

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On:15th July, 2010
Judgment Delivered On:16th July, 2010

+ **W.P.(C) NO.9289/2007**

KENDRIYA VIDYALAYA SANGATHAN & ANR. Petitioners
Through: Mr.S.Rajappa, Advocate

versus

SMT. NEELU BHATIA Respondent
Through: Mr.M.K.Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. It is settled law that there is a difference, though subtle, between an order of transfer of an employee and an order posting an employee.

2. It is also settled law that whether it is a case of transfer or of posting, in the exigencies of service, notwithstanding there being a policy guideline notified pertaining to transfer or posting, a transfer or a posting can be done outside the policy guideline, subject to the employer justifying the same on the known principles of exigencies of service.

3. It is also settled law that every wrong may not be actionable. It is only when a wrong results in an injury, can it be said that the wrong is actionable.

4. Instant writ petition has to be allowed for the reason we find that the Tribunal has, in the instant case, violated all aforesaid three known principles of law.

5. The relevant facts are that the respondent Neelu

Bhatia is a primary teacher under the Kendriya Vidyalaya and was posted at its school being KV-I which is in the Cantonment area in Delhi.

6. Record shows that in the year 2006, up to 5.9.2006, she availed 107 earned leaves.

7. She had obtained medical leave up to 26.9.2006, which was duly sanctioned, and when she reported for duty in the school on 27.9.2006, she was told to report to the Assistant Commissioner, Kendriya Vidyalaya who directed her to join duty at KV-II, which we note is also in the Cantonment area of Delhi.

8. Neelu Bhatia moved the Central Administrative Tribunal alleging that she was wrongly transferred to KV-II by treating her as surplus in KV-I and that the exercise was a mala fide exercise to help somebody else.

9. The stand of the petitioners before the Tribunal was that on account of Neelu Bhatia taking excessive leave, in the exigencies of service, since teaching in the school was getting affected, a teacher was brought in place and that the Principal of the school inadvertently told Neelu Bhatia that she was being transferred on account of being declared surplus.

10. Now, Neelu Bhatia resides in Mayapuri and KV-I and KV-II are in the Cantonment area. The distance between the two schools is about 3 kilometers and thus it is a case where no injury is caused to Neelu Bhatia whose pay and other allowances and the nature of duties remain the same.

11. The actual reason for Neelu Bhatia crying is, as told to us by her counsel, that as against the distance of about 8 kilometers which Neelu Bhatia had to travel from her house to KV-I she has now to travel a distance of about 12 kilometers.

12. This is too trivial a fact and an injury to Neelu Bhatia. It hardly matters whether she travels 8 kilometers or 12 kilometers to reach her school.

13. Noting that it is not a case where Neelu Bhatia has

been transferred to a different city or a far flung area in Delhi, on this ground itself, the Tribunal ought not to have interfered in the matter.

14. No doubt, there is a transfer policy framed by the Kendriya Vidyalaya, but surely, the same does not factor as to what would happen where a teacher avails excessive leave in a year. Surely, the interest of students would be better served in having one teacher teaching the course in one academic year and not a regular teacher who reduces herself as one whose status becomes that of a substitute; we say so for the reason by the month of September 2006 Neelu Bhatia had availed 107 days' leave, meaning thereby, that the so called substitute teacher taught for more than 50% of the working days and Neelu Bhatia taught for less than 50% of the working days and in said set of facts, her status became akin to a substitute teacher.

15. Now, the interest of students in a school is of paramount consideration and thus on the exigencies of service, whatever be the transfer policy, the petitioners were fully justified in doing what was done.

16. It is not a case of a transfer as conventionally understood. It is actually a case of posting a teacher who returns after a long leave and whose classes have been assigned to another teacher and for continuity of teaching it is decided to retain the said teacher in the school.

17. We wonder as to wherefrom the Tribunal has returned a finding that the transfer order is penal. We are left wondering at the observations of the Tribunal in para 10 of the impugned order wherein it has been observed: *"In case the authorities felt that the applicant was staying away from School frequently or for longer durations than considered appropriate in the interest of students or that she was absent without permission, it was for them to take a decision either in terms of*

the provisions for disciplinary action or for transfer in accordance with the relevant rules and guidelines. Instead, they have inducted another teacher while the applicant was on medical leave and asked her to report for duty at another School by treating her as surplus. It is not for this Tribunal to usurp the functions and authority of the respondents in administrative matter but in the light of the above, it is evident that the respondents have acted contrary to rules disregarding the principles of fairness and natural justice to shift the applicant out from KV No.1 while she was away by inducting another person in her place and when she reported for duty instead of taking necessary disciplinary action or issue of proper transfer order after joining duty, they have asked her to report for duty in KV No.2 justifying the same by declaring her surplus”.

18. We may note that an issue was raised that only the Commissioner, Kendriya Vidyalaya has the power to transfer a teacher from one school to another. We set at rest the controversy by noting that the said power has been delegated to the Assistant Commissioners and that the order posting Neelu Bhatia to KV-II is under the signatures of the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Delhi Region.

19. Lastly, we may note the fact that since 4.10.2006, Neelu Bhatia is teaching at KV-II.

20. The writ petition is allowed and the impugned order dated 10.9.2007 passed by the Central Administrative Tribunal is set aside and as a result OA No.1162/2007 filed by Neelu Bhatia is dismissed.

PRADEEP NANDRAJOG, J.

JULY 16, 2010

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W.P.(C) No.9289/2007

MOOL CHAND GARG, J.

Page 4 of 4