Neutral Citation No:=2025:PHHC:027414

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

294 (4 cases) **CWP-25754-2023**
Date of Decision: 25.02.2025

Gaurav Wadhwa and others **…Petitioners**

Versus

State of Haryana and others **…Respondents**

With

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-1150-2024	Sucha Singh and others	State of Haryana and others
3.	CWP-1689-2024	Ishwar Singh and others	State of Haryana and others
4.	CWP-2499-2024	Rahul Barak and others	State of Haryana and others

Present: - Mr. Sajjan Singh, Advocate and
Mr. Vishal Punia, Advocate for the petitioners

Ms. Shruti Jain Goyal,
Senior Deputy Advocate General, Haryana

Mr. B.R. Mahajan, Senior Advocate with
Ms. Nikita Goel, Advocate
for respondent-Haryana State Agriculture Marketing Board
(in CWP-25754-2023 & CWP-2499-2024)

Mr. Samarth Sagar, Advocate
for respondent-Haryana State Agriculture Marketing Board
(in CWP-1150-2024 & CWP-1689-2024)

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JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-25754-2023*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of Online Transfer Policy dated 15.06.2023 (Annexure P-4).

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3. The petitioners are working as Sub-Divisional Engineers (Civil) (for short '**SDE**') with the respondent-Haryana State Agriculture Marketing Board. They have joined respondent on different dates and are posted at different places. In exercise of power conferred by proviso to Article 309 of the Constitution of India, the Governor of State of Haryana made Online Transfer Policy dated 13.02.2020 (Annexure P-1) for the Government Employees. The said policy was a model policy. As per Clause 2 of the policy, it would be applicable to all the employees of a cadre working on regular basis where cadre strength of a post is 500 sanctioned posts or above. By subsequent amendments, it was made applicable to posts having cadre strength of 80 or more. The cadre strength of SDE in the respondent-department is less than 80. The respondent taking cue from State model transfer policy framed its Online Transfer Policy dated 15.06.2023. The said policy was approved by different officers at different levels. It was also put up before the Chief Minister who approved the same. The petitioners are feeling aggrieved from few clauses of the Online Transfer Policy dated 15.06.2023 on the ground that these clauses are arbitrary, thus, violative of Article 14 of the Constitution of India.

4. Mr. Sajjan Singh, Advocate for the petitioners submits that as per impugned policy, the respondent has laid down criteria for calculation of score. On the basis of score, an employee is posted at a particular place. 60 marks are earmarked for age; higher the age, higher the marks; resultantly, the younger employees are not likely to get posting of their choice. There are 5 marks for couple case. The marks are confined to spouses working in any Department, Board or Corporation under any State Government or Government of India. There are many employees whose spouses are

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working with non-government organizations, thus, they are not entitled to marks under the said criteria. The respondent has prescribed maximum 3 years stay at a particular place. No employee can stay more than six years in one Market Committee and more than eight years in one Division/Circle Office. Every Division comprises of 3-4 Sub-Divisions and every Circle comprises of 3 Divisions. The State has been divided into 7 Circles. On account of this clause, no employee would be retained beyond 8 years in a particular Circle. An employee who is having 30 years service will be posted in 4 Circles, meaning thereby, he would be posted in substantial part of the State during his tenure. The impugned policy is contrary to model policy framed by the State Government. There are negative marks for negative performance. Once an employee has been departmentally punished for his act and omission, he cannot be subjected to negative marking because it would amount to double jeopardy. The respondent has adopted model transfer policy framed by State Government, however, substantial amendments have been made which are contrary to said policy. As per model policy, it is inapplicable where cadre strength is less than 80. The respondent has applied the policy to cadres where strength is less than 80. As per model policy, maximum tenure at a particular place is 5 years whereas in the impugned policy it is 3 years. In the transfer policy meant for Assistant Secretary, Market Committee, the maximum tenure of 2 years has been prescribed. It shows non-application of mind and arbitrary attitude of the respondent. There is no provision whereunder impugned policy has been framed. In the absence of source, policy could not be framed. The respondent has partially applied model policy. The respondent could not partially adopt model policy.

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5. *Per contra*, Mr. B.R. Mahajan, Senior Advocate assisted by Ms. Nikita Goel, Advocate & Mr. Samarth Sagar, Advocate and Ms. Shruti Jain Goyal, Senior Deputy Advocate General, Haryana submit that impugned policy is not a piece of legislation. It is not mandatory and sacrosanct. There is grievance redressal mechanism to resolve problems of the employees. The State Government has framed model policy whereby general principles have been laid down. The State Government while forwarding model policy to different organizations have specifically pointed out that departments shall frame their online transfer policy based primarily on these general principles and with such changes as deemed necessary and submit the same to Chief Minister for approval. The respondent framed its policy keeping in mind model policy and put up the same before the Chief Minister who approved the same. Transfer is part and parcel of service. No employee has vested or fundamental right to claim place of posting. It is prerogative of the employer to place any employee at any place. The respondent has framed impugned policy for the purpose of transparency and to avoid favouritism. In case any employee has genuine grievance, he may approach Grievance Committee which would certainly redress the grievance. The Supreme Court time and again has held that Courts cannot interfere in the transfer matters. It is prerogative of the State. The criteria for allotment of post is quite transparent and beneficial to all the employees. A policy cannot be declared bad merely on the ground that it is not suitable to a particular employee or particular set of employees. Higher marks have been earmarked for elderly employees because it is difficult for them to move from one place to another. It is not going to prejudice any employee because every employee is going to turn 50 plus. The marks for couple case are earmarked for the welfare of families. There is no discrimination with any

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employee. If the spouse of any employee is working in a private organization, he cannot be assigned marks because job with private organizations is more or less non-transferable. The maximum period for stay at a particular place or Division or Circle has been prescribed taking cue from model policy as well as prevailing conditions of the organization. No prejudice has been caused to any particular employee.

6. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

7. The petitioners are assailing policy on the ground that its clauses are arbitrary. For ready reference, relevant clauses of the model policy dated 13.02.2020 and impugned policy dated 15.06.2023 are reproduced as below: -

<u>Model Policy dated 13.02.2020</u>: -

*"**No. 15/27/2018-1GS-II-** In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Haryana hereby makes the following Online Transfer Policy for the Government employees: -*

***1. Vision:** To ensure equitable distribution of Government employees at different locations in a fair and transparent manner and to maximize job satisfaction amongst employees and further to improve performance of the Department.*

***2. Application:** This Policy shall be applicable to all the employees of a cadre working on regular basis where the Cadre strength of a post is 500 sanctioned posts or above.*

***3. Definitions**: XXXX XXXX XXXX*

***(c) 'Prescribed Tenure'** means the tenure of appointment for a period of five years. While calculating the tenure of an employee for the*

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purpose of this policy, the date from which someone is working in a zone on 31st March of the calendar year of transfer shall be counted irrespective of the fact he has been appointed by temporary transfer or otherwise. However, an employee may participate in the transfer drive subject to completion of minimum three years service in a zone;

XXXX XXXX XXXX XXXX

5. Merit Criteria for allotment of post:

(a) Merit for allotment of vacant post to an employee shall be based on the total composite score of points earned by the employee, out of 80 points as described below. The employee earning highest points shall be entitled to be transferred against a particular vacancy.

(b) Age shall be the prime factor for deciding the claim of an employee against a vacancy since it shall have weightage of 60 points, out of total points.

(c) A privilege of maximum 20 points can be availed by the employees of special categories as indicated below:-

(A) Age: *The first set of merit points will be the Age of the Government employee concerned enumerated below:-*

Sr. No.	***Major Factor***	***Sub-Factor***	***Max. Points***	***Criteria for calculation***
1	*Age (Present date i.e. (1st January of the year of consideration minus date of birth)*	*Eldest person shall be given maximum points.*	*60*	*Age in number of days ÷ 365 (Maximum for decimal points only)*

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<u>Impugned policy dated 15.06.2023</u>: -

"2. PRINCIPLES GOVERNING THE POLICY:

(A) Basic Principles

i) When a post shall be treated as vacant

A post shall deemed to be vacant in the following circumstances:-

- *A post presently not occupied by an employee at the time of transfer drive.*
- *A post presently occupied by an employee for a working tenure of three years or more; or opted for transfer after 2 years. Occurrence of vacancy after prescribed period (option after 2 years and deemed after 3 years) of occupancy is indicative only, any post can be shown to be vacant even before the expiry of prescribed time periods on administrative reasons by the Competent Authority.*

XXXX XXXX XXXX XXXX

iii) Employees shall be considered eligible for participating in the transfer drive against the vacancy as per para (i) above. An employee who has been posted at any place with working tenure of three years or more; or opted for participation in the transfer drive after a period of 2 years, whose post has been shown to be vacant by the Competent Authority on administrative reasons, on promotion, on new appointment, posting made due to retirement of any employee, on reinstatement of suspended employee, on repatriation of employee earlier or on Administrative grounds and posted at any station without online transfer drive has to participate in the next online transfer drive.

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vi) An employee shall not be posted in one Market Committee for more than six years and in one Division/Circle office for more than eight years in his entire career i.e. from the date of joining in the service by an employee.

XXXX XXXX XXXX XXXX

***4. CRITERIA FOR CALCULATION OF SCORE**:-*

The transfer/ posting of an employee to a vacant post shall be based on the total composite score/ points earned by the employee on the parameters described below. The employee earning maximum points shall be entitled to his preferred place in the first instance. The points on various factors/ parameters are as under: -

Calculation of Score: -

Sr. No.	***Factor***	***Sub-Factor***	***Max. Marks***	***Explanation and requirements***
i	*Age (as on date of freezing the score by the online system)*	*--*	*60*	*[Age in no. of days ÷ (58x365)] x 60*
XX	*XXXX*	*XX*	*XX*	*XXXX*
vi	*Couple case*	*Both Male & Female spouse*	*5*	*Employees' spouses working in any Department/Board/ Corporations under any State Govt. or GOI.* *If husband and wife both working in MC/Division/ Circle in same cadre/ different cadre, then 5 marks shall be given to both husband & wife.*
vii	*Negative performance*	*An employee awarded punishment during the service tenure as under.* *I) Minor penalties*		*Deduction of points: -* *Punishment awarded* / *Minor* / *Major* *One* / *1* / *2* *Two* / *2* / *4* *Three* / *3* / *6* *Four* / *4* / *8* *Five or more* / *5* / *10* ***Note:-***

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		(Rule-4(a) of HCS (P&A) Rule 2016 *II) Major penalties (Rule-4(b) of HCS (P&A) Rule 2016*	*(-) 5* *(-) 10*	*1. Both reductions to be made if punished under both rules.*

XXXX XXXX XXXX XXXX

7. POST TRANSFER EXERCISE:

XXXX XXXX XXXX XXXX

c) Within 15 days of issuance of orders, an employee aggrieved with the transfer process can give representation to the Chief Administrator, HSAMB, Panchkula after joining at the new place of posting, on a grievance redressal forum to be provided by the department for this purpose. His representation shall be considered in accordance with the policy and appropriate decision shall be conveyed to him as deemed fit.

d) A committee headed by the Deputy Commissioner and comprising of CMO and District Officer of the Market Committee/ Board may recommend deputation/ temporary transfer of an employee after the transfer drive, on the basis of genuine and compelling reasons. The committee will scrutinize such cases and send their recommendations to the Government which will be dealt under relaxation clause of the Transfer Policy. (Guidelines of Government vide letter No.15/05/2017-1GS-II dated 07.08.2020)"

8. It is a settled proposition of law that scope of interference in policy matters is very limited. The persons who are making policy are more competent to know need of the people as well as need of the organization.

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9. Hon'ble Supreme Court has time and again adverted with scope of judicial interference in policy matters. A Constitution Bench in ***Vivek Narayan Sharma Versus Union of India; (2023) 3 SCC 1***, while adverting to question of legality of demonetization of currency of denomination of ₹500/- and ₹1,000/- has considered the scope of judicial review. The Hon'ble Supreme Court considered its precedents and concluded that it is not function of the Court to sit in judgment over matters of economic policy and they must necessarily be left to Government of the day to decide. The Court can certainly not be expected to decide them. The relevant extracts of the said judgment read as:-

> *"Scope of Judicial Review*
>
> *218. The law with regard to scope of judicial review has been very well crystallised in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651]. In the said case, it has been held by this Court that the duty of the court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal would have reached or abused its powers. The Court held that it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken.*
>
> *219. After referring to various pronouncements on the scope of judicial review, the Court has summed up thus: (Tata Cellular case [Tata Cellular v. Union of India, (1994) 6 SCC 651] , SCC pp. 687-88, para 94)*
>
> > *"94. The principles deducible from the above are:*
> >
> > *(1) The modern trend points to judicial restraint in administrative action.*

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

(emphasis in original)

220. Though various authorities are cited at the Bar with regard to scope of judicial review, we do not find it necessary to refer to various judgments. We may gainfully refer to the judgment of this Court in Rashmi Metaliks Ltd. v. Kolkata Metropolitan Development Authority [Rashmi Metaliks Ltd.

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v. Kolkata Metropolitan Development Authority, (2013) 10 SCC 95 : (2013) 4 SCC (Civ) 650 : (2014) 1 SCC (Cri) 43 : (2013) 2 SCC (L&S) 858] , wherein this Court has deprecated the practice of citing several decisions when the law on the issue is still covered by what has been held in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651].

221. Our enquiry, therefore, will have to be restricted to examining the decision-making process on the limited grounds as have been laid down in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] .

Scope of judicial interference in matters pertaining to economic policy

222. Since the issue involved is also related to monetary and economic policy of the country, we would also be guided by certain other pronouncements of this Court.

223. We may gainfully refer to the following observations of the seven-Judge Bench in Prag Ice & Oil Mills v. Union of India [Prag Ice & Oil Mills v. Union of India, (1978) 3 SCC 459] : (SCC p. 478, para 24)

> *"24. We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately. We do not think that it is the function of this Court or of any Court to sit in judgment over such matters of economic policy as must necessarily be left to the Government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts."*
>
> *(emphasis supplied)*

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224. In R.K. Garg v. Union of India [R.K. Garg v. Union of India, (1981) 4 SCC 675 : 1982 SCC (Tax) 30] , another Constitution Bench of this Court observed thus : (SCC p. 690, para 8)

> *"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved."*
>
> *(emphasis supplied)*

225. Again, the Constitution Bench of this Court in Shri Sitaram Sugar Co. Ltd. v. Union of India [Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223], observed thus: (SCC pp. 255-56, para 57)

> *"57. Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the "feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such*

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findings are consistent with the laws of the land. As stated by Jagannatha Shetty, J. in Gupta Sugar Works [Gupta Sugar Works v. State of U.P., 1987 Supp SCC 476] : (SCC p. 479, para 4)

'4. … the court does not act like a chartered accountant nor acts like an income tax officer. The court is not concerned with any individual case or any particular problem. The court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination.'

(emphasis supplied)

226. Recently, this Court in Small Scale Industrial Manufactures Assn. v. Union of India [Small Scale Industrial Manufactures Assn. v. Union of India, (2021) 8 SCC 511] had an occasion to consider the issue with regard to scope of judicial review of economic and fiscal regulatory measures. This Court observed thus : (SCC p. 570, paras 69-72)

"69. What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and RBI on the aid and advice of the experts. The same is a matter for decision exclusively within the province of the Central Government. Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala fides, arbitrariness, unfairness, etc.

70. There are matters regarding which the Judges and the lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. Economic and fiscal regulatory measures

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are a field where Judges should encroach upon very warily as Judges are not experts in these matters.

71. The correctness of the reasons which prompted the Government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the Government.

72. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review. The scope of judicial review of the governmental policy is now well defined. The courts do not and cannot act as an appellate authority examining the correctness, stability and appropriateness of a policy, nor are the courts advisers to the executives on matters of policy which the executives are entitled to formulate."

227. This Court in Small Scale Industrial Manufactures Assn. [Small Scale Industrial Manufactures Assn. v. Union of India, (2021) 8 SCC 511] observed that the Court would not interfere with any opinion formed by the Government if it is based on the relevant facts and circumstances or based on expert's advice. The Court would be entitled to interfere only when it is found that the action of the executive is arbitrary and violative of any constitutional, statutory or other provisions of law. It has been held that when the Government forms its policy, it is based on a number of circumstances and it is also based on expert's opinion, which must not be interfered with, except on the ground of palpable arbitrariness. It is more than settled that the Court gives a large leeway to the executive and the legislature in matters of economic policy. A reference in this respect could be made to the judgments of this Court in P.T.R. Exports (Madras) (P)

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> *Ltd. v. Union of India [P.T.R. Exports (Madras) (P) Ltd. v. Union of India, (1996) 5 SCC 268] and Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd. [Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd., (2011) 1 SCC 640].*
>
> *228. It is not the function of this Court or of any other Court to sit in judgment over such matters of economic policy and they must necessarily be left to the Government of the day to decide since in such matters with regard to the prediction of ultimate results, even the experts can seriously err and doubtlessly differ. The Courts can certainly not be expected to decide them without even the aid of experts."*

10. The petitioners are assailing impugned policy primarily on the ground that it is violative of Article 14 of the Constitution of India. The petitioners are not claiming that by impugned policy, the respondent has made discrimination between similarly situated employees. The petitioners are claiming that clauses are arbitrary, thus, violative of Article 14 of the Constitution of India. As per petitioners, the policy is bad on account of following reasons: -

i. Higher marks are earmarked for elderly employees;

ii. No marks are prescribed for spouses working with private organizations;

iii. There is no source to declare impugned policy;

iv. Negative marks for negative performance amounts to violation of Article 20(2) of the Constitution of India;

v. There is no rationale/reason for restricting the stay of an employee to 8 years in a Circle;

vi. There is no rationale/reason to prescribe maximum 3 years stay at a particular place.

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11. Supreme Court in ***State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402*** has held that a Government Servant once appointed at a particular place or position cannot continue for as long as he desires. Transfer is not only an incident inherent in terms of the appointment but also implicit as an essential condition of service. Unless order of transfer is outcome of *mala fide* exercise of power or violative of any statutory provision, an order of transfer cannot be interfered with as a matter of course or routine for any or every type of grievance sought to be made. A challenge to an order should be eschewed and should not be countenanced by the Courts or Tribunals. The relevant extracts of the judgment read as under:-

> *7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of*

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administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

12. The respondent has earmarked 60 marks for age factor. Higher the age, higher the marks. The petitioners are claiming that younger employees would get lower marks, thus, they would not get posting of their choice. Every employee who is working with respondent is bound to retire on attaining the age of superannuation i.e. 58 years. Every employee is bound to grow and turn 50 plus. The respondent as per its wisdom has made classification which seems to be just and fair. There seems to be reason for making the said classification. The respondent has formed an opinion that employees with higher age should be given preference. They certainly have better experience but more family responsibilities and health issues. This classification is not going to affect young employees because at later stage of their life, they are also going to be benefited.

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13. The petitioners are claiming that negative marking amounts to double jeopardy. The respondent has prescribed -5 (minus five) marks for minor penalties and -10 (minus ten) for major penalties. Posting at a place other than place of choice cannot be treated as punishment in terms of Article 20(2) of Constitution of India. The contention of the petitioner is misconceived. A person who has been subjected to major penalty cannot claim that he should be given place of posting of his choice. The employer has every right to post him at non-sensitive place.

14. The petitioners are claiming that employees whose spouses are working in private organizations are not entitled to additional marks. If an employee's spouse is working with private organization and his/her job is transferrable, he/she can certainly raise his/her grouse to authorities who are bound as per Clause 7(c) and (d) of the policy to address the same.

15. The petitioners are also claiming that impugned policy is contrary to model policy and there is no other source of policy. Transfer is an integral part of service. Every employer has right to frame its policy. In the absence of policy, the employer has a right to place its employees as per its choice. The respondent by making impugned policy rather has attempted to create an atmosphere of transparency. In the absence of policy, the persons sitting at the helm of the affairs may post employees as per their discretion which is always prejudicial to particular set of employees. The petitioners are further claiming that impugned policy is contrary to model policy. The model policy was framed by State Government and it is applicable to Government Employees. The respondent is an autonomous body. Its employees are not State Government Employees. The State while framing model policy has asked different organizations to frame their own

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model policy. The respondent was not bound to adopt model policy in toto. The respondent was free to modify model policy as per its need and environment. The respondent, as per its need and wisdom, has implemented model policy with changes. In the absence of any particular statutory provision, the respondent cannot be asked to adopt model policy framed by the State Government. It is undisputed that petitioners are not Government Employees and are not governed by Rules as applicable to Government Employees.

16. The petitioners have not pointed out any clause of the policy which is violative of any fundamental right of the petitioners guaranteed by Chapter III of the Constitution of India except to say that policy is arbitrary.

The petitioners have neither fundamental nor vested right to claim that they should not be transferred or posted as per their choice. There is nothing unreasonable or arbitrary in the impugned policy which can be called as violative of Article 14 of the Constitution of India. The policy could be violative of Article 14, had it been made applicable to few of the employees whereas it is applicable to all the officers, thus, petitioners have no right to claim that policy is violative of Article 14 of the Constitution of India.

From the discussion, with respect to each and every clause doubted by the petitioners, made hereinabove, it is evident that there is nothing manifestly arbitrary or unreasonable in the doubted clauses. The respondent having regard to model policy and its environment has framed different clauses. No attempt has been made to favour a particular employee or class of employees. It is the respondent who knows about the strength and weakness of its organization as well as its employees. The Supreme Court in

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Vivek Narayan Sharma (Supra) while upholding decision of demonetization of currency of denomination of ₹500/- and ₹1,000/- has clearly held that scope of interference in policy matters is very limited. The Supreme Court has repeatedly reminded us that scope of interference in transfer matters is very limited. The respondent to create an atmosphere of transparency and equanimity has framed impugned policy. This Court does not find any infirmity in the impugned policy warranting interference. The Court is sanguine of the fact that as conceded by respondent, the authorities would resolve genuine issues of petitioners as well as other employees.

17. In the wake of above discussion and findings, this Court is of the considered opinion that present petitions being bereft of merit deserve to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

25.02.2025
Mohit Kumar

Whether speaking/reasoned	Yes
Whether reportable	Yes