

(2006) 08 DEL CK 0040
In the Delhi High Court
Case No : WP (C) No. 2447 of 1988

Anand Swarup Mittal

APPELLANT

Vs

Managing Committee of Ramjas Sr. Secondary School No. 4
and Others

RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Delhi School Education Act, 1973 — Section 5
Delhi School Education Rules, 1973 — Rule 59

Citation : (2006) 08 DEL CK 0040

Hon'ble Judges : Manmohan Sarin, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Sunil Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.

With the consent of the Petitioner and respondent writ petition is taken up for disposal.

1. Petitioner Mr. Anand Swaroop Mittal, by this writ petition, assails the transfer order dated 16.7.1988. By the impugned order, the petitioner, a PGT, working at Ramjas School No. 4, Chitragupta Road, New Delhi, had been transferred to Ramjas School No. 1, Daryaganj. Petitioner did not join the school at Daryaganj since he was questioning the right of the authorities to transfer him. Petitioner contends that he was appointed vide appointment letter dated 8.10.1970. The said appointment letter, being a short one, is reproduced for facility of reference:

ANNEXURE R/2

RAMJAS FOUNDATION

(Registered under Societies Registration Act XXI of 1860)

DARYA GANJ, DELHI-6.

Dated : 8th October, 1970

Shri Anand Swaroop Mittal,

M.Sc. (Zoology),

48/11, East Patel Nagar,

New Delhi.

Dear Sir,

With reference to your interview, you have been appointed as P.G.T. (Biology) in Ramjas Higher Secondary School No. 4, Chitragupta Road, New Delhi, @ Rs. 275/- P.M. plus usual allowances in the grade of Rs. 275-550 on probation of one year, from the date of your joining the School, i.e. 19-8-1970.

Please note that one month's notice during probationary period and three month's notice after confirmation on either side shall be necessary in case of resignation by you or termination of service by the Management.

Yours faithfully,

Sd/-

(R.K. GUPTA)

Hony. Secretary,

Education Committee.

2. Petitioner submits that there is no provision in the appointment letter for transfer from one school of the foundation to the other. He next submitted that this letter of appointment was prior to the enactment of the Delhi School Education Act, 1973. After the enactment of Delhi School Education Act, 1973, each school is required to have its own Scheme of Management in terms of Section 5 of the Act and Rule 59 of the Delhi School Education Rules, 1973. Accordingly, he submits that since the transfer sought to be effected in July, 1988, the Management of the school, i.e. Ramjas School No. 4, where the petitioner was working, should have approved his transfer in consultation and with the consent of the Management of the receiving school, i.e. Ramjas School No. 1. He submits that this transfer had been done unilaterally and arbitrarily without consent as aforesaid.

3. In the event, petitioner did not join the new place of posting. Disciplinary proceedings were initiated and he continued to remain absent from duty and an order of dismissal dated 6.6.1991 dismissing him w.e.f. 31.5.1991 was passed after enquiry in which petitioner did not participate.

4. Considering the dismissal of the petitioner, the question of challenge to the transfer has become almost academic. However, we note that the petitioner has independently challenged the order of dismissal by filing an appeal before the

Delhi School Education Tribunal. The said proceedings have been deferred by the Tribunal observing that since the transfer from Ramjas School No. 4 to No. 1 was the genesis of the problem and the challenge to the same was pending in this writ petition, it would be appropriate to await the decision of this Court in the present petition. In the above circumstances, we propose to decide the present writ petition also.

5. Petitioner, in support of his plea, submits that the transfer was a non est one and without following the prescribed procedure under the Education Act and says that the same cannot be given effect to as it was only the Management Scheme of the respective schools that would affect the same.

6. Petitioner, in support of his submissions, relies on certain observations of S.B. Wad, J. in the concluding para of the judgment in *Shri Ram Foundation and Anr. v. Directorate of Education* in Civil Writ Petition No. 2644/1982, which are reproduced for facility of reference:

...There is no violation of the impugned orders if the petitioners maintain joint seniority and transfer teachers from one school to another provided the teachers/employees agree to such terms at the time of accepting the appointment orders.

7. Petitioner submits that the cited case also dealt with transfers and concerned *Shri Ram Foundation*. He submits that in this case, the appointment letter does not contain any provision for transfer. Secondly, there was no consent given by the petitioner for transfer from one school to the other. Summing up, he says that after the Education Act of 1973, the Schools having separate Management, have attained a separate entity and transfer from one school to the other cannot be done without the consent of the concerned employee as held by the learned Single Judge in the para quoted above.

8. He further relies on *Jawahar Lal Nehru University v. Dr. K.S. Jawatkar* reported at AIR 1989 SCC 1577 wherein the Supreme Court noted in para 7:

...No employee could be transferred, without his consent, from one employer to another. the consent may be express or implied.

It has been put to the petitioner whether there is any other plea or submission which he would like to press apart from ones as recorded in his presence today, he says that he has nothing further to state.

9. It is not necessary to refer to the various cases cited by the petitioner in his written submissions. It is sufficient to notice the two cases, namely, *Shri Ram Foundation and Anr. v. Directorate of Education* and *Jawahar Lal Nehru University v. Dr. K.S. Jawatkar* (supra), to which he has referred during the course of his submissions. In our view, *Shri Ram Foundation and Anr. v. Directorate of Education*, when read as a whole does not support the petitioner's case. Reference is invited to the following part of the judgment:

There is no prohibition in the Act for transfer from one School to another. The

question of transferability with promotion or without promotion or on the basis of joint seniority are entirely the matters between the employees and the management. Where an employee joins such an institution which is managed by a Society or a Trust he joins the institution with open eyes. He accepts the term of transferability and joint seniority. He might see a benefit in it.

In our view, the case of Jawaharlal Nehru University (*supra*) does not advance the petitioner's case. Firstly, the requirement of consent, express or implied, is for transfer from one employer to another, i.e., from one centre to another. In the instant case, it is the admitted position that both the schools are run by Ramjas Foundation, i.e. the Society, which had employed the petitioner. None of the schools is run as an independent Society or a Trust. It is not a case of transfer from one employer to another.

10. Learned Counsel for the respondent in refuting the submissions made by the petitioner, has taken us through the appointment letter, which is silent on the issue of transfer. The appointment dated 8.10.1970 has been issued by the Ramjas Foundation. It does not contain any provision for transfer or any prohibition on it.

11. We may also refer to an earlier letter dated 31.10.1958, which shows that for all the schools run by the Trust, a common seniority list is maintained and objections are invited from teachers with regard to the seniority list, if any. It would show that the Trust has been maintaining a common seniority list much prior to the employment and engagement of the petitioner.

12. Our attention has also been drawn to orders passed on 23.8.1971 where transfers were made from one school to the other. Further, common orders transferring employees from one school of the Foundation to the other are enclosed, which are dated 5.12.1981, 1.7.1982, 13.3.1984, 8.4.1987, 15.4.1985, 14.8.1987 etc. These are illustrative of the fact that teachers from one School are being transferred to the other in a routine fashion based on the requirement.

13. We may, at this stage, also refer to a circular dated 18.12.1982 issued by the Assistant Director of Education wherein the Directorate of Education, after seeking legal opinion, advised various Managers or Authorized Officers of Government aided schools that if common seniority was being maintained for the staff of two or more schools and the two schools were being run by the same Trust or Society, transfer of teachers from one school to another school under such chain of schools is permissible. Learned Counsel for the respondent further submitted that under the Delhi Education Act, 1973, there is no provision or embargo on such transfer being effected.

14. Let us recapitulate the factual and legal position which emerges from the facts as noted above and the submissions made by the petitioner and the respective counsel. Petitioner had been appointed prior to coming into force of Delhi Education Act, 1973. The appointment letter neither contains a provision

permitting transfers nor does it contain a stipulation barring transfers from one school of the Foundation to the other. The respondent has demonstrated that the transfers were routinely made and the transfer orders that have been placed on record are for the years 1971 onwards. It is, Therefore, reasonable to assume that the petitioner, who was working in one of the schools, was definitely in the know of these transfers from one school to the other, which were affecting his colleagues. The occasion for the petitioner's transfer came on 16.7.1988. There are no grounds, averments or allegations made for making it out as a case of mala fide transfer. We find that the transfer happens to be within the same city rather, it is not at too distant a place, i.e., the transfer was from Ramjas School Chitragupta Road to a School in Daryaganj, hardly a distance of 4-6 kilometers. Hence, it cannot be said that the said transfer would have subjected the petitioner to any great inconvenience or ordeal. Transfer is an incidence of service and there is nothing in the present case to indicate that the transfer was vitiated either on account of malafides or arbitrary exercise of powers.

15. In these circumstances, we hold that there was no legal embargo on the transfer of the petitioner by the respondent Society from its one school to the other and the same is not vitiated by any malafides or extraneous considerations. The challenge to the transfer, Therefore, fails.

Petition stands dismissed.