

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP 3803 of 2020

Date of Decision: August 05, 2020

S.G.P.C. and othersPetitioners
Versus
Veerpal Kaur and another Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Mrigank Sharma, Advocate
for the petitioners.

Ms. Vanita Sapra Katria, Advocate
for the respondents.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of lockdown due to outbreak of pandemic COVID-19.

Respondent No.1 Veerpal Kaur admittedly is employed as a teacher of English with Guru Gobind Singh Public School Malluka, District Bathinda, being run by petitioner No.1-Shiromani Gudwara Parbandhak Committee (in short '**the SGPC**'). It was during the course of time on account of administrative exigencies a demand was sent by the Principal of the school of the SGPC at Mansa, whereby, on account of

educational requirements of the students another English teacher was required to teach the students at the school. In view of this the SGPC in discharge of its functions in streamlining the functioning of its school transferred Ms. Veer Pal Kaur to its school at Mansa. In consequence of this transfer, the teacher (now respondent No.1-Ms. Veer Pal Kaur) filed a **Petition No.252 of 2019** titled as Virpal Kaur Vs. S.G.P.C. and others before the Educational Tribunal Punjab, S.A.S. Nagar, Mohali. The Tribunal vide its order dated 12.12.2019 (Annexure P-1) passed the following order:-

“Present:- Ms. Vanita Sapra Kataria, Advocate
for the petitioner.

Notice of motion to respondents for 10.02.2020.
Process dasti. The petitioner or her counsel shall file an affidavit of service.

Prima facie, we find that the impugned transfer order dated 11.11.2019 (P-9) is a mid-term transfer. In para 6 of the petition, petitioner has expressed several difficulties faced by her and her family members. She has been transferred to a place which is at a distance of 125 km. Apart from that, in para 10 there are allegations about the malafides suggesting that without enquiring into the complaint about her, alternative way of transfer has been adopted. We, therefore, issue ad-interim order

staying impugned order of transfer dated 11.11.2019 (P-9) till next date”.

Since, the Tribunal was not functioning, the petitioners/SGPC and its functionaries have come before this Court in this civil writ petition under Articles 226/227 of Constitution of India for issuance of writ in the nature of *certiorari* seeking appropriate orders of quashing the stay granted by the Tribunal on this transfer order Annexure P-2 dated 11.11.2019 in the light of the fact that there is apparent stalemate in the functioning of the Tribunal and that the petitioners are suffering in terms of their administrative functioning causing irreparable loss in the educational pursuits of the children in the school at Mansa necessitates cognizance of the writ petition by this Court in the discharge of its Constitutional obligations.

Appreciating the submissions of the two sides, since the respondents have submitted that they do not intend to file any response to this petition and only want to make submissions orally, the parties have been heard at length. The orders (Annexure P-2) which stands were stayed passed by the present petitioners shows that Ms. Veer Pal Kaur English teacher has been transferred from Guru Gobind Singh Public School Malluka, District Bathinda to Bhai Bahelo Public School Fafre Bhaike, District Mansa and which is shown to be on account of administrative exigencies. A faint murmur has sought

to be raised by Ms. Vanita Sapra Katria, Advocate for the respondents that it is a *malafide* punitive act of the SGPC, however, to the specific query of the Court Ms. Vanita Sapra Katria, could not pin point any proof in this regard and rather Mr. Mrigank Sharma, learned counsel for the petitioners has sought to take the plea that it was on a written demand of Principal of School at Mansa urgently requiring an English teacher, this transfer was made on administrative exigencies. In the light of such a situation and in view of well enunciated principle of law as has been laid down in **Civil Appeal No. 8989 of 2019 (arising out of SLP (Civil) No. 6692 of 2015)** titled as **Rajneesh Khajuria Vs. M/s Wockhardt Ltd. and another** that only a transfer is actuated by a *malafide* either its malice in law or on facts, then the Court is well within its powers to interfere. It needs to be reiterated here power to transfer an employee vests in the employer by virtue of relationship of employer and the employee. Since there is specific written request by a Principal of another school of the SGPC urgently requiring an English teacher and in fulfilment of its obligations to its educational institutions, the present petitioners have transferred Ms. Veer Pal Kaur from its school at Bathinda to Mansa and which as per the knowledge of the Court are not far off places and are rather adjoining districts, therefore, there appears to be no element of malice in such a transfer orders.

In view of the exigencies those have come about

and in order to ensure that the educational needs of the children at the school in Mansa do not suffer and in view of the foregoing discussion, this Court holding that the order dated 12.12.2019 (Annexure P-1) does not sustain in the eyes of law and is therefore set-aside thereby allowing the present petition.

However, it is made clear that this order would be operative till appropriate orders of the Tribunal are passed on resumption of its work in due course of time.

August 05, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No