



REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 28th DAY OF SEPTEMBER, 2022

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE VIRENDER SINGH

CIVIL WRIT PETITION NO. 6718 OF 2022

Between:-

**ANITA KUMARI W/O DINESH
SINGH CHAUHAN AGE ABOUT 48
YEARS, OCCUPATION TGT (ARTS),
GSSS GIRLS KOTKHAI, TEHSIL
JUBBAL, DISTRICT SHIMLA, H.P.
PERMANENT RESIDENT OF
VILLAGE DEHLWIN, P.O. GAHAR,
TEHSIL GHUMARWIN, DISTRICT
BILASPUR, H.P.**

...PETITIONER

**(SH. MOHIT THAKUR AND SH.
SUNEET SINGH, ADVOCATES)**

AND

- 1. STATE OF H.P. THROUGH
SECRETARY ELEMENTARY
EDUCATION GOVERNMENT OF
HIMACHAL PRADESH.**
- 2. DIRECTOR OF ELEMENTARY
EDUCATION, SHIMLA.**

...RESPONDENT

**(SH. ASHOK SHARMA, ADVOCATE
GENERAL WITH SH. VINOD
THAKUR, SH. SHIV PAL
MANHANS, ADDITIONAL
ADVOCATE GENERALS AND SH.
RAJAT CHAUHAN, LAW OFFICER.**

*This Petition coming on for orders this day, the **Hon'ble Mr. Justice Tarlok Singh Chauhan**, passed the following:-*

ORDER

The petitioner is about 48 years and was recently appointed as TGT (Arts) on batch-wise basis on 18.02.2021 and posted at GSSS Kotkhai, Shimla.

2. The instant petition has been filed by the petitioner seeking her transfer to a station of her choice on the following grounds:-

(i) That the petitioner suffers from a medical condition whereby she is having only one kidney and she also suffers from associated complications like pain and swelling.

(ii) The husband of the petitioner also suffers from Liver ailment (Hemangioma) as detailed in the petitioner and also from recurrent kidney stone problem.

(iii) Aged mother-in-law running in her late eighties is dependent on the petitioner and her husband.

(iv) The present place of posting is at about 220 kms from her native place and keeping in view the above circumstances it has become very difficult to manage.

(v) Transfer Policy (Annexure P-2) recognizes the right of transfer on Medical and Humanitarian Grounds

(vi) By virtue of Annexure P-8 similar contractual employees have been adjusted.

3. 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 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 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. 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 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 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.

4. The teacher in Indian society has been elevated to a higher position than 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.

5. 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).

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

7. Future hopes and aspiration of the country depends on education, therefore, it is imperative that proper and disciplined functioning of the educational institutions, more particularly, the teachers should be the hallmark. If the laws and principles are eroded by the teachers themselves, then it not only pollutes the functioning of the institution, deteriorates its standard but also exhibits to its own students the wrong channel adopted. If that be so, how could such educational institutions produce good citizens?

8. It is the educational institutions which are the future hope of this country. They lay the seed for the foundation of morality, ethics and discipline. If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed.

9. To provide a conducive ambience and environment to students, teachers with a particular frame of mind are required and whose priority is to ensure mental and physical well being of the children. They are expected to imbibe the right values from the teachers who naturally become their role models. Sincerity and dedication to their chosen profession are the hallmark of such teachers.

10. To be a teacher is a sacred mission. Dedication to the cause of education is the hallmark of teacher. Teachers, in our

perspective, are men of character, honesty, simplicity and dedication. Their mission is to dedicate their lives to brighten the lives of the younger and impressionable generation. Such persons entrusted with the running of the school, universities should not forget their real roles. They should work for the upliftment of the education.

11. Viewed from such a back-drop, when the conduct of the petitioner has been examined, to say the least, it is reprehensible instead of being thankful to the almighty for providing her with the government job at the age of 47 years, the petitioner is trying to seek comfort.

12. 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).

13. None of the grounds on which the transfer is sought for can be held to be sufficient enough to accede to the request of the petitioner. Once the petitioner is currently aged about 48 years, it requires no rocket science to assume that her in-laws,

especially, mother-in-law, would obviously be in the 80's and would also be facing age related issues but this is probably too for all those employees who are fortunate to have the parents, in-laws or any of them alive. Even the averments regarding the so-called medical problems being faced by the petitioner are totally unsubstantiated and, therefore, her request even on this ground cannot be acceded to.

14. In view of the aforesaid discussion, we find no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending applications, if any, also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Virender Singh)
Judge

28th September, 2022
(sanjeev)