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PUNJAB and HARYANA HIGH COURT

Before : Justice Tejinder Singh Dhindsa

NEHA SOOD – Petitioner,

Versus

STATE OF PUNJAB and others – Respondents.

CWP No.24075 of 2017 (O&M) 25.10.2017

Service matter – Transfer is an incident of service and violation of Transfer Policy/Instructions does not confer any right as Transfer Policy/Guidelines do not vest enforceable right in an employee.

Held, Transfer is an incidence of service. Matters of transfer/posting are best left to the judgment of the employer. Orders of transfer would be open to challenge only if the same have been passed in violation of statutory provision or are vitiated by malafides. Terms and conditions contained in a transfer policy/guidelines do not vest an enforceable right in an employee. A reference in this regard may be made to the decision of Hon'ble Apex Court in the case of *Union of India v. S.L.Abbas*, 1995 (4) SCT 455. [Para 9]

Mr. Mayank Mathur, Advocate, for the petitioner.

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TEJINDER SINGH DHINDSA, J.(ORAL) Petitioner applied for the post of Lecturer (Information and Technology) in response to an advertisement bearing No.07 dated 28.12.2015 issued by the Punjab Public Service Commission.

2. Grievance raised in the instant petition is that upon having been selected for the post in question, she has been issued a posting order to join at Government Polytechnic, Bathinda. Petitioner is further aggrieved of memo dated 12.10.2017 (Annexure P-1) whereby her request for adjustment on the post of Lecturer (IT) in Government Girls Polytechnic College, Patiala instead of Bathinda as also for extension of joining time has been declined.

3. Learned counsel representing the petitioner has placed heavy reliance upon the guidelines dated 11.04.2017 (Annexure P-6) issued by the Government of Punjab, Personnel Department on the subject of Transfers and Appointments of Government Employees during the year 2017 and 2018.

4. Clause 2 sub clause (b) of the instructions/guidelines dated 11.04.2017 has been adverted to to assert that since husband of the petitioner is an employee in a Government

Undertaking and posted at Patiala, accordingly, petitioner was vested with the right to be adjusted upon selection as Lecturer (IT) at Patiala itself.

5. Argument raised is that the posting order issued to the petitioner at Bathinda is in violation of the Transfer Policy/Instructions dated 11.04.2017.

6. Counsel has also brought to the notice of this Court that as per information supplied under the provisions of Right to Information Act, a post of Senior Lecturer is available at Patiala and as such it was always open for the respondent authorities to have adjusted the petitioner on such vacant post. In furtherance of such submission, counsel refers to document placed on record at Annexure P-1 to demonstrate that two other candidates, namely, Gurmukh Singh S/o Sh. Makhan Singh and Ramandeep Kaur D/o Sh. Palwinder Singh who were also selected and appointed as Lecturers (IT) in the same very process of selection have been adjusted against the post of Senior Lecturers. On such basis, petitioner claims parity of treatment. Counsel argues that the exercise of posting orders of selected candidates suffers from the vice of arbitrariness inasmuch as certain candidates have been issued posting orders qua posts which had not been advertised so as to accommodate them closer to their home town/district.

7. Yet another submission raised by counsel is that petitioner has already enrolled for the doctorate degree (Ph.D.) under Thapar Institute of Engineering and Technology at Patiala since January, 2015 and if the impugned posting order at Bathinda is given effect to it would impede upon her effort to acquire a higher qualification.

8. Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that no interference in the matter is called for.

9. Transfer is an incidence of service. Matters of transfer/posting are best left to the judgment of the employer. Orders of transfer would be open to challenge only if the same have been passed in violation of statutory provision or are vitiated by malafides. Terms and conditions contained in a transfer policy/guidelines do not vest an enforceable right in an employee. A reference in this regard may be made to the decision of Hon'ble Apex Court in the case of *Union of India v. S.L.Abbas*, 1995 (4) SCT 455.

10. Petitioner had concededly applied for the post of Lecturer (IT) in pursuance to an advertisement dated 28.12.2015 issued by the Punjab Public Service Commission at Annexure P-2. Various posts of Lecturers in different subjects were advertised. Insofar as the subject of Information and Technology is concerned, the advertisement was categoric as regards 22 post in all in the subject of Information and Technology and these posts were in the Subordinate Institutions as also in the Government Polytechnic College (Women), Jalandhar cadre. In other words, at the stage of submitting her application form and subjecting herself to a process of selection and appointment for the post of Lecturer (IT), the petitioner was well aware that in the eventuality of being selected and appointed she was liable to be posted against any of the 18 posts in the Subordinate Institutions. It is not the case of the petitioner that her posting in Government Polytechnic College at Bathinda is not one of the Subordinate Institutions indicated in the advertisement itself.

11. Even the submission as regards parity of treatment and the petitioner having been discriminated against is not well founded. For a plea of discrimination to sustain there must be a pre-existing right. There is no vested right in favour of a candidate who applies for the post that upon selection and appointment he/she has to be adjusted at any particular place. Even if certain candidates who had been selected in the same very process of selection have been adjusted against posts which were not even advertised or against a higher post of Senior Lecturer still it would not vest any right in favour of the petitioner. At best it would be construed as a course of action which was not valid. It would not be open for the petitioner to invoke Article 14 of the Constitution of India and to pray for issuance of directions by this Court to the respondent authorities to perpetuate a practice which may not be valid in law.

12. The instant petition is nothing but an attempt made by a selected candidate for the post of Lecturer (IT) to secure a particular place of posting and that too at the very initial stage of entry into service. Such an attempt needs to be discouraged.

13. There is no merit in the petition and the same is dismissed.