

(2013) 05 DEL CK 0394
In the Delhi High Court
Case No : Writ Petition (C) 3387 of 2013

Abhishek Bhati

APPELLANT

Vs

School Management of GHPS and Others

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7

Citation : (2013) 05 DEL CK 0394

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Raj Kumar Sherawat, for the Appellant; Harshbir Singh Kohli and Mr. Harpreet Singh Kohli, for the Respondent

Judgement

Valmiki J Mehta, J.—Ordinarily, I would not have entertained this writ petition because the petitioner had to approach the Delhi School Tribunal in view of the judgment of the Supreme Court in the case of Shashi Gaur Vs. NCT of Delhi and Others, but since admittedly there is no Presiding Officer at present of the Delhi School Tribunal, I am entertaining this writ petition in view of the urgency/nature of case inasmuch as the services of the petitioner as a probationary officer stand terminated. This writ petition is filed by the petitioner, Abhishek Bhati impugning the memorandum of the respondent No. 1/School whereby the petitioner was terminated from service on the ground that a new session has started. Following is the impugned letter dated 18.04.2013.

Ref. No. 6829 18.04.13

Mr. Abhishek Bhatti

S/Sh. Suresh Chandra Bhati

5/59, Street No. 7

Padam Nagar

Delhi-110007

With reference to your appointment letter as TGT on probation vide Office Order dated 22.01.2013, Since you are on probation as per the above mentioned order and on review it has been found that new session has been started and there is no need for your continuation in your present job hence you are relieved with immediate effect from your services.

Please find enclosed herewith your pending salary and one month notice period salary cheque in lieu of Notice. This will be treated as full and final payment for the entire period of probation you were allowed to serve in this institution.

1. Accounts Branch for information and necessary action

2. To P.A. to Principal

3. In the Personal File of the Concern

2. Before hearing of the writ petition began, counsel for the respondent No. 1 filed in Court a letter of a subsequent date 24.05.2013, issued during the pendency of this petition, and which reads as under:

BY HAND/SPEED POST/REGD. A.D./COURIER

Ref. No. 6760

Dated: 24.5.2013

Mr. Abhishek Bhati,

S/o Sh. Suresh Chand Bhati,

5/59, Street No. 7

Padam Nagar

Delhi-110007

With reference to your appointment letter as TGT (Social Science and English) on probation for a period of 1 year vide Office Order dated 22.1.2013, you are hereby informed that your performance has not been found to be satisfactory and it has been decided that you are not suitable for the job as TGT (Social Science and English), your services are dispensed forthwith and you are discharged from your services with immediate effect.

You filed a Writ Petition being WP(C) 3387/2013 being Abhishek Bhati Vs. School Management of GHPS & Ors. in the High Court of Delhi and pursuant thereto your case was reviewed and it transpired that it was not mentioned in the office order dated 18.4.2013 bearing Reference No. 6829, that your performance was not found to be satisfactory to avoid any stigmatic observation.

You are further informed that and without prejudice to the office order dated 18.4.2013 bearing Reference No. 6829, since you are on probation as per the above mentioned order and on review it has been found that your services on

the whole are not satisfactory, there is no need for your continuation in your present job.

This is to further clarify that the office order dated 18.4.2013 bearing Reference No. 6829, was issued to you, discharging you from your services as a new session had begun was to avoid making any stigmatic observation.

That by way of abundant caution and to obviate any further objection to be raised by you against the school management in future this order is being issued to you in accordance with the rules and regulations.

Copy To:

1. Accounts Branch for information and necessary Action

2. To P.A. to Principal

3. In the personal File of the Concern

3. The admitted facts are that the petitioner was on probation. Though the petitioner in the writ petition challenges the impugned order dated 18.04.2013, subsequently, respondent No. 1 has passed the order dated 24.05.2013 clarifying that the services of the petitioner were not satisfactory, and therefore, his services having not been found satisfactory during the probation period, such services stand terminated and the earlier letter dated 18.4.2013 was issued to avoid any prejudice to the petitioner.

4. On behalf of the petitioner, it is argued before this Court as under:

i. As per Rule 105 of the Delhi School Education Rules, 1973 an employee of the School can only be removed if the work and conduct of the employee is not satisfactory and since this aspect is not mentioned in the impugned letter dated 18.04.2013, termination of services of the petitioner is, therefore, bad.

ii. Petitioner has never been informed of unsatisfactory work during the probation period, and therefore, the services of the petitioner cannot be terminated either by the letter dated 18.04.2013 or the subsequent letter dated 24.05.2013.

iii. It is argued that the letter dated 24.05.2013 which has been given in the course of hearing, cannot improve upon the language of the termination letter dated 18.04.2013, and since the petitioner has only challenged the letter dated 18.04.2013 no termination can take place by the letter dated 24.05.2013.

iv. The termination of services of the petitioner is malafide because immediately after the petitioner gave a representation for salary and joining the school, the petitioner was served with the impugned letter dated 18.04.2013.

5. The admitted facts are that petitioner was interviewed for the post of TGT (Social Science/English) pursuant to the advertisement issued on 12.06.2012. As per para-5 of the writ petition, petitioner admits that he was not given appointment on regular basis. The appointment letter of the petitioner is dated

22.01.2013 (wrongly mentioned as 10.01.2013 in para-5 of the writ petition) and which states that petitioner has been appointed on probation for one year w.e.f. 01.01.2013. This letter reads as under:-

Ref. No. 6747

22-01-2013

OFFICE ORDER

Mr. Abhishek Bhati who is serving the school as Honorary Teacher has been appointed as TGT in the pay scale 5500-175-9000 on probation for a period of one year effective from 1st January 2013.

CC:

Mr. Abhishek Bhati

5/59, Padam Nagar

Delhi-110007

Accounts

Personnel File

6. As per the averments made in the petition, after 2-3 months of the probation period, suddenly on 25.03.2013 without any rhyme or reason, respondent No. 1 restrained the petitioner from attending his classes and from marking attendance and whereupon the petitioner gave a representation to the Chairman of respondent No. 1/School for working on regular basis against regular appointment on salary. The petitioner also sent an e-mail/letter dated 17.04.2013 stating his grievances. The petitioner, therefore, claims that his termination of service on the basis of the impugned letter dated 18.04.2013 giving the reason of starting of a new session is illegal and violative of the Delhi School Education Act and Rules, 1973 and the petitioner, therefore, cannot be terminated as per Rules.

7. Before I turn to the arguments urged on behalf of the petitioner, I may state that the Supreme Court in the recent judgment of the Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, has held that even if the order of termination of services of the probationer refers to the performance of the probationary officer as not satisfactory then such expression cannot be said to mean that the order is stigmatic. The Supreme Court has specifically held that the principle of audi aletram partem is not applicable while terminating the services of a probationary officer. In view of the judgment of the Supreme Court, the argument urged on behalf of the petitioner that he was never informed during his period of probation that his services were not satisfactory, is not a valid argument because no notice/show cause notice with regard to unsatisfactory performance has to be issued to the probationary employee.

8. The issue then arises is as to whether the respondent No. 1 could have clarified the termination letter dated 18.04.2013, (reproduced above) by the subsequent letter dated 24.05.2013 (which also has been reproduced above). So far as the settled legal position is concerned that the probationary officer can always be terminated during the period of probation cannot be disputed. That the petitioner was a probationary officer also cannot be disputed because the appointment of the petitioner was in terms of the letter dated 22.01.2013, which specifically appoints the petitioner on probation for one year w.e.f. 01.01.2013. I have no reason to disbelieve the observations in the letter dated 24.05.2013 that the petitioner was not referred to as a probationary officer whose services were terminated, only to help the petitioner because after all there is no doubt that a probationary employee's services can be terminated by simply giving a non-stigmatic order of termination of services. In any case even if we take the fact that the letter dated 24.05.2013 cannot explain away the earlier letter dated 18.04.2013, I can always take notice of subsequent facts in view of Order VII Rule 7 of CPC which entitles the Court to take notice of subsequent facts in order to decide a case. Therefore, the letter dated 24.05.2013 issued by respondent No. 1 can either be taken as a clarification-cum-additional reason or an independent communication itself terminating the services of the petitioner, who is admittedly only a probationary officer.

9. The argument urged on behalf of the petitioner that termination of services of the petitioner is malafide because of change of management, is not an argument which I agree to inasmuch as, if the services of a probationary officer is not found satisfactory, the services of such probationary officer can always be terminated during the period of probation under Rule 105 of the Delhi School Education Rules, 1973, and which has been done in this case. Just because there is change of management there cannot be alleged malafides unless basis of the same is shown to exist by detailed and connecting facts.

10. I also reject the argument urged on behalf of the petitioner that the respondents have become wiser after filing of the writ petition, inasmuch as, surely looking at it from any angle, the petitioner always continued to remain a probationary officer and whether this writ petition was or was not decided on the basis of the impugned letter dated 18.04.2013, there was no bar in law for respondent No. 1 to otherwise terminate the services of the petitioner who was only a probationary officer in accordance with Rule 105 of the Delhi School Education Act and Rules, 1973 and in terms of the letter dated 18.4.2013 and 24.5.2013.

11. I may at this stage take on record the strong submission made on behalf of the respondents that the petitioner is communalizing the issue by making reference in Ground (F) that the petitioner has been targeted by the School Management because he is a non-Sikh in a school controlled by Sikhs. Obviously, this type of attitude on behalf of the petitioner is unacceptable to say the least especially because the averments in Ground (F) are bland statements with

absolutely no factual basis.

12. In view of the above, I do not find merit in the writ petition and it is held that the respondent No. 2 is fully justified in terminating the services of the petitioner who was only a probationary officer. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.