so and even he had not updated his MIS Portal.

I have heard heard the learned counsel for the parties.

Keeping in view the orders passed in the earlier writ petitions preferred by the petitioner from time to time, but without going into the merits of the case, the present writ petition is disposed of with a direction to the petitioner to move a representation before respondent No.2-Director, Secondary Education, Haryana, for redressal of his claim qua allotting a station nearby District Sonapat, and qua releasing his due salary, within one week from the date of receipt of copy of this order. In case such a representation is filed by the petitioner, the same shall be decided by respondent No.2 sympathetically, within a period of four weeks thereafter.

13.03.2023

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No