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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1607 of 2021

Reserved on: 16.03.2021

Date of decision: 22.03.2021.

Sh. Milap Chand

.....Petitioner.

Versus

State of H.P. & Ors.

.....Respondents.

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Mr. Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹

Yes

For the Petitioner :

Mr. Sanjay Jaswal & Ms. Vandna Kumari, Advocates.

For the Respondents:

Mr. Ashok Sharma, A. G. with Mr. Vinod Thakur, Mr. Vikas Rathore, Mr. Shiv Pal Manhans, Addl. A.Gs., Mr. J. S. Guleria and Mr. Bhupinder Thakur, Dy. A.Gs.

Tarlok Singh Chauhan, Judge

The petitioner, who happens to be a Principal of Government Senior Secondary School Dugli, Tehsil Churah, District Chamba, instead of being a role model, has indulged in an unnecessary and otherwise avoidable litigation, that too, to safeguards his individual interest, over and above that of the students.

2. The facts, as are necessary for the decision of the instant petition, are that the petitioner after rendering service for

¹*Whether the reporters of the local papers may be allowed to see the Judgment?Yes*

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a considerable time came to be promoted as Headmaster on 24.04.2018 and was posted at Government High School Naila, Tehsil Churah, District Chamba.

3. Thereafter, the petitioner on 29.09.2020 was appointed as Principal and posted at Government Senior Secondary School, Dugli, Tehsil Churah, District Chamba, where he is serving till date and has filed the instant petition for grant of following relief:-

(a) *That a writ of mandamus may kindly be issued thereby directing respondent No. 1 to decide the representations (Annexure P-3 and Annexure P-4) for transfer from hard area to soft area/station of the petitioner as he has completed the normal tenure in the hard area and crossed the age of 55 years and family compelling circumstances, and post him either at GSSS Chadhiar, Sub-Tehsil Chadhiar, District Kangra, H.P. or GSSS Dhupkiara, Tehsil Jaisinghpur, District Kangra, H.P. where the post will be vacant on 31.03.2021 and 31.08.2021 due to the retirement of present Principals or newly upgraded 10+2 School Haler Tehsil Jaisinghpur, district Kangra, which will be notified in the month of March, 2021.*

4. The grounds for transfer as taken in para-7 of the petition are as under:-

7. That it is also submitted that the wife of the petitioner is suffering from hearing problem and under treatment from Rajiv Gandhi Post Graduate Ayurvedic College and Hospital Paprola, District Kangra, H.P. Copy

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of the medical prescription slip is attached herewith as Annexure P-6, beside this the wife of the petitioner is also suffering from Gall Bladder stone and required proper medication and surgery and there is none in the house to look-after her as their son is employed in private sector in Noida (U.P.) and two daughters are pursuing their own studies.

5. The petitioner, as mentioned above, is a teacher appointed for educating students. The standards expected of a person practising the noble teaching profession must be ideal so that the students may know and practice the best principles of a civilized life. The requirement of education for girls and the functions of a teacher have been dealt with and explained at some length by the Hon'ble Supreme Court in ***Avinash Nagra vs. Navodaya Vidyalaya Samiti and others (1997) 2 SCC 534***. The relevant portion, as contained in paras 11 and 12 of the judgment, reads as under:-

11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as "guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care

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of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51-A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the caliber, character and capacity of the students for successful

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working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher.

12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher.

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The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but as it in the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, government of India in that behalf. It is seen from the record that the appellant was given a warning for his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girls' hostel at 10 p. m. in the night and asked the hostel helper, Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her; believing the statement, she came out of the hostel. It is the admitted position that she was an active participant in cultural activities. Taking advantage thereof, he misused his position and made

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sexual advances towards her. When she ran away from his presence, he pursued her to the room where she locked herself inside; he banged the door. When he was informed by her roommates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and admitted his meeting with the girl but he had given a false explanation which was not found acceptable to the Enquiry Officer, namely, Assistant Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him not worthy to be a teacher in the institution. Under those circumstances, the question arises whether the girl and her roommates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. In view of his admission that he went to the room in the night, though he shifted the timings from 10 p. m. to 8 p. m. which was not found acceptable to the respondents and that he took the torch from the room, do indicate that he went to the room. The misleading statement sent through Bharat Singh, the hostel peon, was corroborated by the

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statements of the students; but for the misstatement, obviously the girl would not have gone out from the room. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a loco parent is and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice.

6. The teacher in Indian society has been elevated as God. A teacher creates knowledge, learning, wisdom and equip the students with ability and knowledge, discipline and intellect to enable them to face challenges of the life. A teacher is preserver of learning and destroys ignorance. Therefore, as a member of the noble teaching profession, he should be a role model. Without a dedicated and disciplined teacher, even the best education system is bound to fail. Therefore, it is the duty of the teacher to take care of pupil(s) as a careful parent would take care of its children.

7. It would be a very lamentable state of affairs that when teachers who are considered as equal to God, would fall from the highest pedestal to the lowest level by caring and looking after their self-interests alone and not the interest of their pupil(s).

8. The role of the teacher has been best described by the Hon'ble Supreme Court in **Sushmita Basu vs. Ballygunge**

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Siksha Samity (2006) 7 SCC 680, the relevant portion of which reads as under:-

5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average incomes. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.

9. It needs no rocket science to conclude that the Headmasters, who are later on promoted as Principals, are in all

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likelihood bound to be above 55 years of age, and on being promoted as such, are liable to be transferred/served anywhere in the State. Therefore, no exception can be taken against the transfer on the ground that the petitioner has crossed the age of 55 years.

10. We may with conviction state that Education Department is probably one of the biggest litigant before this Court and majority of these writ petitions only relate to the transfer and adjustment of the teachers. However, it is not the teachers alone, who are to be blamed for this, as even the government despite imposing ban on transfers by issuing notification(s) to this effect blatantly violates these notification(s).

11. Be that as it may, given the peculiarity of the facts and circumstances of the case, we are not inclined to interfere, consequently, the petition is dismissed, leaving the parties to bear their own costs. Pending application(s), if any, also stand(s) disposed of.

(Tarlok Singh Chauhan)
Judge

22nd March, 2021
(sanjeev)

(Chander Bhusan Barowalia)
Judge

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