

(2013) 11 P&H CK 0275
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19265 of 2013

Satish Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Citation : (2014) 3 SCT 442

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Judgement

Rajiv Narain Raina, J.—This is a transfer/posting matter. The petitioner teaches in a school and is a NCC Part Time Officer and NSS trainer who imparts this special education in addition to his regular teaching duties of training young students in NCC standards. In the transfer policy floated by the Government of Haryana inter alia in the Education Department for the year 2009-2010, a special care has been taken for NCC/NSS trainees a provision for which is stipulated in Clause (f) of paragraph 3 of the policy. The guideline relevant to this case reads as follows:-

"An NCC/NSS Training Teacher will be transferred from NCC/NSS wing school only when there is another such trained officer or the replacement teacher is also such trained."

The challenge in this petition is to the impugned transfer order dated 7/23.8.2013 (P-9). The petitioner has been transferred from Government Primary School, Nauguran, Jind to Government Primary School, Kuchrana Khurd, Jind against a vacancy in the latter school.

2. In the new place of transfer which is not very distant from the previous school it is said that there is no NCC Part Time Officer-cum-teacher in position. It is, therefore, reasoned that NCC cadets in the previous school will be left in the lurch. These are in substantial number. The GPS Nauguran will suffer since no NCC Officer would be present to teach the targeted cadets whose training would be either disrupted or unavailable. On 2.9.2013 this Court interfered in the

matter and called upon Mr. Nehra, learned Sr. DAG Haryana to take instructions as to the logic behind depriving a school of a teacher who is NSS/NCC trained so that the students in the transferor and transferee school do not suffer. It was also ordered in the interim that pending adjudication, the petitioner may join at the new place of posting but that will not be taken as a waiver of his right to press this petition and prayers made on merits therein. The petitioner undertook that he would join the new place of posting on the next day. He did.

3. In response the State has filed a reply and has contested the case. It has been stated in the reply that the State is under bounden duty u/s 38(2) of the Right of Children to Free and Compulsory Education Act, 2009 to maintain Teacher-Pupil ratio in each school and to adhere to the instructions dated 21.3.1991 (P-5) which enjoin the Government to conduct rationalization and re-deployment exercise of teachers and to complete the process by 30th June of every year. Keeping in view the above, the Department exercised the process of rationalization on 30.6.2013 to maintain the prescribed Teacher-Pupil strictly in accordance with the Act. At the time the petitioner was posted as GPS Nauguran. During the exercise of rationalization, the post occupied by the petitioner, being a senior JBT teacher, became surplus. Consequently, the 2nd respondent issued the impugned transfer order dated 7.8.2013 from Nauguran to Kuchrana Khurd, Jind against a vacant post. But before transferring the petitioner from one school to the other, a counselling process was held. During the process of counselling, the petitioner himself filled up the form of counseling on 1.8.2013 and opted for posting to GPS Kuchrana Khurd, Jind. It was, on the strength of the written option exercised by the petitioner, that he was transferred. A copy of the option exercised has placed on record as Annexure R-1. The petitioner has been posted to his station of choice and cannot be heard to withdraw or resile from his option once exercised by free will without coercion. Still further, the distance between the two schools, admittedly is just 5 Km from his native village Badhana, Jind. And the distance between the two schools is 5/6 Kms. On merits, it is submitted by the respondents that there is no NCC Wing in Primary Schools in Haryana. Hence, an NCC trained teacher is not necessary in a Government Primary School because this wing is not available in such Schools. If such is the case then the respondents have not violated either the transfer policy nor can be seen to have acted on arbitrary, unreasonable or irrational grounds. The petitioner cannot be seen as having any personal interest in a particular group or of students at a particular primary school where there is no statutory duty to train small children in NCC ways. A transfer is an incident of service. Judicial interference remains minimal to examine perversity, mala fides, bias and the kind. No ground is made out for active interference by this Court in the transfer order though I cannot say with any certainty that the petitioner had no case at all. The petitioner is thus left free to still persuade the administrator and bring him to his point of view since it was not denied by the State that indeed a group of students in the previous school were part of NCC/NSS training programme even if law did not require it. After all NCC training can produce finer citizens for tomorrow. Government may

still consider such training in the curriculum of the transferred school to give meaning to Clause (f) of paragraph 3 of the policy guidelines which they have themselves thought was a good thing to put. If this is done there would be continued utility of the special services the petitioner and his like who can offer valuable service as NCC Part Time Officers. It is well to remember that ratio and proportion can hardly be worked with mathematical exactitude in a case of this kind. Some free play in the joints of the administrator will not be abhorred by the RTE Act. Only substantial compliance of the law and its avowed purpose to serve education broadly that is necessary and not phobias of the mind, the letter and spirit of the law measured in beakers and pipettes that should rule the roost in working Teacher-Pupil ratios across the State with so many imponderables and unforeseen pitfalls lying on the spot. Legislature is not expected to know of every straw or dust particle that lies or may fall in a class room or in the play field. Neither is it its job.