

DIRECTORATE OF ELEMENTARY EDUCATION HARYANA, PANCHKULA

Order No. 17/34-2022 ESHM (1)

Dated Panchkula the, 8-10-22

Whereas, the present CWP No. 19396 of 2022 Ajit Singh Vs. State of Haryana & Others for quashing the impugned transfer order dated 28.08.2022 (Annexure P-4), vide which the respondent department has transferred the petitioner, Further, prayed for quashing the action of the respondents in giving those stations which were opted by the petitioner, to such teachers who have secured less points in comparison to the petitioner, who has secured 48.60 points despite that such teachers have been given that choice of stations for which the petitioner was entitled to be allotted, by ignoring the petitioner who was having higher points, the said action being in violation to the provisions of Teacher's Transfer Policy-2016 (amended as on 01.06.2017), dated 05.06.2017 (Annexure P-2) may kindly be set aside, in the interest of justice;

The said writ petition was tagged with CWP No. 19413 of 2022 and other connected cases and came up for hearing before the Hon'ble High Court on 31.08.2022 wherein a common order was passed by Hon'ble Court. The operative part of the order is reproduced as under:-

"Keeping in view the above, as prayed for by the learned counsel for the petitioner(s), the present petitions are disposed of having been not pressed any further with liberty to file appropriate representation raising the grievance as raised in the present petitions before the authorities concerned and the respondents are directed to decide the same as undertaken here-in-before.

In respect of the prayer of the petitioner(s) for allowing them to continue at the present place of posting till their representation is decided, the same has merit. In case, prayer of the petitioner(s) as raised in their representations is accepted by the respondents, the transfer already effected will result in harassment of dislodging the petitioner(s) again, which will not be in the interest of the petitioner(s) or the students, who are being taught by the petitioner(s). Hence, in case upto now, the petitioner(s) have not been relieved from their present place of posting, they will be allowed to continue at the present place of posting till their claim is decided by the competent authority and thereafter, in case the prayer of the petitioner(s) is accepted, they will be allowed to continue at the same place, failing which, the petitioner(s) will join the place of posting as allotted to them by the impugned order.

It is made clear that in case, petitioner(s) feel aggrieved even after the decision on their representation, they will be at liberty to avail any appropriate remedy, if available to them, under the law.

Petitions are disposed of in above terms."

In pursuance of this order dated 31.08.2022 of the Hon'ble High Court, the representation of the claimant was examined by the department. While examining the representation, it is noted that the claimant was working on the posts of State Cadre


(ESHM) and aggrieved that the preference was given to C&V District Cadre rather than ESHM.

The rationale behind such preference was since C&Vs are District Cadre post and being a diminishing cadre, they are occupying the post of teachers of State Cadre. Hence, in order to avoid undue litigation and protect the C&V teachers within their respective districts, such decision was taken otherwise teachers of State Cadre may have captured majority of vacancies which may create Administrative Chaos. Therefore, such decision was policy decision taken after having regard to Administrative exigencies and welfare of students.

In other words, since C&V Cadre is a district Cadre hence C&V teachers need to be posted within the district. To give them posting within district it was decided to first allocate schools to C&V Teachers prior to teachers of State Cadre of that Subject so that they can be protected within the district. During this exercise, it is possible that teachers of State Cadre may view allocation to a C&V teacher having lesser merit than him against a school of his preference and hence ESHM may get lower preference.

In view of the above narrated facts, I, undersigned, is of the considered view that the claim of the Claimants/ Representationists is not maintainable and hereby rejected accordingly.

I order accordingly.


(Anshaj Singh)
Director Elementary Education,
Haryana, Panchkula.

Regd.

To


1. Sh. Ajit Singh [063696], ESHM, aged about 48 years, S/o. Sh. Banwari Lal, posted at GMS Dhani Balhara Distt. Bhiwani now transfer in GHS Sirshi Distt. Bhiwani (4782) resident of V.P.O Baliyali Distt. Bhiwani.

Endst. No.: Even

Dated Panchkula the, 11-10-22

A copy of this order is forwarded to following for information and necessary action:

1. The Principal Accountant General (A&E) Haryana, Chandigarh.
2. District Elementary Education Officer, Bhiwani.
3. Sh. Sandeep Goyat, Advocate, Punjab & Haryana High Court, Chandigarh.
4. IT Cell. To upload the Order on website.


Superintendent ESHM
for Director Elementary Education
Haryana, Panchkula 15.09.2022

DIRECTORATE OF ELEMENTARY EDUCATION HARYANA, PANCHKULA

Order No. 17/45-2022 ESHM (1)

Dated Panchkula the, 8-10-22

Whereas, the present CWP No. 20300 of 2022 Kiran V/s State of Haryana & Another for issuance of a writ/direction/order, especially in the nature of certiorari for quashing the action of the respondent no. 2 vide which the petitioner has not been considered and allotted place of posting as per her preference given on the portal of respondent no. 2 while filing up the online Teacher Transfer form, whereas the petitioner has more points than the persons who have allotted on the said places in the General Transfers of - Principal, Headmaster, PGT, ESHM, TGT and C&V teachers which have been started vide notice dated 13.08.2022, as not allotting the station as per preference given by the petitioner is clear cut violation of Transfer Policy-2016. And has prayed for issuance of a writ, order or direction in the nature of certiorari for quashing the action of the respondent no. 2 vide which the petitioner has not been considered in the 1st online Teacher Transfer Drive-2022 and petitioner has been put in the 2nd online Teacher Transfer Drive-2022, whereas, after completion of 1st online Teacher Transfer Drive-2022 no surplus vacant post has been left for her preference, as the same posts have allocated to persons who are lower in points than the petitioner. Further has prayed for quashing the notice dated 29.08.2022 (P-10) as the said notice has been issued after completion of the 1st Teacher Transfer Drive-2022 (which was started on 13.08.2022 and closed on 16.08.2022 (P-6)) in which it is said that "it is decided to first allocate schools to C & V Teachers prior to TGTs", by taking the support of this notice the respondent no. 2 has snatched the rights of the petitioner and the petitioner has not considered in the 1st online Teacher Transfer Drive-2022, whereas the petitioner designated as Elementary School Head Master.

The said petition came up for hearing before the Hon'ble High Court on 07.09.2022 and the following direction was issued:-

"Learned counsel for the petitioner argues that the petitioner was posted at the present place after her promotion vide order dated 15.01.2020 and the petitioner was made to participate in the transfer drive keeping in view the note mentioned in her promotion order that petitioner will have to participate in the transfer drive for her regular posting, though, she has not completed minimum required period of 05 years at the current place of posting.

Learned counsel for the petitioner submits that while the petitioner participated in the transfer drive, she has opted for certain stations, which stations have not been allocated to her and the same have been allocated to the other teachers, who have lesser merit than the petitioner. Learned counsel for the petitioner further submits that there are certain posts in the nearby stations, which are lying vacant and the petitioner can be accommodated there by the respondents keeping in view the transfer policy.

Notice of motion.

Mr. Harish Nain, AAG, Haryana accepts notice on behalf of the respondent-State and submits that in case the petitioner has any grievance with regard to the fact that the candidates, who had lesser merit than the petitioner have been allocated station in preference to the petitioner or petitioner intends to be posted at a nearby station, where posts are lying vacant, the petitioner can file an appropriate representation with the respondent within a period of two days from today and in case any such representation is filed by the petitioner, the same will be decided in accordance with law by the respondent within a period of ten days from the date of receipt of said representation. In case after the decision, it is found that the petitioner is entitled for any relief, the same will be extended to her.

Learned counsel for the petitioner submits that keeping in view the statement of the learned State counsel, the present petition may kindly be disposed off having been not pressed any further but prays that keeping in view the fact that the respondents have agreed to look into the grievance of the petitioner, the petitioner be allowed to continue at her present place of posting so that in case her claim is accepted by the respondents, she does not suffer harassment of shifting base again.

Keeping in view the above, the present petition is disposed off having been not pressed any further.

It is directed that the respondents will abide by the undertaking as recorded hereinabove and further till the representation is decided by the respondent-department, in case the petitioner has not been relieved so far, she be allowed to continue at her present place of posting so that in case claim of the petitioner is accepted by the respondents, she does not suffer harassment or prejudice. It is made clear that in case claim of the petitioner is not accepted by the respondents, the petitioner will be bound to comply with the order of transfer so as to join at her new place of posting.

In case, after the decision of the respondents, the petitioner feel aggrieved, she will be at liberty to avail an appropriate remedy available with her for the redressal of her grievance”.

In pursuance of this order dated 07.09.2022 of the Hon'ble High Court, the representation of the claimant was examined by the department. While examining the representation, it is noted that the claimant was working on the post of State Cadre (ESHM) and aggrieved that the preferences were given to C&V district cadre rather than ESHM.

The rationale behind such preference was since C&Vs are District Cadre post and being a diminishing cadre, they are occupying the post of Teachers of State Cadre i.e. TGTs. Hence, in order to avoid undue litigation and protect the C&V teachers within their respective districts, such decision was taken otherwise Teachers of State Cadre may have captured majority of vacancies which may create Administrative Chaos. Therefore, such decision was policy decision taken after having regard to Administrative exigencies and welfare of students.

In other words, since C&V Cadre is a district Cadre hence C&V teachers need to be posted within the district. To give them posting within district it was decided to first allocate schools to C&V Teachers prior to Teachers belonging of State Cadre of that Subject so that they can be protected within the district. During this exercise, it is possible that Teachers of State Cadre may view allocation to a C&V teacher having lesser

merit than him against a school of his preference and ESHM may get lower preference. Hence, since the claimant belongs to State Cadre the preference has been given to C&V Teachers to protect the District Cadre.

In view of the above narrated facts, I, undersigned, is of the considered view that the claim of the Claimant is not maintainable and hereby rejected accordingly.

I ordered accordingly.

9/8/10/22

(Anshaj Singh)
Director Elementary Education,
Haryana, Panchkula.

Regd.

To

1. Ms. Kiran [023352], ESHM, aged about 50 years, W/o. Sh. Sandeep, posted at GSSS Khidwali (2662) Block Rohtak, Distt. Rohtak now transferred GHS Barona (3607) Sonipat resident of H.No. 227, Suncity Sector-35, Rohtak, Haryana.

Endst. No.: Even

Dated Panchkula the, 11-10-22

A copy of this order is forwarded to following for information and necessary action:

1. The Principal Accountant General (A&E) Haryana, Chandigarh.
2. District Elementary Education Officer, Rohtak & Sonipat.
3. Sh. Surinder Gaur, Advocate, Room No. 14, New Bar Complex Chandigarh, Punjab & Haryana High Court, Chandigarh.
4. IT Cell. To upload the Order on website.

Shukla
Superintendent ESHM
for Director Elementary Education
Haryana, Panchkula 21.09.2022

DIRECTORATE OF ELEMENTARY EDUCATION HARYANA, PANCHKULA

Order No. 17/32-2022 ESHM (2)

Dated Panchkula the, 8-10-22

Whereas, the present CWP No. 19723 of 2022 Pritam Singh Vs. State of Haryana & Others for quashing impugned transfer order dated 28.08.2022 (P-11) vide which the petitioner has been ordered to be transferred from GSSS Khadri (279), District Yamuna Nagar to GHS Fatehgarh via Buria (209) District Yamuna Nagar against vacancy of TGT/Master (Social Studies) with immediate effect despite of the period of less than one year in his retirement. Further prayed for quashing the action of the respondents in effecting the Transfers through online transfer mode in mid-session in total contravention of the Teachers Transfer Policy dated 29.06.2016 (P-1) and Amended Policy dated 05.06.2017 (P-2) and amendments in policy (P-3) and quash the action of the respondents to compel the petitioner to participate forcibly despite of the fact that previously he was provided with the option of Yes/No i.e. voluntary participation in the present Online Teachers Transfer Policy 2022 and now compelling the petitioner to forcibly participate in the Transfer Drive without any fault of him when he is left with only 9 months in the retirement. Further again prayed for directing the respondents to permit the petitioner to complete his tenure at the present Station i.e. GSSS Khadri District Yamuna Nagar as has been mandated by the transfer policy (P-1 to P-3) and prayed for stay the operation of impugned transfer order dated 28.08.2022 (P- 11) and permit the petitioner to work at the present Station i.e. GSSS Khadri District Yamuna Nagar against the post of ESHM, as the petitioner has been left with approximately 9 months in his retirement, in the interest of justice and Fair Play.

The said petition came up for hearing before the Hon'ble High Court on 06.09.2022 and the following direction was issued:-

"Learned counsel for the petitioner argues that the petitioner is going to attain the age of superannuation on 31.05.2023 and the petitioner has been transferred now vide order dated 28.08.2022, which is contrary to the transfer policy. Learned counsel submits that employee who are to retire within a period of one year, are to be retained at their present place of posting. Learned counsel further submits that petitioner has already raised the said grievance on 23.08.2022, a copy of which has been appended as Annexure P-10, i.e. even prior to the transfer, which is still pending consideration with the respondents and petitioner will be satisfied, at this stage, in case a direction is issued to respondent No. 2 to decide the same by passing an appropriate speaking order in a time bound manner.

On the asking of the Court, Mr. Harish Nain, Learned Assistant Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondents-State and raises no objection in deciding the representation dated 23.08.2022 (Annexure P-10) in a time bound manner by passing an appropriate speaking order.

In view of the pleadings in the present petition, without expressing any opinion on the merits of the case or the claim being made by the petitioner in the representation, respondent No. 2 is directed to decide the representation dated 23.08.2022 (Annexure P-10), by passing a speaking order within a period of two weeks from the receipt of copy of this order. Present writ petition stands disposed of".

In the compliance of above said direction, the case of the claimant i.e. Sh. Pritam Singh has been examined carefully and it has been found that the claimant has claimed for quashing transfer order as he has less than one year Period in his retirement as per Transfer Policy.

It is pertinent to mention here that the claimant was promoted on the post of Elementary School Head Master vide order No. KW 15/32-2019 HRM-III(1) dated 09.11.2020 and he was posted at GSSS Khadri District Yamuna Nagar vide order dated 26.04.2022 which was temporary station and as per promotion order the claimant was directed to participate in the upcoming transfer drive for his regular posting on promotional post. Hence, it is mandatory for the claimant to participate in next General Transfer Drive for his permanent posting as per Transfer Policy.

It is worthwhile to mention here that the Claimant is working as ESHM at GSSS Khadri District Yamuna Nagar which is a Senior Secondary School, where the post of claimant i.e. ESHM has been declared as surplus due to the rationalization of posts, hence, the Claimant shall compulsorily participate in the transfer drive as per Transfer Policy, 2016 amended as on 01.06.2017 which was enacted by the Government of Haryana and the respondent department has not any act beyond the said policy. Section 9 Clause XII of Teacher Transfer Policy, 2016 is as under:

“(xii) Teachers declared surplus from a station as part of the rationalization of posts shall compulsorily participate in the transfer drive. In case of their non-participation in transfer drive from any reason their salary from such posts shall be stopped and the department shall be at liberty to post them at any station across the state in the schools having high deficiency of teachers”.

In the context explained above, the case of the claimant in the representation dated - 23.08.2022 (Annexure P-10) has been examined and it has been found that the claimant is not eligible for stay at present place as the post has been declared surplus due to the rationalization as per Clause XII (9) of Transfer Policy and also as the claimant was working on a station allotted to him manually it was a temporary adjustment on his promotion till the commencement of the Transfer Drive. On the basis of present circumstances, the claim of the claimant has been rejected in above terms.

I order accordingly.

9/8/10/22

(Anshaj Singh)
Director Elementary Education,
Haryana, Panchkula.

Regd.

To

1. Sh. Pritam Singh [003766], ESHM, aged about 57 years, S/o. Sh. Telu Ram, posted at Government Senior Secondary School Khadri,(279) District Yamunanagar, resident of Vill. Dayal Garh, PO, Buria, Distt. Yamunanagar. Haryana.

Endst. No.: Even

Dated Panchkula the, 11-10-22

A copy of this order is forwarded to following for information and necessary action:

1. The Principal Accountant General (A&E) Haryana, Chandigarh.
2. District Elementary Education Officer, Yamunanagar.
3. Sh. Anil Kumar Sharma, Punjab & Haryana High Court, Chandigarh.
- ✓ 4. IT Cell. To upload the Order on website.

Sh. Anil Kumar
Superintendent ESHM
for Director Elementary Education
Haryana, Panchkula