

Upender Kumar and Others Vs State of Haryana and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 1, 2006

Hon'ble Judges: M.M.S. Bedi, J; M.M. Kumar, J

Bench: Division Bench

Advocate: Jagbir Malik, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

The petitioners are working in the Department of Education under the Primary School Directorate, Haryana on various posts like SS Masters and teachers. They have approached this Court with a prayer to set aside Clause 3 of the rationalisation policy dated

30.9.2005 (Annexure P.1) introduced by the respondent State. It is appropriate to mention that the respondent- State has floated a rationalisation

policy with the object of restoring the teacher-students ratio. In the process it became necessary to transfer some teachers/ masters/ mistresses

from one school to another as per requirement as there were more teachers in comparison to the number of students according to norm or there

were less teachers in comparison to the strength of the students. The petitioners are aggrieved by Clause 3 of the Policy which reads as under:

Transfer in the surplus teachers to the nearest schools in the District, where vacancy is available(or the nearest school having vacancy in the

adjoining district when no vacancy is available in the district). While transferring the surplus teachers by way of Rationalization it is proposed that

we may not transfer the teachers who have been transferred to that school in the last few months, since 1st April, 2005. After excluding these

recently transferred teachers the next teacher with shortest stay in the school should be transferred, as part of this Rationalization, when a surplus

teacher is to be transferred.

2. Mr. Jagbir Malik, learned Counsel for the petitioners has argued that the principle of surplus staff should be applied by keeping in view the

seniority of the person. Accordingly a junior most incumbent working in a particular school is required to be declared surplus and then transferred

to a needy school. According to the learned Counsel, Clause 3 of the policy would impose an illegal embargo by protecting those who have been

transferred to a school on or after 1.4.2005 irrespective of their seniority. He has maintained that the petitioners are likely to suffer because they

have been ordered to be transferred in pursuance to the aforementioned Clause 3 vide order dated 20.7.2006 (Annexure P.2).

3. We have thoughtfully considered the submissions made by the learned Counsel and are of the view that this petition is liable to be dismissed. A

perusal of rationalisation policy dated 30.9.2005 would show that the respondents have fixed the norm in paras 1 and 2 of the policy which reads

as under:

1. Science/ Commerce /Geography and Economics Faculty will be allowed if there are minimum 20 students in each class i.e. in class 10 + 1 and

10+2. If the strength of students is less than 20 in each class then faculty would be wound up and the staff may be shifted to some other needy

institution.

2. The minimum norms for the period will be revised as under:

i) Lecturer 30 periods per week

ii) Master 36 periods per week

iii) C & V 40 periods per week.

The strength for Section will be 40 students per section as already approved by worthy C.M. from 1st to 8th classes. Next Section will be created

if the strength of the students increases upto 50 means 11th section allowed after 50 students. If the workload of the subject Lecturer is not

completed in 10+1 and 10+2 classes he/she will be given the periods of 9th and 10th classes subject-wise.

4. However, under Clause 3 those teachers/ masters/ lecturers who have been transferred on or after 1.4.2005 are not be shifted again. We can

see a laudable object in framing of such a clause as it aims at avoiding repeated transfers of a teacher/ master/ lecturer. The clause appears to be in

larger public interest as it would serve the object of rationalisation in accordance with the norms fixed in paras 1 and 2.

5. We are further of the view that the principle for declaring the staff as surplus would not apply to the case in hand as is sought to be argued by

the learned Counsel when the well known principle of declaring an employee as surplus is followed then the principle of "last come first go" is to be

followed. This principle emanates from the concept of retrenchment which in its ordinary connotation is discharge of labour as surplus though the

work may continue. In other words the junior-most in the cadre has to be removed first. However, in the present case the teaching staff has not

been declared surplus but they are being shifted from one school to another in order to achieve the norm fixed in paras 1 and 2 of the policy. The

argument suffers from another fallacy as it pre-supposes that the basis of seniority required to be adopted is a particular school/ institution. Such a

proposition can hardly be accepted. Therefore, the argument is wholly misconceived and deserves to be rejected outrightly. Accordingly, we have

no hesitation to reject the same.

6. For the reasons mentioned above, this petition fails and the same is dismissed.