

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3061/2014**

7th May, 2015

VARINDER KAUR

..... Petitioner

Through **Mr. Raj Kumar Sherawat, Advocate**

versus

SCHOOL MANAGEMENT OF GHPS & ORS.

..... Respondents

Through **Mr. Gautam Narayan, Ms. Asmita
Singh, Advs. for R-3
Mr. Pradeep Kaushik, DEO Assistant
Zone 14, New Moti Nagar in-person**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed under Article 226 of the Constitution of India by the petitioner, who is employed as a clerk by the respondent no. 1/Guru Harkrishan Public School (in short 'GHPS'), Fateh Nagar, Delhi. Petitioner is challenging the transfer order dated 28.4.2014 passed by the respondent no. 2/Guru Harkrishan Public School (New Delhi) Society (hereinafter 'Society') and the relieving order dated 2.5.2014 passed by the respondent no. 1/School whereby petitioner's services have been transferred

from the respondent no.1/School/GHPS at Fateh Nagar, Delhi to GHPS at Tilak Nagar, Delhi.

2. So far as the aspect that schools are separate legal entities and employee of one school cannot be transferred to another school is concerned, this aspect has been considered and dealt with by this Court in the judgment in the case of *Satbir Singh and Anr. Vs. Delhi Sikh Gurudwara Management Committee & Anr.* in W.P.(C) No.8060/2007 decided on 1.5.2013, and in which judgment it is held that each school has a separate legal entity and employee of one school cannot be transferred to another school, however, the ratio of the judgment in the case of *Satbir Singh & Anr. (supra)* was by noting the specific position that no common seniority list was maintained by different schools and hence an employee of one school cannot be transferred to another school because employee by the transfer can be prejudiced because as a result of the transfer such employee may be placed at a lower position in seniority in the transferred school than the position in which the person was working in the school from where the employee was transferred.

3. The issue with respect to transfer of an employee from one school to another which was the subject matter of the decision in the *Satbir Singh &*

Anr. (supra), came up before the Division Bench of this Court in *LPA No. 508/2013* in the case of *Hamdard Education Society & Anr. Vs. Abdul Rehman & Anr.* decided on 16.5.2014 and the ratio of the judgment in the case of *Satbir Singh & Anr. (supra)* has been approved by the Division Bench of this Court stating that an employee of one school cannot be transferred to another school, and once again noting that this is so when no common seniority list of different schools is maintained. The relevant observations of the Division Bench are contained in para 24 of the judgment and this para reads as under:

“24. We had asked learned counsel for the society and the school that if employees are transferrable from one school to another what happens to their seniority and entitled to be considered for promotion? We had posed the question in view of the fact that in schools the teaching cadre comprises Primary/Assistant Teacher – Trained Graduate Teacher (TGT) – Post Graduate Teacher (PGT). 20% posts of PGT are in the selection scale. Promotion is from the lower rung in the teaching cadre to the higher. If a society has established say for example three schools and it treats the employees as transferrable from one to the other it would mean a combined seniority list would have to be maintained. Concededly the schools established by the society are not doing so. If this be so, if a teacher is transferred from one school to another, the seniority list of teachers drawn up in a school would be rendered meaningless. This would be an additional reason to hold that employees of one recognized school cannot be transferred to another recognized school merely because the two schools have been established by the same parent society. ”

4. Therefore, the position of law is that, there cannot be transfer of an employee from one school to another if no common seniority list is maintained of the different schools.

5. At this stage it is relevant to note a decision of a Division Bench of this Court in the case of ***Anand Swarup Mittal Vs. Managing Committee of Ramjas Sr. Secondary School No.4 and Ors. 2007 (5) Services Law Reporter 14*** and which Division Bench judgment holds that in accordance with the terms of the contract of employment, a school is always entitled to place the services of an employee with another school, and obviously, these observations would mean that the effect of placing of services in another school is not a transfer if no common seniority list is maintained and mere placing of services with another school without prejudicially affecting the service conditions of an employee, would not entitle an employee to challenge the placement of services with another school. I have considered this Division Bench judgment of ***Anand Swarup Mittal***'s case (*supra*) along with a related issue of legality of a transfer if it is made by a society and which also arise in this case, in the judgment in the case of ***Tarunjeet Kaur Vs. School Management of G.H.P.S, Hemkunt Colony & Ors., in W.P.(C) No. 7635/2013*** decided on 17.3.2015 and this judgment reads as under:

“1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner, who is an employee of the respondent no.1/School, impugns the order dated 24.10.2013 passed by the respondent no.2/Society transferring the petitioner from the respondent no.1/Hemkunt Colony branch school to the Loni Road branch of the School. The respondent no.1 itself has thereafter passed a Relieving-cum-Transfer order dated 28.10.2013 whereby the petitioner has been transferred to the Loni Road branch of the School.

2. The issue with respect to entitlement of a School to transfer its employees was the subject matter of the decision by me in the case of ***Satbir Singh and Anr. Vs. Delhi Sikh Gurudwara Management Committee & Anr.*** in W.P.(C) No.8060/2007 decided on 1.5.2013. In the case of ***Satbir Singh & Anr. (supra)*** I have held that since there was no common seniority list with respect to various schools of the employer in that case, transfer hence cannot take place and each school has a separate legal entity. The ratio of the judgment in the case of ***Satbir Singh & Anr. (supra)*** has been approved by the Division Bench of this Court in LPA No.508/2013 titled as ***Hamdard Education Society & Anr. Vs. Abdul Rehman & Anr.*** decided on 16.5.2014 and in which judgment, in para 24, the issue of separate individual entity of separate schools was held to be so and teachers were held to be not transferrable because the combined seniority list of the schools was not being maintained.

3. In the present case, the respondent nos.1 and 2 viz the School and the Society have filed the counter affidavit in which it is specifically stated that an *inter se* seniority list is maintained of all the staff/employees of all the Schools of the respondent no.2/Society and this is posted on the website “www.ghphssociety.com”. It is also stated in the counter affidavit that the seniority list has been published after getting declaration of all employees about the correctness of their seniority mentioned in the *inter se* list. Petitioner has not filed any rejoinder affidavit to deny the specific assertion made in the counter affidavit of maintaining of the common seniority list of all the staff/employees for all the Schools run by the respondent

no.2/Society.

4. It is also required to be noted that the terms of appointment of the petitioner include the condition that petitioner can be transferred from any branch run by the respondent no.2/GHPS Society to another branch. This is specifically stated in para 3 of the appointment letter dated 3.11.2006 of the petitioner. Transfer is therefore an incident and the contractual term of service and therefore the ratio of a Division Bench judgment of this Court in the case of **Anand Swarup Mittal Vs. Managing Committee of Ramjas Sr. Secondary School No.4 and Ors. 2007 (5) Services Law Reporter 14** will apply and which holds that in terms of the appointment letter, services of a teacher can be utilized by another branch than the branch in which the employee was originally appointed. The relevant paras of this judgment are paras 11 to 14 and which paras read as under:-

“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.

12. Our attention has also been drawn to orders passed on 23.8.1971 where transfers were made from one School to the other. Further, common orders transferring employees from one School of the Foundation to the other are enclosed, which are dated 5.12.1981, 1.7.1982, 13.3.1984, 8.4.1987, 15.4.1985, 14.8.1987 etc. These are illustrative of the fact that teachers from one School are being transferred to the other in a routine fashion based on the requirement.

13. We may, at this stage, also refer to a circular dated 18.12.1982 issued by the Assistant Director of Education wherein the Directorate of Education, after seeking legal opinion, advised various Managers or Authorized Officers of Government aided schools that if common seniority was being maintained for the staff of two or more schools and

the two schools were being run by the same Trust or Society, transfer of teachers from one school to another school under such chain of schools is permissible. Learned Counsel for the respondent further submitted that under the Delhi Education Act, 1973, there is no provision or embargo on such transfer being effected.

14. Let us recapitulate the factual and legal position which emerges from the facts as noted above and the submissions made by the petitioner and the respective counsel. Petitioner had been appointed prior to coming into force of Delhi Education Act, 1973. The appointment letter neither contains a provision permitting transfers nor does it contain a stipulation barring transfers from one school of the Foundation to the other. The respondent has demonstrated that the transfers were routinely made and the transfer orders that have been placed on record are for the years 1971 onwards. It is, therefore, reasonable to assume that the petitioner, who was working in one of the schools, was definitely in the know of these transfers from one school to the other, which were affecting his colleagues. The occasion for the petitioner's transfer came on 16.7.1988. There are no grounds, averments or allegations made for making it out as a case of mala fide transfer. We find that the transfer happens to be within the same city rather, it is not at too distant a place, i.e., the transfer was from Ramjas School Chitragupta Road to a School in Daryaganj, hardly a distance of 4-6 kilometers. Hence, it cannot be said that the said transfer would have subjected the petitioner to any great inconvenience or ordeal. Transfer is an incidence of service and there is nothing in the present case to indicate that the transfer was vitiated either on account of malafides or arbitrary exercise of powers.” (underlining added)

5. Therefore, once a common seniority list is maintained, persons such as the petitioner suffer from no prejudice in any of the service conditions either with respect to monetary emoluments or with respect to seniority and therefore

petitioner cannot question the transfer order.

6. Learned counsel for the petitioner did seek to argue that the transfer order in this case has been passed not by the respondent no.1/School but by the respondent no.2/Society and therefore the transfer order is bad because the petitioner was employed by the respondent no.1/School and not by the respondent no.2/Society, however, the argument urged on behalf of the petitioner lacks substance for two reasons. Firstly, the relieving order dated 28.10.2013 passed by the respondent no.1-School in fact uses the expression “that the respondent no.1-School is transferring the petitioner”. Therefore, in one way this relieving order of the respondent no.1 dated 28.10.2013 can be taken as a transfer order and it makes no difference in law merely because respondent no.1/School may have done so under the directions of the respondent no.2/Society. There is no law which bars a society from giving instructions to a branch of a School to transfer its employees and therefore for this reason itself the argument urged on behalf of the petitioner is misconceived that there is no transfer order of the petitioner from the respondent no.1/School to the School at Loni Road, Delhi. The second reason for rejecting the argument urged on behalf of the petitioner would be that the argument urged has no substance once a specific seniority list is maintained for all the Schools and the employment letter of the petitioner contains the clause of transfer being an incident of service. Petitioner hence cannot argue on form and technicalities that although the petitioner suffers from no prejudice in her service conditions, petitioner’s services cannot be placed at the disposal of another branch than the branch to which petitioner was originally employed (being the respondent no.1/School in this case).

7. I may state that counsel for the petitioner, without prejudice to the rights of the petitioner, has not pressed the issue of *malafide* with respect to the transfer orders.

8. In view of the above, there is no merit in the petition and the same is therefore dismissed. No costs.”

6. I have quoted the entire judgment of *Tarunjeet Kaur's* case (*supra*) because the same also deals with the issue as to the validity of a transfer order passed by the society and implemented by the school, by holding that once the school passes a relieving order pursuant to the transfer order issued by the society, relieving order can also be read as a transfer order. In this case also, admittedly the respondent no. 1/School has issued the relieving order dated 2.5.2014 effectively transferring the petitioner from the Fateh Nagar School to Tilak Nagar School, and therefore, it cannot be argued by the petitioner that her transfer is invalid because transfer is by the respondent no. 2/Society and not by the respondent no. 1/School.

Therefore, one argument of the petitioner that the transfer order is illegal as it is made by the respondent no. 2/Society and not by the respondent no. 1/School holds no merit and is rejected accordingly.

7. The second issue is that whether the petitioner can be transferred from the School at Fateh Nagar to the School at Tilak Nagar and whether such a transfer is barred by the ratio of the judgment passed by this Court in the case of *Satbir Singh & Anr. (supra)*. Even this issue has to be decided against the petitioner in view of the counter affidavit filed by the respondent no. 2/Society because along with the same a detailed list of all the employees of

all schools which are run by the respondent no. 2/Society has been filed and seniority of such employees has also been specified in this seniority list. Therefore, once a detailed seniority list is maintained for all the schools which are run by respondent no. 2/Society, under the name of GHPS, para 24 of the judgment of the Division Bench of this Court in ***Hamdard Education Society***'s case (*supra*) clarifies the position that there is no bar on transfer of an employee of one school to another because on account of transfer such an employee is in no manner prejudiced with respect to his/her service conditions.

8. For the sake of completion of narration, I may note that clause 3 of the appointment letter of the petitioner specifically states that petitioner is liable to be transferred to any school/branch run by the respondent no. 2/Society.

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 Rules, 1973 (in short

‘DSEAR, 1973’) that a common seniority list can only be maintained if schools 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 school 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. 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.

10. In view of the above, I do not find any merit in the petition, and the petitioner therefore cannot claim relief of quashing the transfer order. Dismissed.

VALMIKI J. MEHTA, J

MAY 07, 2015/hkaur