



2023:DHC:7214



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 20th September, 2023**

+ **W.P.(C) 12392/2023**

DR R S GUPTA

..... Petitioner

Through: In-person

versus

GOVT. OF NCT OF DELHI AND OTHER Respondents

Through: Ms.Laavanya Kaushik, Advocate for
GNCTD Mr.Parvinder Chauhan and
Ms.Aakriti Garg, Advocates for
DUSIB

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 48900/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 12392/2023 & CM APPL. 48899/2023 (Stay)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

“(i) Set aside the impugned transfer orders, of 70 employees, dated 30.06.2023, another impugned transfer order of 08 employees, dated 31.07.2023 and another third impugned transfer order of 10 employees, dated 31.08.2023 and the



fourth impugned transfer order for 48 employees, dated 31.03.2022, vide chronological Annexure - P/20, 21,22 & 19), have been transferred- illegally, unauthorizedly, inconsistently & derogatory among 4Aided schools, by harassing, humiliating, agonizing & created favoritism, nepotism & without any policy in transfers by R-9 ~.A/

without compliance with the order, dated 17.08.2010 (Annexure-~P/9) in which the power of transfer posting of staff working under Hindu Shiksha Samiti has been withdrawn, withdrawing the previous order No.12752 dated 31.12.1998 issued by ADE (Act);under 'Right to Equality', Equality of opportunities in matters of public employment, under Article 14 & 16 of the Constitution of India, in the interest of justice.

(ii) issue a writ of mandamus or any other appropriate writ or direction for strictly implement of the order, dated 17.08.2010, prior to each transfer of each employee under 'Right to Equality under Article 14 of the Constitution of India and make a fair/valid/legal policy for fair transfer of employees duly approved by D.E. for each employee to be stayed for a particular period of time in a particular school without any favoritism/nepotism in the interest of justice.

AND

(iii) reveal the status of all the (18-20) adjusted employees in the schools run by R-09, vide para 5.13 and provide them an order for permanently absorbed these adjusted employees duly issued by the Administrator in that particular school where these employees have been adjusted by Director of Education and these employees should never be transferred further in another school, being originally appointed under single school management; AND

(iv) may pass such other and further order(s) as this Hon'ble Court may deem fit and proper facts and circumstances of the case."



3. A bare perusal of the record shows that the petitioner was appointed to the post of PGT-English at DAV Senior Secondary School, Chitragupta Road, New Delhi w.e.f. 9th January 2001.

4. The respondent No.2, Director of Education (hereinafter “DOE”) issued an order under Rule 47 of the Delhi School Education Rules, 1973 (hereinafter “DSEAR”) *vide* order No. DE/15/ACT/2005/5430-5629 dated 28th March 2005, for drawing the salary of surplus employee from the adjusted schools following which the petitioner was wrongly declared surplus under Rule 47 of DSEAR, and was adjusted in DAV Senior Secondary School No.1, Gandhi Nagar, Delhi, however, he continued to draw his salary from his parent school till his absorption.

5. Subsequently, the DOE issued an order dated 16th August 2005, to partially modify the office order dated No. F/DE/15/OS/ACT/Misc/2006-5777 dated 5th January 2007, by which all employees that had been declared surplus were to commence drawing a salary from the aided-school in which, they were adjusted and the management of the said adjusted school would contribute 5% towards the salary being drawn by such adjusted persons.

6. The petitioner along with other employees was transferred from one school to another among the 4 unaided schools by Hindu Shiksha Samiti, Delhi, without obtaining any approval of Director of Education on 28th June 2010. Further, *vide* order dated 17th August 2010, the DOE ordered that all the staffs working under Hindu Shiksha Samiti, shall be made with prior approval of the DOE.



7. Thereafter, the DOE *vide* order dated 24th September 2015, the petitioner was declared surplus in the year 2009-2010 and was subsequently adjusted in DAV Senior Secondary School No.1, Gandhi Nagar, Delhi.

8. The General Secretary, Hindu Shiksha Samiti transferred the petitioner to Geeta Senior Sec. School No.2, Sultanpuri, Delhi from DAV SSS No.1, Gandhi Nagar, Delhi-110031 *vide* order dated 30th June 202. Subsequently, on 31st August 2020, the petitioner was again transferred to Geeta Sr. Sec. School No. 2, Sultanpuri, Delhi.

9. The General Secretary, Hindu Shiksha Samiti *vide* transfer order dated 31st March 2022, transferred 48 employees to different schools of their choice and then in the second round of transfers, *vide* transfer order dated 30th June 2023, 70 employees were transferred. Similar transfers were made *vide* transfer orders dated 31st August 2023 and 31st July 2023.

10. Aggrieved by the illegal, invalid transfers *vide* orders dated 31st March 2022, 30th June 2023 and 31st July 2023, the petitioner has preferred the present petition.

11. The petitioner who appears in person submitted that the impugned transfer orders dated 31st March 2022, 30th June 2023, 31st August 2023 and 31st July 2023 are illegal, arbitrary and unauthorised as the said transfers were based on a biased and partial decision at the 4 schools of Hindu Shiksha Samiti, therefore, the same is in violation of Article 14 of the Constitution of India.

12. It is submitted that the transfers made *vide* the above-mentioned transfer orders were made without complying with the directions of the DOE



dated 17th August 2010, i.e., no prior approval was taken by the DOE.

13. It is further submitted that the Hindu Shiksha Samiti failed to make a policy governing the transfer system and the said illegal transfers were done in lieu of monetary benefits provided to the schools, which had led to the harassment of the employees working at the respondent organization.

14. It is also submitted that the concerned employees who were adjusted in the schools operated by Hindu Shiksha Samiti have been transferred from one school to another without being absorbed by the DOE till date.

15. Hence, in view of the foregoing submissions, it is prayed on behalf of the petitioner, that the present petition may be allowed and the reliefs may be granted as prayed.

16. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the arguments advanced by the petitioner and submitted that the same is devoid of any merit and hence, is liable to be dismissed.

17. It is submitted that the impugned transfer orders passed by Hindu Shiksha Samiti were not arbitrary or illegal. Moreover, the petitioner does not have a vested right since, the orders do not concern the petitioner.

18. It is further submitted that the transfer is at the discretion of the authorities and has been done as per law. The same is evident from Order No.F.DE/DDE(E)/Z-1/CC/WPC-6298/Z015/9441003 dated 24th September 2015, issued by the DOE.

19. Hence, in view of the foregoing paragraphs, it is submitted on behalf of the respondent that the present petition may be dismissed.

20. Heard both parties and perused the record.



21. It is the case of the petitioner that he was wrongly declared surplus as per Rule 47 of the DSEAR as a result of which he was adjusted in DAV Senior Secondary School and then, subsequently transferred from school to school without prior approval of the DOE.

22. It is further contended by the petitioner that all the transfers that were sanctioned by the Hindu Shiksha Samiti were partial and entirely based on the internal political rivalries at the schools of Hindu Shiksha Samiti.

23. The petitioner placed reliance on the order dated 17th August 2010, which is reproduced as under:

“The competent Authority has directed to send full details of DAC proceedings against Sh. Sanjay Sharma TGT (N.Sci.) Working in Gita SR. Sec. School Sultanpuri Delhi and submit its all aspects to the undersigned being as Nodal Officer, within three days.

It has been further ordered that all transfer postings of staffs working under Hindu Shiksha Samiti shall be made with prior approval of the undersigned, withdrawing previous order No12752 dated 31.12.1998 issued by the ADE (Act)”

24. The extracted portion of the order dated 17th August 2010, is not applicable for the adjudication of the present dispute since the impugned transfer orders being challenged by the petitioner are not the ones *vide* which he has been transferred.

25. It is observed by this Court that the petitioner has failed to provide a cogent reason as to why the impugned transfer orders are being challenged



by him considering the fact that his transfer has not been sanctioned by any of the three impugned transfer orders.

26. At this stage, it becomes imperative to discuss the power of this Court while issuing a writ of mandamus. The law is well settled with regard to the scope of mandamus issued by High Courts. A writ of mandamus may be issued but remains limited to cases wherein there exists a legal right in the petitioner with a corresponding legal duty of the respondent. Even in such circumstances, the Courts will refrain from interfering unless, a clear-cut case for interference is made out.

27. Mandamus is one of the prerogative writs issued by the High Court or the Supreme Court in the manner of command to any authority that falls under the definition of “State” as per Article 12 of the Constitution of India, for the purpose of fulfilling their constitutional/ statutory public duty. It is used as a last resort in cases where the Court is satisfied that without its intervention, there will be a denial to justice to the party invoking such writ.

28. The quintessential elements for issuing a writ of mandamus are *firstly*, the petitioner has claimed relief by invoking such writ has a legal right, *secondly*, the authority against whom the writ is seeking to be enforced has a legal duty towards such petitioner and has refused relief to petitioner, *thirdly*, such relief is claimed with a *bonafide* intention and *fourthly*, the petitioner has no alternative remedy.

29. The Court has to be hyper vigilant while issuing a writ of mandamus since the said writ is an extraordinary remedy to be invoked only upon special occasions and in exceptional circumstances.



This Court is of the view that the above said extraordinary remedy is invoked to supplement the deficiency in law, if any, and cannot be invoked as an appellate mechanism against the decision of any Court, Tribunal, or Authority which is exercising statutory power. The writ of mandamus is an invincible weapon in cases, where there is a failure of justice or exercise of power in an illegal way or arbitrary manner. The same has been reiterated by the Hon'ble Supreme Court in the judgment of ***Oriental Bank of Commerce v. Sunder Lal Jain, (2008) 2 SCC 280.***

30. Adverting to the facts of the present petition, it is contended by the petitioner that the impugned transfer orders are illegal and arbitrary, since the same has been done in contravention to the office order dated 17th August 2010. It is well settled that the Court should not interfere with transfers of employees as the matter pertains to the administrative authorities of the concerned institution and interfering with the same would lead to disarray in the internal processes of such institutions.

31. The Division Bench of this Court has dealt with the above-stated principle in case titled ***Amarjeet Singh Dagar v. OUI and Ors. W.P.(C) 6311/2020*** dated 7th March, 2022, and held as follows:

“23. At the outset, it must be emphasised that an employee in a transferable job has no vested right to remain posted at one place. The Courts should not readily interfere with the transfer order which is made in the public interest and for administrative reasons, unless the transfer order is made in violation of any mandatory statutory rule or on the ground of mala fide. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should



not interfere with the order, instead, the affected party should approach the higher authorities in the concerned department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and/or its subordinate Authorities, there will be complete chaos in the administration which would not be conducive to the public interest. Interference under Article 226 of the Constitution of India is permitted only where the Court finds either the transfer order is mala fide or that the service rules prohibit such transfer or that the Authorities issuing the order were not competent to pass the same. It must be remembered that transfer ordinarily is an incidence of service and must be left to the discretion of the Authorities concerned, which are in the best position to assess the necessities of the administrative requirements of the situation. The Courts must maintain judicial restraint in such matters. {Refer: Shilpi Bose (Mrs.) & Ors. vs. State of Bihar & Ors., 1991 Supp. (2) SCC 659; Mohd. Masood Ahmad vs. State of Uttar Pradesh & Ors., (2007) 8 SCC 150; State of Haryana vs. Kashmir Singh & Anr., (2010) 13 SCC 306; and Major Amod Kumar vs. Union of India, (2018) 18 SCC 478}.

24. In Punjab and Sind Bank & Ors. vs. Durgesh Kuwar, 2020 SCC OnLine SC 774, the Supreme Court summarised the principles applicable to transfer orders, as under:

“17. We must begin our analysis of the rival submissions by advertg to the settled principle that transfer is an exigency of service. An employee cannot have a choice of postings. Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus. Unless an order of transfer is established to be mala fide or contrary to a statutory provision or has been issued by an authority not competent to order transfer, the Court in exercise of judicial review would not be inclined to interfere. These



principles emerge from the judgments which have been relied upon by the appellants in support of their submissions and to which we have already made a reference above. There can be no dispute about the position in law.””

32. In the case of **Amarjeet Singh Dagar (Supra)**, it was held by a Division Bench of this Court that intervention of Courts is not required while dealing with transfer orders. The employee being transferred has no vested right in remaining at the same job, and the same has to be decided by the concerned authority. The Courts intervention is only limited to cases where there has been violation of a mandatory statutory rule. It was further held that the Courts should not exercise their power under Article 226 of the Constitution of India even when there has been a clear violation of some executive directions issued by the concerned department, instead it should encourage the aggrieved to approach the higher authorities of the same department.

33. The Hon'ble Supreme Court in **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey, (2004) 12 SCC 299** expounded the same principle stating to the extent that transfer is an incidence of service and at the end is a matter that is to be decided by the administrative authority. In the event no *malafides* are established, no interference by the Court is warranted.

34. In the present case, the petitioner is aggrieved by the repeated transfers and subsequently not being transferred to an institution closer to his place of living. As discussed above, matters pertaining to transfers are an incident of service ergo; an employee has no right to be posted at a particular place, unless the same is governed by an existing statute. The



Hon'ble Supreme Court has reaffirmed the same principle in case titled ***Union of India v. Muralidhara Menon, (2009) 9 SCC 304.***

35. As per the factual matrix of the case, the petitioner was aggrieved by the continuous transfers and preferred the instant petition in view of the same; however, the petitioner did not raise an objection instead accepted the said transfers. This Court is of the considered view that as per the settled principle of law, once an offer has been accepted, the aggrieved person cannot choose a legal recourse against the same offer. Further, transfers not being a matter of right, are the end decisions vested with the authority concerned and the said concerned authorities are expected to exercise such discretion with caution and care.

36. In light of the judgments mentioned in the preceding paragraphs, it is observed that, for transfers to be termed as *malafide*, there needs to be impeccable proof on record to establish the said *malafide* intention. The employees cannot at their own whims and fancies claim that a transfer may not be done on the ground that the same may cause inconvenience to the concerned party. Moreover, transfer order of other employees which does not involve the said party before this Court, should not be used as a ground to invite the writ jurisdiction of this Court.

37. The Court under its extraordinary power under Article 226 may intervene only where there is a grave injustice caused to the party before this Court and if a *malafide* intention established. The Right to equality under Article 14 of the Constitution of India is not violated when certain employees of the organization are transferred and some not. The statutory



authority may transfer employee as per its own needs. Any transfer policies issued by the State or employer lack legal authority as the same is issued as a mere guideline for the department personnel. The Courts cannot interfere merely because of personal inconvenience caused to the employee as the same would fall under the domain of the employer.

38. Bearing in mind the facts and scenarios; this Court is of the opinion that there has been no *malafide* or arbitrariness that was at the hands of the respondents. Matters pertaining to transfer are in fact incidences of service and do not warrant any interference by this Court. Therefore, this Court discerns no material to establish the propositions put forth by the petitioner. It is hereby, held that there is no irregularity in the actions of the respondent which goes to the root of the matter and invites the intervention of this Court while exercising its writ jurisdiction.

39. Accordingly, the instant petition stands dismissed.

40. Pending applications, if any, also stands dismissed.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 20, 2023

Dy/ds/ryp

Click here to check corrigendum, if any