

(1998) 09 MP CK 0019

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1267 of 1998

Suneeta Dharmendra Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 MPLJ 556

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : N.K. Mody, for the Appellant; D.K. Katare, for the Respondent

Judgement

S.P. Srivastava, J.

Feeling aggrieved by an order dated 20-7-1998, transferring her from the Kendriya Vidyalaya No. 4, Gwalior to Kendriya Vidyalaya, Bhind, the petitioner who is employed as a Trained Graduate Teacher for teaching the subject of Hindi has now approached this Court seeking redress praying for the quashing of the aforesaid order.

I have heard the learned counsel representing the petitioner as well as the learned counsel representing the respondents, and have carefully perused the record.

The facts in brief shorn of details and necessary for the disposal of this case lie in a narrow compass. The petitioner's husband who is also a Trained Graduate Teacher is employed in the Kendriya Vidyalaya No. 1 in the district of Gwalior, for teaching the subject of Hindi. Both the petitioner as well as her husband are posted in different Kendriya Vidyalayas situate in the district of Gwalior from before the passing of the impugned order. Prior to her posting at Gwalior, the petitioner was posted at Jaisalmer. She had made a request for transferring her at the place where her husband was posted. Accepting her request, she had been transferred from Jaisalmer to Gwalior.

The petitioner had made a representation to the concerned respondent seeking cancellation of her transfer. The said representation was however rejected by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Gwalior, the respondent No. 3 vide the order dated 28-7-1998; on the ground that at present no vacancy of TGT (Hindi) existed in any Kendriya Vidyalayas located in Gwalior. A true copy of the aforesaid order has been filed as annexure R/3 to the return/counter-affidavit filed by the respondents.

The petitioner in support of her claim has placed reliance on the decision of the Government of India, Ministry of Personnel Public Grievances and Pensions (Department of Personnel and Training), wherein in its office memorandum dated 3-4-1986, the Government of India had laid down a broad statement of policy with reference to those employees who are under the purview of the Central Government/Public Sector Undertakings. Indicating the policy decision, the Central Government has also reflected upon the guidelines for enforcing and implementing the decision in its letter in order to enable the cadre controlling authorities to consider the requests from spouses for posting at the same station, making it clear that these guidelines were to be treated as only illustrative and not exhaustive. The Government expressed the desire that in all other cases, the cadre controlling authority shall consider each request with utmost sympathy.

Pursuant to the aforesaid policy decision of the Government of India, the Kendriya Vidyalaya Sangathan which runs and manages the Kendriya Vidyalayas has framed guidelines of its own regulating the transfers of various teachers employed in the various Kendriya Vidyalayas run by it. These guidelines include certain guidelines which cover the cases of the transfers of such teachers who fall in the category of "spouse cases" i.e., the cases pertaining to husband and wife.

However, vide the letter issued by the Assistant Commissioner, Kendriya Vidyalaya Sangathan dated 24-7-1996, true copy of which has been filed as annexure R/5, it had been made clear that all transfers of surplus should be made in public interest and that no transfer in departure of the guidelines or out of turn should be done in the name of adjustment of surplusage. The same authority vide its another letter dated 15-7-1998, true copy of which has been filed as annexure Rule 7, had clarified that surpluses must be adjusted within the same region, to the most convenient places, to the extent possible.

In the return/counter-affidavit filed in opposition to the writ petition, it has been asserted by the respondents that the petitioner had already completed the normal tenure of three years posting at one place and it was on account of her being rendered surplus at the Kendriya Vidyalaya Organisation School No. 4, Gwalior region, that she had been ordered to be transferred out of Gwalior to Bhind. It was further asserted that the guidelines, a copy of which has been filed as annexure P/3 to the writ petition, did not confer any legally enforceable right. Since the order of transfer had been made in public interest and on account of administrative exigencies because of the petitioner had been rendered surplus at

Kendriya Vidyalaya No. 4, Gwalior, and further there was no other vacancy in any of the Kendriya Vidyalayas situate at Gwalior, it had become necessary to transfer her out of station of Gwalior. It was reiterated that it was not administratively feasible to continue the petitioner at Gwalior and out of that staff which had been rendered surplus the petitioner had to move out taking into consideration her seniority. The reason for the petitioner's having been rendered surplus indicated in the counter-affidavit is that it was the alteration in the distribution of work load on the trained graduate teachers that had resulted in rendering her surplus. It is not the case of the contesting respondent that there has been a decrease in the teacher-taught ratio that had rendered to petitioner surplus but it was the increase in the work load.

Along with the counter-affidavit the respondents have filed the details showing the sanctioned strength in the various Kendriya Vidyalayas situate at Gwalior. So far as the subject of Hindi is concerned, the number of posts available in the five Kendriya Vidyalaya situate at Gwalior has been disclosed to be nine.

In the rejoinder-affidavit it has been indicated that the petitioner could be accommodated in Kendriya Vidyalaya No. 3 situate at Gwalior. However, in the additional counter-affidavit, the respondents have indicated that as against the vacancy, referred to in the rejoinder-affidavit, in Kendriya Vidyalaya No. 3, another trained graduate teacher, Smt. Kusumlata had been adjusted taking into consideration her ailment. It is, however, not disputed that the aforesaid Smt. Kusumlata is not entitled to any benefit envisaged under the policy decision of the Central Government indicated hereinabove. In the additional counter-affidavit what has been asserted is that since the husband of Smt. Kusumlata was also employed in Gwalior the benefit envisaged under the aforesaid policy decision had been extended to her but nothing has been asserted which could lead to an inference that the husband of Smt. Kusumlata fell within the category of an employee as envisaged under the policy decision of the Central Government.

The fact remains that the assertions made in the counter-affidavit initially filed by the respondents indicating that no such vacancy existed in any Kendriya Vidyalaya situate at Gwalior where the petitioner could have been accommodated was not correct and was in fact misleading.

On the pleadings of the parties, the question which arises for consideration is whether the petitioner was entitled to any protection envisaged under the policy decision of the Central Government as reflected in the copy of the circular filed as annexure P/2 to the writ petition and the protection envisaged thereunder in fact amounted to a preferential treatment to the "spouse cases" referred to therein.

A perusal of the circular, annexure P/2, referred to hereinabove, indicates that the Government of India considered it necessary to have a policy which could enable women employed under the Government and the public sector undertakings to discharge their responsibilities as wife/mother on the one hand

and productive workers on the other more effectively. It was indicated that it was the policy of the Government that as far as possible and within the constraint of the administrative feasibility the husband and wife should be posted at the same station to enable them to lead a normal family life and to ensure the education and welfare of their children.

In the present case, it is not disputed that there are no statutory rules in existence which regulate the transfers. It is further not disputed that Kendriya Vidyalaya Sangathan is an instrumentality of the State. The policy decision of the Central Government, it is obvious, in the circumstances of the case, is binding on the Kendriya Vidyalaya Sangathan. The guidelines, it seems to me, framed by the Sangathan for the purposes of effecting transfer of the teachers employed by it have to be in consonance with the policy decision of the Central Government.

It may be noticed that in its decision in the case of Union of India (UOI) Vs. K.P. Joseph and Others, , the Apex Court had clarified that "generally speaking, an administrative order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions". The Apex Court pointed out that it had held in Sant Ram Sharma Vs. State of Rajasthan and Another, that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.

In yet another decision in the case of Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., , it was observed by the Apex Court that "granting that it is executive in character, this Court has held that Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities." To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties.

In the case of Banda Brothers v. Board of Revenue reported in AIR 7966 Mad. 179, it has been observed that where a public authority has been directed by its higher authority to perform a particular act, the refusal by the subordinate authority to perform that act is capable of correction in the writ jurisdiction of the High Court.

I am of the considered opinion that taking into consideration the implications arising under the decision of the Apex Court in the case of Union of India v. K. P. Joseph (supra) as well as in the case of Indo Afghan Agencies Ltd., (supra), in the situation indicated hereinabove in case of any violation of the policy decision there could be no impediment in issuing suitable directions even while exercising the jurisdiction envisaged under Article 226 of the Constitution of India to ensure that a person is not deprived of the protection secured in his favour under such a policy decision of the Government as in question.

It seems to me that taking into account the ambit and object underlying the policy decision of the Central Government referred to hereinabove there can be no escape from the conclusion that the benefit extended to an employee falling in the spouse category as envisaged under the policy decision makes him entitled to a preference over other employees of the same cadre to which such an employee belongs. In a situation, therefore, where there are competing interests in the matter relating to going out of station then on account of the preference secured in favour of an employee falling in the spouse category, the other employees belonging to the same cadre have to give way so that the object of the policy decision is not defeated.

In the present case, it is not disputed that nine trained graduate teachers are functioning at Gwalior in five Kendriya Vidyalayas. It is also not in dispute that the petitioner as well as her husband both are employed as trained graduate teachers in the same station i.e., Gwalior. It is further not in dispute that the petitioner falls in the spouse category. There is no competing interest between two trained graduate teachers who claimed preference in the matter relating to their retention at the same station on account of being so entitled as belonging to the spouse category. Even if there was any such competing interest, the other employee of the same cadre not belonging to the spouse category had to give way to accommodate the trained graduate teacher of the spouse category on account of the preference made available to her/him envisaged under the policy decision of the Central Government in the event any necessity arose on account of the administrative reason or otherwise to shift one employee of the same cadre to any other station.

The respondent-authority while rejecting the representation of the petitioner vide the order dated 28-7-1998, has not considered at all the aspects indicated hereinabove. A perusal of the order dated 28-7-1998, indicates that the competent authority had been swayed away and rested its conclusion only on the assumption that there was no vacancy of trained graduate teacher in the subject of Hindi in any Kendriya Vidyalayas located at Gwalior. The existence of vacancy as indicated in the impugned order was hardly relevant specially in view of the implications arising under the policy decision of the Central Government referred to hereinabove and the implications arising thereunder securing the concerned employee of the spouse category to be entitled to a preference in the matter relating to her retention along with her husband at a particular station. The omission to consider this aspect of the case, it seems to me, has resulted in manifestly erroneous conclusions vitiating the impugned order.

In the circumstances, therefore, sufficient ground has been made out for interference by this Court.

Learned counsel for the respondents has urged that in view of the decision of this Court in Writ Petition No. 299/98, in the case of Mrs. Bharti Saxena v. Commissioner and Ors., no interference is called for as the ratio of the aforesaid decision is squarely attracted to the facts and circumstances of the present case.

I have perused the aforesaid decision dated 15-7-1998. In the aforesaid decision, this Court had considered the implications arising under the guidelines framed by the Kendriya Vidyalaya Sangathan and not the policy decisions of the Central Government referred to hereinabove. Further, there is nothing in the aforesaid decision to indicate as to whether the petitioner in that case satisfied the minimum eligibility criteria bringing her within the ambit of spouse category as envisaged under the policy decision of the Central Government. It is further clear from the perusal of the judgment that this Court had come to the conclusion that the case of Mrs. Bharti Saxena (supra) was not a fit case for interference. The implications arising under the policy decisions of the Central Government and the implications arising under the decision of the Apex Court in the case of Union of India v. K. P. Joseph (supra) as well as in the case of Indo Afghan Agencies Ltd., (supra), were neither brought to the notice of the Hon''ble single Judge nor were considered at all.

In the circumstances, the aforesaid decisions cannot come to the rescue of the contesting respondent.

In the result, this writ petition succeeds in part. The impugned order dated 20-7-1998, so far as it relates to the petitioner is quashed. The order dated 28-7-1998, a true copy of which has been filed as annexure P/3 is also quashed. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Gwalior, the respondent No. 3, is directed to consider afresh the matter relating to the transfer of the petitioner out of Gwalior station in accordance with law and in the light of the observations made hereinabove.

The aforesaid authority shall ensure that the final decision is taken within a period of three weeks" from the date of production of a certified copy of this order before him.

Considering the facts and circumstances of the case, it is further directed that the respondent No. 3, shall ensure that the petitioner is paid the salary and other allowances treating her to be continuing in the service unaffected by the impugned order dated 20-7-1998, and is not deprived of any service benefit on account of that order.