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

*Date of decision : 23<sup>rd</sup> August, 2018*

+ W.P.(C) 6460/2015, CM APPL. 11748/2015, 16814/2015 & 16931/2018

BALJEET SINGH ..... Petitioner

Through : Mr. V. Elanchezhiyan and  
Mr. Vivek Yadav, Advs.

versus

SCHOOL MANAGEMENT OF GURU HARKRISHAN  
PUBLIC SCHOOL & ORS ..... Respondents

Through : Mr. Jasmeet Singh and  
Mr. Aditya Madaan, Advs. for  
R-1 to 3.  
Mr. Devesh Singh, ASC (Civil)  
with Ms. Sukriti Ghai, Adv. for  
R-4.

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

% **JUDGMENT (ORAL)**

1. The petitioner was appointed as Office Electrician by the Respondent no.1 - school on 2<sup>nd</sup> August, 2004, and was confirmed, on 23<sup>rd</sup> August, 2005. Both orders were passed by the Respondent No. 1 – school (hereinafter referred to as “the Guru Harkrishan Public School”).

2. The petitioner was transferred, *vide* Office Order dated 3<sup>rd</sup> July, 2015 passed “as per the orders of Chairman and Vice Chairman” of the Respondent No. 2-Society (hereinafter referred to as “the Society”), from the Guru Harkrishan Public School, Kalkaji to the

Guru Harkrishan Public School, Punjabi Bagh (Respondent No. 3). This was followed by order dated 3<sup>rd</sup> July, 2015, relieving the petitioner and directing him to report to the Guru Harkrishan Public School, Punjabi Bagh.

3. The contention of the petitioner is that the Society was neither his appointing authority nor his employer and did not, therefore, have the authority to transfer him to one school to the other.

4. In support of this contention, petitioner places reliance on the judgment of this court, ***Hamdard Education Society v. Abdul Rehman, 2014 (143) DRJ 585***, which holds that, for a recognized school governed by the Delhi School Education Act, 1973 (hereinafter referred to as the “DSE Act”), the employer-employee relationship is between the Managing Committee of the school and the employee concerned, and that the Society which establishes the school, not being the employer, is not empowered to transfer the employee from one school to another, even if both schools function under its aegis. The decision in ***Hamdard Education Society (supra)*** was followed by a learned Single Judge of this Court in ***Satbir Singh v. Delhi Sikh Gurudwara Management Committee, MANU/DE/1153/2013***.

5. ***Hamdard Education Society (supra)***, as Mr. V. Elanchezhian, appearing for the petitioner points out, was subsequently followed by another Division Bench of this court, in order dated 16<sup>th</sup> February, 2016 passed in LPA 40/2016 (***Nauman Ahmad Khan v. Managing Committee, Rabea Girls Public School***).

6. As against this, the Guru Harkrishan Public School, who is represented by Mr. Jasmeet Singh, submits, in counter affidavit, that the letter of appointment dated 2<sup>nd</sup> August, 2004 of the petitioner, clearly stated that the appointment carries with it the liability to serve any branch of the school. Attention was also invited, in the counter affidavit, to circular, dated 18<sup>th</sup> December, 1982, issued by the Central Board of Secondary Education, which permitted transfer of employees from one school to the other where the schools were run by the same Society/Trust.

7. Though these submissions really beg the issue, which does not relate, actually, to the liability of the petitioner to be transferred from one school to the other, but the power of Respondent No. 2 to direct such transfer, the further reliance, by the School, on *Anand Swarup Mittal v. Manging Committee of Ramjas Sr. Secondary School No.4 & Ors. 2007 (5) SLR 14*, is undoubtedly well taken.

8. The counter affidavit sought to distinguish *Hamdard Education Society (supra)* on the premised that one of the grounds on which this court decided the said matter was that there was no common seniority between the schools. It was also pointed out that *Hamdard Education Society (supra)* was under challenge in the Supreme Court.

9. When this matter came up for preliminary hearing and issuance of notice dated 13<sup>th</sup> July, 2015, it has been pointed out, on behalf of the petitioner, that, in LPA 379/2015 (*Varinder Kaur v. School Management of Guru Harikrishan Public School*), which involved

an identical dispute, an interlocutory order, permitting the petitioner, in that case, not to join the school to which she had been transferred, has been passed. Following the said order, this court, had while issuing notice on 13<sup>th</sup> July, 2016, also passed an order granting *ad interim* protection, to the petitioner, from the requirement of joining at the Guru Harkrishan Public School, Punjabi Bagh to which he had been transferred.

10. Learned counsel are *ad idem*, today, that ***Varinder Kaur (supra)*** stands finally decided, by the Division Bench of this Court, on 12<sup>th</sup> February, 2018, subsequently reported as ***Varinder Kaur v. School Management of Guru Harkrishan Public School, 2018 (168) DRJ 354 (DB)***. The said decision considers ***Hamdard Education Society (supra)***, as well as ***Anand Swarup Mittal (supra)***. The Division Bench has taken the view that it was not open to the Bench in ***Hamdard Education Society (supra)*** to adopt a view contrary to ***Anand Swarup Mittal (supra)***. Proceeding on this premise, the Division Bench, following ***Anand Swarup Mittal (supra)*** upheld the decision, of the school, to transfer the appellant; in that case, from the Fateh Nagar school to the Tilak Nagar school.

11. It may be noted that there is no dispute about the fact that, on facts, the controversy involved in ***Varinder Kaur (supra)*** is identical to that involved in the present case.

12. Mr. Elanchezhian, learned counsel appearing for the petitioner however would seek to escape the rigour of the judgment in ***Varinder Kaur (supra)*** by placing reliance on Rule 109 of the Delhi School

Education Rules, 1973, which deals with a situation in which a joint seniority roster of employees could be maintained by a society or trust running different schools. Particular emphasis has been laid by Mr. Elanchezhiyan, on the proviso to Rule 109 (ii). In his submission, Mr. Elanchezhiyan, this rule has not been properly considered by the Division Bench while deciding *Varinder Kaur (supra)*.

13. It is not possible for me, sitting singly, to adopt such a view especially as Rule 109 of the DSE Rules has been noticed in para 10 of the judgment in *Varinder Kaur (supra)*, which reads thus:

“10. It is further urged that no common seniority list was maintained by the Society at the time of appointment of the appellant and subsequent preparation of seniority list without the consent of the employee, which is also defective, cannot be relied upon. The appellant has also relied on Sub Rule (iv) of Rule 109 of Delhi School Education Rules, 1973. The impugned judgment is further challenged on the ground that the transfer is punitive and mala fide and the learned Single Judge has failed to appreciate that she was sexually harassed by the Chairman at the workplace and the transfer is a counter blast to her complaints of sexual harassment against the Chairman of the respondent No. 1/School. The act of the respondents thus is also in violation of the directions of the Supreme Court in the case of *Vishaka & Ors. v. State of Rajasthan* reported in *AIR 1997 SC 3011*. On these contentions, it is submitted that the impugned judgment is liable to be set aside.”

14. Mr. Elanchezhiyan seeks to point out that the judgment of this court in *Varinder Kaur (supra)* has been carried further in SLP(C) No.7737/2018, which is presently pending before the Supreme Court and, in which an order of stay has been passed. The order passed in SLP(C) No.7737/2018, on 16<sup>th</sup> May, 2018 reads thus :

“Application for deletion of the name of respondent No. 4 from the array of parties is allowed.

Application for exemption from filing official translation is allowed.

Issue notice.

We are informed that interim order of stay had been passed in the connected matters.

Parties are directed to maintain status quo.

Tag with SLP (Civil) No. 27225 of 2014 and batch.”

15. It is well settled that grant of an order of status quo – or even an order of stay - by the Supreme Court, in a SLP filed against the judgment of the High Court, does not erode the precedential value of the said judgment. Bhaskar Bhattacharya, J., speaking for a Division Bench of the High Court of Calcutta in *Pijush Kanti Chowdhury v. State of West Bengal*, (2007) 2 Cal LT 577, has evocatively crystallized the legal position, in this regard, thus:

“11. At this stage it will be profitable to refer to the following observations of the Supreme Court in the case of *Narcotics Control Bureau v. Dilip Prahlad Namade*, reported in *AIR 2004 SC 2950* where the Court pointed out that there was no scope of laying down a law at the interlocutory stage:

“Coming to the plea regarding long passage of time it is to be noted that the two orders passed by this Court in SLP (Crl.) Nos. 1136/2002 and 434/2003 referred to above do not lay down any principle of law of invariable nature to be universally applied. Furthermore, disposal of SLP against a judgment of the High Court does not mean that the said judgment is affirmed by such dismissal. The order passed in any SLP at threshold without detailed reasons does not constitute any declaration of law or constitute a binding precedent. [See *Union of India v. Jaipal Singh*, 2003 (7) Supreme 676]. This Court cannot and does not reverse or modify the decree or order appealed against while deciding the petition for special leave to appeal and that too when the SLP was being

dismissed. What is impugned before this Court can be reversed or modified only after granting leave and then assuming appellate jurisdiction over it. If the order impugned before this Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage [See *Kunhayammed v. State of Kerala*, 2000 (6) SCC 359 and *Sri Ramnik Vallabhdas Madvane v. Taraben Pravinlal Madhavani*, 2004 (8) Supreme 208].”

(Emphasis Supplied)

12. At this juncture, it will not be inappropriate to refer to the following observations of the Supreme Court in the case of *Shree Chamundi Mopeds Ltd. v. Church of South India Thrust Association, Madras*, reported in *AIR 1992 SC 1439* while pointing out the difference between an order of stay of operation of the order impugned and an order quashing the order itself:

“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and *it does not mean that the said order has been wiped out from existence*. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. *The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law* and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been

disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the appellate authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the appellate authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the appellate authority.”

13. *Therefore, the effect of the order of stay in a pending appeal before the Apex Court does not amount to ‘any declaration of law’ but is only binding upon the parties to the said proceedings and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent* because while granting the interim order, the Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned.”

(Emphasis supplied)

16. In any event, sitting singly, I am bound by the judgment of the Division Bench of this court in ***Virender Kaur (supra)***, and cannot possibly adopt a view contrary thereto. The remedy, for the petitioner, if any, may possibly lie elsewhere.

17. In view of the above discussion, this writ petition is dismissed without any order as to costs.

**C.HARI SHANKAR, J**

**AUGUST 23, 2018**

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