

Chairman, Sarvajanik Education Society and ors. Vs. Jashvantrai Gulabrai Desai and ors.

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Court : Gujarat

Decided On : Apr-18-1978

Reported in : (1978)19GLR1058

Judge : S.H. Sheth, J.

Appellant : Chairman, Sarvajanik Education Society and ors.

Respondent : Jashvantrai Gulabrai Desai and ors.

Judgement :

S.H. Sheth, J.

1. Sarvajanik Education Society of Surat is petitioner 2 its Chairman is petitioner 1 and the Head Master V.T. Choksi, Haripura Sarvajanik High School, Surat, is petitioner 3. Respondent 1 is a teacher employed by petitioner 2 Society (hereinafter referred to as 'the Society'). Respondent 2 is the District Education Officer, Surat. The society is running a number of schools in the city of Surat. Respondent 1 has been serving as a teacher in the Society's Haripura school. Kadiwada school is also run by the society. On 4th July 1975 the society made an order transferring respondent 1 from Haripura school to Kadiwada school. Respondent 1 challenged that order before the Tribunal constituted under Gujarat Secondary Education Act, 1972. It was application No. 345 of 1975. He challenged the transfer order on the ground that after the enactment of Gujarat Secondary Education Act, 1972 every school is a separate entity and is governed by Regulations made under Section 54 of the Act. Therefore, according to him, unless there is an express condition of service to which a teacher has agreed he cannot be transferred from one school to another under the same management. The Tribunal upheld the contention raised by respondent 1 and quashed the order of transfer.

2. It is that order which is challenged by the petitioners in this petition.

3. It is undisputed that the society runs five Colleges, five primary and secondary schools and Chunilal Gandhi Vidya Bhavan. Obviously, therefore, the society employs members of the staff for these institutions. The society is governed by its own rules. It is stated on behalf of the society that it has been effecting inter-school and inter-College transfers and that it has been maintaining common seniority list of persons belonging to the same cadre. The society has also laid down conditions of service for those whom it employs, One of the conditions of service is that a teacher shall obey the order of the Board of volunteers subject to an appeal to the Executive Committee of the society whose decision shall be final. Mr. Vakil has tried to show that in the past also respondent 1 had been transferred from one school of the society to another

school belonging to it.

3A. Now the reasons which have weighed with the Tribunal in recording the conclusion that inter-school transfers under the same management have not been contemplated by the Act are as follows. The first reason which has weighed with the Tribunal is that even though the rules of the society authorized the Board to transfer an employee from one school to another, an order of transfer would not be binding upon the employee concerned unless it was made a condition of service in the order of appointment of the employee himself. In other words, the view which the Tribunal has taken is that general rules governing the constitution and administration of the society would not bind the teachers and that a teacher would be liable to be transferred from one school to another only if he had been appointed expressly subject to that condition. This reason which has weighed with the Tribunal, in my opinion, is not a sound reason. It is not necessary that transfer which causes no harm or injury to an employee cannot be ordered by a management unless condition to that effect has been incorporated in the order of appointment of the employee concerned. Whatever conditions have been specified in the order of appointment are indeed binding upon the employee. In addition an employee is also bound by the rules of the management which govern its constitution and administration.

4. The second reason which has weighed with the Tribunal is that the Act has made every school an independent entity and that wherefore inter-school transfer under the same management is not permissible. The Tribunal has not deeply examined in all its aspects this question but has proceeded on the assumption that merely because every school is an independent entity under the Act, inter-school transfer is something against which the provisions of the Act militate. This aspect of the question requires deeper examination and I am shortly proceeding to do it.

5. The third reason which has weighed with the Tribunal is that the light of the management to transfer an employee from one of its establishments to another is a condition of service and not merely an incidence of service. This observation made by the Tribunal makes it clear that it has tried to distinguish between a 'condition of service' and an 'incidence of service'. However, the Tribunal has not pointed out in its judgment what is the exact difference in the connotation of these two terms. The Tribunal has, therefore, come to the conclusion that the management which runs a number of schools does not have an unqualified right to transfer an employee from one school to another in absence of any express agreement between the management and the teacher under which the management is entitled to transfer such a teacher from one institution to another. The approach which the Tribunal has made is whether the management has a right to transfer a teacher from one school to another. In my opinion, that is an erroneous approach, Transfer by itself from one establishment to another establishment under the same management does not really mean anything. An employee is bound to serve at any place where his employer asks him to serve unless his rights are prejudicially affected or it is well-nigh difficult for him to do so. The Tribunal, therefore, ought not to have examined the controversy from the point of view of the existence of the right of the management to transfer or not but from the point of view of the rights of the teacher under transfer. If the transfer does not violate or infringe any rights of the teacher, it would be an innocuous transfer and it would not be open to a teacher to object to it. However, if his rights are violated, it would be open to him to contend that he cannot be transferred from one school to another because for no fault of his he is not liable to suffer any injury to his rights. I, therefore, propose to proceed from this point of view

with the examination of the controversy which has been raised before me.

6. It may be stated at the outset that there is no express provision in the Act or in the Regulations made under the Act which militates against inter-school transfer of a teacher under the same management, Mr. Vakil has contended before me that it is the privilege of the management to transfer a teacher in its employment from one school to another under its control and that such an express privilege cannot be challenged by a teacher under transfer. On general principles I am in full agreement with the proposition that an employee is liable to serve at any place where his employer directs him to serve subject indeed to his own security and subject to the fact that no statutory rights, if he has any, are violated.

7. Mr. Mehta has canvassed a large number of provisions to make good two propositions to me. The first proposition which he has tried to make good is that every school is a separate independent entity under the Act and that the Act does not contemplate a group of schools under the same management as one entity. Really speaking it is not necessary to deeply examine this proposition because even on the assumption that every school is an independent entity, transfer from one school to another under the same management does not necessarily militate against every school being an independent entity. However, since he has referred to some of the provisions, I shall make a brief reference to them. Clause (q) of Section 2 defines the expression 'recognised school' so as to inter alia, mean a secondary school recognised by the Director of Education or a High School registered by a University. Clause (s) of Section 2 defines the expression 'registered school' so as to mean 'a secondary school or a post basic school registered by the Board under Section 31.' It cannot be gainsaid that if there are several schools under the same management, every school has got to be independently recognised or registered and that there cannot be a common registration or recognition of schools under the same management. Clause (14) of Section 17 empowers the Secondary Education Board to prepare and maintain a register containing the names of teachers who are willing to be selected for appointment as teachers in other registered private secondary schools in the State. Section 31 provides that no person shall impart secondary education through a school unless such school is registered under the provisions of the Act. Sub-section (1) of Section 34 provides that fifteen per cent of vacancies of the teaching staff of a registered private secondary school shall be filled up by persons belonging to the Scheduled Castes and the Scheduled Tribes. There cannot be any doubt or dispute that the quota prescribed for the members of the Scheduled Tribes and the Scheduled Caste is operative in respect of every school and cannot be operative in respect of a group of schools under the same management as if it is one single school. Sub-sections (1) and (2) of Section 35 are important for the purpose of the present case. Sub-section (1) provides that every registered private secondary school shall have two committees: (a) a school staff selection committee for the purpose of recruiting the teaching staff of the school other than the headmaster, and (b) a special school committee for the purpose of recruiting the headmaster and for the purpose of the initial recruitment of the headmaster and the teaching staff of a school started after the appointed day. Sub-section (2) provides that the staff selection committee shall consist of two representatives of the management to be nominated by the management, the headmaster of the school and two teachers to be elected by the teachers from amongst themselves where the strength of teachers exceeds six and one if it is six or below. In this context a glance may be cast at Sub-section (5) of Section 35 as well. The special school committee is empowered to select a person for appointment to the post of the headmaster of a school from amongst the persons

referred to in Sub-section (4) or from amongst the teachers in the school. Under Section 54 of the Act the Government of Gujarat has made the Regulations, Regulation 2 (xii) of the Secondary Education Regulations, 1974 defines 'supervisor' in relation to a Secondary School so as to mean 'a person appointed to supervise the work of teachers in a registered secondary school'. It cannot be gainsaid that every school must have a Supervisor. It is difficult to imagine in the context of the scheme of the Act the Regulations that there can be one supervisor for more than one school. Regulation 9 lays down the procedure for registration of secondary schools by the Board. A bare glance at it shows that every school has got to be registered as a separate entity or unit and that there cannot be common registration of more than one school. Regulation 10A provides that in case the number of classes are to be reduced in a particular school, the concerned teachers of the school must be given a reasonable opportunity of being heard, Regulation 11 provides that the Head Master of each school shall act as the correspondent in respect of that school and be the channel of communication between the Secondary Education Board and the management. Regulation 12 (8) provides for the ratio of female teachers to be maintained in respect of schools specified therein. Regulation 19 (1) provides for maintenance of ratio of teachers in each school bearing in mind the need for the teachers in respect of subjects particularly with reference to optional or alternative subjects. Regulation 19 (2) provides what strength of the clerical staff shall be maintained in a school having a particular strength of students. Regulation 12 provides that a student who wants to leave one school in order to join another shall be required to produce a migration certificate from the school which he intends to leave. It is difficult to imagine that a student can leave one school without a migration certificate and join another merely because both the schools belong to the same management. Regulation 41 provides that the Secondary Education Board shall maintain a register containing names of teachers who are willing to be selected for appointment as teachers in other registered private secondary schools in the State. Under the Grant-in-Aid Code every school and not every group of schools under the same management gets a separate grant-in-aid from the State. These are some of the provisions to which I have made reference in order to show that every school is an independent unit or an independent entity and that the concept of a group of schools under the same management operating as a unit or entity is foreign to the scheme of the Act and the Regulations made thereunder. However, I do not subscribe to the view expressed by the Tribunal that merely because every school is a separate and independent unit or entity, a teacher initially appointed to serve in one school cannot be transferred by the management to serve in another school run by it. Transfer from one school to another under the same management appears to me to be so innocuous that it is difficult to imagine that a serious challenge can be made to it unless statutory rights have been violated.

8. There is one more aspect to which it is necessary to make a reference. Section 35 of the Act to which I have already referred requires every registered private secondary school to maintain two committees. One of them is the School Staff Selection Committee. This committee consists of two representatives of the management of the school, the head-master of the school and two teachers of the school elected by them from amongst themselves in case the total number of teachers are more than six and one in case it is six or less. Now, if a number of schools under the same management can be treated as one entity there will be one school staff selection committee for all such schools. That is not what is contemplated by Section 35. Secondly, the representation of the teachers on that committee will also be adversely affected inasmuch as all the teachers working in all the schools under the

same management will elect two teachers (the maximum) instead of teachers in each school electing two from amongst themselves to be on the committee (the maximum) for each school. In my opinion, therefore, to treat all schools under the same management as one unit or entity in order to facilitate the transfer of a teacher from one school to another militates against the provisions of Section 35 of the Act. However, it does not affect the rights of an individual teacher because a teacher who is serving in a particular school will be eligible to elect or to be elected as a representative on the committee of that school. However, if he is transferred to another school he will enjoy the same right and eligibility in another school. Therefore, the concept which is embodied in Section 55 is more meant for treating every school as an independent unit than as one militating against the transfer. There is no special charm in claiming that this right can be enjoyed better in the original school where one is appointed than in another to which, one is transferred.

9. Now, let us proceed to examine whether inter-school transfer under the same management violates the rights of a teacher under transfer.

10. Regulation 2 (xii) which defines the expression 'supervisor' has an important bearing on the question. As amended upto date the definition reads as follows:

'Supervisor' in relation to a Secondary School means a full-time teacher of the same-school appointed to supervise the work of the teachers in that school.

The original definition did not contain the expression 'a full-time teacher of the same school' but used in its place the expression 'a person'. Therefore, the appointment of a supervisor in every secondary school has got to be made out of the full-time teachers of that very school. Gujarat Secondary Education Board has issued Circulars in order to implement the provisions of the Act and the Regulations made thereunder Circular dated 20th September 1976 which has a bearing on the appointment of a supervisor, inter alia, provides that while assessing the eligibility of a full time teacher for being appointed as a supervisor, he shall be given merit marks on certain basis. It then provides that he shall be given full merit marks depending upon his qualifications and the terms during which he has served the school. It further provides that he shall be given only 75% of the merit marks in respect of the terms which he has served elsewhere. Therefore, the effect of this circular, to illustrate, is as follows. Let us assume that a teacher has served the same school for five terms and that he gets 10 merit marks. Now, if he has served the same school for one term and has served another school for four more terms, he will get two merit marks for the term during which he has served his present school and 75% of the merit marks in respect of four terms which he has served in some other school. The result will be that a teacher who has served the same school for five terms shall get ten merit marks. Another teacher, given the same qualifications, who has served two schools during these very five terms shall get two merit marks for the term which he has served in the school and six merit marks (75 % of 8) for four terms which he served elsewhere. It is, therefore, clear that since every school is an independent registered entity, the merit marks which a teacher who has served the same school gets for the purpose of his eligibility to be appointed as a supervisor will be more, for the same number of terms, than the merit marks which a teacher would get for the same period if he has served more than one school. It is, therefore, clear that the transfer of a teacher from one school to another without his consent will adversely affect his merit marks which form the basis of his eligibility for being considered for appointment as a supervisor in his school.

11. Mr. Mehta has also argued that in case of retrenchment the seniority of a teacher is required to be taken into consideration. According to him, in case of retrenchment, the seniority of a teacher from the school to which he is transferred will alone be taken into account. He has relied in that context upon the Circular dated 3rd/4th August 1976 issued by the Secondary Education Board. That circular which incorporates Resolution No. 11 of the Secondary Education Board provides that in case of retrenchment, bearing in mind the need of the teacher for teaching different subjects, a teacher who is the junior most may, with the previous approval of the District Education Officer, be retrenched. It is difficult to imagine in view of this circular which has been made in pursuance of the provisions of the Act and the Regulations blade thereunder that in case of retrenchment, seniority of all teachers in several schools under the same management can be taken into account particularly when every school is a separate and independent entity. In fact, this circular suggests that a teacher who has been transferred from one school to another is deemed to have resigned from the school from which he has been transferred (vide Government Circular dated 14-9-1976). In my opinion, therefore, compulsory transfer of a teacher from one school to another under the same management adversely affects the seniority of such a teacher.

12. The next contention which Mr. Mehta has canvassed before me relates to right to compensation in case of retrenchment and has relied upon Regulation 33. It provides that a permanent employee whose services are terminated by the management in accordance with the provisions of the Act shall be entitled to compensation equal to 6 months' salary including allowances if the employee has put in service in the school for a period not exceeding five years and equal to 6 months' salary including allowances for the first five years and a month's salary for every year of the period exceeding five years if the employee has put in service in the school for a period exceeding five years. The quantum of compensation in case of retrenchment, it is indeed clear, depends upon the length of service which an employee has put in the same school. In my opinion, compulsory transfer of a teacher from one school to another under the same management violates his right to compensation because compensation will have to be determined only on the basis of the total length of service which he has put in the school' from which he is retrenched.

13. The next contention which he has raised relates to the teacher's resignation and the notice pay. He has invited my attention to the Government Circular dated 14th September 1976 which, inter alia, provides that a teacher who is transferred from one school to another shall have to resign from the school from which he is transferred and shall have a fresh appointment in the school to which he is transferred. The circular further states in this context that there is no provision for inter-school transfers. It also does not provide for an inter-school transfer under the same management. It is, therefore, difficult to imagine under the aforesaid circumstances that there can be a transfer from one school to another under the same management without adversely affecting the rights of a teacher.

14. The next contention which has been raised is based upon Regulation It has been argued by Mr. Mehta that a transfer of a teacher from one school to another is likely to disturb the class-wise ratio as well as the Subject-wise ratio of teachers. This, in my opinion, does not violate any right of a teacher because it is more a matter between them anagement on the one hand and the Secondary Education Board on the other hand. I say so because when a teacher teaching a particular subject is transferred from one school to another under the same management, the

management shall have to restore the class-wise and the subject-wise ratio of teachers disturbed by such transfer. They are bound to do it. Merely because a compulsory transfer of a teacher from one school to another creates a particular difficulty for the management, it does not necessarily mean that it violates the rights of a teacher.

15. Section 35 (5) inter alia provides that 'the special school committee shall select persons for appointment to the post of the Head Master of the school from amongst persons referred to in Sub-section (4) or from amongst the teachers in the school: Provided that for the purpose of such selection preference shall be given to a senior teacher serving in the school if he is otherwise eligible and suitable.' (emphasis supplied). Regulation 19 (4) provides that 'the management of a registered school having more than fifteen classes may appoint a school Head to assist the Head Master in his administrative and supervisory duties.' Bearing in mind the basic fact that every school is an independent and separate entity, it is clear that the appointment of the Head Master has a vital relation to the seniority of a teacher which is bound to be adversely affected if a teacher is transferred from one school to another (vide Government Circular dated 14-9-1976). This adverse effect on his seniority is bound to affect his chances for being appointed as the Head Master. Similarly, if a teacher is transferred from a school having more than fifteen classes to a school having less than fifteen classes-both under the same management-his chances, given other things equal, for being appointed as the school Head are bound to be adversely affected.

16. There are the only provisions which Mr. Mehta has canvassed before me. I have therefore, examined the scheme disclosed by them only.

17. It is clear from these provisions that compulsory transfer of a teacher from one school to another under the same management adversely affects his chances of being appointed as a supervisor, his seniority, the quantum of compensation when he is retrenched, his right to be appointed as the Head Master and his right to be appointed as the school Head.

18. In my opinion, therefore, though ordinarily it is the privilege of a management to ask its employee to serve in any of its establishments subject to his security, it cannot be done in case of teachers serving in secondary schools governed by Gujarat Secondary Education Act, 1972 because such a transfer militates against their statutory rights which I have referred and which have been conferred upon them. Therefore, any private rule which enables a management to transfer a teacher from one of its schools to another violates Section 37 of the Act. It is therefore, void and unenforceable at law.

19. The view which I am taking, however, does not mean that a teacher cannot be transferred from one school to another under the same management with his consent. When a teacher accords his consent to his transfer from one school to another, he naturally forgoes his rights flowing from the continuity of his service in the same school and willingly incurs the injury resulting therefrom. Therefore, in my opinion, the impugned order of transfer made by petitioner 2 against respondent 1 could not have been made.

20. In light of the reasons which I have stated in this Judgment and not on account of the reasons stated by the Tribunal in its Judgment, the impugned order made by the Tribunal is upheld.

In the result, the petition fails and is dismissed. Rule is discharged with no order as to costs in the circumstances of the case.

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