



\$~31

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

+ **LPA 18/2024**

HARI SHANKAR

..... Appellant

Through: Mr. Anuj Aggarwal, Mr. Sidharth
Nath and Ms. Shreya Kukreti, Advs.

versus

M/S TAGORE INTERNATIONAL SCHOOL

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

08.01.2024

%

CM APPL. 893/2024

1. Exemption allowed, subject to all just exceptions.
2. Application is disposed of.

LPA 18/2024 and CM APPLs. 891/2024 & 892/2024

3. The appellant has filed the present intra court appeal impugning an order dated 02.02.2023 (hereafter '**the impugned order**') whereby, the appellant's writ petition – WP (C) No. 2123/2011 captioned *Hari Shankar v. Tagore International School* – was dismissed. The appellant had filed the aforementioned petition impugning an award dated 31.10.2009 (hereafter '**the impugned award**') passed by the learned Labour Court to the extent that the learned Labour Court had rejected the appellant's



contention that his transfer from Delhi to DLF, Gurgaon was illegal and / or unjustified.

4. The appellant was initially employed by the respondent Management as a Gardener (*Mali*) with effect from 14.07.1991 for maintenance of gardens at Tagore International School, Delhi. The appellant alleged that, on 21.10.2002 the Principal of the School, Smt. Madhu Sen had beaten him without any fault and terminated his services with effect from 22.10.2002.

5. It was the respondent's case that the quality of the appellant's work was found to be poor. On 21.10.2022, the deficiencies were pointed out to the appellant and he was scolded. The allegation that the Principal of the School had assaulted or beaten the appellant is stoutly denied. It is stated on behalf of the respondent School that the appellant voluntarily did not report for his duties, after 21.10.2022. Thus, the appellant was absent without leave. A notice was also issued to the appellant in this regard. However, the appellant did not join his duties but approached the Conciliation Officer. During the said proceedings, the respondent agreed to allow the appellant to report for duty with effect from 07.05.2003. The appellant, thereafter, was transferred to another School run by the respondent Management in DLF, Gurgaon. The appellant did not report for his duties at the said School.

6. In the aforesaid backdrop, one of the principal questions before the learned Labour Court was whether the appellant's transfer was illegal or unjustified.

7. It was the respondent's contention that the terms on which the appellant was engaged by the Management included the service condition that he could be placed at any other school being run by the respondent Management. Although, the appellant disputed the same, he did not lead



evidence to counter the same. The learned Labour Court held that the appellant had failed to establish that his service terms and conditions required him to be retained in Delhi alone. The learned Labour Court accepted the respondent's contention that the appellant was transferred by the transfer order dated 08.05.2003, on account of exigency of work and as per the requirement of the Management.

8. It is apparent from the above that the controversy raised by the appellant involves a question of fact, that is, whether the appellant's condition of service entailed that he could be transferred to any of the other Schools under the same Management. The learned Labour Court had examined the evidence and rejected the appellant's contention on the ground that the appellant had not produced evidence to establish that the conditions of the service required him to remain in Delhi alone.

9. The learned counsel for the appellant referred to the decision dated 30.08.1976 of the Gujarat High Court in *Automotive Manufacturer Ltd. v. Nanalal Panachand Vakharia & Anr.* in Special Civil Application No. 1270 of 1976, in support of his contention that the appellant could not be expected to join work in any other city. The first paragraph of the said decision indicates that the Gujarat High Court had found that the findings of the learned Labour Court with regard to the whether there was an implied agreement between the parties that the petitioner (employee) would not be transferred, was a question of fact which could not be assailed in a petition filed under Article 227 of the Constitution of India. In that case, the learned Labour Court had found that there was an implied term of employment that did not permit the transfer of the concerned employee. In the present case, the learned Labour Court has found to the contrary.



10. We accept that the terms of service being a question of fact cannot be assailed in a petition filed under Article 227 of the Constitution of India, unless it is found, that the findings are *ex facie*, erroneous and perverse.

11. Although, the appellant had filed the writ petition in the year 2011, he has not been pursuing the writ petition diligently and sought a number of adjournments. In the given facts, the learned Single Judge had declined to interfere with the impugned award in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. We find no infirmity with the said decision.

12. It is also noted that there is an inordinate delay of 326 (three hundred and twenty six) days in filing of the present appeal. We find no grounds to condone the same.

13. The appeal is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 8, 2024

aks

Click here to check corrigendum, if any