
(2015) 04 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17532 of 2013 (O and M)

Shalini Sindhu

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 3 SCT 255

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Keshav Pratap Singh and Tahar Singh for Abhimanyu Singh, for the Appellant; Ravi Pratap Singh, AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.—The challenge in the present writ petition is to the order dated 6.8.2012 (Annexure P-4), whereby the petitioner has been ordered to be transferred from the post of Principal, Government Girls Senior Secondary School, Kaimari (Hisar) to Government Senior Secondary School, Moda Khera (Hisar) on the ground that it is the outcome of arbitrariness, malafide, much less, illegal and against the guidelines of the transfer policy.

2. The petitioner was appointed as Lecturer in English and thereafter promoted to the post of Principal in HES(II) Cadre and was ordered to be transferred to Government Girls Senior Secondary School, Kaimri, District Hisar vide order dated 21.4.2012 against the policy and accordingly joined as Principal.

3. It has been stated that the Gram Panchayat, Kaimri passed a resolution dated 9.6.2013, whereby the conduct of the petitioner was referred to be not good. The contents of the resolution have been extracted in para 3 of the writ petition and annexed as Annexure P-1 with the writ petition.

4. It has also been stated that a formal complaint dated 21.5.2013 was made by the Gram Panchayat to the Block Education Officer, Hisar-I, who stated to have investigated the matter and gave the following report:--

"Office of Block Education Officer, Hisar.

Sr. No. 13/1236-39

dated 31.5.2013

The inspection of Govt. Girls Senior Secondary School, Kaimari was done by the undersigned today on 31.5.2013 at 9.00 a.m. during the course of inspection, the school was found to be properly operational. Teachers were teaching in all the classes. Entire staff was present. The premises of the school was clean. All the students in the school were in proper dresses. Science lab and computer lab of the school were found in order. Sweet Dalia was found to be prepared in the mid-day meal. Report of CRP Programme was good. Strength of student in the school was as under: 6th Class 48/62, 7th Class 60/71, 8th Class 50/72, 9th Class 48/61, 10th Class 43/59, 10+1 Class 34/50 and 10+2 Class 40/43. The discipline in the school was good.

Sd/- Block Education Officer, Hisar."

5. Copy of the said report is also attached with the writ petition as Annexure P-2.

6. It has been stated that the copy of the complaint was sent to respondent No. 4-Member of Legislative Assembly, Nalwa Constituency, District Hisar and on his recommendation, the impugned order (Annexure P-4) was passed. The petitioner has challenged the said order by making reference to the policy dated 28.4.2008 (Annexure P-7), which essentially provides that in case of displacement/transfer of the categories of Teachers, efforts should be made to adjust them in the same Block within a radius of around 10 Kms. from the desired place of posting in the following order of reference:--

"(i) Blind (100%)

(ii) Handicapped (70% or more)

(iii) Those suffering from serious ailments/diseases like cancer etc. or whose wards are suffering from any chronic disease like Thelesemia etc. (in case of medical ground, the certificates issued by All India Institute of Medical Science, New Delhi, PGI, Chandigarh and Medical College, Rohtak will only be considered.

(iv) Widow

(v) Legal Divorcee

(vi) Wives of the serving soldiers."

7. Petitioner is stated to be a divorcee living with her old parents. It has been stated that she has worked in the Government Girls Senior Secondary School, Kaimri (Hisar) for 1 year and few months only and her transfer was nothing but a political motivated.

8. Mr. Keshav Pratap Singh, learned counsel appearing for the petitioner, in

support of his aforementioned submissions, also relied upon the order dated 12.9.2012 passed in Civil Writ Petition No. 10401 of 2012, whereby in identical situation, a person was transferred on the basis of the complaint made by the Gram Panchayat and this Court while noticing the respective contentions of the parties, found that it did not lie in the realm of Gram Panchayat to run the administration of the education department and found that the competent authority, while passing the transfer order, must apply independent mind and quash such like transfer orders.

9. Learned counsel appearing for the petitioner has referred to Annexure P-10, whereby all the Teachers have given a certificate that allegations contained in the resolution of the Gram Panchayat were totally false and the school was being properly run and the Principal never misbehaved with anyone.

10. Learned counsel appearing on behalf of the State, while referring to the stand taken in the written statement, submitted that a detailed enquiry was conducted by the District Education Officer, Hisar, copy of which has been annexed as Annexure R-1 with the reply, wherein it was found that the respective persons of the village had shown dissatisfaction with the working and behaviour of the petitioner and, thus, demanded her transfer. It would be relevant to extract the so-called detailed enquiry dated 6.8.2013 (Annexure R-1) herein below:--

"From

Block Education Officer, Hisar-I

To

District Education Officer, Hisar. No.E-1/13/Spl-01 Dated 06.08.2013

Subject:- Regarding transfer of Smt. Shalini Sindhu, Principal, GGSSS Kaimri on administrative grounds.

With reference to District Education Officer Memo No. E-6/2013/2788 dated 06.08.2013.

Undersigned discussed with Gram Panchayat, Kaimri (Hisar), members of SMC and responsible person of village about working, behavior and about the education of girls in respect of Smt. Shalini Sindhu, Principal, GGSSS Kaimri (Hisar). During discussion all the present members of Gram Panchayat and respected persons of village were showed dissatisfaction of working and behavior of the Principal and demanded her transfer.

Sd/- 06.08.2013 Block Education Officer, Hisar-I

OFFICE OF DISTRICT EDUCATION OFFICER, HISAR

Endst. No. E-6/2013/2789-A

dated 06.08.2013

With reference to Director Secondary Education letter No. 22/65-2013 HRG-I(1) dated 26.07.2013. It is submitted that concerned matter was enquired from Block Education Officer, Hisar-I and undersigned is agreed with the report of BEO and the case is submitted for further necessary action.

Sd/- 06.08.2013 District Education Officer, Hisar."

11. From the perusal of aforementioned enquiry, no reasoning, much less, any cogent reason has been assigned. Even the petitioner had not been joined by the District Education Officer in respect of the so-called allegations made by the Gram Panchayat.

12. I have heard the learned counsel for the parties, appraised the paper book and the impugned order.

13. It is strange that the Education Department is being run on the dictum of the Gram Panchayat. The respondent-Department is enjoined upon an obligation to apply its mind while passing the transfer orders and not in the manner as has been done in the present case. Rather, it is a case of victimization at the hands of the Gram Panchayat, whose members may be feeling disgruntled with the ideology of the Principal. It can also be inferred that the Principal may not be budging to their illegal demand to admit the students of their choice and it could be an outcome of that dissatisfaction that the complaint in the shape of resolution was submitted to the local MLA. While passing the impugned order, the guidelines of the Government, particularly Para 11 are not taken into consideration as admittedly the petitioner is a divorcee and the school is 10 Kms away from the place of her residence, whereas the place where she is now sought to be transferred is about 40 Kms, which is against the guidelines of the Government. Annexure R-1, the alleged enquiry done at the behest of the District Education Officer is a farcical exercise and does not fulfill the test of reasonableness. It appears to be unilateral act of the Block Education Officer in toeing to the line of the local MLA.

14. Since the order of transfer suffers from the act of malice and ulterior motive, much less, illegal and arbitrary and has not been passed on any administrative ground, thus, is not sustainable in the eyes of law and is hereby set-aside.

15. In view of what has been observed above, the writ petition is allowed.