

(2006) 05 DEL CK 0192
In the Delhi High Court
Case No : Writ Petition (C) 12892 of 2005

Meher Bala Malik

APPELLANT

Vs

Delhi Sikh Gurudwara Mgmt. Comm.

RESPONDENT

Date of Decision : 22-05-2006

Acts Referred:

Delhi School Education Rules, 1973 — Rule 109, 109(2), 109(4), 59

Citation : (2006) 05 DEL CK 0192

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Raj Kumar Adv, for the Appellant; Baljeet Singh, Latika Chaudhry and Avnish Ahlawat Advs., for the Respondent

Judgement

S. Ravindra Bhat, J.—The controversy in this case is whether the services of the petitioners could be transferred from one school to the other managed by the Society i.e., Delhi Sikh Gurdwara Managing Committee.

2. The fourth respondent-Directorate of Education in its counter affidavit has taken the position that in the absence of a common seniority list in the Rules, it is not possible to shift employees from one school to the other even through they are established, in the first instance by the same Society. Counsel for the Directorate Ms. Avnish Ahlawat contends that as per Rule 59 of the Delhi School Education Rules, the managing committee of each school is a separate body and the appointing authority is, Therefore, distinct. It is also contended that in the absence of a power to transfer under the Rules, the mere circumstance that a common society exists, in relation to different schools, does not empower such society to transfer the services of the employee from one school to the other. Counsel also submits that where the Act is silent, no such conditions can be imported into the contract of employment.

3. Learned counsel for respondent management and the society submitted that a common seniority list was circulated in respect of the schools on 31.8.2005 and 18.1.2006. He relied upon Rule 109 to say that in these circumstances, it is

possible to issue orders of transfer to the petitioners.

4. Prima facie, I am not inclined to accept the submissions of the respondent management. The Delhi School Education Act and the Rules constitute complete Code as to the manner of recruitment, pay scales, fixation of pay, filling of vacancies, seniority, retirement, confidential reports and all matters which have been provided for. Therefore, there is merit in the submission that where the Act or the Rules have intervened, the concerned parties would not have any power outside the Act. Administrative instructions can supplement, not supplant statutory terms. Therefore, where the rules provide for all exigencies of service, and dictate that each school has to be managed by a separate body with defined composition, the absence of the power to transfer is an instance of deliberate and conscious omission. This circumstance is even more glaring where the society might be controlling different classes of institutions such as aided and unaided institutions. In such an eventuality, there would be disparity in the terms of service and also other aspects if the management seeks to transfer the services of an employee in different schools.

5. I am also of the opinion, prima facie, that Rule 109 has limited application; it deals only with seniority. The proviso to Clause 109 (2) and 109(4) deals with situations which existed prior to the coming of these Rules into force. The materials on record relate to later period.

6. At this stage, it is contended that if an interim order is made, it would act on large body of employees who had already been given posting orders that have been implemented and have not been impugned. It is made clear that this order has limited application to the parties to these proceedings and will not be construed as casting an obligation on the respondent to review past transfer orders.

7. In these circumstances, the impugned transfer order is stayed till further orders.

8. The respondent is directed to issue consequential order with regard to petitioner's posting, within two weeks.

9. List on 5.10.2006.

10. Order dusty.