
(2021) 10 SHI CK 0080
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.5067 Of 2021

Tara Tegwan

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 30-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16(1)

Citation : (2021) 10 SHI CK 0080

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Seema Azad, Ashok Sharma, Rajinder Dogra, Shiv Pal, Ashwani Sharma

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The instant petition otherwise stands disposed of vide order dated 10.9.2021, which reads as under:

"Since, the petitioner has completed her normal tenure in hard and difficult area having been posted there since 23.07.2007, therefore, she is entitled to be posted at one of the stations of her choice, as has been opted by the petitioner i.e. Government Girls Senior Secondary School, Lakkar Bazar, Shimla. The vacancy at the opted station by the petitioner has already been filled up.

2. Therefore, in the given circumstances, if permissible, we direct the official-respondents to consider the case of the petitioner for transfer to the following four stations as given in her writ petition:-

"1.Government Senior Secondary School, Sanjauli, Shimla, H.P.

2. Government Senior Secondary School, Chhota Shimla, H.P.

3. Government Boys Senior Secondary School, Lalpani, Shimla, H.P.

4. Government Senior Secondary School, Kamla Nagar (Bhattakuffar), Shimla, H.P."

3. Thereafter consequential orders of transfer and posting of the petitioner be issued.

4. It is made clear that in case there is no vacancy, then the official-respondents shall consider the case of the incumbent for transfer with longer stay so as to make way for the petitioner. The entire exercise be completed within four weeks.

5. The petition stands disposed of in the aforesaid terms, so also the pending application(s), if any.

6. For compliance, to come up on 08.10.2021.

2. On 8.10.2021, the case was taken up for compliance and the Court was informed that there is no vacancy in any of the schools mentioned in the judgment, on account of short stay. The Court, thereafter, directed the respondents to file an affidavit, disclosing therein the incumbency of the teachers, working in the schools, alongwith details of their previous place of posting(s).

3. In compliance to the aforesaid direction, respondent has filed compliance affidavit, and to say the least, we are aghast to go through the contents of the same, as we noticed that some of the lecturers (English), as detailed in the affidavit have been in the periphery of Shimla, for more than 2 to 3 decades, and yet respondent would maintain that there is no vacancy in the schools in Shimla, on account of short stay.

4. In somewhat similar factual position, this Court in CWP No. 511 of 2020, titled as, "Sheetal Suryanvanshi versus State of HP and others", decided on 26.8.2020, the Court had observed that there was a particular cartel of teachers operating in Shimla and it was observed as under:

"18. Off late, this Court has seen a surge in litigation relating to transfer. The State of Himachal unlike other States is not evenly or uniformly developed in matters of basic infrastructure like education, health services etc. It is for this reason and rightly so that every employee tries to make an endeavour to seek posting in the district or tehsil headquarters where the infrastructure is relatively well developed. This we observe on the basis of the statistics relating to Shimla alone, where floating population is equal to permanent population. Most of these migration in urban areas is directly related with education of children and thereafter it could be for other purposes like better health facilities etc.

19. We further notice that because of cartel created by few of the employees serving in the urban and semi urban areas of Himachal Pradesh, the influential employees manage to secure their postings in and around urban areas, leaving practically no room for the other employees.

20. The instant case is one such classical example, which reflects the modus

operandi being resorted to by these teachers on completion of their tenure by seeking mutual transfer or creating artificial vacancies and thereafter getting each one adjusted in such vacancies.

21. It cannot be ignored that not only the State or Country but the whole world is in the grip of pandemic COVID-19, because of which students cannot be taught physically in the class rooms and are being taught through online classes.

22. In such circumstances, the respondents are not only duty bound but are mandated by law to ensure that no monopoly in the matters of transfers is created in favour of selected fews but an endeavour has to be made to accommodate maximum number of teachers whose children are appearing for the board examination or examination for professional courses. These students can only study and attend classes on line if there is adequate and desired bandwidth. Even otherwise the facilities of tuition and coaching classes on online are mainly available in these places i.e. the district and tehsil headquarters, therefore, also the State is required to adopt a fair and transparent policy of transfer by calling for the details of all the teachers whose children are to appear in the Board exam or examination for professional courses like MBBS, AIEEE etc. This would not only bring about an end to the monopoly created in favour of few teachers but would also ensure benefit to the student community as a whole.

23. The Central Government, State Governments and likewise all public sector undertakings are expected to function like a 'model employer'. A model employer is under an obligation to conduct itself with high probity and expected condour and the employer, who is duty bound to act as a model employer has obligation to treat its employees equally and in appropriate manner so that the employees are not condemned to feel totally subservient to the situation. A model employer should not exploit the employees and take advantage of their helpless and misery.

24. The action of the State must be reasonable, fair, just and transparent and not arbitrary, fanciful or unjust. The right of fair treatment is an essential ingredient of justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen; vesting of discretion is no wrong provided it is exercised purposively judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom, than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty.

25. It was observed by Wades Administrative Laws, 5th Edition at page 347 that "The first requirement is the recognition that all powers have legal limits, the next requirement, no less vital, is that the Court should draw this limit in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen. Parliament consistently confers upon public authorities powers which on their face seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the Courts refuse to countenance. They have

woven a net-work of restrictive principles which require statutory powers to be reasonable and in good faith and in accordance with the spirit and letter of the empowering Act." At page 359, it was also observed that "Discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That amounts at least to this that the statutory body must be guided by relevant consideration and not irrelevant. If its decision is influenced by extraneous consideration which ought not have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith, nevertheless, the decision will be set-aside."

26. Here, it shall be apposite to make a reference to the judgment of the Hon'ble Supreme Court in *New India Public School vs. Huda* (1996) 5 SCC 510, wherein it was observed that when public authority discharges its public duty, it has to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and the same cannot be acted at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration.

27. The concept of reasonableness and non-arbitrariness pervades the entire constitutional spectrum and is a golden thread which runs through the whole fabric of the Constitution. Thus, Article 14 read with Article 16(1) of the Constitution accords right to an equality or an equal treatment consistent with principles of natural justice. Therefore, any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly and reasonably. Right to fair treatment is an essential inbuilt of natural justice.

28. As observed above, exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen; vesting of discretion is no wrong provided it is exercised purposively, judiciously and without prejudice.

29. The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16 of the Constitution. It also means that the State should not exploit its employees nor should it seek to take advantage of their helplessness and misery. As is often said, the State must be a 'model employer'.

5. In addition to this, the Court also observed that:

"43. Before parting, we hope and trust that the respondents would take all requisite steps to break the cartel and as far as possible ensure that maximum number of teachers, especially those whose children are to appear in the Board examination and examination for professional courses are afforded an opportunity to serve in the district and tehsil headquarters or wherever requisite infrastructure like adequate band width, facility of tuition etc. are available".

6. It is rather unfortunate that the official respondent have not been able to break the cartel or else there would be no occasion for the cases of instant kinds, repeatedly coming up before this Court.

7. We may, at this stage, notice that details given in affidavit by the respondent, only pertains to some of the Lecturers in the subject of English, which reveals that many of those lecturers, who have been posted in and around Shimla, for 2-3 decades and same position would be there regarding Lecturers in other subjects. In such circumstances, it is obviously high time to break the cartel of transfer of each one of the schools Lecturers, irrespective of the subject they are teaching on the basis of incumbency, who have been in periphery of in and around Shimla, by treating a radius of 45kms, as a local adjustment, and thereafter, based on their incumbency, of longer stay, transfer them one by one, so as to make a room for the other teachers, especially those, whose children are to appear in Board examination and examination for professional courses.

8. In view of above, the instant petition stands disposed of, so also, the pending application(s),if any.

To come up for compliance on 26.11.2021.