

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3592 of 2015**

- Bhuvneshwari Jaiswal W/o Shri Pradeep Jaiswal Aged About 33 Years Pre. Prt Dav Public School, Gevra Project, R/o B 229 Urja Nagar Gevra Project, Korba, District Korba (C.G.).

---- Petitioner**Versus**

1. The Director (P S I I I) D. A. V. College Managing Committee, Chitra Gupta Road, New Delhi 110055.
2. Chairman D A V Public School, Gevra Project, District Korba (C.G.).
3. Principal D A V Public School, Gevra Project, District Korba (C.G.).
4. Chairman D A V Ispat Public School, Nandini Mines, Durg C.G.
5. Principal D A V Ispat Public School, Nandini Mines, Durg C.G.
6. Shri Prashant Kumar Asst. Regional Director (M P & C G Zone) C/o D A V Public School, Bhilai, Durg (C.G.).

---- Respondent

For Petitioner : Shri Shivang Dubey, Advocate.
 For Respondents : Shri Vaibhav Shukla, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****Passed on : 17/12/2015**

1. The petitioner, a Hindi Teacher at DAV School, Gevra Project, Korba has assailed the order dated 23.9.2015 whereby she has been transferred from DAV Public School, Gevra Project, District Korba to DAV Ispat

Public School, Nandini Mines, Durg (CG).

2. The assail to the impugned order is made on the ground that the order is malafide as the petitioner would suffer severe hardship at the transferred place which is at a distance of about 250 km from the present place of posting; the petitioner's husband is also working nearby Dipka Project; it will uproot her family inasmuch as she has 3 years old daughter who needs care and attention of the parents.
3. The law with respect to scope of judicial review in the matters concerning challenge to the transfer of an employee has been well settled by the Supreme Court in a catena of decisions wherein it has been held that the transfer order can be assailed only on the ground of violation of statutory provision, proved malafide and the order being adversely affecting the service conditions of the employee. As none of these conditions is arising in the present petition, challenge to the impugned order is not sustainable on merits, moreso, as per the respondents, when the petitioner already stood relieved from the present place of posting. However, the present writ petition was also heard on the issue of maintainability because the respondents raised a preliminary objection that DAV School being a private unaided school is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.
4. Learned counsel for the petitioner would refer to the judgment of the

Supreme Court reported in (2012) 12 SCC 331 {**Ramesh Ahluwalia Vs. State of Punjab and Others**} to argue that the Supreme Court has held therein that the writ petition against DAV School is maintainable.

5. Per contra, learned counsel for the respondents would refer to the law laid down by the coordinate Bench of this Court in WP No.4133/2004 {Smt. Makhmoor Jahan Vs. Secretary, Subhania Anjuman Islamia, Bilaspur & Ors} and WPS No.1929/2008 {Smt. Makhmoor Jahan Vs. Secretary, Subhania Anjuman Islamia Bilaspur & Ors}, both decided by a common order dated 10.7.2015, to hold that the writ petition is not maintainable against the private unaided school.
6. In Smt. Makhmoor Jahan (Supra), it has been held in paragraphs 6 & 7 thus:-

“6. In (1965) 1 SCR 890 (State of Assam v. Ajit Kumar Sarma) with regard to the issuance of a writ against a private college receiving grant-in-aid it was observed as follows:-

“14. Then we come to the question whether a writ could have been issued against the Governing Body of the College. We find however that there is no appeal by the College against the order of the High Court issuing a writ against it. In these circumstances we do not think that we can interfere with the order of the High Court insofar as it is against the Governing Body of the College. At the same time we should like to make it clear that we should not be taken to have approved of the order of the High Court against the Governing Body of the College in circumstances like the present and that matter may have to be considered in a case where it properly arises.

7. In (1997) 3 SCC 571 (K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering) it was

observed that the writ remedy is available against a private aided institution only if a public element is involved in the grievance and not for a private remedy. This has been reiterated in (2006) 12 SCC 636 (M. Raja v. Ceeri Educational Society Pilani) as follows:-

“25. This Court clearly held that interference in the affairs of a private educational institution would be justified only if public law element is involved.”

In absence of any allegation for violation of any statutory rule by the Respondent No.1, the writ petition is held to be not maintainable. Sympathy cannot be a ground for grant of relief or even that pleadings are complete if jurisdiction under Article 226 is inherently wanting. Nothing in the present order shall be deemed or construed as any opinion and/or observation against the Petitioner in any appropriate civil proceeding that she may be advised to institute and which shall have to be decided on its own merits in accordance with law.”

7. In **Mukul Ranjan Ganguly Vs. Board of Secondary Education and Teachers Training & Ors** {WP No.523/1999} and other matter decided on 28.9.2015, this Court has referred to the earlier judgments of the Supreme Court in the matters of K. Krishnamacharyulu (Supra) and **Sushmita Basu and others Vs. Ballygunge Siksha Samity and others** {(2006) 7 SCC 680} to hold that the writ petition is not maintainable against the private unaided school if the impugned action does not involve any public law element.
8. In **Ramesh Ahluwalia** (Supra), relied by the petitioner, it has been held in para-14 thus:-

“14. In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be

maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.”

9. With utmost respect at my command and with all humility, this Court is of the considered opinion that the matter has to be considered on the basis of nature of order assailed in the writ petition. When the Court is faced with different elucidation of law on the same issue decided by Benches of equal strength of the Supreme Court, one which fits in the facts and circumstances of the case at hand and decides the issues in a more elaborate manner needs to be applied {See : **Smt. Kalabai Choubey and others Vs. Rajabhadur Yadav and another** (AIR 2002 MADHYA PRADESH 8)}.
10. It is also settled that the judgments of the Supreme Court are not to be interpreted as a statute because circumstantial flexibility and one additional or different facts may make a world of difference between conclusions in two cases. Therefore, keeping in mind the judicial propriety and discipline, this Court is required to take into account the facts and the nature of issue brought before it in the present case.
11. The present is a case where the employee has been transferred from one school to another school of DAV Society. It is not the case of the petitioner that any of her statutory right has been infringed or violated by the impugned order. Merely because DAV School performs public

duty while being engaged in imparting education to the students, the issue brought before the Court does not become an issue involving public law element. Had it been a case that large number of teachers are involved in a policy decision, this Court might have applied the law laid down by the Supreme Court in **Ramesh Ahluwalia** (Supra) which was decided against the DAV School. However, in case of transfer of employee, no public law element is involved, therefore, this Court would prefer to rely on the law laid down by the Supreme Court in the matters of **K. Krishnamacharyulu** and **Sushmita Basu** (Supra) and two cases decided by this Court in **Smt. Makhmoor Jahan** and **Mukul Ranjan Ganguly** (Supra).

12. In above view of the matter, the writ petition is dismissed as not maintainable.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve