CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION No:282 of 2005

THIS, THE 8th DAY OF SEPTEMBER, 2005

HON'BLE SHRI SHANKER RAJU MEMBER (J)

HON'BLE SHRI S.P. ARYA MEMBER (A)

Ms. Preeti Katiyar aged about 30 years
wife of Sri Pradip Kumar resident of
B-14/FF/D-2, CSIR Scientist Apartment,
Sector K, aliganj, Lucknow-226024.

Applicant.

By Advocate Shri Raj Singh .

Versus

1. Kendriya Vidyalaya Sangathan,
   18, Institutional Area, Shaheed Jeet Singh Marg,New Delhi through Commissioner, Kendriya Vidyalaya Sangathan.
2. Commissioner, Kendriya Vidalaya Sangathan 18, Institutional Area, Shaheed Jeet singh Marg, New Delhi.
3. Education Officer, Kendriya Vidyalaya Sangathan 18, Institutional area, Shaheed Jeet Singh Marg, New Delhi.
4. Assistant Commissioner, Kendriya Vidyalaya Sangathan Lucknow Region, sector-J, Aliganj, Lucknow.
5. Principal, Kendriya Vidyalaya, Indian Institute of Management, Prabandh Nagar, Off Sitapur Road, Lucknow.

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:283 of 2005

Ms.Madhushri Shukla aged about 44 years

Wife of Sri D. K. Garg,

Resident of MMB-1/11,
Sector B, Sitapur Road

Scheme Lucknow.

Applicant.

By Advocate Shri Raj Singh .

Versus

1. Kendriya Vidyalaya Sangathan,

18, Institutional Area, Shaheed Jeet Singh Marg,New Delhi through Commissioner, Kendriya Vidyalaya Sangathan.

2. Commissioner, Kendriya Vidalaya Sangathan 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

3. Education Officer, Kendriya Vidyalaya Sangathan 18, Institutional area, Shaheed Jeet Singh Marg, New Delhi.

4. Assistant Commissioner, Kendriya Vidyalaya Sangathan Lucknow Region, Sector-J, Aliganj, Lucknow.

5. Princiapl, Kendriya Vidyalaya, Indian Institute of Management, Prabandh Nagar, Off Sitapur Road, Lucknow.

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:284 of 2005

Ms. Madhvi Pathak aged about 33 years
Wife of Shri K.K. Pathak,
Resident of 13,

Alkapuri, Adil Nagar,

Kursi Road,Lucknow.

Applicant.

By Advocate Shri Raj Singh .

Versus

1. Kendriya Vidyalaya Sangathan,

18, Institutional Area, Shaheed Jeet Singh Marg,New Delhi through Commissioner, Kendriya Vidyalaya Sangathan.

2. Commissioner, Kendriya Vidalaya Sangathan 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

3. Education Officer, Kendriya Vidyalaya Sangathan 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

4. Assistant Commissioner, Kendriya Vidyalaya Sangathan Lucknow Region, Sector-J, Aliganj, Lucknow.

5. Princiapl, Kendriya Vidyalaya,Gomti Nagar, Lucknow.

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:286 of 2005

Z.A. Khan, aged about 58 years,

S/o Late Shri Akhtar Ali,

Resident of 220 Ashiana Colony,

Lucknow.

Applicant.

By Advocate Shri Yogendra Mishra .

Versus

1. Union of India, through Secretary, Department of Human Resource Development,Ministry of Central Secretariat,
New Delhi.
2. Joint Commissioner,

Kendriya Vidyalaya Sangathan,

18 InstitutionalArea,

Saheed Jit Singh Marg,

New Delhi

3. Education Officer,

Kendriya Vidyalaya Sangathan,

18 Institutional Area,

Shaheed Jeet Singh Marg,

New Delhi

4. Principal,

Kendriya Vidyalaya, SGPGI Campus,

Lucknow.

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:288 of 2005

Smt. Smriti Saxena, aged about 44 years, wife of Shri Ajay Kumar Saxena, resident of B-1390, Indira, Nagar, Lucknow (posted as Primary Teacher in Kendriya Vidylaya, Bakshi-Ka-Talab, DistrictLucknow.

Applicant.

By Advocate Shri Prashant Singh for Shri R. C. singh .

Versus

1. Kendriya Vidyalaya Sangathan, New Delhi, through its Commissioner.

2. Commissioner, Kendriya Vidyalaya Sangathan,New Delhi

3. Joint Commissioner , Kendriya Vidyalaya Sangathan, New Delhi.

4. Deputy Commissioner (Administration), Kendriya Vidalaya Sagathan, New Delhi.

5. Education Officer, Kendriya Vidyalaya Sagathan, New Delhi.

6. Principal,

Kendriya Vidyalaya, Bakshi-Ka-Talab, District Lucknow.

7. Smt. A. Darbari, Primary Teacher, Kendriya Vidyalaya, Gomti Nagar, Lucknow.

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:290 of 2005

Dr.Seema Chaudhary aged about 43 years, D/o Shanti Swaroop Chaudhary, R/o G. 71 Sanjay Gandhi Puram Faizabad Road , Lucknow.

Applicant.

By Advocate shri V. Raj for Shri Vinod Kumar .

Versus

1. Kendriya Vidyalaya Sangathan,

18, Institutional Area, Shaheed Jeet Singh Marg,New Delhi through Commissioner, Kendriya Vidyalaya Sangathan.

2. Commissioner, Kendriya Vidalaya Sangathan 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

3. Education Officer, Kendriya Vidyalaya Sangathan 18, Institutional area, Shaheed Jeet Singh Marg, New Delhi.

4. Assistant Commissioner, Kendriya Vidyalaya Sangathan Lucknow Region, Sector-J, Aliganj, Lucknow.

5. Principl, Kendriya Vidyalaya, Indian Institute of Management, Prabandh Nagar, Off Sitapur Road, Lucknow.

Air Force station Bakshi-ka-Talab,

Corrected as per court's order dt. 15.9.05

15/9/05

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:292 of 2005

Ms. Ranjana Rani aged about 45 years D/o late Pratap Singh, resident of C-140, LDA Colony Kanpur Road, Lucknow.

Applicant.

By Advocate Shri Raj Singh .

Versus

1. Kendriya Vidyalaya Sangathan,

18, Institutional Area, Shaheed Jeet Singh Marg,New Delhi through Commissioner, Kendriya Vidyalaya Sangathan.

2. Commissioner, Kendriya Vidalaya Sangathan 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

3. Education Officer, Kendriya Vidyalaya Sangathan 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

4. Assistant Commissioner, Kendriya Vidyalaya Sangathan Lucknow Region, Sector-J, Aliganj, Lucknow.

5. Princiapl, Kendriya Vidyalaya, Army Medical Core Lucknow.

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:291 of 2005

Manjula Barnwas, aged about 47 years daughter of Shri R. N. Chatterjee, r/o 1/590, Vikas Nagar, Lucknow.

Applicant.

By Advocate Shri R.C. Saxena .

Versus

1. Union Of India, through Secretary to the department of Human Resources & development, New Delhi.

2. Commissioner/Principle Eexcutive Officer, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

3. Joint Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional area, Shaheed Jeet Singh Marg, New Delhi.

4. Assistant Commissioner, Lucknow Region, Aliganj Sector-J, Regional Office, Kendriya Vidyalaya Sangathan, Lucknow..

5. Principapl, Kendriya Vidyalaya, Aliganj, Lucknow.

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:376 of 2005

Smt. Uma Dixit, aged about 47 years, wife ofSri r. K. Dixit, resident of E 1/330/H, L.D.A. colony, Kanpur Road, Lucknow.

Applicant.

By Advocate Shri R.C. Saxena .

Versus

1. Kendriya Vidyalaya Sangathan, 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi..

2. Joint Commissioner (Administration), Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

3. Assistant Commissioner, Lucknow Region, Aliganj Sector-J, Regional Office, Kendriya Vidyalaya Sangathan, Lucknow..

4. Principapl, Kendriya Vidyalaya, Aliganj, "AMC" Lucknow.

Corrected as per order dt 15.9.05

16/9/05

DR 16/9/05

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:293 of 2005

Vineeta Shah, aged about 36 years Wif of Sri Ashutosh Sah, R/o 2/294, Vishwash Khand, Gomti Nagar, Lucknow..

Applicant.

By Advocate Shri R.C. Saxena .

Versus

1. Union of India, through Secretary to the Department of Human Resources & Development, New Delhi..

2. Commissioner/Principle Eexcutive Officer, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, Ne.

3. Assistant Commissioner, Lucknow Region, Aliganj Sector-J, Regional Office, Kendriya Vidyalaya Sangathan, Lucknow..

4. Principapl, Kendriya Vidyalaya, SGPGI, Lucknow.

Respondents.

By Advcate Shri M.G. Misra.

ORIGINAL APPLICATION No:303 of 2005

Sangeeta Srivastava aged about 41 years W/o Sri Rajeev Kamal r/o 5/179, Vikas Nagar, Lucknow.

Applicant.

By Advocate Shri R.C. Saxena Sri Y.S. Lohit

Corrected vide courts order dt. 13.9.05.

14/9/05

Versus

1. Union Of India, through Secretary, Ministry of Human Resources Development, Ministry of Central Secretariat, New Delhi.

2. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhin through its Commissioner.

3. Joint Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

4. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow, Sector-J, Aliganj.

5. Education Officer, Kendriya Vidyalaya sangthan, 18 Institutional area, Saheed Jit singh Marg, New Delhi.

6. Principl, Kendriya Vidyalaya, Aliganj, Gomtinagar, Lucknow.

corrected vide Hon'ble Courts order dt. 13-9-05

Respondents.

By Advcate Shri M.G. Misra.

14/9/05

14-9-05

ORDER

BY HON'BLE SHRI SHANKER RAJU, MEMBER (J)

As the facts are almost similar and the issue is based on identical question of law, to avoid multiplicity and for the sake of brevity, these OAs are disposed of by this common order.

2. By virtue of these OAs applicants are working as teachers in Kendriya Vidyalaya Sangathan (KVS) have impugned transfer guidelines of the KVS promulgated on 19.1.2005 with a particular challenge to clause 10 (2) of the guidelines which displaces for want of vacancy , a teacher who is junior most in the service of KVS in the said station of the same category.

3. Further paragraph 18 (B) of the guidelines is also challenged which vest in Commissioner of KVS power to make departure from the guidelines with the approval of the Chairman of the KVS, as unfettered power vested in the Chairman.

4. In O.A. No. 282/05, applicant impugns said transfer from Lucknow to Mahendra Garh on various grounds . It is also stated that in the spouse case there is no provision of consideration of spouses case employed elsewhere except KVS. One of the ground alleged is that as per clause 10 (3) even after operation of clause 10 (2) on displacement of teachers efforts have to be made to adjust them in the nearest KVS against the available vacancy which has not been considered.

5. In O.A. No. 283/2005, transfer of applicant from Lucknow to Tripuati is assailed inter alia on the ground that spouse case has not been given its meaning as per the Govt. of India instructions issued in 1986 and 1984 and the policy is malafide violative of Articles 14 and 16 of the Constitution of India. Apart from challenge to the policy guidelines on the ground that there has been a deviation from the past policy promulgated by the KVS and this departure has no reasonable nexus with the objects sought to be achieved and the guidelines are contradictory in operation of its clauses.

6. In OA No.284/2005 applicant impugns transfer from Lucknow to Bakra on various grounds, inter alia, challenging the policy and non-consideration of spouse case of other ministries and government departments.

7. In OA-286/2005 transfer of the applicant from Lucknow to Nowgaon is assailed on the similar grounds as above. Another ground is taken by the applicant is that whereas clause 6 (A) of the policy determines 30th June of the year as cut of date of transfer and as the applicant by the date has only three years to go , he cannot be replaced under the policy.

8. In O.A. 288/2005, applicant impugns respondents order dated 1.6.05 whereby applicant has been transferred from Lucknow to Bhind on various grounds as stated above as well as on medical grounds.

9. In O.A. No. 290/2005, respondents order transferring applicant from Lucknow to Bargarh has been assailed on identical grounds as above.

10. In O.A. No. 292/2005, applicant impugns transfer from Lucknow to Lokha on spouse case and other grounds as well.

11. In O.A. No. 293/2005, applicant impugns transfer from Lucknow to Rajgarh after challenging the policy.

12. In O.A. No. 291/05, applicant impugns her transfer from Lucknow to Recongpeo on various grounds as stated above.

13. In OA No. 303/2005, applicant impugns transfer from Lucknow to Jamuna Colliery at Shadol M.P.

14. In O.A. No. 376/2005, applicant challenges her transfer from Lucknow to Dinjam, Assam. Rajgarh.

corrected as per order dt 15.9.05

16.9.05

DR 16/9/05

15. At the out set as established from the ratio decidendi held in various Supreme Court decisions that a transfer order in administrative exigency or public interest without any malafide , arbitrariness , punitive ness or if not in derogation of statutory rules cannot be interfered in a judicial review by the court as wheels of administration should not be stalled from being run smoothly and the court cannot sit an appellate authority over the posting /transfer of the Govt. employees as held by the Apex Court in National Hydro Electric Power Corporation Vs. Sri Bhagwan 2002 SCC (L&S) 21.

16. From time to time KVS issued guidelines as policy for effecting transfers within the organization. In the wake of decision of the Tribunal which was deliberated by the High Court regarding transfer of a lady teacher more than 500 Kms. , the transfer guidelines were promulgated in 2000 by the KVS where definition of teacher including not only teacher employed in KVS but also Vice Principal and Principal. A tenure was defined as continuous stay for three years. In these guidelines the transfer in spouse case not only included the spouse employed in Central / State Govts., Public Sector Undertakings (PSUs) etc. Para 4 of these guidelines lays down maximum period of service at a station not exceeding three years for a teacher. In para 10 A , the displacement to accommodate those who posited in hard areas , teacher with long stay at a station was the criteria. However, certain amendments were carried out on 27.1.2003, where in clause 10 (1) , displacement of longest stay has been retained.

17. On 7.7.2004, guidelines promulgated included Vice Principal and Principal within the ambit of teacher and in clause 4 , a maximum

period of service at a station is maintained as maximum three years . However, in clause 6 (B) , a teacher who had the least in KVS as per length of service has been observed to be identified as excess . However, in a spouse case, apart from KVS employees, Central Govt. and other employees have been mentioned. On 27.1.2003, an amendment defined the maximum stay for displacement as per length of service.

18. The guidelines issued in the present O.As have been issued w.e.f. 19.1.2005 in super session of existing guidelines where definition of teacher excluded Vide Principal and Principal for the purposes of transfer and the maximum tenure of stay at a place has been done away with. Clause 6 (A) and 6(B) of these guidelines are reproduced as under:-

"6(A) As far as possible, the annual transfers may be made during summer vacation. The crucial date for determining the eligibility stay etc., for those serving at the Vidyalayas at North East Region, very hard stations/ hard stations shall be 30th June and in rest of the cases, it shall be 31st March. However, no transfers accept those on the following grounds shall be made after 30th June. Any modification/ corrigendum arising out of effecting regular transfers will be completed by 31st July.

(i) Organizational reasons , administrative grounds and cases covered by clause file.
(ii) Transfers on account of death of spouse or serious illness when it is not practicable to defer the transfer till next year without causing serious danger to the life of the teacher , his spouse and son /daughter.
(iii) Mutual transfers as provided in clause 12.

6(B) (i) The teacher of the particular category who has the maximum length of service in a Kendriya Vidyalaya will be identified as excess to the requirement based on the staff sanction order issued by KVS for a particular year. The teacher thus identified as excess to the requirement at Kendriya Vidyalaya level will be transferred out of station only if no vacancy exist in the station and if he happens to be one who has the maximum length of service at the station. If he is not so , then the teacher/ staff who has the maximum length of service in that station will be transferred out. The teacher/staff identified

as excess to the requirement at Kendriya Vidyalaya level will be adjusted against this created vacancy/ any existing vacancy within the station or in the nearest vidyalaya.

(ii) The following categories of teachers will be exempted from being identified as excess to the requirement except in the event of non –availability of other teacher in that particular category (post/subject) in that Kendriya Vidyalaya/ Station for being adjusted as excess to the requirement.

(a) who are covered under medical grounds for seeking transfers under the transfer guidelines
(b) who are physically challenged
(c) whose spouse has died within the last two years with reference to 31st March of the particular year.
(d) Who have less than three years of service for retirement on superannuation with reference to 31st March of the particular year
(e) Spouse of KVS employee.

In such a situation, the teacher who has the next maximum length of service in that Kendriya Vidyalaya/station will be identified as excess to the requirement and redeployed as per clause 6 (B) (i) above.

In the event of non-availability of teacher from the non-exempted category for being identified as excess to the requirement where it becomes inevitable to redeployed a teacher from the available exempted category, the teacher member among the said exempted categories will get preference for being retained in the above sequence as at (a) to (e) i.e. the teacher from the lower exempted category will have to move out."

19. As such in the above clauses, there is no reference to the tenure of a teacher in a particular school and within the definition of spouse of KVS employee, priority to the Sangathan employee. Clause 10 (2) of the guidelines is reproduced as under:-

"10(2) Where transfer is sought by a teacher under clause 8 of the transfer guidelines after a continuous stay of two years in the VERY HARD STATION or 3 years in the North East , A& N Islands and other declared hard stations of by a teacher falling under the grounds of medical/death of spouse / less than three years to retire or vary hard case involving human compassion, in the event of non- availability of vacancy at his choice station , the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of the KVS in the said station of the same category (post/subject). However, the principles who have been retained under clause 4 to promote excellence would not be displaced under the clause.

Note: Date of appointment on regular basis will be the criteria to decide service in KVS in the said post. While displacing teachers, immunity

shall be granted to the teachers as applicable, for identifying and redeploying excess to the requirement of teachers. Apart from them , President/ General Secretary of the recognized service associations of KVS who are also the members of the JCM will also be granted immunity. This facility is applicable to regional level also.

20. If one has regard to the above, this provision is challenge on the ground that for a teacher who under clause 8 of the scheme due to organizational reason has on a very hard station posting for two years and in North East Region for a period of three years as per choice posting and those who on account of their medical problems and spouse case and those who are retiring within three years , if a vacancy is not available at the choice station, the vacancy is created to accommodate the concerned by transferring the junior most teacher in the service (as per length of service) in the same station but with an exception to the Principal. However, before displacing the teachers efforts should be made to accommodate them in the nearest Kendriya Vidyalaya against the clear vacancy. Clause 18 of the guidelines also challenged which is reproduced as under:-

"18. Notwithstanding any thing contained in these guidelines :

(a) A teacher or an employee is liable to be transferred to any Kendriya Vidyalaya/Office of the Sangathan at any time on grounds mentioned in clauses 5 , 6 (A) and 6 (B) of these guidelines.

(b) The commissioner will be competent to make such departure from the guidelines as he may consider necessary with the prior approval of the Chairman , KVS. However, such departure will be considered only after the disposal of the cases of en-bloc categories specified under clause 7. Moreover, such departures will not be made for the cases covered under clause 17 (iv) and 17(v).

(c) The request of teacher may be considered for transfer to a station in respect of which no other person has made a claim or request even if such teacher has not submitted in the prescribed proforma at the time of annual transfer or within the time limit prescribed for the purpose. This will be applicable only for transfer to Kendriya Vidyalayas in the North East Region and other Kendriya Vidyalayas declared as very hard and hand stations.

21. It is stated that unfettered power has been accorded to the Commissioner to make a departure from the guidelines which has crept in arbitrariness in the action.

22. Sri Raj Singh has cited a number of decisions of the Apex Court, which are referred to in paragraph 38 below, to buttress his plea:

23. According to Sri Raj Singh when earlier guidelines of the KVS not only defined maximum tenure of a teacher at a particular station and included Principals and Vice Principals within the ambit of teacher and allowed spouse cases of Central/State Govts and PSUs employees, then the deviation from the scheme and policy guidelines which have been followed since 2000 without any reasonable nexus with the objects sought to be achieved may be a policy decision will still be a malafide action and the guidelines promulgated or required to be set aside.

24. Sri Raj Singh Learned counsel appearing for applicants in some cases assailing the transfer on spouse case contends that policy of transfer for accommodating a particular category of teachers by transferring a senior most teacher at a particular station and not the junior most teacher in KVS has no reasonable basis . According to him to accommodate teachers at hard station and nearest area, the longest stayee at a place should be displaced. The criteria should have been the senior most teacher in service as the junior most teacher by virtue of length of service if displaced under clause 10(2) of the guidelines wherever goes remains as junior most teacher and every year on annual transfer, he would have to give way to the exempted categories and this would lead to a situation where the junior most in service shall be subjected to frequent transfer and would be out of place

every time to accommodate others. This not only affects the interest of the employee but the organization as well, as at a particular place, if a teacher starts performing then his transfer in the midst of short tenure would lead to prejudicial effect on students as the KVS is an organization imparting education which is the paramount consideration and object . By such guidelines , the same is frustrated. By referring to DOP&T O.M. dated 3/4/86, 12.6.97 and 23.8.2004, it is stated that as far as possible husband and wife should be posted together which has a reasonable nexus with the object sought to be achieved to enable them to lead a normal family life and to ensure welfare education of their children. It is in the public interest and for running the Govt. organization smoothly . In the wake of V^{h} Central Pay Commissions' Recommendations , O.M. dated 12.6.97 has reiterated that posting of husband and wife at the same station is to be invariably done till the children are 10 years of age. A subsequent instructions issued on 23.8.2004 that is the policy of the Govt. has been reiterated and direction to all ministries and Departments to follow the guidelines has been issued. In the above back drop , in the exempted categories, when spouse of the KVS employee has been included then spouse category of employee belonging to Central/State Govt. employees, PSUs and other spouse cases should also have been included in the exempted category. The aforesaid inclusion is arbitrary , irrational and in violative of article 14 and 16 of the Constitution of India.

25. As regards clause 18 (B) of the Transfer Guidelines , the learned counsel stated that in one of the cases Smt. A Batra , PRT who has been transferred, her transfer has been cancelled under clause 18 (B) by the Commissioner and she has been retained at Lucknow. By referring to the aforesaid, it is stated that guidelines are unguided and

give unfettered powers to the Commissioner of KVS to accommodate a particular person who otherwise has to be replaced under clause 10. Such a power would invariably be subject to misuse. As such pick and chose method can be adopted to favour the blued eyes.

26. Proxy counsel appearing for Sri Y.S. Lohit assails the policy on the ground that whereas Article 71(1) of the Education Code of KVS provides liability of transfer whereas clause 3 reveals that one is liable to transfer depending upon the administrative exigencies and organizational reasons but with a purpose to maintain uninterrupted academic schedule and quality of teaching. Paragraph 4 of Article 71 of the Education Code provides maximum tenure of three years for a teacher to stay at a particular place. In this view of the matter it is stated that when Principal and Vice Principal who are performing the teaching jobs who are earlier included in the definition of teachers have been left out of the array of application of clause 10 (2) which is not only arbitrary but discriminatory and violative of principles of equality, as for the purpose of teaching both the teachers and principals are identically situated.

27. By not considering the representation against the transfer a valuable right of applicant has been lost which is violative of Article 350 of the Constitution of India.

28. Shri R.C. Singh has also challenged the transfer policy and stated that clause 10 of the policy provides the junior most teacher at the place to be transferred and applicants are not the junior most.

29. In nut shell it is stated that by these guidelines the KVS has retained unfettered power to discriminate the employees under the guise

of administrative exigencies and public interest to transfer and the policy with its contradictory clauses is not workable.

30. In OA-286/2005 Mr. Mishra contended that public interest which is the basis of clause (2) of Article 17 of the Code is interpreted as a personal interest by the respondents without looking at the interest of the employees and object of the organization. In the above view of the matter it is stated that applicant who is to retire on 20.5.2007 has been displaced by a teacher at hard station and in view of the policy laid down under Rule 6 (A) crucial date for determining the eligibility for annual transfer for a teacher at hard station is 30th June of the year and in rest of the case it is 31st March of the particular year. The exception clause 6 (B) where less than 3 years service for retirement on superannuation is stated to be 31st March of the particular year may not be pressed for those teachers where they are displaced by persons at hard station at North East Region because the crucial date is 30th June shall mutatis mutandis apply to applicant and adopting two cut off dates in such an event would not only be unreasonable but irrational.

31. On the other hand, respondents' counsel have filed their reply and vehemently opposed the contentions. According to the learned counsel policy decision cannot be interfered with by this Court in a judicial review. The object of the KVS is to maintain KVS spread all over the country for imparting education for which a Board of Governors has been constituted and Education Code has been formulated. A teacher as all India transfer liability. Para 6 (B)(i) of the guidelines determines identification of an excess teacher on the basis of maximum length of service who is to be transferred. As per clause 6 (B) exemption has been given to certain categories. Clause 10 (2) of the guidelines accommodate those who have

continuously stayed at hard station and North East for two years or three years respectively and other exempted categories as per their choice. Clause 18 (B) gives power to the Commissioner with the approval of Chairman of KBS to make departure from the guidelines. A reference has been made to a decision of the Apex Court in CA No.6459/2002 in **Commissioner, KVS v. Ansuya Pathak** and Ors. decided on 30.9.2002 and CA No.6207/2004 in **KVS v. Damodar Prasad Pandey & Ors.** decided on 30.9.2004 wherein transfer has been set aside with reversal of the judgment of the Tribunal on the ground that even if one is a lady teacher transfer cannot be interfered with unless arbitrary or malafide or infraction of the rules. In the above backdrop of the orders passed it is stated that policy guidelines do not suffer from any infirmity and are adopted for regulating transfer.

32. As regards spouse case, it is stated that KVS being a Society registered under the Societies Registration Act of 1960 not being a Ministry or Department of the Government the guidelines issued by the Central Government are not applicable. Learned counsel would contend that Board of Governors with the prior approval of the Chairman is competent to devise guidelines to regulate the transfer as per KVS Code. For want of any malafide it is stated that applicants have failed to make a prima facie case for interference of this Court and the OAs are liable to be dismissed. The learned counsel have also relied upon a decision of the Apex Court in **Bank of India v. Jagjit Singh Mehta**, AIR 1992 SC 519 to contend that posting of husband and wife cannot be claimed as a matter of right.

33. In rejoinder learned counsel have reiterated their pleas and stated that guidelines are not tenable in law and on individual basis it is stated

that undue hardship in spouse cases, medical grounds and shortest stay have not been considered.

34. We have carefully considered the rival contentions of the parties and perused the material on record.

35. We find that in some of the cases relieving orders have been issued but most of the cases by virtue of interim orders transfer has been stayed.

36. The following are the features in transfer policy assailed which is the subject matter of challenge:

i) Exclusion of principals from the ambit of definition of teacher to attract transfer policy.

ii) Non-inclusion of maximum period of service at a station for a teacher whereas in clause 4 the same has been laid down for principal.

iii) In clause 6 (B) though the identification as an excess teacher with maximum length of service in KVS is to be identified failing which if no vacancy exists in that station and if he happens to be the one who has the maximum length of service at that station will be transferred out of station.

iv) Exempted categories under clause 6 (b) (ii) include only spouse of KVS employees whereas spouses of Central /State Government and PSUs are left out.

v) Displacement of teacher under clause 10 (2) of the Scheme on the basis of length of service in KVS.

vi) Operating two cut off dates for exemption to retirees within three years i.e., 30th June of the year and 31st March of the year.

vii) Under Clause 18(B) unfettered power has been given to the Commissioner on approval to make deviation from the Scheme and Clause 22 which makes representation against grievance only through proper channel.

37. In the above backdrop the established transferred guidelines in the past as amended from time to time clearly define teacher including Principal and Vice Principal and tenure for a teacher also to the maximum of three years at a school. In the spouse case , employee of Central /State Governments , PSUs were also reckoned with.

38. Before we deal with the vires of these guidelines it is necessary to clear the position of law in the matter of policy decision.

(1998) 4 SCC 117,in State of Punjab and Others Versus Ram Lubhaya Bagga and Others, the Apex Court held as follows:-

"Now we revert to the last submission, whether the new State policy is justified In not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of government policy is concerned in our view it is not normally with the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including on constraints based on its resources. It is also based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."

(1996) 2 SCC 405 in Delhi Science Forum and Others versus Union of India, the Apex court held as follows:-

"Section 7 enables the Central Government to make rules consistent with the provisions of the Act for the conduct of all or any telegraphs established, maintained or worked by the government or by persons licensed under the said Act. Clause (e) of sub-section (2) of Section 7 prescribes that rules under the said section may provide for conditions and restrictions subject to which any telegraph line, appliance or apparatus for telegraphic communication shall be established, maintained, worked, repaired, transferred, shifted, withdrawn or disconnected. There is no dispute that no such rules have been framed as contemplated by Section 7(2) (e) of the Act. But in that event, it cannot be held that unless such rules are framed, the power under sub section (1) of section 4 cannot be exercised by the Central government. The power has been granted to the Central Government by the Act itself, and the exercise of that right, by the Central Government, cannot be circumscribed, limited or restricted (sic by) any subordinate legislation to be framed under Section 7 of the Act. No doubt, it was advisable on the part of the Central Government to frame such rules when it was so desired by Parliament. Clause (e) to sub-section(2) of Section 7 was introduced by amending act 47 of 1957. If the conditions and restrictions subject to which any telegraph/telephone line, is to be established, maintained or worked , had been prescribed by the rules, there would have been less chances of abuse or arbitrary exercise of the said power. That is why by the Amending act 47 of 1957 Parliament required the rules to be framed. But the question is as to whether it can be held that till such rules are framed Central Government cannot exercise the power which has been specifically vested in it by first proviso to Section 4 (1) of the Act? Even in the absence of rules the power to grant licence on such conditions and for such considerations can be exercised by the Central Government but then such power should be exercised by the Central Government but than such power should be exercised on well settled principles and norms which can satisfy the test of article 14 of the Constitution. If necessary for the purpose of satisfying as to whether the grant of the licence has been made strictly in terms of the proviso complying and fulfilling the conditions prescribed, which can be held not only reasonable, rational, but also in the public interest can be examined by courts. It need not be impressed that and an authority which has been

empowered to attach such conditions, as it thinks fit, must have regard to the relevant considerations and has to disregard the irrelevant ones. The authority has to genuinely examine the applications on their individual merit and not to promote a purpose alien to the spirit of the Act. In this background, the courts have applied the test of a reasonable man i.e. the decision should not be taken or discretion should not be exercised in a manner, as no reasonable man could have ever exercised. Many administrative decisions including decisions relating to awarding of contracts are vested in a statutory authority or a body constituted under an administrative order. Any decision taken by such authority or a body can be questioned primarily on the grounds(i) decision has been taken in bad faith; (ii) decision is based on irrational or irrelevant considerations; (iii) decision has been taken without following the prescribed procedure which is imperative in nature. While exercising the power of judicial review even in respect of contracts entered on behalf of the government or authority, which can be held to be State within meaning of Article 12 of the Constitution, courts have to address while examining the grievance of any petitioner as to whether the decision has been vitiated on one ground or the other . It is well settled that the onus to demonstrate that such decision has been vitiated because of adopting a procedure not sanctioned by law, or because of bad faith or taking into consideration factors which are irrelevant, is on the person who questions the validity thereof. This onus is not discharged only by raising a doubt in the mind of the court but by satisfying the court that the authority or the body which had been vested with the power to take decision has adopted a procedure which does not satisfy the test of Article 14 of the Constitution or which is against the provisions of the statute in question or has acted with oblique motive or has failed in its function to examine each claim on its own merit on relevant considerations. Under the changed scenarios and circumstances prevailing in the society, courts are not following the rule of judicial self-restraint. But at the same time all decisions which are to be taken by an authority vested with such power cannot be tested and examined by the court. The situation is all the more difficult so far as the commercial contracts are concerned. Parliament has adopted and resolved a national policy towards liberalization and opening of the national gates for foreign investors. The question of awarding licences and contracts does not depend merely on the competitive rates offered; several factors have to be taken into consideration by an expert body which is more familiar with the intricacies of that particular trade. While granting licences a statutory authority or the body so constituted should have latitude to select the best offers on terms and

conditions to be prescribed taking into account the economic and social interest of the nation. Unless any party aggrieved satisfies the court that the ultimate decision in respect of the selection has been vitiated, normally courts should be reluctant to interfere with the same."

(1997) 7 SCC 592 in M.P. OIL Extraction versus State of MP, the Apex court held as follows:-

"After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the a administration of the State Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or other wise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these-days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

(2002) (2) SCC 333 in Baico Employees'(Regd.) versus Union of India, the Apex court held as follows:-

"It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical."

"Process of disinvestments is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognized that economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed . Even though the workers may have interest in the manner in which the Company is conducting its business, inas much as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only articles 14 and 16 of the Constitution but also of Article 311, has not absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that , by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision."

(1991) (4) SCC 54 in Bangalore Medical Trust versus B.S. Muddappa and Others , the Apex court held as follows:-

"**46.**Financial gain by a local authority at the cost of public welfare has never been considered as legitimate purpose even if the objective is laudable. Sadly the law was thrown to winds for a private purpose. The extract of the Chief Minister's order quoted in the letter of Chairman of the BDA leaves no doubt that the end result having been decided by the highest executive in the

State the lower in order of hierarchy only followed with 'ifs' and 'buts' ending finally with resolution of BDA which was more or less a formality. Between april 21 and July 14, 1976, that is less than ninety days, the machinery in BDA and government moved so swiftly that the initiation of the proposal by the appellant, a rich trust with 90,000 dollars in foreign deposits, query on it by the Chief Minister of the State, guidance of way out by the Chairman, direction on it by the Chief Minister , orders of Govemment resolution by the BDA and allotment were all completed and the site for

public par stood converted into site for private nursing home without any intimation direct or indirect to those who were being deprived of it. Speedy or quick action in public institutions call for appreciation but out democratic system shuns exercise of individualized discretion in public matters requiring participatory decision by rules and regulations. No one howsoever high can arrogate to himself or assume without any authorization express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. Where the law requires an authority to act or decide, 'if it appears to it necessary' or if he is 'of opinion that a particular act should be done' then it is implicit that it should be done objectively, fairly and reasonably. Decisions affecting public interest or the necessity of doing it in the light of guidance provided by the Act and rules may not require intimation to person affected yet the exercise of discretion is vitiated if the action is bereft of rationality, lacks objective and purposive approach. The action or decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. The purpose for which the act was enacted is spelt out from the Preamble itself which provides for establishment of the Authority for development of the city of Bangalore and areas `adjacent there to. To carry out this purpose the development scheme framed by the improvement trust was adopted by the Development authority. Any alteration in this scheme could have been made as provided in sub-section (4) of section 19 only if it resulted in improvement in any part of the scheme. As stated earlier a private nursing home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The exercise of power ,therefore, was contrary to the purpose for which jit is conferred under the statute.

47. Was the exercise of discretion under sub section (4) of section 19 in violation or in accordance with the norm provided in law. For proper appreciation the sub-section is extracted below:

" 19. (4) If at any time it appears to the Authority that an improvement can be made in any part of the scheme, the authority may alter the scheme for the said purpose and shall subject to the provisions of sub-sections(5) and (6) forthwith proceed to execute the scheme as altered."

This legislative mandate enables the Authority to alter any scheme. Existence of power is thus clearly provided for.

What is the nature of this power and the manner of its exercise? It is obviously statutory in character. The legislature took care to control the exercise of this power by linking it with improvement in the scheme. What is an improvement or when any change in the scheme can be said to be improvement is a matter of discretion by the authority empowered to exercise the power. In modern State activity discretion with executive and administrative agency is a must for efficient and smooth functioning. But the extent of discretion or constraints on its exercise depends on the rules and regulations under which it is exercised. Sub section (4) of Section 19 not only defines the scope and lays down the ambit within which the discretion could be exercised. Therefore, any action or exercise of discretion to alter the scheme must have been backed by substantive rationality flowing from the section. Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must with stand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions. From the extracts of correspondence between the Chairman and the Chief Minister it is apparent that neither of them cared to look into the provisions of law. It was left to the learned advocate General to defend it, as a matter of law, in the High Court. There is no whisper anywhere if it was ever considered, objectively, by any authority that the nursing home would amount to an improvement. Whether the decision would have been correct or not would have given rise to different consideration. But here it was total absence of any effort to do so. Even in the reply filed on behalf of BDA in the High Court which appears more a legal jugglery than statement of facts bristling with factual inaccuracies there is no mention of it. The extent of misleading averment for purpose of creating erroneous impression on the court shall be clear from the statement contained in Paragraph of the affidavit relevant portion of which is extracted below:

"respondent 4 had made an application for grant of land for purpose of constructing a nursing home. This application was made also to this respondent. Considering the fact that the medical facilities available In Banglore were meager and were required to be supplemented by charitable medical institutions, this authority was required to ascertain whether a suitable site could be given for the hospital building of respondent 4. Upon scrutiny of the Rajamahal Vilas Extension, as early as in 1976,the area in question which had been marked as a low level park measuring 13,485 sq. yards was found suitable to cater to medical relief to the needy public. However,since the said area had been

marked as a low level park, it was necessary to convert the said low level park as civic amenity site. Furthermore, it is essential that the Government had to approve allotment of the sight to respondent No.4 as civil amenity site. There are proceedings before respondent No.1 in relation to allotment of site to public institutions. Under the recommendations which have been made it was decided that plots could be allotted to public institutions subject to certain conditions".

It was this statement which resulted in erroneous finding by the learned single judge to the effect.....

48. Much was attempted to be made out of exercise of discretion in converting a sight reserved for amenity as a civic amenity. Discretion is effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even whether statutes are silent and only power is conferred to act in one or the other manner the authority cannot act whimsically or arbitrarily. It should be guides by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly. When legislature enacted sub-section (4) it unequivocally declared its intention of making any alteration in the scheme by the Authority that is BDA and not the State Govt. It further permitted interference with a scheme sanctioned by it only if it appeared to be improvement. The facts therefore that were to be found by the authority were that the conversion of public park into private nursing home would be an improvement in the scheme. Neither the authority nor the State Government undertook any such exercise. Power of conversion or alteration in scheme was taken for granted. Amenity was defined in Section 2 (b) of the Act to include road, street, lighting drainage, public works and such other conveniences as the government may, by notification, specify to be an amenity for the purposes of this Act. The Division Bench found that before any other facility could be considered amenity it was necessary for State Government to issue a notification. And since o notification was issued including private nursing home as amenity it could not be deemed to be included init. That apart the definition indicates that the convenience or facility should have had public characteristic. Even if it is assumed that the definition of amenity being inclusive it should be given a

wider meaning so as to include hospital added in clause 2 (bb) as a civic amenity with effect from 1984 a private nursing home unlike a hospital run by government or local authorities did not satisfy that characteristic which was necessary in the absence of which it could not be held to be amenity or civic amenity. In any case a private nursing home could not be considered to be an improvement in the Scheme and therefore the power under Section 19 (4) could not have been exercises."

In **Union of India and others v. Kannadapara Sanghatanegala Okkuta & Kannadigara and others**, (2002) 10 SCC 226 made the following observations:

"5. We do not find any basis for the High Court coming to the conclusion that the decision of the Union Cabinet was vitiated on account of legal mala fides. Merely because an administrative decision has been taken to locate the headquarters at Bangalore, which decision is subsequently altered by the same authority, namely, the Union Cabinet, cannot lead one to the conclusion that there has been legal mala fides. Why the headquarters should be at Hubli and not at Bangalore, is not for the court to decide. There are various factors which have to be taken into consideration when a decision like this has to be arrived at. Assuming that the decision so taken is a political one, it cannot possibly give rise to a challenge on the ground of legal mala fides. A political decision, if taken by a competent authority in accordance with law, cannot per se be regarded as mala fide. In ay case, there is nothing on the record to show that the present decision was motivated by political consideration. The observation of the High Court that there has been a change in the decision because there was a change of the Government and a different political party had come into power, is not supported by any basis. That the court will not interfere in questions of policy decision is clearly brought out by the following passage from a decision of this Court in Delhi Science Forum v. Union of India, when at p.413, it was observed as follows: (SCC p.413), para 7)

7. What has been said in respect of legislations is applicable even in respect of policies which has been adopted by Parliament. They cannot be tested in court of law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country and such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatization is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role

of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatization is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations – because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court."

6. We further find that the High Court has issued a direction to the appellants herein to locate the zonal office of the Railways at Bangalore. Apart from the fact that in matters of policy the court will not interfere, such a direction should under no circumstances have been issued. If a case had been made out, and in this case no such case had been made out, that a decision to locate at Hubli was not in accordance with law, then the only direction which could have been issued by the court was to consider as to where the headquarters should be located. It is not the function of the court to decide the location or the situs of the headquarters, it is the function of the Government. On this ground also, the decision of the High Court is incorrect."

In **Premium Granites and another v. State of T.N. and others**, (1994) 2 SCC 691, the following observations have been made by the Apex Court:

"50. The observation made in the majority decision in Delhi Transport Corpn. Case as referred to hereinbefore should be appreciated with reference to the facts and circumstances of a case and the true import of a provision under which a discretionary power is to be exercised. While no exception can be made to the observation of this Court in the said decision that "It would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law" it should also be borne in mind that it is not always feasible and practical to lay down such exhaustive written guidelines which can cover all contingencies. It has, therefore, become necessary to make provisions for exercise of discretion in appropriate case by giving broad guidelines and indicating the parameters within which such power is to be exercised. In various decisions referred to hereinbefore, this Court has upheld such exercise of discretion if the same does not appear to be wholly uncontrolled, uncanalised and without any objective basis."

In **Ugar Sugar Works Ltd. V. Delhi Administration and others**, (2001) 3 SCC 635 the Apex Court made the following observations:

> "18. The challenge, thus, in fact, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on ground of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interest of a party, does not justify invalidating the policy. In tax and economic regulations cases there are good reasons for judicial restraint, if not judicial difference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."

In **P.U. Joshi and others v. Accounant General, Ahmedabad and others**, (2003) 2 SCC 632 the Apex Court has held as follows:

> "10. We have carefully considered the submission made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and later or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all

finding. As there was no reason to justify the direction by the High Court orders have been passed to vacate the stay.

43. It is settled that KVS Code which contains the conditions of service and other ancillary matters provides all India transfer liability for a teacher. However in Government of India OM dated 3.4.86 Government has taken cognizance of a social welfare circular to seriously consider the question of posting of wife at the same station is an underline object to lead them their normal family life especially women. These guidelines were issued on 12.6.97 and reiterated in 2004. This aspect of the matter has been left to be considered. Though unstarred question in the Parliament cannot be taken cognizance of but Board of Governors in their 63rd Meeting held on 27.1.98 taken a decision which is binding on them not to normally post PRT and TGT out side the region where they have been selected. However, this has been superseded . The new transfer guidelines are considerate only for the spouse of KVS employee which is as an exception has identified excess strength. The other Central Govt. employees etc. have not been found favoured with. The public interest which is basis of these transfers would not mean that under its guise unfettered powers should have been vested with the KVS to transfer the employees at their whims and fancies and retaining power with the Commissioner to undo the things to their favorites one by deviating from the policy guidelines with the approval of the competent authority as quoted " Power corrupts and absolute power corrupts absolutely " . Though discretion in the matter of policy decision has to be left as the prerogative or discretion of the authorities but this discretion should have to be exercised judiciously with an underline object of the organization which not only includes free flow of administrative work but also welfare of the teachers etc. being employee of the organization KVS basically

> purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

39. What is discerned from the ratio decidendi of these cases is that a policy decision of the Government is amenable to judicial review when it is not in public interest, power has been misused or it is an example of malafide exercise of the powers vested in the authorities. If the action of the Govt. in a policy is violative of Articles 14 and 16 of the Constitution, it has to be set aside.

40. As regards case law cited by the respondents regarding posting of husband and wife cannot be claimed as a matter of right is not disputed but there must be a provision to include the spouse of KVS who are employed in Central /State Government and PSUs.

41. As regards challenge to transfer, there cannot be a denial to the fact that transfer in public interest in administrative exigencies cannot be interfered with unless comes within the exceptions. The decision of the Apex Court in Ansuiya Pathak's case which is distinguishable deals with an issue where high court has not given any reason in staying the transfer only on the ground that respondent was a lady teacher.

42. In Damodar Prasad Pandey's case (supra) malafides have been alleges and punitiveness has been attributed to the transfer. In the above backdrop the Apex Court ruled that when the Tribunal held that no malafides were involved the High Court should not have disturbed the

through out the country through their institutions has undertaken a noble cause for imparting education and strengthen the society in future by the children to grow as a good citizen of the country. However, it should not be forgotten that teachers who are the instrumentality to achieve this object, once started imparting education, by passage of time develop a close relationship of teacher and students and by displacing them frequently would not only disturb this relationship but the mutual understanding developed which ultimately affects the education which is prime object and aim of KVS. If transfer is to be resorted in such a manner, without looking into the angle of not only the organization but also normal human life of a teacher by frequent displacement teacher is affected in the normal life which would ultimately affect outcome of duty which could neither be congenial nor beneficial to the interest of the organization. The aforesaid would not serve any purpose of any public policy or public interest.

44. Article 71 (4) of the Education Code, prescribes maximum tenure of 3 years for a teacher. The aforesaid tenure of a teacher has extended a guarantee to a teacher to be retained at a place at least for a period of 3 years and the earlier policy decision retained the same. In the new policy the above provision does not find mention. As such , the conspicuous absence of teachers to be within the ambit of tenure whereas including Principals and Vice Principals in our considered view when they are promoted amongst teacher and impart identical duties except looking after the management and supervision, being equals not to be treated unequally. Exclusion of principals from the definition of teachers only for the purpose of transfer has left unfettered discretion to the KVS by arbitrarily , discriminating the teacher by this clause. In the matter of equality the same treatment

should be meted out to all the categories which are more or less situated at par. Except transfer exclusion of principals and Vice Principals would not hold good clearly shows that teacher is to be displaced but not the Principals which to our mind requires reconsideration. Teachers should have been assigned at least minimum tenure at a place or in the alternative the old policy should be brought in, which guarantees at least maximum tenure which would bring in confidence in the working of the teachers and would serve the purpose for which KVS has been set up. We do not find any intelligible differentia by exclusion of teacher from the tenure of service at a particular place which would have no reasonable nexus with the object sought to be achieved. In order to bring equality, the above is the condition precedent. It is relevant here to reproduce the observation of the Constitution Bench of the Apex Court in **D.S. Nakara Vs. Union of India,**1983 SCC (L&S) 145:

> "13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in ay form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi case in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view take was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned tow conditions. However, in E.P. Royappa v. State of T.N., it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p.38, para 85)
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> From a positive point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and unconstitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

14. Justice Iyer has in his inimitable style processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of executive excesses – if we may use current cliché – can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: Be you ever so high, the law is above you.
Affirming and explaining this view, the Constitution Bench in Ajay Hasi v. Khalid Mujib Sehravardi held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in Air India v. Nergesh Meerza the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

45. We find that though KVS is a society registered under the Societies Act, 1960 but is a State within the meaning of Article 12 of the Constitution of India. The funding and financial control is done by the Govt. of India which clearly brings its within the instrumentality of the State. Though the KVS is bound by its own code and decision taken by the Board of Governors, ratified and approved by the competent authority yet there are certain legislations and policy decision of Govt. which cannot be brushed aside and which have been followed as a principle by the KVS in the past. One of such decisions was decision of the Government to post husband and wife at the same station. The object behind the OM issued on 3.4.86 reiterated on 12.6.97 and further

repeated in OM dated 23.8.2004 husband and wife who are posted in Central Government or in the PSUs as far as possible within the constraints of administration to enable them to lead a normal family life and to ensure education and welfare of the children. By bringing spouse of the KVS within the exception under clause 6 (B) to (E) and leaving the rest of the categories including Central/State Governments employees and PSUs and giving priority to the spouse and the priority would be considered when the teacher seeks transfer to the station other than posted and the condition would not apply where the spouse of a teacher is posted to a non-family station. The aforesaid in the past subject to administrative exigencies was a valid consideration for transfer in case of a spouse, excluding this would not lead to a harmonious construction, rather leaving other categories from the exemption clause smacks of arbitrariness and hostility and this discrimination though may have an object to look after the interest of spouse of KVS employee would go against the public interest and the decision of the Social Welfare Ministry would go redundant and otiose. However, unless a provision exists these categories would not find a right of consideration though right to be posted together is still at the discretion of the authorities and cannot be claimed as a right, yet when there is no provision even a scope for consideration. As such, deprivation of this provision which the other categories could be considered in spouse case would lead to discrimination and would frustrate the object of putting family together to lead a normal life.

46. At this juncture we would observe that though teacher is a Guru and has a prestigious position in our society like Guru Draunacharya and Guru Vashisht but gone are those days when Guru would live a bachelor's life. A teacher apart from owing a responsibility towards students and KVS equally owes a responsibility to nurture and look after the family and

if the family is neglected including education of the children the object of imparting education would go frustrated in their cases and the just and legitimate expectations of a teacher and equitable consideration warrant that no provision should be made which rather carrying out the object of the KVS would bring the efficiency to such a level where the object and organizational interest are left otiose.

47. Another teacher which draws our attention is inconsistency and contradiction in the policy. For a teacher posted at North East Region and hard/very hard station in annual transfer the cut off date to determine the eligibility of a stay is 30th June. Under clause 10 (B) when a teacher seeks transfer on facing about 2/3 years posting at North East/hard/very hard stations and those teachers who are availing under exempted clause 6 they are to be brought as per their choice to the station of KVS but in the event the vacancy is not available at the choicest station the discretion to accommodate by creating a vacancy and the methodology adopted is highly unworkable, impracticable, irrational and vests arbitrariness in the action. While accommodating such a category the juniormost teacher in the service of the KVS in such station is to be displaced. However, Principals who have been retained for academic excellence would not be disturbed. The date of regular appointment, i.e., length of service is the criteria. Having regard to the above, clause 6 (B) where a teacher is to be identified as excess is one who has the maximum length of service in KVS would further be viewed for want of vacancy and be applicable to one who has maximum length of service at the station. It appears that a person who has the maximum length of service to an area of the State at a station would be declared excess whereas in the matter of displacement of a teacher by the exempted categories has taken a summer salt and a junior teacher in the length of service would have to go. It appears that the

principle of 'last come first go' is the rule for displacement of teacher by exempted category. In the above backdrop if a hard station and North East teacher after completion of tenure as prescribed on his choicest station displaces a teacher then the criteria of cut off date of 30th June of the particular year should be reciprocated, i.e., when the transfer from North East the cut off date is 30th June then for judging the eligibility of displaced teacher the same cut off date has to be reckoned with.

48. In one of the cases before us a lady teacher who had been retiring before 30th June when displaced by a teacher from North East the justification was that in such a case as per the exemption clause 6 (B) (ii) the rule is less than three years for retirement on superannuation as on 31st March of the particular year. This is very irrational as for displacement of a teacher from a teacher posted in hard station and North East when his eligibility for stay the cut off date is 30th June of the year then the same should have been for all purposes including exception clauses has applicability to a teacher who is being displaced. This criteria would not only lead to disharmony but no reasonable nexus is established with the objects sought to be achieved. If a person who has less than 3 years of service on 31st March of the year in which transfers are effected then the criteria of 31st March of the year should also be applicable for stay of teachers at hard stations and North East areas. This has to be reconsidered.

49. While evolving a formula for displacement of the juniormost which on the bare reading shows impracticability and subjecting a teacher to frequent transfer, for example, if a person has been appointed freshly to a school and on 30th June of that year for want of a choicest station by a teacher at North East and hard station or any other exempted category

this teacher being the juniormost in the length of service irrespective of his appointment and non-completion of a tenure of a reasonable period has to be displaced. In the next year the school where the person has been posted still remains the juniormost in the matter of length of service and would be displaced again. It appears that the juniormost teachers in length of service are made scapegoats and would be subject to frequent transfers which is not the object of the transfer policy and aim of the organization.

50. In the above cases clause 10 (3) of the guidelines while operating displacement of a teacher from exempted category and those posted at hard stations and North East areas obligates the KVS to make sincere efforts to accommodate them in the nearest KVS against the available vacancy. For that we do not find any list prepared by the respondents and this obligation discharged. There is no evidence to show that efforts have been made to post these displaced teachers at the nearest stations. Retaining such clause of displacement creates a right in their favour to be accommodated for want of vacancies. If it is so then operating the choice station of exempted categories and teachers at North East and hard stations would not be practicable as if the displacement is to be done then before hand KVS has to ascertain before effecting the transfer to post these displaced teachers to any nearby place. As this is not done in the present cases policy, irrespective of its challenge, has not been followed in its true letter and spirit.

51. Clause 18 (B) of the policy vests discretion on approval by the competent authority upon the Commissioner, KVS to make departure from the scheme and this unfettered power vests absolute discretion in the Commissioner and one of the examples cited before us is when on

displacement on a request made transfer has been cancelled. It is trite law that in the matter of transfer authorities are the sole judges and we are not to act as an appellate authority, yet in a welfare State like ours, when there are norms to govern transfers retention of such a power not only encourages favoritism but also a real apprehension in the mind of the teachers of their having discriminated arbitrarily. If the policy is to be implemented with all exceptions then retention of such a power would be an anti thesis to the equal opportunities and would not past the test of reasonableness laid down under Article 14 of the Constitution of India. Though discretion is always vested in the authority, yet it has to be exercised judiciously as the authority should not act in a manner which would give an impression of injustice to others. If the exceptions are carved out in the matter of transfer no further provision is warranted in this regard and the policy needs reconsideration.

52. Another clause 20 which refers to CCS (Conduct) Rules, 1972 though bringing in outside influence in the matter of service in KVS by a teacher is certainly a misconduct but raising the grievance without proper channel the implications are stringent. One's right to represent against an illegality or any service grievance cannot be blocked by the authorities. A teacher who has been transferred if makes a representation through proper channel then in the guise of the fact that the teacher has already been transferred the proper channel would be to the new school and in that event the very purpose of raising the grievance would go frustrate.

53. In the above view of the matter, we are of the considered view that the policy of transfer as promulgated by the KVS requires reconsideration, as certain provisions are violative of Articles 14 and 16 of the Constitution of India and some of them are unworkable, causing prejudice to the

teachers. We, accordingly, partly allow these OAs with the following directions:

i) Respondents are directed to re-examine the policy to reconsider it in the light of the observations made above.

ii) The orders of transfer passed in each case shall not be given effect to till the matter is reconsidered by a decision of the KVS in writing with reasons.

iii) Any transfer order already effected and relieving ordered, in those cases applicants would be restored back to their status quo ante till that period they would be disbursed for work rendered, salary and pay and allowances.

iv) On reconsideration by a reasoned and speaking order, which shall be passed within a period of two months from the date of receipt of a copy of this order, respondents shall either modify the transfer orders or pass fresh orders of transfer. No costs.

Let a copy of this order be placed in the case file of each case.

(S.P. Arya)
Member(A)

(Shanker Raju)
Member(J)

'San.'