

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

+ **W.P.(C) No.7635/2013**

% **17th March, 2015**

TARUNJEET KAUR Petitioner
Through: Mr. Raj Kumar Sherawat, Advocate.

versus

SCHOOL MANAGEMENT OF G.H.P.S., HEMKUNT COLONY & ORS.
..... Respondents
Through: Mr. Jasmeet Singh, Advocate for
respondent Nos.1 and 2.
Ms. Nikhita Khetrapal, Advocate for
respondent No.3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

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.

MARCH 17, 2015
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VALMIKI J. MEHTA, J