

(2025) 05 DEL CK 0927

In the Delhi High Court

Case No : Writ Petition (C) No. 8742 Of 2024 & Civil Miscellaneous Application
Nos. 35645, 55923 Of 2024, 134 Of 2025

Sandeep Dahiya

APPELLANT

Vs

Poorna Prajna Public School & Ors

RESPONDENT

Date of Decision : 21-05-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Delhi School Education Act and Rules, 1973 — Section 118, 119, 120

Citation : (2025) 05 DEL CK 0927

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Viraj Datar, Neha Warriar, Jeevesh Mehta, Srikant Singh, Amarjit Singh Bedi, Surbhi Mehta, Latika Chaudhry

Final Decision : Allowed

Judgement

Prateek Jalan, J

1. The petitioner, by way of this petition under Article 226 of the Constitution, challenges an order dated 12.06.2024 by which he has been transferred from the post of Principal of respondent No. 1 – Poorna Prajna Public School, Vasant Kunj, New Delhi – 110070 [“PPPS-VK”] to the post of Principal of a sister School, namely – Poorna Prajna Education Centre Sangameshwarpur, Chikmagalur, Karnataka [“PPEC”].

A. FACTS:

2. PPPS-VK is an unaided private school established in the year 1987. It was recognised by the Directorate of Education, Government of National Capital Territory of Delhi [“DoE”] in the year 1994. The petitioner was appointed as PGT-Physical Education in PPPS-VK in the year 1999. Although the said appointment letter is not on record, it is stated in the writ petition ‘Paragraph 4’, and not disputed in the counter affidavit, that the appointment letter did not

contain a transfer clause.

3. The petitioner was designated as Coordinator up to the secondary level by an office order dated 12.01.2009, and appointed as Vice Principal by an order dated 16.09.2011. He was thereafter promoted to the post of Principal by a communication dated 23.04.2012.

4. Both the office order dated 16.09.2011 and the communication dated 23.04.2012, provide for transfer to any other institution run by the Udupi Sri Admar Matt Education Council, Sadashiva Nagar, Bangaluru –respondent No. 2.

5. By the impugned transfer order dated 12.06.2024, the petitioner was transferred to PPEC which, like PPPS-VK is run by respondent No.

2. The petitioner's representation dated 17.06.2024 to the DoE against the transfer order dated 12.06.2024, has not been answered, resulting in the present writ petition.

B. SUBMISSIONS OF COUNSEL:

6. Mr. Viraj Datar, learned Senior Counsel for the petitioner, submitted that transfer of a teacher from Delhi to any place outside Delhi, even a sister concern of the employer school, is impermissible, as the employee would stand to lose the protection of the Delhi School Education Act and Rules, 1973 ["DSEAR"]. He submitted that this position has been clearly established in the judgments of this Court in *Anjana Sharma and Ors. v. Shishu Bharti Vidyalaya and Ors* (2013) SCC OnLine Del 4933 [hereinafter "*Anjana Sharma*"]. and *Jitender Singh Tyagi v. Director of Education and Ors* Rev.Pet. 395/2008 in LPA 1991/2006, decided on 16.01.2009 [herein after "*Jitender Singh*"]. He also drew my attention to the judgment of the Supreme Court in *Raj Soni v. Air officer Incharge Administration and Anr* (1990) 3 SCC 261 [herein after "*Raj Soni*"], to submit that the DSEAR is applicable to all schools in Delhi. Mr. Datar further pointed out that the stand of the DoE, recorded in its order dated 22.06.2006 in the case of DAV Schools, was categorical to the effect that no such transfer outside Delhi was permissible.

7. In addition to this legal submission, Mr. Datar submitted that the petitioner is being transferred from the post of Principal in a school which runs up to Class XII, to a school which only goes up to Class X, which constitutes a demotion and punishment. According to Mr. Datar, this has been occasioned by a writ petition filed in this Court by some of the teachers of PPPS-VK seeking payment of salary and arrears in consonance with the recommendation of the 7th Central Pay Commission. Mr. Datar submitted that the petitioner did not accede to the demand of respondent No. 2, the School management, that the said teachers should be pressurised into withdrawing their writ petitions.

8. Mr. Amarjit Singh Bedi, learned counsel for respondent Nos. 1 and 2, first submitted that the petitioner's grievances were not amenable to the jurisdiction of this Court under Article 226 of the Constitution, relying upon the judgments of the Supreme Court in *St. Mary's Education Society and Anr. v. Rajendra Prasad*

Bhargava and Ors (2023) 4 SCC 498 [hereinafter "St. Mary's"]. and Army Welfare Education Society, New Delhi v. Sunil Kumar Sharma & Ors 2023 SCC OnLine SC 1896 [hereinafter "Army Welfare"]. He submitted that service related disputes, even against private institutions discharging public functions, remain contractual in nature, and do not attract the jurisdiction of the writ Court. In this connection, Mr. Bedi contended that the petitioner's grievance does not have statutory backing, as there is no provision in the DSEAR against transfer of an employee. There is also no order passed by the DoE in exercise of its statutory functions, which would be amenable to the Court's constitutional jurisdiction.

9. On facts, Mr. Bedi argued that the impugned transfer order flows directly from the provisions of the petitioner's appointment letter, which provides for transfer anywhere in India. He specifically submitted that the petitioner's service conditions, as applicable under the DSEAR, would be maintained. Mr. Bedi cited the judgments of the Supreme Court in Action Committee, unaided Private Schools and Ors. v. Director of Education and Ors (2009) 10 SCC 1. [hereinafter "Action Committee"]. and this Court in Varinder Kaur v. School Management of Guru Harikrishan Public School & Ors (2018) SCC OnLine Del 7115 [hereinafter "Varinder Kaur"]. and Mohan Lal Gupta v. Delhi Managing Committee and Ors (2004) 109 DLT 622 [hereinafter "Mohan Lal Gupta"] in support of his submissions.

10. Ms. Latika Choudhry, learned counsel for the DoE, submitted that a transfer from one school to another under the same management is permissible, provided the transfer is within Delhi. She supported the petitioner's case that transfer outside Delhi is impermissible.

11. Mr. Datar dealt with the question of maintainability in his rejoinder submissions. He argued that, even under the judgments of the Supreme Court in St. Mary's and Army Welfare, a writ petition would lie, if service conditions of teachers are governed by statute. In Delhi, the DSEAR provides protection to the terms and conditions of service as laid down in Management Committee of Montfort Senior Secondary School v. Vijay Kumar and Ors (2005) 7 SCC 472 [hereinafter "Montfort"], and Article 226 of the Constitution would therefore be available.

C. ANALYSIS ON MAINTAINABILITY:

12. Turning first to the question of maintainability, the judgments of the Supreme Court in St. Mary's and Army Welfare have been cited on behalf of the respondents, to suggest that a writ petition ought not to be entertained in the present case. In St. Mary's, the Court inter alia recorded following conclusions:

"75. We may sum up our final conclusions as under:

xxxx xxxx xxxx

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public

duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element."

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service." Emphasis supplied

The aforesaid judgment has been followed in Army Welfare also.

13. The Supreme Court, in these judgments, has held that contractual disputes – including cases arising out of employment contracts – are excluded from the purview of the writ jurisdiction. However, a specific exception has been carved out for cases where service conditions are regulated by statutory provisions. This has been expressly noticed in paragraphs 75.2 and 75.3 of St. Mary's, which have also been quoted extensively in Army Welfare.

14. The judgments of the Supreme Court in Raj Soni and Montfort clearly emphasise the statutory flavour of the conditions of service applicable to teachers in all schools in Delhi. Raj Soni recognises that management of all private schools, whether aided or unaided, are obliged to apply the provisions of DSEAR to its teachers. In Montfort Paragraph 10, the Court held that the effect of its earlier decision in Frank Anthony Public School Employees' Assn. v. Union of India (1986) 2 SCC 707, was that statutory rights and privileges have been extended to employees covered under the DSEAR and that "therefore, the contractual rights have to be judged in the background of statutory rights". Although the said judgment was in the context of a minority educational institution, as far as this aspect is concerned, there is no distinction with the case of a non-minority recognised institution.

15. Applying these principles to the facts of this case, the petitioner's claims arise out of statutory protections granted to his conditions of service, under the DSEAR. He specifically asserts that he would lose those statutory protections if he is transferred out of Delhi. Such a situation is covered by the exception carved out in *St. Mary's*. Mr. Bedi's submission that, in the absence of a specific statutory bar to transfer, the petition is not maintainable, is too restrictive of the petitioner's rights and remedies. Judged on this yardstick, I am, therefore, of the view that the present writ petition ought not to be rejected on this ground.

D. ANALYSIS ON MERITS:

16. Turning now to the next question, as to whether the petitioner could at all have been transferred out of Delhi, it may first be noted that the DSEAR does not contain any express provision permitting or prohibiting transfer of teachers. The question, however, arises as to whether the statutory protection can be withdrawn by transfer of a teacher outside Delhi, and thus outside the purview of the DSEAR. The judgment of a Coordinate Bench in *Anjana Sharma* clearly holds to the contrary:

"9. At this stage, I may note that petitioners have filed an application to bring on record that two petitioners, namely Ms. Sunita Arora and Ms. Geeta Pandey i.e. petitioner nos. 3 and 5 have been transferred by the respondent no. 1's society to a school in Jammu. In this regard it is observed that so far as the transfers of petitioner nos. 3 and 5 to a school outside Delhi is concerned, the transfer orders would be illegal because an employee/teacher of a school in Delhi is governed by the provisions of the Delhi School Education Act and Rules, 1973 and has statutory protections thereof, and therefore such a person cannot be made to lose the statutory protections; whether of services or monetary emoluments as provided under the Delhi School Education Act and Rules, 1973 by making them employees of schools not governed by Delhi School Education Act and Rules, 1973. I may state that I have passed judgments on this issue. One of such judgment is in the case of *T.P. Singh v. School Management of GHPS, Fateh Nagar* in W.P.(C) No. 4655/2012 decided on 1.5.2013 wherein I have held that an employee of a school is an employee of that very school and no other school unless a common seniority list is maintained, and hence leaving aside the issue of transfer of an employee of a school in Delhi to a school outside Delhi, there cannot even be transfer of an employee of one school in Delhi to another school in Delhi. I have also in the subsequent judgment in the case of *Army Public School v. Narendra Singh Nain* in W.P.(C) No. 1439/2013 decided on 30.8.2013 held by reference to the judgment of the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School v. Sh. Vijay Kumar*, (2005) 7 SCC 472 that teachers of the schools in Delhi including minority schools, have statutory protections of the services and such teachers/employees cannot be removed except by following the procedure contained in Rules 118 to 120 of the Delhi School Education Rules, 1973 and by transferring petitioner nos. 3 and 5 to a school in Jammu these provisions are violated. Therefore, transfer of

the petitioner nos. 3 and 5 to a school outside Delhi is held to be illegal and the action of the respondent no. 1/school of the transferring them outside Delhi is quashed.” Emphasis supplied

17. A Division Bench considered this issue in Jitender Singh, wherein the transfer was between schools under the same management:

“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 retransfer 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.” Emphasis supplied

18. While coming to this conclusion, the Court distinguished the judgment in the case of Mohan Lal Gupta, in which the petitioner had been originally appointed in a school in the State of Haryana. In such a situation, his original appointment itself was not under the DSEAR and the Court had upheld the transfer order.

19. Anjana Sharma was followed in an interim order dated 15.04.2021 of a Coordinate Bench, in Madhu Gupta v. CL Bhalla Dayanand Model School & Ors & connected matters WP (C) 4300/2021 and other connected matters, whereby operation of transfer orders against the teachers therein were stayed, as the transfers were to schools outside Delhi, albeit under the same management.

20. On the basis of these judgments, I am of the view that the respondents’ action in transferring the petitioner in a school outside Delhi cannot be countenanced.

21. The judgments relied upon by Mr. Bedi also do not persuade me to a contrary conclusion. In Action Committee, the Supreme Court was concerned with a public interest litigation, in which it was alleged that unaided recognised schools were

transferring funds to their parent societies/trusts or to other schools run by the same society/trust, contrary to DSEAR. The Supreme Court came to the conclusion that DSEAR could not come in the way of the management establishing more schools, and the DoE was not entitled to object so long as the transfer was from one institution to another under the same management. The said judgment is entirely inapplicable to this case – it deals with the question of utilisation of funds between Schools, and does not concern transfer of teachers at all.

22. The Division Bench judgment in Varinder Kaur concerned the transfer of a clerk from one school to another under the same society. The Division Bench relied upon an earlier Division Bench judgment in Anand Swaroop to hold that transfer of an employee from one school to another under the same society was permissible. The aforesaid judgment, however, is also distinguishable, as the transfer was within Delhi, and did not have the effect of depriving the employee of her statutory rights under the DSEAR.

23. Having regard to the aforesaid, I am of the view that respondent Nos. 1 and 2 have no legal authority to transfer the petitioner to a school outside Delhi.

E. CONCLUSION:

24. The writ petition is therefore allowed, and the impugned transfer order dated 12.06.2024 is set aside. The respondents are directed to treat the petitioner as having been in service continuously with all consequential benefits, and without giving any effect to the impugned order.

25. The respondent Nos. 1 and 2 will also pay costs of this petition, assessed at Rs.25,000/-, to the petitioner.