

Sanjeet Singh Dabas Vs Govt. of NCT of Delhi and Others

Court: Delhi High Court

Date of Decision: May 19, 2011

Acts Referred: Delhi School Education Act, 1973 " Section 2, 24(3), 24(4)

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: M.M. Sudan, for the Appellant; V.K. Tandon, Mamta Tandon for R-1 GNCTD and Pramod Dayal, for R-2 and R-3, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The Petitioner employed as an Accounts Clerk with the Respondent no2 D.A.V. College Management Committee

(DCMC) of the Respondent No. 3 D.A.V. Centenary Public School, Narela, Delhi has filed this writ petition impugning the order dated 3rd April,

2008 of the Respondent No. 2 DCMC transferring the Petitioner to D.A.V. Centenary Public School, Bhawanathpur, District-Garhwa, Jharkhand

in his existing pay, pay scale and admissible allowances". The Petitioner first preferred an appeal to the Delhi School Tribunal in accordance with

The Managing Committee of Geeta Bal Bharti Senior Secondary School and Another Vs. Director of Education and Others, laying down that

appeals before the Tribunal were maintainable against all grievances of the teachers/employees of the School. However the said appeal was

withdrawn on 11th December, 2008 with liberty to pursue the remedies before the Directorate of Education (DOE) or before other appropriate

forum. The DOE, on the representation of the Petitioner and after hearing the Respondent No. 3 School found that no common/joint seniority list

was maintained by the School at Narela and the School in Jharkhand to which the Petitioner had been transferred and held that an employee of a

recognized School can be transferred by its management to any other School only if the School is maintaining a common/joint seniority list of

employees of the School and if the transfer is made with the concurrence of the employee concerned; the DOE accordingly, vide order dated 7th

March, 2009 held the transfer to be not tenable under the provisions of the Delhi School Education Act and the Rules, 1973 and directed the

Respondent No. 3 School to allow the Petitioner to continue to perform his duties in the Respondent No. 3 School at Narela. Upon non-

compliance by the Respondent No. 3 School of the said direction of the Directorate of Education, the School was also threatened with de-

recognition. The Petitioner has in the present writ petition also sought the relief of issuance of direction to the DOE to take action against the

School in accordance with the provisions of Section 24(3&4) of the Act and the Rules.

2. Notice of the writ petition was issued and vide interim order which continues to be in force, passing of final order in the disciplinary proceedings

initiated against the Petitioner for failing to comply with the transfer order, though permitted to be continued, was stayed.

3. The Respondent No. 1 DOE has in its counter affidavit, though supporting the Petitioner has submitted that further action against the

Respondent No. 3 School has not been taken since the Petitioner had preferred the present writ petition.

4. The Petitioner in the writ petition itself has relied upon the judgment dated 3rd October, 2008 in LPA No. 1991/2006 titled Jitender Singh

Tyagi v. Director of Education and the judgment dated 16th January, 2009 in Review Petition No. 395/2008 in LPA No. 1991/2006 titled

D.A.V. College Managing Committee v. Jitender Singh Tyagi laying down that General Terms and Conditions of employees of DCMC in no way

empower the DCMC to transfer employees of any recognized School in Delhi, merely on the basis of contractual General Terms and Conditions

of employment.

5. The Respondent No. 2 DCMC in its counter affidavit has with response to the aforesaid judgment of Division Bench of this Court contended

that the same is contrary to the judgment of the Apex Court in Samarth Shiksha Samiti and Another Vs. Bir Bahadur Singh Rathour and Others, In

fact the said judgment of the Apex Court is the sole defence of Respondent No. 2 DCMC to the present writ petition, besides the general

argument of, transfer being an incident of service and of the Petitioner, as per the terms and conditions of his appointment, being liable to be

transferred.

6. The Apex Court in Samarth Shiksha Samiti (supra) drew the distinction between an employee of the Society which runs the School and posted

in the School run by the Society and an employee of the School and held that the Society is not bound to follow the provisions of the Act and the

Delhi School Education Rules, 1973. The counsel for the Respondent No. 2 DCMC has contended that the Petitioner also is the employee of the

Respondent No. 2 DCMC and not an employee of the Respondent No. 3 School and thus what has been held by the Division Bench of this Court

in the judgments supra relating to employees of the School would not apply to the Petitioner. It is contended that the case of the Petitioner is

squarely covered by the judgment aforesaid of the Apex Court.

7. Not finding the letter heads of the Respondent No. 2 DCMC on record to be indicative of the same being the Society running the Respondent

No. 3 School, it was enquired from the counsel for Respondents No. 2 & 3 whether the Respondent No. 2 DCMC is a ""Society"". The counsel

answers in the affirmative. However being suspicious of the stand so taken and sought to be conveyed without making any definite pleadings, the

counsel was told that he should take a positive stand which would be recorded and with which he will be bound and responsible for consequences

if not proved to be correct. The counsel then says that he is not sure whether the Respondent No. 2 DCMC is the ""Society"" which has set up the

Respondent No. 3 School.

8. The Respondent No. 2 DCMC in its counter affidavit has referred to its Rules and extracted the Rules relied upon without choosing to produce

the same before this Court. It was enquired from the counsel for the Respondents No. 2 & 3 as to from where he had extracted the Rules. The

counsel stated that he does not have the document available with him but had seen the same while drafting the counter affidavit. Again, being

suspicious from non production of the Rules which would have disclosed as to whether the Respondent No. 2 DCMC is the ""Society"" or the

Society is distinct from the DCMC, the counsel was again implored in this regard. He ultimately pulled out from his file the ""Rules of the D.A.V.

College Managing Committee"" qua ""Provident Fund"" and which have been taken on record. The same disclose that the Society running the

Respondent No. 3 School is the ""Dayanand Anglo-Vedic College Trust & Management Society"" and not the Respondent No. 2 DCMC. The

counsel also, upon the document having surfaced, is unable to controvert the said position.

9. The aforesaid shows that the Respondents No. 2 & 3 have intentionally built up a false case before this Court and wrongly portrayed before this

Court that the Respondent No. 2 DCMC, the Managing Committee of the Respondent No. 3 School to be the Society when it very well knew or

is deemed to have known that the Society is different from the Respondent No. 2 DCMC. A visit to the official website of Respondent No. 2

DCMC also reveals that the same is the ""Executive Body"" of the Dayanand Anglo-Vedic College Trust and Management Society. It is not

understandable as to on what basis it was pleaded and argued that the Petitioner is an employee of the Society and not of the School.

10. I may record that the aforesaid stand was persisted with inspite of the Petitioner along with his rejoinder to the counter affidavit filing the letter

of appointment in the case of Samarth Shiksha Samiti supra which clearly shows that the employee in that case was appointed by the Society at a

post in the Central Office of the Society. It was also enquired from the counsel for the Respondents No. 2 & 3 whether there are two sets of

employees in the Respondent No. 3 School i.e. those employed by the School and others by the Society. The counsel stated that he has no

instructions in this regard. Attention of the counsel was invited to the definition of an "employee" in Section 2(h) of the DSE Act as all those

working in the School and neither require employment by the School nor creates a distinction between employment by the School and by the

Society. Thus it appears that all those working in the School, irrespective of whether employed by the Society or by the School would be covered

by the provisions in the Act and the Rules relating to employees of the School.

11. Before parting with the matter other arguments of the counsels may also be noticed. The counsel for the Petitioner has contended that the order

of transfer in the present case as per the documents filed with the rejoinder, is by way of punishment and bad for this reason also having been made

without holding any inquiry. The counsel for the Respondents No. 2 & 3 has argued that the Petitioner has suppressed an appointment letter and

the factum of appeal before the Tribunal. However as aforesaid the appeal was dismissed.

12. It is not deemed expedient to discuss the matter further. The matter is otherwise covered by the judgment of the Division Bench of this Court in

Jitender Singh Tyagi (supra) holding transfer to be not permissible. The judgment relied upon by the counsel for the Respondents No. 2 & 3 is not

applicable, the Petitioner being an employee of the Respondent No. 2 DCMC, being the Management Committee of the Respondent No. 3

School and not of the Society. Even otherwise, it is felt that the provisions of the Act and the Rules cannot be permitted to be defeated by making

employment in the Society and taking work in the School.

13. The writ petition is accordingly allowed, the order of transfer is set aside/quashed. The Respondent No. 3 School is however given opportunity

to take back the Petitioner on duty within four weeks from today, failing which the Respondent No. 1 DOE is directed to take action in

accordance with law against the Respondent No. 3 School for non-compliance of the directions issued by it.

14. The Respondents No. 2 & 3 having deliberately taken a false stand before this Court and having abused the process of this Court, are also

burdened with exemplary costs of Rs. 30,000/- of this litigation payable to the Petitioner within four weeks hereof and are warned to be careful in

future. At this stage, I am resisting from proceeding further against the Respondent No. 3 School and its General Secretary who has filed the false

affidavit.

The writ petition is disposed of.