

(2009) 01 DEL CK 0122

In the Delhi High Court

Case No : Review Petition No. 395 of 2008 in LPA No. 1991 of 2006

Jitender Singh Tyagi

APPELLANT

Vs

Director of Education and Others
 D.A.V. College
Managing Committee and Another Vs Jitender Singh Tyagi
and Another

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Citation : (2009) 157 DLT 589 : (2009) 2 ILR Delhi 583 : (2010) 1 SLJ 500

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : Rakesh K. Khanna, K.K. Tyagi Faizy Ahmed Syed and Iftikhar Ahmad, for the Appellant; R.P. Bansal Rakesh Mahajan, Prabhat Ranjan, Sheetesh Khanna and Rajni Singh for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This Review Petition has been filed by the Applicants/ Respondents No. 2 and 3 seek review of the judgment/order dated 3rd October, 2008 passed by this Court in LPA No. 1991 of 2006 whereby the applicants were directed by the impugned judgment/order to implement the order dated 26th June, 2006 issued by the Director of Education.

2. The Respondent No. 1/Appellant filed a Writ Petition (C) No. 13441 of 2006 before the Hon'ble High Court challenging the transfer order dated 14th December, 2005 and further seeking a writ of mandamus to implement the administrative direction dated 22nd June, 2006 issued by the Director Education, Delhi. The said Writ Petition was dismissed by the learned Single Judge of Delhi High Court vide order dated 12th September, 2006. The Respondent No. 1/Appellant aggrieved from the said order of learned Single Judge filed LPA No. 1991/2006.

3. The Applicants filed their Counter Affidavit to the said LPA. The Division Bench

of this Court on 3rd October, 2008 allowed the appeal filed by Respondent No. 1/ Appellant setting aside the order dated 12th September, 2006 passed by the learned Single Judge and further directing the Applicant Society to implement the order dated 22nd June, 2006 passed by the Director of Education, Delhi, not later than 31st October, 2008.

4. The main submission of the applicant in the present Review Petition is that under the same circumstances the learned Single Judge of Delhi High Court by its order dated 23rd January, 2004 on the Writ Petition (C) No. 6962/2000 in re Mohan Lal Gupta v. DAV College Managing Committee had held that the Director of Education, Delhi had no power to issue an order to the Applicant Society to withdraw the order of transfer of its employees issued by the Applicant Society and had further upheld the power of the Applicant Society to transfer its employees from one Institution to the other throughout the country, and that order dated 23rd January, 2004 had never been challenged by the Director of Education, Delhi and so had acquired finality qua the Director of Education, Delhi. The Court had not considered that the LPA No. 168/2004 filed by Mohan Lal Gupta petitioner therein against the order dated 23rd January, 2004 was dismissed by the Division Bench of the Delhi High Court by its order dated 01st February, 2006. This Court has also not considered that SLP No. 6327 of 2006 filed against the said order dated 01st February, 2006 passed by the learned Division Bench of Delhi High Court had also been dismissed by the Hon'ble Supreme Court vide order dated 17th April, 2006. Therefore, the power of the applicant society to transfer its employees from one school to another stood finally upheld.

5. The Counsel for the Appellant submitted that the facts of the case of Shri M.L. Gupta and Jitender Singh Tyagi stand on a completely different footing. The Appellant Jitender Singh Tyagi was appointed in a School in Delhi in terms of Rule 98 of the Delhi School Education Act & Rules 1973 (hereinafter referred to as 'the DSE Act and Rules, 1973') whereas Shri M.L. Gupta was appointed as Principal in a School at Rohtak in Haryana by the management committee and not under the DSE Act and Rules, 1973. Shri M.L. Gupta was transferred from Rohtak Haryana to Delhi and again re-transferred to Haryana which was the place of his original appointment therefore no right whatsoever vests in Shri M.L. Gupta in urging that he cannot be transferred to Haryana from Delhi. The premise of the judgment of M.L. Gupta was that he cannot be transferred back to the place of his original appointment, Haryana from Delhi was sustainable because he was appointed as Principal in Haryana only. It is also submitted that the respondent have admitted in their counter in M.L. Gupta's case that the school have their independent Managing Committee known as Local Managing Committee and the employees appointed by them are their employees.

6. In our view also, the facts of the case of Shri M.L. Gupta with that of the Appellant differ materially. The Respondent No. 1/Appellant Jitender Singh Tyagi was appointed in a School in Delhi in terms of Rule 98 of the DSE Act and Rules,

1973 whereas Shri M.L. Gupta was originally appointed as Principal in a School at Rohtak in Haryana by the Management Committee and not under the DSE Act and Rules, 1973. Shri M.L. Gupta has never disputed or challenged the transfer orders from Rohtak in Haryana to Narela in Delhi and had only challenged the subsequent re-transfer from Narela to Pehowa in Haryana. It was the subsequent transfer from Delhi to Pehowa, Kurukshetra, Haryana that was challenged by way of the writ petition. This fact is evident from the finding in the judgment of the learned Single Judge in Writ Petition (C) No. 6962/2000 filed by DAV College Managing Committee against Shri M.L. Gupta which is as follows:

To my mind initially when petitioner was appointed as a principal from Hans Raj Model School run by the Managing Committee to be a principal of a school in Rohtak which was to be started by the Managing Committee his appointment was not in terms of provision of Delhi School Education Act and the Rules framed thereunder. The petitioner was transferred as Principal from Rohtak to the school at Narela and that school at Narela was initially a middle school when petitioner joined in 1989 as a Principal and later on that school became senior secondary school. If I agree with the argument of Counsel for the petitioner then even the initial appointment of the petitioner was not in accordance with the provisions of Delhi School Education Act and the Rules. The position which emerges is that the petitioner was appointed by the Managing Committee and service of the petitioner was transferable to the schools run by the DAV Managing Committee throughout the country.

However, in the case of Shri Jitender Singh Tyagi the DAV College Managing Committee and DAV Public School, Sant Nagar Burari, Delhi acted against the mandate of the DSE Act and Rules, 1973 same thereunder and the conditions incorporated as to observance of by the DSE Act and Rules, 1973 and those contained in the essentiality certificate dated 3rd April, 1992 issued by the Director of Education and CBSE order dated 5th December 1996 and transferred the Appellant Jitender Singh Tyagi vide letter dated 14th December, 2005 from DAV Public School, Sant Nagar, Burari, Delhi to DAV Public School, Ludhiana, Punjab. It is also pertinent to note that DAV Sant Nagar School being run at Dr. Mukherjee Nagar was having 19 trained teachers out of which 18 teachers were transferred to other schools in Delhi and only the Appellant was transferred to Ludhiana.

It is also an admitted position that in the decision relied upon by the review petitioner, the appointment of Sh. M.L. Gupta at the initial stage was not made in accordance with and/or under the DSE Act and Rules, 1973. However, in the case of the Respondent No. 1/Appellant the initial appointment was under the DSE Act, 1973. Thus, the facts of the present case cannot be equated with the facts of the case of Shri M.L. Gupta and thus the judgment delivered in the case of Shri M.L. Gupta cannot be relied upon in the present case.

7. If the plea of the review petitioner, i.e., the respondents 2 and 3 in the appeal is accepted it will lead to a wholly unsustainable situation where a teacher

appointed under the DSE Act, 1973, merely at the desire of the management, can be transferred to any other State where the Delhi Act naturally has no applicability. The plea of the learned Senior Counsel for the respondents Shri R.P. Bansal that the transfer of the petitioner was in accordance with the General Terms and Conditions of the Employees which govern the service conditions of the employees, cannot be upheld. The DSE Act, 1973 in no way permits the employees of any recognized public schools in Delhi to be transferred to any of the schools outside Delhi contrary to the Statute, so as to take the employee out of the purview of the DSE Act and Rules, 1973 merely on the basis of Contractual General terms and conditions relied upon by the review petitioner. The judgment in the case of M.L. Gupta in LPA No. 168/2004, which only related to the re-transfer of the original appointee as Principal in Haryana selected by the Management Committee to Delhi and retransfer of the said employee to Haryana, obviously cannot apply to a case where transfer of a teacher is sought to be made who was originally appointed in Delhi under the DSE Act, 1973. Thus, in our view, the transfer of any employee from one school to another even in Delhi has to be in accordance with the scheme as envisaged by the DSE Act, 1973 and the rules framed thereunder. In view of the above, the transfer of the appellant from Delhi to Ludhiana is not at all permissible and tenable under the provisions of the DSE Act, 1973.

8. As observed by us in the judgment dated 3rd October, 2008 that it is not in dispute that the Director of Education has jurisdiction to issue directions to the DAV College Managing Committee in the present case. It is also not in dispute that an order dated 22nd June 2006 has been passed u/s 24(3) of the DSE Act, 1973 and the rules framed thereunder directing the DAV College Managing Committee to withdraw the transfer order of the appellant and to send a compliance report. The Director of Education functions under the DSE Act and Rules, 1973. In our view, the DAV College Managing Committee is amenable to the jurisdiction of the Director of Education functioning under the DSE Act and Rules, 1973. It is not in dispute that the aforesaid orders dated 26th June 2006 of the Director of Education has not been challenged and/or set aside in any proceedings. No party can with impunity ignore a lawfully passed direction under a statute. To permit such a state of affairs would lead to wanton violation of the statute.

9. In view of the facts and circumstances of the present case and in view of our observations noted above by us that the facts of the present case cannot be equated with the facts of Shri M.L. Gupta, this review petition is dismissed. Accordingly, the review petition along with all pending applications stands disposed of.