

## Smt. Bhupa Sharma Vs State of Haryana

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 23, 2016

**Acts Referred:** Constitution of India, 1950 - Article 14, Article 226

**Citation:** (2017) 1 SCT 428

**Hon'ble Judges:** Tejinder Singh Dhindsa, J.

**Bench:** Single Bench

**Advocate:** Ramesh Malik, Advocate, for the Petitioner

**Final Decision:** Partly Allowed

### Judgement

Tejinder Singh Dhindsa, J. - Petitioner is serving as a Science Mistress under the Department of School Education, State of Haryana. She is

currently posted at Govt. Senior Secondary School, Sector 19, Panchkula.

2. The instant petition has been filed raising a grievance that a Transfer Policy issued by the State Govt. on 29.6.2016 (Annexure P-2) has been

made a subject of clarification vide letter dated 22.7.2016 (Annexure P-4) and by applying such clarification the petitioner would now be eligible

to be transferred out from her present place of posting.

3. Counsel would submit that as per policy dated 29.6.2016 (Annexure P-2) and in particular para 7 (i) (b) a deemed vacancy has been defined

i.e. only in relation to a post where a teacher has completed a tenure of 5 years in a particular school. As per clarification dated 22.7.2016

(Annexure P-4) such definition stands altered to mean a period of 5 years in a particular zone as opposed to the particular school.

4. Counsel argues that the petitioner had joined on the present place of posting on 16.5.2012 and if the original policy dated 29.6.2016 was to

hold the field and under para 7 (i) (b) thereof the petitioner was not occupying a deemed vacancy and as such, could not have been transferred.

Challenge as such is being laid to the clarification contained in order dated 22.7.2016 (Annexure P-4) which has enlarged the scope of the

definition of deemed vacancy to include a tenure of 5 years even in relation to a zone as opposed to a particular school. As per counsel, such

clarification is arbitrary inasmuch as by way of process of interpretation the basic policy itself has been changed. Counsel relies upon a judgement

of the Hon"ble Supreme Court in State of Bihar v. Subhash Singh, 1997 (4) S.C.C. 430 to contend that administrative action is an essential

part of the rule of law and whenever there is any arbitrariness therein the same would be open by way of intervention by this Court by in exercise

of powers under Article 226 of the Constitution of India by way of judicial review.

5. Yet another submission raised by counsel is that the Transfer Policy dated 29.6.2016 (Annexure P-2), even though, issued from the office of

Additional Chief Secretary to Govt., Haryana, School Education Department but the same had been approved by the Cabinet, whereas the

impugned clarification dated 22.7.2016 has been issued by the office of Additional Chief Secretary to Govt., Haryana, School Education

Department without taking the matter up to Cabinet and as such, suffers from an inherent lack of jurisdiction.

6. Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that the instant

petition is completely bereft of merit and deserves dismissal.

7. Transfer Policies issued by the State Govt. and the stipulations contained therein do not vest an enforceable right in an employee. A Transfer

Policy can never be taken to the pedestal of a statutory rule. These policies are at best in the nature of guidelines for the appropriate department

while issuing orders of transfer.

8. In the present case a transfer order in so far as the petitioner is concerned, has not been passed. Petitioner has filed the instant petition

apprehending an order of transfer. As per petitioner, by virtue of the clarification dated 22.7.2016 she has now been rendered eligible for transfer

as she has completed more than 4 years in a particular zone. Case of the petitioner is that the original policy of 29.6.2016 should hold the field and

the petitioner should be held to be not eligible to be transferred as she has not completed 5 years tenure on her present place of posting i.e. at

Govt. Senior Secondary School, Sector 19, Panchkula.

9. The clarification dated 22.7.2016 (Annexure P-4) has been perused. The Additional Chief Secretary to Govt. Haryana, School Education

Department has also referred to para 8 (iii) of the original policy dated 29.6.2016, wherein it was stated that ""in case a teacher has 35 years of

service left, then he/she gets to select 7 zones in order of his/per preference..."". Accordingly, a view has been taken that a teacher would normally

stay only 5 years in a particular zone. What flows apparently is that such clarification would not be an alteration or a change of the original policy.

The clarification to which the petitioner is aggrieved of is relatable to the original policy itself. Under such circumstances, the submission made by

counsel that the clarification has been issued by an official who was not competent to do so, lacks merit. The original policy in any case had met

approval of the Cabinet. It was certainly open for respondent no.1 to resort to a clarification keeping in view the intent and objective for which the

original Transfer Policy had been issued.

10. Even otherwise, the petitioner has completed more than 4 years of tenure at her existing place of posting. Transfer is an incidence of service.

Even if it was assumed that the original policy dated 29.6.2016 (Annexure P-2) is to be applied and the clarification dated 22.7.2016 (Annexure

P-4) is not to be taken in account, still, no enforceable right vests with the petitioner. In any case the present petition is only founded on an

apprehension that an order of transfer would now follow.

11. No ground for interference is made out.