

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

+ **W.P.(C) No. 2642/2017**

% **22st March, 2017**

RANJIT SINGH Petitioner
Through: Mr. R.K. Saini, Mr. Minal Sehgal,
Advocates

versus

GURU HARKRISHAN PUBLIC SCHOOL (NEW DELHI SOCIETY) &
ANR. Respondents
Through: Mr. Jasmeet Singh, Advocate

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

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

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of quashing of transfer order dated 7.3.2017 issued by the respondent no. 2/Guru Harkrishan Public School transferring the petitioner from Guru Harkrishan Public School, Kalkaji to Guru Harkrishan Public School, Tilak Nagar.

2. The legal propositions with respect to whether an employee of a private unaided school in Delhi can be transferred to another school in Delhi, are well settled as under:

(i) Each school branch functioning as a school under the Delhi School Education Act and Rules, 1973 is a separate entity than another school, and which may in fact be a branch even under the same management.

(ii) Transfer of an employee from one school branch to another school or to another branch of the school under the same management is permissible provided two conditions are satisfied. The first condition is that a common seniority list must be maintained of all the schools under the same management so that the seniority of the employee who is transferred from one school to another school is not affected. The second condition is that in the employment terms and conditions of an employee it has been specified that the employee can be transferred from one school to another school.

(iii) Since the employee of a school is an employee of the school, and not the society which runs the school, hence, the employee is to be transferred by the school and not the society, but, a relieving order issued by a school can be read as a transfer order of/by the school.

3. So far as the aforesaid three aspects are concerned, the same were subject matter of the decision by this Court in the case of ***Varinder Kaur vs. School Management of GHPS & Ors.***, W.P. (C) No. 3061/2014 decided on 7.5.2015. The respondent in the case of ***Varinder Kaur's***

(*supra*) is the same respondent as the respondent in the present case being a school branch of Guru Harkrishan Public School. The relevant paras of the judgment in the case of *Varinder Kaur (supra)* are paras 2 to 4 and 6 to 8 and the same read as under:-

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.

XXXXX

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.”

4. So far as the aspect that there is required not only a common seniority list but a term and condition in the employment terms and conditions of an employee that such an employee can be transferred from one school to another school has been dealt with by this Court in the recent judgment in the case *Arvind Kumar vs. Delhi Sikh Gurudwara Management Committee and Ors.*, W.P. (C) No. 13032/2006 decided on 25.1.2017. The relevant para of this judgment is para 3 and the same reads as under:-

“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.”

5. No doubt the judgment in the case of *Varinder Kaur (supra)* dated 7.5.2015 has been appealed from and the appeal being LPA No. 379/2015 is pending, however, merely because the appeal is pending would not mean that the ratio of the judgment dated 7.5.2015 will not operate and bind. Also I may notice that the interim order which was passed in LPA No. 379/2015 of staying the transfer, that interim order was passed in the peculiar facts of that case as noted in the order dated 25.10.2016 in the LPA.

In any case, an *ex parte* interim order passed by any Court, and even confirmation thereof would not mean that the issues stand decided, more so when the interim orders are not orders giving reasons. The three orders dated 29.5.2015, 6.7.2015 and 25.10.2016 in LPA No. 379/2015 read as under:-

Order dated 29.5.2015

“Cav 582/2015

Since the learned counsel for the respondent is present, the caveat stands discharged.

CM No. 10725/2015(for exemption)

The exemption is allowed, subject to all just exceptions.

LPA 379/2015 and CM No. 10724/2015

Issue notice. Notice is accepted by the learned counsel for the respondents.

Renotify before the Roster Bench on 6.7.2015.

In the meanwhile, the appellant need not join the school to which she has been transferred. The appellant will continue in the school at Fateh Nagar.”

Order dated 6.7.2015

“LPA 379/2015

1. None for R-1, 2 & 4. Contesting respondents are R-1, 2 & 4 who have filed a caveat through Mr. I.S. Bakshi, Advocate. Learned counsel Shri I.S. Bakshi has appeared on May 29, 2015 and accepted notice in the appeal as also accompanying application seeking interim order but has failed to appear today.

2. Admit.

CM 10724/2015

Application is disposed of confirming the interim order dated May 29, 2015 till disposal of the appeal.”

Order dated 25.10.2016

“C.M. No. 10251/2016

It is stated that in view of the peculiar facts of the case, the interim order passed in this case is being scrupulously observed.

Relist on 6th February, 2017.”

6. Accordingly, merely because of the pendency of LPA No. 379/2015 against the judgment dated 7.5.2015 in the case of ***Varinder Kaur (supra)*** will not mean that this judgment dated 7.5.2015 will not bind and operate.

7. In the present case that there is a common seniority list of all the Guru Harkrishan Public Schools is not in issue inasmuch as the petitioner himself has filed an order dated 17.8.2015 in LPA No. 359/2013 titled as ***School Management of Guru Harkrishan Public School The Principal & Anr. vs. The Director of Education & Anr.***, and which order notes that Guru Harkrishan Public Schools are coming out with a transfer policy and which is possible because an employee from one school is being transferred to another school in the Guru Harkrishan Public Schools as a common seniority list is maintained of all the branches of the school. A transfer policy was indeed thereafter framed by the Guru Harkrishan Public Schools and which transfer policy dated 23.12.2015 has been filed by the petitioner itself as Annexure P-10 to this writ petition. I may note that in the present writ petition it is not the case of the petitioner that the transfer of the petitioner is hit on account of the same not being in accordance with

the transfer policy of the Guru Harkrishan Public Schools dated 23.12.2015.

8. Learned counsel for the petitioner argued that the transfer order dated 7.3.2017 in the present case is illegal because it has been passed, not by the managing committee of the school but by the society which runs the Guru Harkrishan Public Schools, however, even this argument is misconceived because the same has already been dealt with and rejected in terms of para 6 of the judgment in the case of *Varinder Kaur (supra)* dated 7.5.2015 that a relieving order by a school can be interpreted to mean a transfer order by the transferring school i.e of the managing committee of the transferring school. In the present case, though the petitioner has concealed the factum of the petitioner being served with the relieving order, learned counsel for the respondent no.2/school has filed in Court the relieving order dated 8.3.2017 (duly received in hand by the petitioner under his signatures), and which reads as under:-

“Ref. No.KIK/669/2016-17

Dated 08/03/2017

RELIEVING ORDER

In compliance of the Transfer order received vide E-mail Ref. No.CSE/2017/55 dated 07-03-2017, from the Chairman School Education, Mr. Ranjeet Singh (Accountant) is hereby informed that you have been transferred from Guru Harkrishan Public School Kalkaji to Guru Harkrishan Public School, Tilak Nagar with immediate effect.

Accordingly, you have been relieved off from your duties w.e.f. 08-03-2017 (A.N) & directed to report to the Principal, Guru Harkrishan Public School, Tilak Nagar.

Sd/-
(Harpreet Kaur)
Principal
Sd/-
Mr. Ranjeet Singh-Accountant

Copy to:-

1. Principal, G.H.P.S. Tilak Nagar
2. Accounts Section
3. Personal File”

9. Therefore, applying the ratio contained in para 6 of the judgment dated 7.5.2015 in the case of *Varinder Kaur (supra)* it is held that the petitioner since has been served the relieving order, hence it is not permissible for the petitioner to argue that the respondent no.2/school has not transferred the petitioner.

10. That takes us to the only remaining issue as to whether the terms and conditions of the employment of the petitioner with the Guru Harkrishan Public School contained any term with respect to liability of the petitioner to be transferred from one Guru Harkrishan Public School to another. The letter of the appointment of the petitioner is dated 10.9.1996, and which along with the annexed Term 4.4., reads as under:-

“Letter dated 10.9.1996

No.2-1/84/95-96/Est.
Dated 10.9.1996

To
Mr. Ranjit Singh
House No.208
Arjun Nagar, N. Delhi-29
Subject: Offer of appointment in Guru Harkrishan Public School, Hemkunt Colony.

Sir/Madam,

With reference to your application followed by Interview for the post of Accounts Clerk you have been selected for the same on the terms and conditions specified in the annexure to this offer. If you accept the offer, you may please communicate your acceptance immediately to the school.

If the offer is acceptable you may joined duty on 11th Sept, 1996 at 8.00 A.M.

Sd/-

(MRS. KULDIP KAUR UPPAL)

PRINCIPAL

Term 4.4

4.4 The appointment carries with it the liability to serve in any branch of Guru Harkrishan Public School.”

11. Therefore it is seen that the terms and conditions of employment of the petitioner contains a liability of the petitioner that petitioner will be liable to serve in any of the branches, of the Guru Harkrishan Public Schools.

12. In view of the aforesaid discussion, the following conclusions can be drawn:-

(i) Petitioner’s terms and conditions of employment provided for the liability of the petitioner for being transferred from one Guru Harkrishan Public School to another.

(ii) All the Guru Harkrishan Public Schools are maintaining a common seniority list and thereby transfer of the petitioner from one branch of the Guru Harkrishan Public School to another branch of the Guru Harkrishan Public School will not be in any manner detrimental or prejudicial to the

petitioner because by the transfer the seniority of the petitioner is not adversely affected.

(iii) Petitioner has been served the relieving order dated 8.3.2017, duly received by the petitioner under his own hand, and therefore, petitioner has been transferred by Guru Harkrishan Public School, Kalkaji to Guru Harkrishan Public School, Tilak Nagar.

13. In view of the above discussion, petitioner cannot lay any legal and valid challenge to the impugned transfer order dated 7.3.2017 read with relieving order dated 8.3.2017. Writ petition is accordingly dismissed, leaving the parties to bear their own costs.

MARCH 22, 2017
godara/Ne

VALMIKI J. MEHTA, J