

(2018) 02 DEL CK 0338

In the Delhi High Court

Case No : Letter Patent Appeal No. 379 Of 2015, Civil Miscellaneous Application
No. 10251 Of 2016

Varinder Kaur

APPELLANT

Vs

School Management Of Guru Harikrishan Public School & Ors

RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Delhi School Education Rules, 1973 — Rule 109, 109(iv)
Delhi School Education Act, 1973 — Section 8, 109

Citation : (2018) 02 DEL CK 0338

Hon'ble Judges : Deepa Sharma, J; Siddharth Mridul, J

Bench : Division Bench

Advocate : Elanchezhiyan, Manzar Anis, Nasim Anwar, Jasmeet Singh, Astha Sharma, Aditya Madaan, Sanjoy Ghose, Rhishabh Jetley, Urvi Mohan

Final Decision : Dismissed

Judgement

Deepa Sharma, J

1. In the present Letter Patents Appeal, the appellant has challenged the judgment dated 07.05.2015 passed by learned Single Judge in W.P.(C) No.

3061/2014, wherein her petition seeking quashing of transfer and relieving orders dated 28.04.2014 and 02.05.2014 respectively, was dismissed.

2. The brief facts of the case are that the appellant was appointed as a clerk vide her appointment letter dated 11.02.1997. In the appointment letter,

there was a transfer clause. The appointment letter is reproduced herein:-

â?? Guri Harkrishan Public School

Fateh Nagar, New Delhi-110018

13-52/96-97/Est.

11thFebruary,1997

MEMORANDUM

The performance of Mrs. Varinder Kaur has been reviewed. She is hereby informed that she is placed on Probation as a Clerk in the salary

scale of Rs. 975-25-1150/EB-30-1660 with a basic start of Rs. 975/- p.m. The appointment shall be governed by the following terms and

conditions:

1. The appointment is on Probation for a period of one year with effect from 10th February, 1997.

2. The service conditions shall be governed by the school rules in force from time to time.

3. The staff is liable to be transferred to any branch run by Guru Harkrishan Public School Society. No transfer can be claimed as a matter

of right.

4. On Probation a staff shall signed a service contract as required under Delhi Education Act and Rules.

If these terms and conditions are acceptable, you may give your acceptance immediately.

Sd/- Kawaljit Kaur

Principal

Ms. Varinder Kaur??

(emphasis ours)

3. Vide transfer order dated 28.04.2014 issued by respondent No. 2 i.e. Guru Harkrishan Public School (New Delhi) Society, she was transferred to

their School at Tilak Nagar. Pursuant to the transfer order, the relieving order dated 02.05.2014 was passed by the respondent No. 1/Guru Harkrishan

Public School.

4. In the Writ Petition No. 3061/2014, the appellant has challenged her transfer on the ground that she could not have been transferred from Fateh

Nagar School to Tilak Nagar School for the reasons that every School is a separate legal entity and employees of one School cannot be transferred to

another School and has relied on the judgment of this Court in the case titled as Satbir Singh vs. Delhi Sikh Gurudwara Management Committee &

Anr. in W.P.(C) No. 8060/2007, decided on 01.05.2013. Another ground of challenge is that the common seniority list, prepared by the respondent no.

2, is wrongly prepared as certain cadre posts are wrongly clubbed together. She has also urged that her transfer is mala fide occasioned on account of

her filing complaints against the Chairman of the Fateh Nagar School who had been harassing her. The transfer being thus mala fide and hence

vitiated.

5. All the contentions of the appellant were controverted by the respondents in their counter affidavit. It has been denied that transfer order was a

mala fide order or that she has been harassed by the Chairman. It is submitted that a common seniority list was prepared in respect of all the Schools

run by respondent No.2. It is further submitted that the appellant was transferred to another School which is at a distance of 2-3 kilometers from

Fateh Nagar School pursuant to the transfer policy of the respondents.

6. It is further alleged that the appellant had indulged herself in acts of indiscipline and has threatened the Principal and the Chairman of respondent

No. 1 /School. It was in these circumstances that in order to avoid any confrontation, she was transferred to other school run by respondent No. 2.

Reliance has been placed by the respondents on the case of Anand Swarup Mittal vs. Managing Committee of Ramja Sr. Secondary School No.4 &

Ors. in W.P.(C) no. 2447/1998, decided on 24.08.2006.

7. After hearing the arguments of learned counsel for the parties and taking note of the case laws relied upon by them, the learned Single Judge has

dismissed the writ petition vide impugned judgment.

8. The said impugned judgment has been challenged by the appellant before us on the ground that the learned Single Judge has ignored his findings in

his earlier judgment in the case of Satbir Singh's case (supra) wherein he had discarded the same common seniority list, on which the respondents

are relying in the present case. Once he has discarded the common seniority list in his earlier judgment, he cannot now rely on it. The impugned

judgment is erroneous and needs to be set aside. It is further submitted that the said findings in Satbir Singh's case (supra) were approved by the

Division Bench of this Court in appeal.

9. It is further contended that since the Delhi School Education Act, 1973 (hereinafter referred to as "DSEA"), does not incorporate any

provision of transfer, the employee of one school cannot be transferred to other school even if the same Society runs both the Schools. In this regard,

it is urged that the learned Single Judge has not correctly appreciated the law laid down by the Division Bench of this Court in Hamdard Education

Society & Anr vs. Abdul Rehman & Anr, in LPA No. 508 of 2013, decided on 16.05.2014, wherein the Division Bench has categorically stated that

the employee of a School is an employee of that School only and he cannot be transferred to other school even if both the schools are run by the same

Society. It is argued that the learned Single Judge has wrongly relied on the obiter of the said judgment. It is further contended that as per Section 8 of

DSEA, service conditions of an employee cannot be changed after commencement of this Act to the disadvantage of the said employee. It is

submitted that the clause of transfer in the appointment letter is to the disadvantage of the employee and has to be regarded as null and void.

10. It is further urged that no common seniority list was maintained by the Society at the time of appointment of the appellant and subsequent

preparation of seniority list without the consent of the employee, which is also defective, cannot be relied upon. The appellant has also relied on Sub-

Rule (iv) of Rule 109 of Delhi School Education Rules, 1973. The impugned judgment is further challenged on the ground that the transfer is punitive

and mala fide and the learned Single Judge has failed to appreciate that she was sexually harassed by the Chairman at the workplace and the transfer

is a counter blast to her complaints of sexual harassment against the Chairman of the respondent No. 1/School. The act of the respondents thus is also

in violation of the directions of the Supreme Court in the case of Vishaka & Ors. vs. State of Rajasthan reported in AIR 1997 SC 3011.

On these contentions, it is submitted that the impugned judgment is liable to be set aside.

11. We have heard the arguments and have perused the relevant records.

12. The admitted facts are that the appellant was appointed as a clerk vide appointment letter dated 11.02.1997. Her appointment letter contained the

transfer clause stating that the staff of the School can be transferred to any branch run by respondent No.2. When the appellant signed the said letter

of appointment, she was very well aware and conscious of the fact that her services were transferable from one School to another School run by

respondent No. 2/ Society. It is a well settled proposition of law that the transfer is an incident of service. It is so held by the Supreme Court in the

case of Tushar D. Bhatt vs. State of Gujarat and Anr. reported in (2009) 11 SCC 678 as under:-

15. The legal position has been crystallized in number of judgments that transfer is an incidence of service and transfers are made

according to administrative exigencies.

13. The Supreme Court in the case of Union of India and Others vs. S.L. Abbas, reported in AIR 1993 SC 2444 has held that it is the prerogative of

the employer to decide a place where an employee should be deputed. It is also a settled proposition of law, as propounded by the Apex Court in

catena of its judgments that Courts should not interfere with transfer order in writ petitions unless the transfer is vitiated by malafides or made in

violation of any statutory provisions. The Court has held as under:-

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated of by

malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no

doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any

representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of

administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however

does not confer upon the government employee as a legally enforceable right.

14. In another judgment, in the case of Somesh Tiwari vs. Union of India (UOI) reported in AIR 2009 SC 1399, the same views have been expressed

by the Apex Court wherein in para 19, it is observed that an order of transfer is an administrative order and . There cannot be any doubt

whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of

the authority is proved.

15. The appellant has alleged her transfer is mala fide. She has alleged that she has been transferred because she had filed complaints of sexual

harassments against the Chairman of respondent No.1-School. The respondents have denied it vehemently and have urged that the appellant's

own behaviour was questionable; that she had been threatening the Principal

and Chairman. It is further urged that no complaints of sexual harassment was ever filed by her.

16. The contentions and argument of the appellant that she had been sexually harassed at her workplace in the present appeal seems to be an improvement. She has given the facts relating to allegations of harassment in paragraph 5 of the writ petition No.3061/2017. The relevant paragraph is reproduced as under:-

“5. That the petitioner was harassed by the Chairman of the School and she suffered mentally on that account and had to take leave

from the school. The chairman had threatened the petitioner that he will suspend her if she failed to withdraw complaint from Grievance

Cell. The petitioner had lodged various complaints by email and by hand to the Principal due to the ill-treatment given by the Chairman. The

copies of the complaints dated 18.03.2014, 22.03.2014 and 01.04.2014 to the Principal through email and complaint dated 13.03.2014 to

Chief Coordinator DSGMC/Staff S.C, Review Committee dated 13.03.2014 are annexed as ANNEXURE P-6 (Colly).”

17. The perusal of this and other averments in her writ petition, clearly shows that she had not in the first instance, imputed allegations of sexual

harassment by the Chairman of the respondent No. 1/School. It is also noteworthy that in her writ petition, in the grounds of challenge of the transfer

order, she has not alleged any harassment at all leave alone allegations of sexual harassment by the Chairman. The only averment she made in the

writ petition is found in paragraph H of grounds of challenge to the effect that her “transfer order has been passed malafidely at the behest of the

Chairman of the School.”

18. She has also failed to bring to our notice any of the complaints, she had purportedly made regarding sexual harassment by the Chairman of

respondent No. 1 School. The learned Single Judge also did not find any merit in the contention made relating to sexual harassment by the Chairman

of respondent No. 1 School. In para 9 (iii) of impugned judgment, the learned Single Judge has held as under:-

“9(iii)”. At this stage, also, I must refer to and reject the argument urged on behalf of the petitioner that there exist malafides in her transfer

order because petitioner was being harassed by the Chairman of the Fateh Nagar

School and with respect to which a sexual harassment complaint has been filed by the petitioner, inasmuch as, just making of a complaint would not mean that this Court has to take contents of the complaint as necessarily final and hold that the same are correct unless of course there exists a judicial pronouncement of a court or a competent tribunal holding that in fact there is sexual harassment of the petitioner. In fact, I put it to the counsel for the petitioner that the petitioner should be in fact happy on being transferred from Fateh Nagar School to Tilak Nagar School if the petitioner was facing harassment in the Fateh Nagar School and to which observation, obviously the petitioner did not have any answer.â??

19. It is noteworthy that the appellant has been continuously improving upon her pleas of malafide transfer, resulted due to her complaints of harassment by the Chairman. Her contentions that the transfer was the result of the complaints of sexual harassment against the Chairman, does not inspire confidence. She has failed to convince our judicial mind that the transfer was malafide. In situations, where employees of an institution are having conflicts with each other and are vitiating the atmosphere of the school, a duty is cast on the employer to manage the employees in order to ensure a congenial atmosphere in the working place and for that purpose, the law recognizes that it is the prerogative of the employer to choose a way to maintain the order at workplace, so that the employees can discharge their functions efficiently, utilizing their full potential. This Court in the case of P. Rajapratap vs. Union of India reported in 2010 (1) SLR 123 (Delhi) has held in para 15 as under:-

15. It is good management to separate two employees in an organization who come into conflict with each other without apportioning blame on any, for the reason, a blame game vitiates the atmosphere in an organization. One of the two employees needs to be transferred out. We see no scope for malice in said approach being adopted.â??

20. Therefore, in order to bring normalcy at the work place, if two employees are fighting with each other and if one of them is transferred out, it cannot be said to be an act of malafide on the part of the employer. The contention of the appellant that her transfer was vitiated being mala fide, has no force and we find no infirmity or illegality in the impugned judgment on this count.

21. It is also argued by the learned counsel for the appellant that at the time when she joined the respondent No. 1/School, there was no common seniority list and it was prepared subsequently and, therefore, such seniority list is hit by Section 109 of DSEA, 1973.

22. The learned Single Judge has dealt with this argument in the impugned judgment in para 9. The relevant paragraph is reproduced as under:-

â??9(i) Learned counsel for the petitioner argued two further aspects to question the transfer order. First is that, the common seniority list

filed was one which is not properly maintained including for the reason that cadre posts which have not to be shown together have been

shown together under the same cadre. The second aspect which is argued is by placing reliance upon Rule 109 of the Delhi School

Education Act and Rule, 1973 (in short â??DSEAR, 1973â?) that a common seniority list can only be maintained if school had maintained

common seniority list even before passing of the DSEAR, 1973.

(ii) Both the aspects urged by the petitioner have no merits because if petitioner questions her position in the seniority list or questions the

merit of the common seniority list, then this aspect would be examined when petitioner files proceedings challenging the common seniority

list, but that does not mean that a common seniority list is not being maintained by the respondent no. 2/Society of the schools run by it in

the name of GHPS. What ought to be the correct seniority in the list, and, not maintaining of a common seniority list, are two totally separate

aspects. Once common seniority list is maintained an employee working in one school can be transferred to another school.

(iii) So far as the second aspect is concerned, the same is also without merit because I do not find on a reading of Rule 109 of the DSEAR,

1973, that only those schools are entitled to maintain a common seniority list who had maintained it prior to passing of the DSEAR, 1973. To

give such interpretation, schools opened after the DSEAR, 1973 came into force cannot be allowed to maintain a common seniority list for

various schools which are run and effecting transfers from one schools to another although transfer of one employee from one branch to

another branch does not in any manner prejudice the service conditions of such employees, and thus which cannot be done. Surely courts

cannot decide administrative exigencies as to how an employer is to run his organisation by placing a particular employee at a particular

place in the organisation. The administrators of the organisation including schools are entitled within their jurisdiction to take a decision as

to which employee has to be placed where, and this Court except in the case of clear cut illegality or on account of clear malafides negating

the validity of transfer, will not interfere with the transfer orders.â

23. The issue as to the validity of the seniority list has been left open by the learned Single Judge in the impugned judgment and the appellant has been

given the option to challenge it by way of appropriate proceedings. This argument of the appellant is without force.

24. There is no dispute as to the legal proposition that transfer is an incident of service. Admittedly, at the time when the appellant joined the

respondent No. 1/School, she was aware that her job was a transferable job. The next contention and argument of the appellant is that every School is

a separate entity and an employee of one School cannot be transferred to another school even though the same Society runs both the Schools. In

support of this contention, she has relied on the judgment in the case of Satbir Singh's case (supra), and it is urged that the learned Single Judge has

contradicted his findings in Satbir Singh's case (supra). It is also urged that the said findings in the Satbir Singh's case (supra) were upheld by the

Division Bench of this Court. This argument of the appellant that the earlier view of the learned Single Judge in Satbir Singh's case (supra) had the

approval of the Division Bench of this Court is not correct for the reason that the Letter Patents Appeal against the judgment in Satbir Singh case

(Supra), was dismissed without expressing any opinion on the judgment in Satbir Singh's case (supra). The Division Bench had no occasion to go into

the merit/validity of the findings in Satbir Singh's case in view of the fact that the transfer order, which was the subject matter of dispute, was

withdrawn and the parties were put to the original position. It, therefore, cannot be said that the view of learned Single Judge in Satbir Singh's case

(supra) was affirmed by the Division Bench of this Court. It is apparent that the learned Single Judge has discussed in the impugned judgment his

earlier view taken in Satbir Singh's case (supra) and has given the reasons for not agreeing with the conclusion in Satbir Singh's case (supra).

25. Another argument is that the findings in Satbir Singh's case (supra) that an employee of a school cannot be transferred to another school even

though run by the same Society were confirmed by the Division Bench of this Court in LPA No. 508/13 in Hamdard Education Society's case

(supra). It is argued that in Hamdard Education Society's case (supra), the Division Bench has clearly held that the employee of a School cannot be

transferred to another School even if both the schools are run by the same Society. That in Hamdard Education Society's case (supra), the Division

Bench of this Court has clearly held that "the Society establishing the School is not the employer. Each and every school established by a parent

society is an independent juristic entity having its own scheme of management and Managing Committee. The employees appointed by the Managing

Committee of the School are not the employees of other Schools." It is further urged that in Hamdard Education Society's case (supra), the Division

Bench of this Court has even gone to the extent of holding that the transfer clause in the appointment letters is an absurdity in the employment

document and has to be resolved in favour of employee and against the employer for the reason of contra proferentem rule. It is argued that the

impugned judgment is erroneous because undue emphasis on the obiter in Hamdard Education Society (supra) ignoring the categorical findings, is

uncalled for. It is further urged that the existence of the common seniority list is of no consequence, in view of clear findings of co-ordinate Bench of

this Court in Hamdard Education Society's case (supra).

26. The respondents have urged that the findings in Hamdard Education Society's (supra) do not have binding effect in view of the earlier judgment

of the Division Bench in Anand Swarup's case (supra). The learned counsel has relied on paras 9 and 11 of the said judgment. It is argued that in

that case despite the fact that the appointment letter did not contain any transfer clause, the Court had upheld the employer's rights to transfer its

employee from one school to another School run by the same Society or a Trust holding that such a transfer is not a transfer from one employer to

another. It is further argued that in view of the findings of Apex Court in the case of Union of India vs. S.K. Kapur, reported in (2011) 4 SCC 589, the

findings in Anand Swarup's case (supra), which were given in earlier judgment is binding and findings in Hamdard Education Society's (supra)

which are contrary to the findings of the Division Bench in Anand Swarup's case (supra) were given as the same issue is non est.

27. We have given thoughtful consideration to the contentions and arguments of the learned counsels for the parties on this point. The Apex Court in

the case of Union of India vs. S.K. Kapur, reported in (2011) 4 SCC 589 has clearly held, in para 9 of the judgment, that where a subsequent

coordinate Bench of an equal strength wants to take a different view from prior decision of a coordinate Bench, then it must refer the matter to a

larger Bench and where it is not so done, the prior decision of a coordinate Bench is binding on the subsequent Bench of an equal strength. The Apex

Court has held as under:-

¶ It is well settled that if a subsequent co-ordinate bench of equal strength wants to take a different view, it can only refer the matter

to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the

decision in S.N.Narula's case (supra) was not noticed in T.V.Patel's case (supra), the latter decision is a judgment per incuriam. The

decision in S.N.Narula's case (supra) was binding on the subsequent bench of equal strength and hence, it could not take a contrary view,

as is settled by a series of judgments of this Court.¶

28. Both in Anand Swarup's case (supra) and Hamdard Education Society's case (supra) point in issue was same, i.e. transfer of an

employee from one School to another where both the Schools are run by the same Society/Trust and relieving of common seniority list in

such transfers. In view of the law propounded by Supreme Court in the S.K. Kapur (supra), the previous judgment of the Division Bench i.e.

Anand Swarup's case (supra) holds the field and is good law on this issue. The coordinate Bench of this Court in Anand Swarup's case

(supra) in paragraphs 9, 10, 11 and 15 has clearly held as under:-

¶ 9. It is not necessary to refer to the various cases cited by the petitioner in his written submissions. It is sufficient to notice the two

cases, namely, Shri Ram Foundation and Anr. vs. Directorate of Education and Jawahar Lal Nehru University v. Dr. K.S. Jawatkar

(supra), to which he has referred during the course of his submissions. In our view, Shri Ram Foundation and Anr. v. Directorate of

Education, when read as a whole does not support the petitioner's case. Reference is invited to the following part of the judgment:

“There is no prohibition in the Act for transfer from one School to another. The question of transferability with promotion or without

promotion or on the basis of joint seniority are entirely the matters between the employees and the management. Where an employee joins

such an institution which is managed by a Society or a Trust he joins the institution with open eyes. He accepts the term of transferability

and joint seniority. He might see a benefit in it.”

In our view, the case of Jawaharlal Nehru University (*supra*) does not advance the petitioner's case. Firstly, the requirement of consent,

express or implied, is for transfer from one employer to another, i.e., from one centre to another. In the instant case, it is the admitted

position that both the schools are run by Ramjas Foundation, i.e. the Society, which had employed the petitioner. None of the schools is run

as an independent Society or a Trust. It is not a case of transfer from one employer to another.

10. Learned Counsel for the respondent, in refuting the submissions made by the petitioner, has taken us through the appointment letter;

which is silent on the issue of transfer. The appointment dated 8.10.1970 has been issued by the Ramjas Foundation. It does not contain any

provision for transfer or any prohibition on it.

11. We may also refer to an earlier letter dated 31.10.1958, which shows that for all the schools run by the Trust, a common seniority list is

maintained and objections are invited from teachers with regard to the seniority list, if any. It would show that the Trust has been

maintaining a common seniority list much prior to the employment and engagement of the petitioner.

15. In these circumstances, we hold that there was no legal embargo on the transfer of the petitioner by the respondent Society from its one

school to the other and the same is not vitiated by any malafides or extraneous considerations. The challenge to the transfer, therefore,

fails.

Petition stands dismissed.”

29. In *Anand Swarup's* (*supra*), this Court had upheld the transfer of the

employee from one school to another of the same Society i.e. Ramjas Foundation, despite the fact that there was no transfer clause in the appointment letter of the employee. The present case is on better footing. The fact shows that the appointment letter of the appellant contained the transfer clause and she had signed her appointment letter knowing fully well that her post was transferable. Admittedly, a common seniority list is also being maintained by the respondent No. 2. As discussed above, the appellant has also failed to point out any element of malafide or bias on the part of respondents. Admittedly, the place where she has been transferred is nearby. Even otherwise, the appellant has not claimed any inconvenience which is likely to be caused to her by travelling to another School.

30. We find no infirmity and illegality in the impugned judgment. The impugned judgment does not call for any interference. The appeal has no merit and the same along with pending applications is hereby dismissed with no order as to costs.