

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

+ **W.P.(C) No.13032/2006**

% **25th January, 2017**

ARVIND KUMAR Petitioner

Through: None.

versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ORS.

..... Respondents

Through: None.

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 under Article 226 of the Constitution of India, the petitioner who is working as a Chowkidar with the Guru Harkishan Public School at its Hari Nagar branch, Delhi (represented by respondent nos.2 to 4) impugns his transfer order dated 11.7.2006 transferring the petitioner to Guru Harkishan Public School at Loni Road, Delhi.

2. The impugned order dated 11.7.2006 reads as under:-

“

GURU HARKRISHAN PUBLIC SCHOOL
HARI NAGAR, NEW DELHI

Ref. NO.300/P/GHPS.H.N.

Dated:-11th July 06

OFFICE ORDER

This is with reference to the letter no.5856/11-13, by the President/General Secy. of the D.S.G.M.C., dated 21st June 06, regarding your transfer back to the GHPS, Loni Road:

You are directed to report to the office of the GHPS Loni Road immediately.

Sd/-
PRINCIPAL

Copy forwarded to:

1. Principal, GHPS, Loni Road
2. Sri Arvind Kumar (Chowkidar)”

3. It is settled law that each school in Delhi is a separate legal entity and transfer of an employee can take place from one school to another school under the same management provided two conditions are satisfied. The first condition is that in the conditions of employment, the employer has stated that services of the employee can be utilized at any school under the same management, and secondly a common seniority list would have to be maintained so that when the employee joins the new school, then, his seniority is not affected and which he is entitled to because of his services in the earlier school under the same management.

4. In the present case, it is seen that respondent nos.1 to 3 in their counter affidavit have only pleaded that they are maintaining a common seniority list of all the Guru Harkishan Public Schools, however, there is no plea, and no document filed, to that effect that the petitioner, as per the service conditions agreed upon by him, was liable to be employed in any of the schools run under the same management of the respondent no.1.

5. In view of the above, since each school is a separate legal entity under the Delhi School Education Act and Rules, 1973 and though a common seniority list of all schools of management of respondent no.1 is maintained as pleaded by the respondent nos.1 to 3, but since there are no terms and conditions of services filed that the petitioner is liable to be shifted within schools under the same management, the impugned transfer order dated 11.7.2006 therefore cannot stand.

6. This writ petition is therefore allowed and transfer order dated 11.7.2006 is quashed and the interim order passed by this Court on 22.8.2006 is made absolute while allowing the writ petition.

JANUARY 25, 2017
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VALMIKI J. MEHTA, J