

**(2006) 07 DEL CK 0015**  
**In the Delhi High Court**  
**Case No : WP (C) No. 5808 of 2004**

Mrs. Paramjit Gill

APPELLANT

Vs

The Chairman, Managing Committee, Army Public School and  
Another

RESPONDENT

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**Date of Decision :** 17-07-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Delhi School Education Act, 1973 — Section 10, 11, 4

**Citation :** (2006) 07 DEL CK 0015

**Hon'ble Judges :** S. Ravindra Bhat, J

**Bench :** Single Bench

**Advocate :** Jyoti Singh, for the Appellant; R.R. Ojha and Avnish Ahlawat, for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Ravindra Bhat, J.—The writ petitioner seeks a quashing order in respect of the decision/ communication dated 13.4.2004, issued by the first respondent School whereby she was redesignated as Head of Co-curricular activities in the School. The first respondent would be referred to as "The School", the second respondent the Director of School Education, as "The Director".

2. The School is a recognized, unaided institution governed by provisions of the Delhi School Education Act and the Rules framed under it (referred to as "The Act" and "The Rules", respectively). It had invited applications for filling the post of Head, Primary Wing from amongst women candidates in October, 1989. The eligibility conditions advertised were minimum of 10 years" teaching experience including five year in senior administrative capacity; the pay prescribed was Rs. 2200-4250 per month. The petitioner applied along with others and was selected to the post. She joined the service pursuant to an offer of appointment dated 5.1.1990. The appointment letter stated that the starting basic salary would be in the basic of pay scale of Rs. 2200-4250. The petitioner was confirmed as a

permanent employee, in the post of Head of the Primary Wing, by order dated 1.2.1991 with effect from 12.1.1991.

3. It is alleged that the petitioner rendered satisfactory service and was commended on several occasions by school management. Her trouble appears to have started when after implementation of the recommendations of the Central Fifth Pay Commission and general revisions of pay scale, she claimed the revised pay scale of Rs. 8,000-13,500. A large body of correspondence ensued, between her and the school, and on 9th November, 1999, the school management granted two additional increments with effect from 1.11.1999, but in respect of the existing pay scale made applicable to her namely, Rs5500-9000 per month. The petitioner continued to voice her grievances claiming that the revised pay scale granted was not as per her entitlement, since Rs. 5500-9000 was a replacement of scale for unrevised pay scale commencing with the basic salary of Rs. 1400/- per month, whereas she was drawing salary in the pay scale of Rs. 2200-4250, from the inception, in her employment with the respondent School.

4. It appears that on 4th July, 2002, the respondent school addressed a letter stating that the matter stood settled indicating that her pay scale would be fixed as Rs. 7500-12000 per month. The petitioner continued to represent, drawing to the notice of the management that while the upward revision to the pay scale of Rs. 7500-12,000/- was itself not objectionable nevertheless her grievance about fixation in the proper replacement grade namely, Rs. 8000-13,500/- remained unaddressed. It is a matter of record that the petitioner caused a legal notice to be issued seeking proper revision on the basis of the claim; the legal notice was issued on 12.4.2004.

5. ON 13.4.2004, the school management issued the impugned letter which reads as follows:

Mrs P Gill

Head Primary Wingh

APS Dhaula Kuan

#### ASSIGNMENT OF COORDINATOR ACTIVITIES (CO-CURRICULAR) OF THE SCHOOL

1. The Managing Committee of this school in its meeting held on 17 Dec 2003 has approved the proposal of creating a post of the Activity Coordinator (Co-curricular).

2. Keeping in view your rich experience and the organising ability, it has been decided to shift you from the Head of the Primary Wing to the Head of Co-curricular activities of the school with immediate effect. Your salary, perks and other facilities will be protected.

Sd/-

(Thomas Mathew)

Maj Gen General Officer Commanding/  
Chairman.

6. As is evident the school created a new post of Activity Coordinator (Co-curricular) and sought to shift the petitioner from the post of Head of the Primary Wing, to that post. The petitioner unavailingly represented against the move, stating that no provision for shifting of Head of Primary Wing existed. The posting order has been impugned as illegal and mala fide. It has been alleged that the petitioner has been removed from an academic to a non-academic post which does not even exist in the respondent school nor in comparable schools. It is also alleged that the impugned letter was aimed at harassing the petitioner for her persistent demand that proper pay fixation be effected.

7. The petitioner also avers that during her entire career she was involved primarily with academic activities including teaching various classes and the impugned order shifting her from the Head of Primary Wing to a non-existing post really amounts to demotion/ degradation meant as a manner of penalty.

8. The school has justified the impugned order. It alleges to have a total strength of 4600 students with staff of 180 teachers and 70 other employees. The respondent school has characterized the petition as a pre-mature move, since the petitioner's request for assignment of the pay scale, viz. Rs. 8000-13500/- is pending consideration.

9. The material portion of the counter affidavit dealing with the assignment/posting of the petitioner as Head of Co-curricular activities reads as follows:

3. That the petitioner as per her own admission (page 30) of the said petition was performing the following responsibilities and duties.

i) Total development of the students of Primary Wing - providing safety and security, academic activities, games and sports, excursion, interaction with parents of the students of the Primary Wing.

ii) Grooming of new teachers.

iii) Development and maintenance of the activity rooms, library, play grounds, lawns and gardens.

iv) Conducting admission test.

v) Coordinating the co-curricular activities of the Houses functioning at the Primary Wing.

4. It is respectfully submitted that the duties and responsibilities of the Head of Primary Wing are only related to the administration of academic and co-curricular activities at primary level. However, keeping in view of the strength of the school, it was decided by the managing Committee to create a post of Head Co-Curricular activities for the entire school. The petitioner was considered for this prestigious assignment in view of her rich experience and organising abilities.

5. That the duties and responsibilities to be performed by the Petitioner as Head of co-curricular activities are to be as follows:

- i) To be an over all in charge of all co-curricular activities of the entire school.
- ii) To coordinate and supervise the activities of all houses, functioning at Primary, Secondary and Senior Secondary levels.
- iii) To coordinate and supervise the activity clubs at the schools. At present following clubs are functioning:
  - a. Art and Craft Club
  - b. Dramatic Club
  - c. Declamation Contest Club
  - d. Library Club
  - e. Inter Act Club (Rotary Club's Branch)
  - f. Dance Club
  - g. Computer Club
  - h. Science Club
  - i. Scouts and guide Club

iv) To coordinate supervise the socially useful productive work (SUPW) in the school as part of Central Board of Secondary Education, Syllabus.

10. This Court had by the interim order dated 25.5.2004 suspended operation of the impugned order. That interim order was challenged by way of an appeal which was disposed off on 31.4.2004 by the Division Bench; the order required an expeditious disposal of the present writ petition. After the decision by the Division Bench, the Directorate filed its affidavit. Whilst maintaining that as an unaided, recognised school, the School would have internal autonomy in regard to Management, nevertheless the Directorate has averred that such private schools are governed by the Act and the Rules. It is averred that the grant of higher pay scales on the merits of a deserving candidate cannot be faulted but at the same time, such discretion has to be exercised cautiously by the School Management so as to not create a class within a class. As far as the issue of divesting the petitioner from the post of Head Primary Wing is concerned, the Directorate has averred as follows:

That so far as the post of Head, Primary Wing whose equivalence is Head, Primary Wing whose equivalence is Head Master/Head Mistress in the government Aided Schools is a reaching cadre post. In the government schools, there is no post of Head Mistress (Co-curricular activities) and, Therefore, there are no recruitment rules for these posts. There is no bar for respondent school to create some extra posts for their school but then they may not fit in the cadre.

The extra posts so created can be filled up only in accordance with the rules framed for these posts but they will not enter the existing employees' service conditions without their consent or otherwise.

5. That the post of Head Mistress (Co-curricular activities), Therefore, will be required to be filled up as per rules to be framed by the Managing Committee as there is no similar post in the government departments. Even the rules framed or to be framed cannot be contrary to the rules framed for the cadre posts. The individuals working in the cadre posts, their duties, their rights and liabilities cannot be altered by those rules.

11. The writ petition was heard a final disposal on 30th of March, 2006. During the course of hearing, Mr. Ojha learned Counsel for the School stated that the post of Head, Primary Wing had been abolished; he sought time to file an affidavit, which was granted. The affidavit accordingly was filed on 24.4.2006 in which the Chairman of the Managing Committee of the respondent school averred the post of Head, Primary Wing, being a academic post was to be abolished and that the school had decided to do so.

12. Ms. Jyoti Singh, learned Counsel submitted that the impugned order is a mere camouflage to hide the real motive of shifting the petitioner from the post of Head, Primary Wing. It was submitted that the petitioner was recruited to the post and has functioned there for more than 15 years in a substantive capacity; when the impugned order was issued, the post of, Head of Primary Wing existed. It was submitted that the motivation for the impugned order was the petitioners demand for proper pay fixation, which was seen as an intolerable affront to the school management.

13. Counsel submitted that in terms of the Delhi School Education Act, particularly Section 10 and the affidavit of the Directorate, there has to be parity as far as conditions of service as well as staffing pattern between the recognised school and schools managed by the appropriate authority, such as Govt. of NCT. She relied on the affidavit of the directorate to say that the post of Head (Co-curricular Activities) is not encadred. It was submitted, that as Head of Primary Wing, combining past experience, the petitioner had more than two decades of teaching and administrative experience which had been commended during her tenure. In these circumstances, the move to shift her as Head of Co-curricular activities was nothing short of denuding her of the status attached to the post, as Head of Primary wing. To acquire legitimacy, the impugned order seemingly held out that the petitioners' pay would be protected.

14. It was submitted that the petitioners' substantive lien is in the post of Head (Primary Wing) to which she was recruited and confirmed. Shifting her from that to a new post that did not entail teaching and administrative responsibilities amounted to demoting or degrading her from the legitimate status to which she was entitled. Learned Counsel has relied upon the decision of the Supreme Court in S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and

Others, and submitted that the issue of equivalence of two post has to be decided not merely from the stand point of pay but also on the basis of other factors. Reliance has been placed upon the following passage:

Equableness of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than "pay" will have to be taken into consideration, likely nature of duties, responsibilities, minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of Union of India (UOI) and Another Vs. P.K. Roy and Others,

15. The learned Counsel has attacked the allegation of school that it decided to abolish the post of Head, Primary Wing. It was urged that in the affidavit, the stand taken is that the post is an ex cadre post and Therefore the school decided to abolish it, whereas in the letter dated 29.11.2005 the School had categorically stated that the post of Head Master/ Head Mistress is an encoder post in the Schools of NCT of Delhi. It was submitted that with this admission, the logic underlying the so-called opinion that Head "Primary Wing" is not a cadre post, is completely baseless. Counsel submitted that a careful and cumulative consideration of all the materials would show, that Head, Primary Wing was a substantive post and none other than Head Mistress, the equivalent post in Govt. of NCT Schools, despite slight difference in the nomenclature. It was also submitted that the concept of confirmation or substantive appointment to an ex-cadre post and that too for a period of 15 years is unheard of.

16. Learned Counsel lastly submitted that the so-called abolition of post of Head, Primary Wing has not been justified by any production of materials on record or approval of the appropriate authorities/ Directorate as required by the provisions of the Rules/ Acts. The allegations about the petitioner being no longer entitled to to the post of Head, Primary Wing was Therefore refuted as malafide and an attempt to overreach the Court.

17. Mr. Ojha, counsel for the school submitted that so long as the petitioners pay and emoluments were protected as indeed was done, by the impugned order itself, she had no actionable claim under Article 226 of the Constitution. Learned Counsel submitted that the respondent school being un-aided, though bound by the provisions of Act and Rules, is within its right to administer the school as per its choice. Therefore, having regard to the petitioners past experience it was felt by the school management that she ought to fill the post of Head of Co-curricular activities, created for the purpose of overall coordination of extra curricular activities of the school. It was submitted that this order could not be characterized as malafide or motivated, because the school management in its wisdom and having regard to the good work done by the petitioner, felt that she ought to occupy the newly created post.

18. Learned Counsel relied upon the judgment of the Allahabad High Court in Rajinder Prasad Chaturvedi v. Commissioner, Kanpur Region (2002) All LJ 1763 to say that if the salary and allowances admissible to an employee are paid

without assigning him work or giving him lesser work, as per employer's choice, he has no right to complain of it. Learned Counsel relied upon the judgment of the Supreme Court in *M. Ramanatha Pillai v. State of Kerala* 1973 SCC (L&S) 560 and submitted that an employer always has the power to abolish any post, consistent with its policies. It was submitted that so long such decision is taken in the bona fide interests of the Institution, an employee laying claim to that post, does not have legitimate cause to approach the court.

19. The above narrative shows that the facts leading up to the issuance of the impugned order are not in serious dispute. The petitioner was recruited and confirmed to the post of Head, Primary Wing as far back as in 1989-90. It is not disputed at all by the Management that her work and conduct were exceptional and commended by the School time and again. Her misfortunes, unfortunately appear to have sprung up after she started questioning the assignment of pay scale, consequent to the acceptance of the Central Fifth Pay Commission's recommendations. That the management realized the justness of her demands is evident from two moves; one in 1999 when she was granted two increments in the pay scale commencing with a basic salary of Rs. 5500/- and two in the year 2002 when the issue was re-visited and the management assigned a higher pay scale of Rs. 7500-12000/-. The petitioner persisted in pressing her claim. When her demands were pending, a legal notice was issued on 12.4.2004. The impugned order was issued on the very next date.

20. The timing of the impugned order appears to be rather suspicious, yet, much cannot be read into it because the proposal for creation of the new post and shifting the petitioner had been apparently made earlier. The question, Therefore, is whether the impugned order is sustainable in law.

21. Ordinarily issues such as staffing pattern, re-organization of the posts, etc., particularly in private institutions, are perceived as internal management concerns. However, in this case, there is a public interest element which cannot be lost sight of. All schools including unaided private schools are regulated by provisions of the Act and Rules. Sections 10 and Section 11 have been enacted, by the legislature as measures in public interest to see that teachers in such public schools are not treated arbitrarily or capriciously by private managements. Section 10 is a manifestation of social concern to secure to every teacher in Delhi a certain minimum status and assure him or her a uniform standard in regard to matters of pay and other terms and conditions of service. Therefore, every school management, be it aided or unaided is under an obligation to fall in line with the mandate of Section 10.

22. Section 10 reads as follows:

10. Salaries of employees- (1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of Section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit month, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.

23. The above provision, as is immediately apparent, not only enacts an obligation to grant pay scales which are equivalent to what is granted in schools of the appropriate government, but also extend similar, prescribed benefits, which are granted to those with "employees of the corresponding status in school run by the appropriate authority". The obligation, and the corresponding right of the teacher/ employee, is as to the "corresponding status". It is, Therefore, idle to contend that shifting of a teacher from one post to another cannot lead to a grievance at all, so long as he is given pay protection. If such a logic were accepted, a Post graduate teacher can not complain, if he is required to work as a trained graduate teacher, and assigned duties in a lower post, which could be the feeder grade to his post. Likewise, a Principal cannot, by analogy, complain if he is asked to perform the duties of a PGT, if his emoluments as a principal are protected. The fallacy, of the schools' defense, in my opinion is the treatment of a teachers' work as any other employment, and the assertion of the management's right as in the case of any other commercial organization, or industrial concern. The primacy of a teacher's status, in a society, can never be undermined; upon him falls the difficult, and delicate task of not only imparting education, but also instilling social and moral values, that are essential building blocks for a sound and just society. Our society has always prided in granting that pride of place to teachers; it would indeed be a sad day if they are treated as mere cogs in organizations, as factors of production. There is sufficient material on record to conclude that the post of "Head of primary wing" held by the petitioner, is none other than that of Headmistress, in government of NCT schools. Likewise, the creation of a post of "Head Co-curricular activities" is a position that does not exist in the hierarchy of posts in any school managed by the Govt of NCT. The impugned order, Therefore, seeking to shift the petitioner as Head of Primary Wing, to the new post, is unsupported in law. My findings are

also supported by the decision of the Supreme Court in S.I. Rooplal's case (supra) where the issue of equivalence of a post was held not to be confined only to equal pay, but also to extend to job content and other considerations. Here, indisputably, the petitioner worked as Head, Primary Wing, ( to which she was recruited, and in which post she was confirmed in 1991) for 14 years. The work content of both the posts are entirely different; the new post is non-academic, and the petitioner has a justifiable grievance that shifting her there, from a post where she discharged supervisory duties, in addition to holding academic/teaching assignments, amounted to an adverse change of her status. The claim of the management, that the post was "ex-cadre" is a mere assertion, to justify the indefensible; no material was produced in support of the stand. I am of the opinion that such a position is contrary to law, i.e Section 10 of the Act; the impugned order is Therefore illegal, and liable to be quashed.

24. So far as the assertion that the post of "Head Primary wing" is to be abolished is concerned, the management has not produced any material in support of the plea. The plea is supported by an affidavit, which baldly asserts that the post has to be abolished; the rationale for its abolition has not been indicated, nor the process, by which it was done. Moreover, the question of abolition of post can arise, if according to the management, one existed. Having asserted on the one hand that the post itself was ex-cadre, the question of its abolition, without any further Explanation, cannot arise. Therefore, I hold that the management's stand is untenable, and opposed to provisions of the Act.

25. The petitioner, in my opinion, has not been able to prove personal mala fides, on the part of the respondent school. However, there is the other species of malice, i.e. malice in law, or legal mala fides, which is that a person inflicting an injury based upon an impermissible behavior cannot be heard to take refuge on lack of personal motive, or ignorance. It was remarked in Shearer v. Shields [1914] A.C. 808 that:

Between malice in fact and malice in law there is a broad distinction which is not peculiar to any particular system of jurisprudence. A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, Therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently.

The above declaration of law was approved, and followed by the Supreme Court, in Bhut Nath Mete Vs. The State of West Bengal, . In State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, , it was held as follows:

12. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill

feeling and spite. It is a deliberate act in disregard of the rights of others". (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989.)

13. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seeks to "acquire land" "for a purpose not authorised by the Act....

26. I am of the opinion that the facts of this case, justify a conclusion that the impugned order was actuated by legal malice. In such an action, the allegation, as explained by the Supreme Court, is not of personal malice by an individual; there is no need to implead any one person as a party. the inference is based on materials available, culminating in the order or action complained against. The petitioner repeatedly sought higher pay scales; the justification to revise was felt, and even accepted by the management. Her persistence appears to have irritated the school which decided perhaps that by shifting her a "final solution" could be found. The action is unsupported in law, and issued by way of pique. The subsequent stand that the post itself stood abolished, is an argument of desperation. As observed by Shakespeare,

Oh what a tangled web we weave;

When we first practice to deceive

The stand of the management, that there was no change in the petitioner's status, followed by the assertion that the post (of Head of Primary Wing) was an ex-cadre post, culminating in the position that the post had to be abolished are all exercises in deception. I am of the opinion that the management's actions were actuated by legal malice, and also liable to be quashed on that ground.

27. The impugned order/ letter is hereby quashed, for the foregoing reasons. The petitioner shall be continued in the post of "Head of Primary Wing" hitherto held by her, before the issuance of the letter dated 13-4-2004. The writ petition is allowed, in the light of such directions. The respondent No. 1 shall pay costs quantified at Rs. 20,000/- to the petitioner, within 3 weeks from today.