
(2016) 01 P&H CK 0484

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 17139 and 17845 of 2013

Maneesh Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 15(3), Article 16

Citation : (2016) 3 RSJ 89 : (2016) 1 SCT 731 : (2016) 6 SLR 599

Hon'ble Judges : Rajive Bhalla and Hari Pal Verma, JJ.

Bench : Division Bench

Advocate : Rajbir Sehrawat, Advocate, for the Appellant; Ravi Dutt Sharma, Deputy Advocate General, for the Respondent

Final Decision : Disposed off

Judgement

Rajive Bhalla, J.—1. By this common order, we shall decide Civil Writ Petition Nos. 17139 and 17845 of 2013 as they involve adjudication of and answer of common questions of law. The facts necessary for adjudication are being taken from Civil Writ Petition No. 17139 of 2013. The petitioner prays that clauses 7, 8 and 10 of the Inter District Transfer policy, dated 12.12.2012 may be quashed, insofar as it does not allow a male teacher, covered by a definition of a couple case, to get transferred to the place of posting of his wife, who is also a teacher.

2. A brief narrative of the facts would be appropriate.

The petitioner is working as a Hindi Teacher at Government Senior Secondary School Bajghera, District Gurgaon. The petitioner got married to Sunita Rani, also a teacher posted at Government High School Bibarkatabad District Jhajjar. The petitioner and his wife are blessed with two children who are studying at a school in Bahadurgarh. The petitioner applied for an Inter-District transfer to the place of posting of his wife and submitted an affidavit that he is willing to forgo his seniority in District Gurgaon. The petitioner's case for transfer was rejected on the ground that as per clauses 7, 8 and 10 of the Inter District Transfer Policy

dated 12.12.2012, a female alone can seek transfer and then also to the place of posting of her husband.

3. Counsel for the petitioner submits that admittedly, the petitioner and his wife are teachers working in the Education Department and, therefore, a couple case. The purpose of clauses, namely, 7, 8 and 10 of the Inter District Transfer Policy is to allow couples to live together but these clauses permits a female employee alone to seek transfer to the place of posting of her husband. The clauses, as framed, work to the detriment of a couple as the wife alone can join the husband and not vice versa. The purpose of these clause is to ensure that couples, working in the same department, reside at the same station but the clauses as framed operate to the detriment of a family. A wife may be posted at a better place and, therefore, a couple may decide to live together at the place of her posting but clauses 7, 8 and 10 of the Policy as framed, do not allow a wife or a husband to pray for such a transfer. The clauses, therefore, not only perpetuate a discrimination but in a given situation defeat the very object of the policy. Counsel for the petitioner further submits that the policy, as framed, limits the option of a lady teacher as she can only be posted at the place where her husband is posted. The question is not one of making of a special provision for females but whether the object of these clauses, to ensure that couples employed in the same department, reside together is fulfilled or frustrated by these clauses.

4. Counsel for the State of Haryana, on the other hand, submits that the petitioner is serving as a Hindi teacher, a district cadre post. The cadre has already been declared a diminishing cadre. The petitioner's arguments that clauses 7, 8 and 10 of the Policy are violative of Articles 14 and 16 of the Constitution disregards that Article 15(3) of the Constitution empowers the State to make a special provision for women and children. The aforesaid clauses have been notified as special provisions to enable female teachers of the JBT and C & V cadres to join their husbands. The petitioner can not demand, whether on the basis of a vested right or otherwise that he be transferred to a particular place or that his wife should be allowed to pray for his posting to her place of posting. The petitioner's wife may always file an application for her transfer to petitioner's place of posting. Counsel for the State of Haryana also submits that a similar plea has already been rejected in Ramesh Chander v. State of Haryana and another (Civil Writ Petition No. 8132 of 2013), decided on 22.5.2013, by holding that policies are mere guidelines do not have statutory force.

5. We have heard counsel for the parties, perused the paper-book and contents of the policy.

6. The petitioner's grievance, briefly put, is that clauses 7, 8 and 10 of the Inter District Transfer Policy, which permit a female teacher to apply for an Inter District transfer, to the place of posting of her husband, discriminates against male employees and as these clauses do not allow a female teacher to pray that her husband be transferred to the place of her posting, defeat the very object of

these clauses, namely, to ensure that couples reside together.

7. A relevant extract from the Inter District Transfer policy, namely, clauses 7, 8 and 10 read as follows:--

"7. JBT/C&V Female Teachers who want transfer in the district where their husbands are working in district cadre under Education Department. All those female JBT/C&V teachers whose husbands are working in district cadre of other departments will also be considered in this group.

8. Such JBT/C&V female teachers who got married after joining their service and seek transfer in the district where husband/in-laws are residing.

9. XX XX XX

10. All such female JBT/C&V teachers who seek their transfer in the district where their husbands are working in State Cadre posts of State/Centre Govt./ Local Bodies and body corporate."

8. A perusal of clauses 7, 8 and 10 of the Inter District Transfer Policy reveals that the object underlining these clauses is to ensure that, wherever possible, couples should reside together by conferring a right upon a female teacher to seek transfer to the place of her husbands posting. The clauses, as framed, however, restrict this right to a female teacher alone without any corresponding right to a husband or a right to the wife, subject to the consent of the husband, to seek his transfer to the place of her posting. The question that, thus, calls for an answer is whether these clauses are arbitrary or fulfill only in part, the object sought to be achieved, namely, ensuring that couples reside together. The State of Haryana seeks to justify the policy on the anvil of Article 15(3) of the Constitution of India by pointing out that these clauses have been enacted as a special provision for women and, therefore, can not be challenged on the ground of discrimination. The State of Haryana also asserts that a policy being a mere guideline is immune from judicial scrutiny.

9. A policy is, undoubtedly, a guideline and falls to the policy making domain of the Executive but if a policy, is discriminatory or arbitrary or works to the detriment of a class or a category of persons it may, the situation so demanding, be subjected to judicial review. The Executive is required to ensure that a policy abides by all constitutional and statutory safeguards and if a policy is discriminatory or arbitrary or both cannot be shielded from judicial review subject, however, to any constitutional protection.

10. As already noticed, the policy, as framed, confers a right upon a female teacher to seek the transfer to the place of her husband's posting and, therefore, may be immune from the charge of discrimination on the anvil of Article 15(3) of the Constitution but as the object of clauses 7, 8 and 10, is to ensure that couples reside together, have no hesitation in holding that the clauses, as framed, do not fulfil the object sought to be achieved. The clauses confer a right upon a wife to seek transfer to the place of posting of her husband

but with no right to pray that her husband be posted at the place of her posting. The principle underlining these clauses is to ensure that couples and their children reside together but operate only if the wife wants to be posted to the place of her husband's posting. A situation may arise and often does where a wife is posted at a better station. The couple may want the husband to join the wife but as a husband cannot file an application and a wife has no right to request that her husband be posted at the place of her posting, the clauses, as framed, thus would never allow such a couple to live together.

11. The policy, in our considered opinion, requires to be reexamined by the State of Haryana so as to consider whether the object underlining clauses 7, 8 and 10, namely, to ensure that couples live together, has been fulfilled. Therefore, while holding that the policy enacts a special provision for females and is protected by Article 15(3) of the Constitution, the writ petition is disposed of by directing the State of Haryana to reconsider clauses 7, 8 and 10 in the light of our observations and take a fresh decision, within six months. In case of any modification in the policy, the petitioner's prayer for transfer to the place of posting of his wife, if affirmed by his wife, may be reconsidered.