

**Before Ajay Tewari, J.**

**PUSHPA BAI — Petitioner**

*versus*

**STATE OF HARYANA — Respondents**

**CWP No. 2063 of 2017**

May 10, 2017

***Constitution of India, 1950 — Art. 226 — Transfer Policy of Haryana Govt. dated 29.06.2016 discussed — Petition filed for quashing the impugned transfer orders — Government rejected representation — that her daughter is suffering from “Epilepsy Severe Mental Retardation” which is not included in the list of diseases notified vide notification No. 1/72-2016-e. Govt. Cell dated 27.06.2016 — Prayed to direct the respondents to re-consider her claim by allowing her to points for serious ailments of her daughter — CWP allowed.***

*Held* that a perusal of the medical certificate issued by the chief medical officer, H. C.M.S- I, Civil Surgeon noticed that the daughter of the petitioner is a person with disability/severe disability suffering from mental retardation.’ To the same effect is the medical certificate of the Principal Medical Officer, General Hospital, Ambala City. It is for this reason that the respondents had accepted the claim of the petitioner in para 4 of their short reply. The respondents are directed to grant 10 more marks to the petitioner and after granting 10 marks more issue transfer order as per her entailment.

(Para 4)

Ram Niwas Sharma, Advocate  
*for the petitioner.*

Harish Rathee, Sr. DAG, Haryana.

**AJAY TEWARI, J. (Oral)**

(1) This petition has been filed for quashing the impugned transfer orders dated 17.09.2016 (P-6) and orders dated 01.12.2016 (P-11) wherein the petitioner has been transferred from Govt. Primary School, Khatoti Sultanpur (Narnaul) District Mahendergarh to Govt. Primary School, Dochana, Narnaul (Mahendergarh) against vacancy by violating the transfer policy dated 29.06.2016 (P-2) and also rejected her representation dated 26.09.2016 (P-9) on the ground that her

daughter is suffering from “Epilepsy Severe mental retardation” which is not included in the list of diseases notified vide notification No.1/72-2016-e.Govt. Cell dated 27.06.2016 and further to direct the respondents to re-consider her claim by allowing her 10 points for serious ailments of her daughter.

(2) On 07.03.2017 the following order was passed :-

“Short reply on behalf of respondent Nos. 1 to 3 has been filed in Court today and the same is taken on record.

On 08th February, 2017, the following contention was noticed.

“The precise grievance of the learned counsel for the applicant-petitioner is that in the transfer policy, weightage is given to two distinct categories relating to illness. In one there are general illnesses which may be afflicting either the employees or the spouse or their unmarried children and the second distinct category applies only where an employee has mentally challenged children. The case of the petitioner was that her child was mentally challenged but repeatedly the respondents have considered that her case does not come under the first category and this is the third petition in this regard. Prima-facie the argument seems to be correct and if so, reveals a very sorry state of affairs where the State itself is increasing its burden and that of the Court.”

In Para No.4 of the short reply, it has been accepted that the case of the petitioner falls in Sr. No.6 and therefore, petitioner was entitled to 10 marks on that account. It has further been stated that the case of the petitioner will be reconsidered in the next transfer 2nd drive which as per learned Senior Deputy Advocate General, Haryana will take place after April.

Adjourned to 10.05.2017.”

(3) Even today the learned Senior DAG states that till date the 2<sup>nd</sup> transfer drive could not take place due to logistic reason.

(4) On the other hand learned counsel for the petitioner has stated that the medical condition of the daughter of the petitioner is such that this case can brook no delay. A perusal of the medical

certificate issued by the Chief Medical Officer, H.C.M.S.-I, Civil Surgeon, Mahendrgarh at Narnaul noticed that the daughter of the petitioner is a 'person with disability/severe disability suffering from mental retardation'. To the same effect is the medical certificate of the Principal Medical Officer, General Hospital, Ambala City. It is for this reason that the respondents had accepted the claim of the petitioner in para 4 of their short reply. The respondents are directed to grant 10 more marks to the petitioner and after granting 10 marks more issue transfer order as per her entitlement. The necessary action be taken within a period of one month from today. It is further clarified that this would be done de hors the second transfer drive which may or may not take place in the near future.

(5) Petition stands allowed in the above terms.

(6) Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

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*Amit Aggarwal*