
(1982) 05 DEL CK 0051

In the Delhi High Court

Case No : Civil Revision Appeal No. 433 of 1982

V.K. Kumar

APPELLANT

Vs

Kendriya Vidhyalaya Sanga than and Others

RESPONDENT

Date of Decision : 28-05-1982

Acts Referred:

Citation : (1982) 22 DLT 18 : (1982) 2 ILR Delhi 679

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : Ashok Sen, Rohatgi, P.K. Jain and Arun Kumar, for the Appellant;

Judgement

Sultan Singh, J.

(1) The question for decision in this Civil Revision and in Civil Revision Nos. 434 and 435 of 1982 u/s 115 of the CPC is : Whether respondent-defendant No. 1 is to be restrained from transferring the plaintiff petitioner in the three cases outside Delhi, during the pendency of the suits for declaration and injunction filed by them challenging the order of transfer?

(2) Briefly the facts in C. R. No. 433 of 1982 are that defendant-respondent No. 1 Kendriya Vidhalaya Sangathan (hereinafter referred to as "the Sangathan") an autonomous body, was set up by the Ministry of Education and was registered as a society in 1965, under the Societies Registration Act, 1860. The Sangathan at present is running 366 Kendriya Vidhyalayas (hereinafter referred to as "K.V.") all over the country. The Sangathan has its own rules and regulations, contained in a book titled "Education Code for Kendriya Vidhyalayas".

(3) The plaintiff was appointed as an Assistant on 25th May, 1972 by the Sangathan and he was confirmed as such on 25th May, 1974. K. L. Sachdeva, defendant-respondent No. 2 was taken on deputation by the Sangathan as an Assistant with effect from 1st February, 1971. He was absorbed in the Sangathan and confirmed as an Assistant on 1st February, 1975. In November, 1976 a provisional seniority list of "Assistants" was issued wherein defendant No. 2 was

shown as senior to the plaintiff. A representation was made that the plaintiff was senior to defendant No. 2 as he was confirmed as Assistant earlier i.e. 25th May, 1974 while defendant No. 2 was confirmed from 1st February, 1975. The matter was referred by the Sangathan to the Government of India, Ministry of Home Affairs. It was held that defendant No. 2 could not be given benefit of deputation period for the purposes of seniority and that plaintiff would rank senior to defendant No. 2.

(4) The Sangathan promoted defendant No. 2 as Superintendent with effect from 23rd August, 1979 and made a reference to the Department of Personnel and Administrative Reforms, to ascertain whether six years qualifying service for promotion would count from the date, a deputationist is absorbed or from the date he joined the Sangathan. On 24th August, 1979 the plaintiff again represented against promotion of defendant No. 2. The Sangathan on 10th January, 1980 passed an order promoting and posting the plaintiff also as ad hoc Superintendent in the Regional Office at Faridabad. The plaintiff represented for being absorbed as Superintendent against a regular post in the Regional Office, Delhi as he was senior to defendant No. 2. On his representation the order posting him at Faridabad was cancelled. The plaintiff again represented to the Vice Chairman of the Sangathan who after referring to the record, ordered reversion of defendant No. 2 as Assistant and promoted the plaintiff as Superintendent in a regular post at Regional Office Delhi with effect from 25th July, 1980. The plaintiff then claimed promotion as Superintendent with retrospective effect i.e. 23rd August, 1979 on which date defendant No. 2 was promoted as Superintendent. This matter was also referred to the Ministry of Home Affairs and the Sangathan was advised to give promotion to the plaintiff with effect from 23rd August, 1979 with all benefits except that he would not claim arrears on account of difference of pay. The plaintiff submits that on account of various representations made by him for his seniority and promotion the Sangathan (defendant No. 1) was prejudiced against him and had been trying to find fault in order to punish him. He, Therefore, alleges that the Sangathan with mala fide intention, to deprive the fruits of promotion as Superintendent, and to favor defendant No. 2 passed orders transferring him as Superintendent to Bhopal and promoting defendant No. 2 as Superintendent in the Regional Office, Delhi. The order promoting defendant No. 2 was passed on 21st May, 1981 while the order transferring the plaintiff was passed on 22nd May, 1981. The plaintiff on 29th May, 1981 filed the suit out of which this revision has arisen, for declaration that the orders dated 21st May, 1981 and 22nd May, 1981 passed by the Sangathan regarding transfer and posting were illegal, mala fide and inoperative. He also prayed for a permanent injunction restraining the Sangathan from transferring him from Delhi to Bhopal and posting defendant No. 2 in the Regional Office Delhi. The plaintiff also filed an application for the issue of a temporary injunction.

(5) The Sangathan in its written statement admits that defendant No. 2 was ranked senior to the plaintiff as Assistant in the seniority list issued on 26th

November, 1976, that defendant No. 2 was appointed as Assistant on 1st February, 1971 while the plaintiff was appointed to the post of an Assistant with effect from 25th May, 1972. Defendant No. 2 was a deputationist while the plaintiff was a direct appointee. The Sangathan has further pleaded that defendant No. 2 was promoted according to rules regarding promotion of Superintendents. According to rules one third persons are promoted on the basis of selection from Assistants having served as such for six year and the remaining two-third posts are filled, on the basis of a departmental examination where all the employees of the Sangathan are entitled to complete. It is further pleaded that the employees of the Sangathan are liable to transfer anywhere in India, that seniority is no consideration for transfer, that transfers were ordered on administrative consideration. It is denied that the transfer of the plaintiff as Superintendent from Delhi to Bhopal was mala fide and made to favor defendant No. 2. It has been further pleaded that the plaintiff was posted as Superintendent, Delhi Regional Office in July, 1980 taking into consideration his family circumstances at that time, that defendant No. 2 was offered the post of Superintendent at Bhopal in March, 1981. His request for retention in Delhi on grounds of ill health and the marriage problem of his two daughters were acceded on compassionate grounds, that the plaintiff wants to stay at Delhi which is not permissible under the rules and is also not justified. It is denied that the transfer order was with any mala fide intention or prejudiced mind, that the transfer order is an administrative act, not liable to be challenged in the civil court. The plaintiff in his rejoinder has denied that the rules of the Sangathan provide for transfer throughout India or that he is bound by the same that there are no rules for transfer of the Superintendent cadre. The trial court by order dated 24th July, 1981 restrained the Sangathan (defendant No. 1) from transferring the plaintiff to Bhopal on the ground that his transfer did not appear to be bona fide. On appeal the first appellate court by judgment and order dated 1st April, 1982 vacated the injunction. The plaintiff has filed this revision.

(6) Education Code for Kendriya Vidhyalayas" of defendant No. 1 (hereinafter referred to as "The Education Code") in Article 49(k) provides that employees of the Sangathan are liable to be transferred anywhere in India. An order of transfer by an administrative authority in its discretion is not justifiable or open to judicial review unless the transfer order is violative of any legal provision or is otherwise mala fide, or arbitrary. In other words the civil court has jurisdiction to quash the transfer order if it is mala fide, arbitrary or contrary to any legal provision. In Ram. Pratap Vs. State of Rajasthan and others, 1981 (2) All India Services Law Journal 524(1) it has been observed that the transfers are made on administrative grounds and unless mala fides are proved or it is shown that any extraneous considerations were responsible for the same, the normal presumption were of administrative exigency and bona fides would hold the field. It has been further held that judicial review is permissible only if the transfer is made in mala fide exercise of the power and that transfer order need not be a speaking order and the requirement for a speaking order cannot be insisted upon

unless the Statute expressly lays down such requirement. In *Prakash Chandra Saxena Vs. State of N. P. and others*, 1980 (1) S. L. R. 788(2) it has been held that transferring an employee merely to accommodate some particular official amounts to mala fide transfer. In *N N. Singh and others Vs. General Manager Chittaranjan Locomotive Works and others*, 1973 (1) S. L.R. 115(3). it has been held that the mala fide transfers are liable to be interfered with by the civil court. In *K. B. Shukla and others Vs. Union of India and others* 1979 (2) S. L. R. 58(4), the Supreme Court observed as under :

"IT is true that formation of opinion by the Central Government as to the "existence of exigencies of the service" requiring appointment by such method, is a pre-requisite for the exercise of the power. But the formation of such opinion is a matter which, in view of the peculiar nature of the function and the language of the provision, has primarily been left to the subjective satisfaction of the Government. Indeed it is as it ought to be. The responsibility for good administration is that of the Government. The maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility. Therefore, the Government alone is a best suited to judge as to the existence of exigencies of such a service requiring appointments by transfer. The term "exigency" being understood in its widest and pragmatic sense as a rule, the court would not judge the propriety or sufficiency of such opinion by objective standards; save where the subjective process, of forming it is vitiated by mala fides, dishonesty, extraneous purpose or transgression of the limits circumscribed by the legislation".

In *Subhash Chander Vs. The Lt. Governor, Delhi Administration, Delhi*, 1979(2) S. L. R. 719(5) this court observed that the transfer of an employee is in the administrative discretion of the authorities and unless the transfer can be held to be bad on the ground of mala fide or based on extraneous grounds the order of transfer was immune from challenge in a court of law.

(7) The burden of establishing mala fide is on the person who alleges it to be so. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, the Supreme Court observed, "the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility".

(8) Learned counsel for the plaintiff submits that the impugned order of transfer is mala fide, that the Sangathan was prejudiced and annoyed as he had been making various representations regarding his seniority and promotion. Representation by the plaintiff and decision of the Sangathan in consultation with the Ministry of Home Affairs in his favor does not mean that the officials of the Sangathan were prejudiced against him. Representation to seek relief is an ordinary course of conduct of an employee against his employer. It is a well recognised method to seek relief. It cannot be said as a general rule that an employer would be prejudiced against his employee simply because of

representation. If representation is not made the employee would not get any relief. If representation is made by an employee it cannot be presumed that the employer was prejudiced against him on account of such a representation. Mere representation is not sufficient to hold that the employer was prejudiced. The plaintiff has made a mere allegation of mala fide against the Sangathan for promoting defendant No. 2 but no specific allegation has been made by him against any particular official. If the allegations are vague no notice of the same can be taken note. In *Ram Das Pandey Vs. State of West Bengal*, 1977(1) S. L. R.225 (M) it has been observed that before an order could be challenged as mala fide, malice must be alleged against the particular officer who has taken the decision. Observations to the same effect were also made in *Shri Kedar Nath Bahl Vs. The State of Punjab and Others*, .

(9) Learned counsel next submits that there are no guidelines for transfer of non-teaching staff in Article 49(k) of the Education Code. Guidelines for transfer of non-teaching staff does not appear to be necessary. Even if guidelines are there, transfers can be made in the exigencies of public service. In *Jogendra Mohanty Vs. State of Orissa, and others*, 1979(1) S. L. R. 892(9) it has been observed that an order of transfer cannot be challenged on the ground of violation of administrative instructions wherein general guidelines for transfer has been indicated. In *Ramachandra Shetty etc. Vs. State of Karnataka and others*, 1980 Lab. I. C. 414(10) it has been observed that mere absence of express guidelines for exercise of wide powers of transfer, does not render such conferment of power bad and if such power is exercised in any particular case, arbitrarily, capriciously, unreasonably, mala fide or for a collateral purpose, the exercise of such power in that particular case will be bad and liable to be struck down by courts.

(10) The plaintiff in the instant case was ordered, to be promoted and posted as Superintendent at Faridabad. But he made a representation to the Sangathan. His posting at Faridabad was cancelled. The plaintiff was then posted as Superintendent Regional Office, Delhi on account of his family circumstances in July, 1980. It shows that the Sangathan was not prejudiced against him. Defendant No. 2 in March, 1981 was offered the post of Superintendent at Bhopal but on account of his family circumstances has posting to Bhopal was also not effected. Retention of defendant No. 2 at Delhi in March, 1981 on compassionate ground is no reason to hold that he was being favored against the plaintiff. Thus if on compassionate ground an officer is not posted at a particular place it cannot be said that the Sangathan was prejudiced against one or the other employee or that the Sangathan favored one employee against the other. The petitioner's wife Smt. Indra Kumari Kumar was selected for appointment to the post of primary teacher in 1976 for Gauhati region. However, she did not want to go there. As a special case on the request of the plaintiff she was given the appointment of primary teacher in the City of Bombay where she joined on 24th September, 1976. The plaintiff had completed only four years service as Assistant and was posted at Regional Office, Bombay so that he could be in the

same city as his wife. This ad hoc pro- motion given to the plaintiff demolishes his allegation that the Sangathan was prejudiced against him. Subsequently the plaintiff was transferred to Delhi in 1978. His wife was also transferred to Delhi. The plaintiff now submits that his wife is working at Delhi so he should not be transferred to Bhopal. This is no ground for holding the transfer order as bad.

(11) Learned counsel for the defendant-Sanga than has offered that the Sangathan would have no objection to transfer also the plaintiff's wife to Bhopal if she so desires, so that both husband and wife may live together. He also says that the children of the plaintiff can also be shifted to K. V. at Bhopal.

(12) Next it is submitted on behalf of the plaintiff that his transfer would disturb his family life. It is no ground to set aside the transfer. The Sangathan may accept any representation of its employees on compassionate grounds such as ill health, climate condition, disturbance of family life etc. but such grounds cannot be the basis for interference by courts. Thus from the facts of the present case it is clear that plaintiff prima facie has not made out a case that the transfer order for his transfer from Delhi to Bhopal is mala fide. On this ground alone, the plaintiff is not entitled to the grant of a temporary injunction restraining the defendant from transferring him to Bhopal during the pendency of his suit.

(13) C.R. No. 434 of 1982 : Mr. S. S. Dhingra, plaintiff-petitioner in this revision has also challenged his transfer order on similar grounds. The Sangathan is defendant No. 1. Assistant Commissioner Delhi Region of the Sangathan is defendant No. 2. The Principal, K. V. Tagore Garden is defendant No. 3. Briefly the facts are that Mr. Dhingra was appointed as an Upper Division Clerk by the Sangathan on 1st November, 1972. He through a competitive test held by the Sangathan was promoted as Head Clerk on 10th August, 1979 and was posted at K. V. Gole Market, New Delhi. Again as a result of competitive examination by the Sangathan he was promoted as an Assistant and was posted at its Headquarters office at Nehru House, Bahadur Shah Zafar Marg, New Delhi which post he joined on 21st December, 1979. In April, 1980 Mr. Dhingra for reasons of family circumstances requested for his reversion to the original post of Head-Clerk and desired his posting as such at K. V. Gole Market, New Delhi. The Sangathan accordingly reverted him as Head Clerk and he was placed at the disposal of Assistant Commissioner, Delhi Region (defendant No. 2). Mr. Dhingra was then posted at K. V. Janakpuri and subsequently to R. K. Puram, New Delhi. On 29th October, 1980 Mr. Dhingra was posted as Head Clerk in K. V. Tagore Garden, New Delhi. He represented for his posting at K. V. Gole Market, New Delhi on the ground that he had requested for reversion due to his family problems, that his request for reversion was accepted by the Sangathan but he was not posted at K. V. Gole Market, New Delhi for reasons known to the officials of the Sangathan. He made several representations for his posting at K. V. Gole Market, New Delhi. In one of the representations he requested that in the alternative his request for reversion be cancelled and he be posted as an Assistant in the Headquarters. On 4th September, 1981 Mr. Dhingra was transferred from Delhi to Meerut. He has

challenged the transfer order on the ground that the Sangathan wanted to accommodate one Mr. B. Joseph who being an ad hoc appointee has no right to be retained at K. V. Tagore Garden, that Mr. Nagpal working as Head Clerk at K. V. Gole Market, also has no preferential right to be retained there, that his transfer was against the Government Policy of retaining husband and wife at one station, that it was an act of victimisation as he repeatedly requested for his posting at K. V. Gole Market, New Delhi which irritated the authorities, in general, and defendant No. 2 in particular, that there is no set policy for transfer of non-teaching staff of the Sangathan, that unguided and unfettered powers of transfer are against the provisions of law and ultra virus of the powers of the Sangathan, that defendant No. 2 was not competent to transfer a person belonging to the category of Head Clerk and above in the Sangathan, that he was a recipient of an award, that his efficiency would deteriorate at Meerut, that the Sangathan could accommodate him at the Headquarters of the Sangathan as an Assistant, that his purpose of voluntary reversion would be defeated, that the Sangathan would not be benefited by his transfer, that his transfer to Meerut was not in public interest and his family would suffer financially, and that the Sangathan authorities have allowed persons to continue in Delhi under pressure such as Mrs. Verma, P.G. T. and Mrs. Arora P. G. T. at Gole Market and Delhi Cantt. respectively. He also alleges that he has an ailing mother aged 65 years, that his two children study at K. V. Gole Market, that his wife Mrs. Saroj Dhingra has been working in the Council of Scientific & Industrial Research, Rafi Marg, New Delhi as Lower Division Clerk. He has also alleged that his promotion from Head Clerk to Assistant disturbed his family affairs and Therefore he had sought for reversion to the post of Head Clerk.

(14) The defendants in their written statement have pleaded that the suit for injunction was not maintainable as Mr. Dhingra, (plaintiff) was relieved on 5th September, 1981 and Mr. B. Joseph took charge on that date in his place, that his representation for posting in K. V. Gole Market, New Delhi was duly considered by the Assistant Commissioner of Delhi Region and he was posted at K. V. Tagore Garden, that Mr. Dhingra was transferred by order dated 4th September, 1981, that his service book and personal file were sent to the Principal K. V. Punjab Lines, Meerut Cantt. vide letter dated 7th September, 1981, that his transfer was in accordance with service conditions of the employees of the Sangathan, that Article 49(k) of the Education Code provides that employees will be liable to be transferred anywhere in India, that Mr. Dhingra cannot dictate his terms of service, that no favor was shown to Mr. B. Joseph and Mr. Nagpal, that his transfer was not made under any pressure, that it was not with any ulterior motive, that it was a routine matter and an administrative act, not subject to review by the civil courts, that defendant No. 2 was competent to pass the transfer order in the case of plaintiff. All other allegations were also denied by the defendants. Along with his suit for permanent injunction restraining the defendants from transferring him out of Delhi and to post him at K. V. Gole Market, New Delhi he also filed on 8th September, 1981 an application for

temporary injunction. The trial court by judgment and order dated 19th September, 1981 held that the impugned order of transfer was mala fide and colourable exercise of power, that it was based on extraneous considerations and was not a routine and administrative order. An injunction was granted restraining the Sangathan from transferring Mr. Dhingra. On appeal, the first appellate court vacated the injunction and dismissed his application under Order 39 rules I and 2 of the Code of Civil Procedure.

(15) Learned counsel for Mr. Dhingra (plaintiff) submits that there are no guidelines for transfer of non teaching staff of the Sangathan and Therefore his transfer is liable to be quashed. Article 49(k) of the Education Code provides for transfer of its employees. It has been observed above that guidelines for transfer of non-teaching staff do not appear to be necessary. Even if the guidelines are there the transfers can be made in the exigencies of public service. Further absence of guidelines does not make the power of transfer bad. In the instant case it has to be seen whether the transfer order is vitiated by any act of mala fide. The version of Mr. Dhingra is that his transfer was ordered on account of repeated requests for his posting at K. V. Gole Market, New Delhi. This cannot be a valid reason to impute mala fides to the Sangathan. Merely making a representation and not getting a relief from the authorities does not mean that the authorities were prejudiced against him. The onus to prove mala fides is upon Mr. Dhingra but no specific allegation of mala fides against any particular officer of the Sangathan has been made. Mr. Dhingra says that the Sangathan authorities wanted to accommodate Mr. B. Joseph who was appointed as a Head Clerk. His argument is that Mr. B. Joseph being an ad hoc appointee had no right to be retained at Tagore Garden. For promotion a distinction may be drawn between a regular appointee and an ad hoc appointee but no such distinction can be made as far as posting of an ad hoc appointee is concerned. Both can be posted at any place at the discretion of the appointing authority. There is no specific allegation as to why Mr. Joseph has been given preference over Mr. Dhingra. Similarly, Mr. Nagpal has been working in K. V. Gole Market, New Delhi. It is an administrative act of the Sangathan to post and transfer its staff. Mr. Dhingra cannot challenge the posting of Mr. Joseph or Mr. Nagpal.

(16) Next the learned counsel for Mr. Dhingra submits that it is the policy of the Government that husband and wife should be retained at one station. This is a mere wish. If possible the husband and wife may be retained but it does not mean that an officer should always remain at a place where his wife was working. Mr. Dhingra's wife is employed as L. D. C. and she cannot be transferred by the Sangathan. It Therefore does not mean that Sangathan authorities cannot transfer Mr. Dhingra also. No law has been brought to my notice to hold that the husband and wife should always be allowed to work at one station.

(17) Next it is submitted that the Assistant Commissioner of the Sangathan is not a competent person to transfer Head Clerk. He submits that all transfers are

made by the Head Office only. Article 28 of the Education Code narrates the various administrative powers of the Assistant Commissioner of Kendriya Vidhyalayas. Sub clause 14 of this Article confers power on him to transfer Vidhyalaya staff other than the Principals and Vice Principals from one place to another within the region. In the instant case Mr. Dhingra has been transferred from Delhi to Meerut which is in the same region. Thus the transfer order cannot be said to be beyond the power of defendant No. 2. Mr. Dhingra is a recipient of the award of meritorious service but it does not mean that he cannot be transferred from one place to another. All other grounds challenging the transfer order, as stated earlier, are not available to him in law. Transfer order can be challenged if mala fides are alleged and proved. He cannot be allowed to say why the transfer of other persons was not made, or why other persons continue to remain at a particular place. Learned counsel for Mr. Dhingra laid stress that he was promoted as Assistant after competitive examination and on account of his family circumstances he sought reversion and when he has been reverted as Head Clerk he should have been posted at K. V. Gole Market, New Delhi. When he requested for reversion there was no condition that he should not be reverted from the post of Assistant if he was not to be posted at K. V. Gole Market. After reversion he has been making requests that he should be posted at K. V. Gole Market, New Delhi on compassionate grounds. Posting of an employee is an administrative act of the employer. There is no case of victimisation. There are no mala fides. Prima facie there is no mala fide on the part of the Sangathan authorities to transfer Mr. Dhingra. Learned counsel for the Sangathan further submits that Mr. Dhingra was relieved from his post on 5th September, 1981 i.e. before the institution of the suit for declaration and injunction and Therefore such a suit is not maintainable. Mr. B. Joseph, according to the affidavit of Mr. S. P. Singh, Principal K. V. Tagore Garden, New Delhi took over his duties as Head Clerk on 5th September. 1981 and Mr. Dhingra handed over cash of bus fee and keys of table drawers. Thus prima facie the plaintiff is not working on his old post. He has however been working as Head Clerk on account of the injunction order granted by the trial court on 19th September, 1981. This injunction was vacated by the first appellate court. But again on 7th April, 1982 an order was passed by this Court directing the respondents not to relieve Mr. Dhingra. In other words, Mr. Dhingra was relieved of his post as Head Clerk before the institution of the suit but he has been retained at Delhi on account of interim orders passed by the courts from time to time. Such interim orders do not give him any right to remain in Delhi. Mr. Dhingra prima facie has not made out a case for injunction against the Sangathan. There is no merit in this revision petition.

(18) C. R. No. 435 of 1982 Mr. H. L. Kashyap is the plaintiff-petitioner in this revision, while Kendriya Vidhyalaya Sangathan is defendant No. 1 Deputy Commissioner and Assistant Commissioner of Kendriya Vidhyalaya Sangathan are defendants 2 and 3. The Principal of K. V. Lawrence Road is defendant No. 4. Briefly the facts are that Mr. H. L. Kashyap was appointed as an Upper Division

Clerk by the Sangathan in terms of a memorandum dated 2nd June, 1973. He was working in K. V. Lawrence Road, New Delhi on 14th September, 1978. He was transferred to Khetri Nagar by an order dated 7th September 1981. Mr. Kashyap has challenged his order of transfer alleging that according to terms of his appointment he can be transferred outside Delhi by the Sangathan for special reason, that the job of his wife employed with New India Assurance Co. Ltd. Shahdara, Delhi is not a transferable, that he has been residing in Krishan Nagar in his own house, that he has one son, that his son goes to school with him and similarly he comes with him, that his relations have been residing at Delhi, that the education of his son would be disturbed, that there has been no complaint against him, that he is an honest and hard. worker, that there is a circular dated 1st March, 1972 issued by the Sangathan according to which employees are to be transferred after serving at one place for three years, that according to another circular dated 28th February, 1976 of the Department of Social Welfare, Government of India, New Delhi it has been recommended that place of posting of husband and wife, where both are employed, should be the same in order to avoid inconvenience and to keep social harmony and not to ruin the family life of the husband, wife and the children, that he has been transferred at Khetri Nagar, a place 600 K. Ms. from Delhi that he could be retained at Delhi as there were 15 local branches, that his transfer to Khetri Nagar in spite of availability of posts at Delhi discloses the mala fides of the authorities. Mr. Kashyap has further alleged that defendant No. 4 Principal took over the charge from his predecessor on 18th August, 1981, that the Principal had no power to operate the bank account, that he requested him not to sign cheques in the absence of delegated powers from the authorities concerned. According to him this request was made to avoid inconvenience to the school and to avoid audit objections. He alleges that this request has annoyed the Principal, defendant No. 4 who immediately reacted and threatened that his family life would be disturbed, that on account of annoyance of the Principal he received a telegraphic order transferring him to Khetri Nagar and report to the Principal, K. V. at Khetri Nagar, that transfer order does not assign any reasons. The defendants in their written statement have pleaded that the matter is not justifiable by the civil court, that the suit was not maintainable as Mr. Kashyap was relieved on 7th September, 198-1 before the institution of the present suit on 10th September, 1981, that Sunil Kumar Upper Division Clerk joined in place of Mr. Kashyap, that the son of Mr. Kashyap on transfer can be admitted in K. V. at Khetri Nagar, that the two circulars dated 28th February, 1976 and 1st March, 1972 referred to by Mr. Kashyap are not applicable, that the Principal defendant No. 4 of K. V. is vested with both financial and administrative powers i.e. to operate the bank account under Article 31 of the Education Code, that on transfer of defendant No. 4 necessary instructions were sent to the bank for operation of the bank account by him, that there was no occasion for any annoyance on the part of the Principal (defendant No. 4) that no threat was given to Mr. Kashyap, that the transfer order was issued by the Assistant Commissioner, Kendriya Vidhyalaya Sangathan, Delhi region who was authorised to do so, that the post of the plaintiff is transferable throughout India

it accordance with Article 49(k) of the Education Code. The trial court by order dated 26th September, 1981 held that there was prima facie case to show that non-teaching staff was not to be transferred unless there were special reasons, that he had been transferred without assigning any reason. On appeal, the first appellate court vacated the injunction and dismissed the application.

(19) In this revision, learned counsel for Mr. Kashyap, submits that he was appointed as an Upper Division Clerk in terms of the memorandum dated 2nd June, 1973 issued by Kendriya Vidyalaya, Tagore Garden, New Delhi and the service conditions are mentioned in the enclosure to the said memorandum. Para 3 of this memorandum reads asunder :

" TERMS and conditions of service governing the appointment are as laid down in the Education Code for Kendriya Vidhyalayas, as amended from time to time. He will be liable to transfer anywhere in India."

From the Memorandum it is clear that Mr. Kashyap would be liable to transfer anywhere in India. Learned counsel however submits that there are other terms and conditions of service which are attached to the memorandum. Clause where reads as under :

" TRANSFER liability : Employee will not ordinarily be shifted from the place of initial posting and requests for transfer will not be entertained on any grounds. The Central Schools Organisation, however, reserves the right to transfer personnel, in special cases, in its discretion".

(20) Learned counsel for the respondent on the other hand, submits that the services of Mr. Kashyap are governed by the terms and conditions as laid down in the Education Code as amended from time to time, that the alleged enclosure to the said memorandum containing the terms and conditions was not a part of the memorandum dated 2nd June, 1973, that the conditions mentioned in the memorandum and the enclosure are contradictory, that there is no reference of the said enclosure in the said memorandum, that according to Article 49(k) of the Education Code the plaintiff was liable to be transferred anywhere in India, which is also a term of the memorandum dated 2nd June, 1973. According to clause Ii as contained in the enclosure the employee is to be shifted from the place of initial posting only in special cases. Prima facie it appears that the enclosure was not a part of the memorandum dated 2nd June, 1973. The reason is that the terms and conditions of Mr. Kashyap are to be governed by the Education Code for Kendriya Vidhyalayas. The terms and conditions as given in the enclosure appear to be conditions which were in force previously. The memorandum specifically states that Education Code as amended would be applicable, and Mr. Kashyap would be liable to be transferred anywhere in India. I am, Therefore, prima facie of the view that clause Ii of the terms and conditions as mentioned in the alleged enclosure to the memorandum dated 2nd June, 1973 is not applicable. The transfer liability of Mr. Kashyap is to be governed by Article 49(k) of the Education Code.

(21) Learned counsel for Mr. Kashyap next submits that the Sangathan on 1st March, 1972 issued a circular regarding annual transfers. This circular gives directions to the staff not to make request for transfer before the completion of three years. The circular also provides for entertaining requests before completion of three years under special circumstances such as unsuitability of the climate, ill-health or posting of husband to a station far away from the place of work of his wife or vice-versa. This circular does not provide about the powers of the authorities of the Sangathan to transfer. Under Article 49(k) of the Education Code the staff of the Sangathan is liable to be transferred anywhere in India. The circular dated 1st March 1972 is Therefore of no help to Mr. Kashyap.

(22) Learned counsel next relies upon another circular dated 28th February 1976 issued by the Department of Welfare Government of India regarding the posting of husband and wife in the same station. This circular is a suggestion and applies to husband-wife who may be working in the same department or institution. In the instant case the wife of Mr. Kashyap is working in a non-transferable post. Mr. Kashyap has been appointed on the condition that his service would be liable to be transferred anywhere in India. This circular cannot override the conditions of service of Mr. Kashyap. Further this circular is directory and not mandatory. It cannot override the specific rules contained in the Education Code by which the services of Mr. Kashyap are to be regulated. The transfer of Mr. Kashyap cannot Therefore be held to be contrary to law under the circular dated 28th February, 1976. Mr. Kashyap's main allegation is that he has been dealing with the accounts in the school, and he requested the Principal (defendant No. 4) not to operate the bank account in the absence of delegation of powers from the concerned authorities, that this request annoyed him and Therefore the order for his transfer was passed. Under Article 31 of the Education Code the Principal is to function as Administrative Head . of the Vidhyalaya and to act as the drawing and disbursing officer of the staff employed in the Vidyalaya, subject to detailed instructions given in this regard in the Accounts Code. In other words, the Principal is authorised to operate the bank account of the Vidyalaya. Necessary instructions were given to the bank concerned by the authorities. It is unimaginable that the Principal would operate the bank account without any authority. The allegation of Mr. Kashyap that his request annoyed the Principal appears to be imaginary. In any case such a request if made would not annoy the high officials of the K. V. He would not be prejudiced against him on this ground. The allegations have been made against the Principal of K. V. while the transfer order has not been passed by him. The Principal does not deal with transfer orders of the staff of the Vidyalaya. It is only the Assistant Commissioner who deals with such matter under Article 28 clause 14 of the Education Code. Thus the allegation made by Mr. Kashyap is meaningless and does not give him any cause of action for quashing the transfer order.

(23) Learned counsel for the defendants submits that Mr. Kashyap was relieved on 7th September, 1981 and that in his place one Mr. Sunil Kumar was posted. His submission is that as Mr. Kashyap has been relieved and another person has

taken over the charge the present suit does not lie. The suit was filed on 10th September, 1981. Prima fade no mala fide against the officials of the Sangathan has been made out. The transfer order has been challenged on. various grounds as narrated above but such grounds are not available in a court of law. As already observed, transfer order can be challenged before the civil court if it is mala fide, arbitrary or contrary to any legal provision. There is no merit in the revision petition and the same is Therefore liable to be dismissed.

(24) The first appellate court has taken into consideration all the facts and circumstances of the petitioners in all the three cases and has concluded that they have no prima fade case. Moreover, Therefore no jurisdictional error in the three judgments and orders of the first appellate court. The impugned orders do not call for interference u/s 115 of the Code of Civil Procedure. The revision petitions, (C. R. Nos. 433, 434 and 435 of 1982) are, Therefore, dismissed with no order as to costs.