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(2013) 01 DEL CK 0265

In the Delhi High Court

Case No : LPA 48 of 2005

Air Force Bal Bharti School and Another — APPELLANT

Vs

Delhi School Tribunal and Others — RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Citation : (2013) 5 AD 656 : (2013) 199 DLT 609 : (2013) 199 DLT 607

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Rekha Palli with Ms. Amrita Prakash and Ms. Poonam Singh, for the Appellant; Arjun Mitra, Advocate for Resp-2, Ms. Latika Choudhury, Proxy for Ms. Avnish Ahlawat, Advocate for Resp-3, for the Respondent

Final Decision : Dismissed

Judgement

Mr. S. Ravindra Bhat, J.—Heard counsel for the parties. The present appeal is directed against the judgment and order of a learned Single Judge of this Court dated 15.10.2004 in WP (C) 4008/1993. The learned Single Judge had, even while upholding the findings of the Delhi School Education Tribunal (hereinafter referred to as "the Tribunal") impugned by the present appellant (hereinafter referred to as "the School) in a writ petition, limited the arrears of salary and allowances payable to the respondent (hereinafter referred to as "the Teacher") by way of relief by the Tribunal, to the extent of 50%.

2. Briefly, the facts are that the second respondent, a Teacher, who was working as Post Graduate Teacher (PGT) in the school and teaching Engineering Drawing since 1977, was alleged to have committed misconduct. Apparently, from the year 1979, he was asked to teach SUPW (Electronics) to the 10th standard students in addition to his normal duties. The incident alleged against him occurred on 5.5.1987 when the Principal, who was inspecting the school, allegedly found that the class room-where the Teacher was supposed to be taking the class, was locked. The Principal sent for the Teacher and asked him why he was not attending to his duties and taking the class; in response, the

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Teacher is alleged to have told the Principal that he was in the class room. The Principal then alleged that the respondent Teacher was not correct and he ought not to tell a lie. This led to an altercation when the Principal allegedly called the Teacher, "an idiot". The Teacher too called the principal "an idiot" in retaliation. The matter did not end there; and that two days later, a show cause notice was issued to the Teacher. Since his explanation was found to be unsatisfactory, disciplinary proceedings by way of an enquiry were initiated. During the course of enquiry proceedings, the enquiring authority looked into seven charges alleged against the respondent Teacher and found him guilty substantially in respect of six of them. Deeming the findings of guilt to be of a serious and grave nature, the disciplinary authority of the school dismissed the Teacher from employment. Aggrieved, the Teacher preferred an appeal under Section- 8 of the Delhi School Education Act, before the Tribunal. The Tribunal, which heard both the parties and considered the evidence on record in the form of material and the entire record of proceedings before the Enquiry Officer, allowed the appeal on 29.07.1993. It would be relevant to notice here that as regards the 4th and 5th charges, the Tribunal held that the respondent Teacher was not guilty. This is apparent from a reading of paragraph 12 and 13 of the order dated 29.07.1993. As regards the charges no. 6 and 7, the Tribunal was of the opinion that there was some substance and respondent Teacher''s conduct was not beyond reproach. However, the Tribunal was of the opinion that taking the totality of the circumstances into consideration, the extreme penalty of removal from service was harsh and disproportionate to the misconduct alleged.

3. The school impugned the Tribunal''s order before this Court in writ proceedings. The learned Single Judge in the impugned judgment has considered every contention of the appellant/school in substantial detail, especially, with regard to the factual material vis-?-vis charges no. 6 and 7. This is evident from a plain reading of paragraph 17-24 of the impugned judgment. The management of the school had cited several decisions of the Supreme Court including Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, and Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another, and certain other judgments.

4. After considering this, the learned Single Judge analyzed the facts of the present case and concluded that the punishment of removal was disproportionate. Instead, he upheld the order of reinstatement but modified the direction to pay complete back wages. The impugned judgment directed the Management of the School to pay, as a measure of balance of equities and towards securing the ends of justice, 50% of the arrears of wages to the respondent Teacher. The relevant part of that discussion is found in paragraph 25-27 of the impugned judgment which is extracted below:-

25. Two aspects need to be kept in mind while dealing with this part of the controversy. The first is that out of seven charges framed against the respondent only, charges No. 6 and 7 have been proved. Both these charges do not relate to

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any grave misconduct which could possibly justify removal of the respondent from service, which punishment does appear to be wholly disproportionate to the gravity of the misconduct. The second aspect is that the parts were not averse to finding a mutually acceptable course which could avoid any further litigation in the matter. Viewed in the backdrop of these two significant aspects, the question is whether this court can, keeping in view the totality of the circumstances, mould the relief suitably to prevent miscarriage of justice and undue hardship arising from the same to either party. The power of the court to suitably mould the relief in exceptional and rare cases was not disputed by counsel for the parties. That the present is one such case where exercise of the power to mould the relief suitably would be justified, is evident from the following circumstances:-

(i) The incident giving rise to the disciplinary proceedings against the teacher relates to the year 1987.

(ii) The respondent teacher has been removed from service since April, 1989.

(iii) During the intervening period the teacher had indeed applied for being exonerated of the charges and allowed to leave the school to join an other organization which permission of the school had admittedly declined.

(iv) Even in the opinion of the Tribunal, it is a case where a minor penalty could be imposed.

(v) The institution is run by Officers of the Air Force and is a non-profit making organization which can ill-afford to pay the arrears of salary of a teacher for nearly 15 years or so without the teacher having done any work whatsoever,

(vi) Remand on the question of quantum of punishment to the Tribunal or the Disciplinary Authority for passing an appropriate order may further prolong the disposal of the case, causing unnecessary complications.

26. In the totality of the above circumstances, I consider the present to be a fit case in which the order passed by the Tribunal and that passed by the Disciplinary Authority deserve to be modified suitably. Since the order of removal from service is unsustainable for what has been said in the earlier part of this order, the only modification which is possible and which would serve the ends of justice, would be in regard to the payment of the arrears of wages to the respondent teacher for the period he remained out of service.

27. In the result, I allow this petition but only to the extent that while the order removing respondent No. 2 teacher from service shall stand annulled and the respondent teacher held entitled to reinstatement, the said respondent shall be entitled to back wages only to the extent of fifty per cent of what would have been legally admissible to him for the period he remained out of service. No costs.

5. We have considered the submissions of the school management. It has been emphasized that the behaviour of the respondent was unworthy of a Teacher and

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in any event, the principle of proportionality could not have been invoked in the facts and circumstances of the case. Counsel took pains to underline the fact that the allegation leveled by the Teacher against the Principal about the latter''s character and background was utterly false since it was unsupported by any material. She argued that despite repeated opportunities, he could not produce any material to say that the school Principal had joined the Air Force Bal Bharti School with a clouded past. It was emphasized that applying the doctrine of proportionality in the circumstances would be subversive in disciplinary order.

6. This Court is now called upon to exercise second review, as it were, of the disciplinary order made by the school. The first and substantive review was undertaken by the School Tribunal which went into the matter both on facts and in law as it was duty bound to since the Teacher approached it in a first appeal against the decision of the school. The school''s grievance was articulated in proceedings under Article 226 which was really by way of judicial review against a judicial/quasi-judicial order. We only underline this aspect because this Court is now called upon to comment on the judiciousness and discretion exercised by learned Single Judge of this Court in exercise of his undoubted powers under Article 226. Whilst, there can be no gainsaying that in a given case that discretion may extend to differing from, and setting aside the Single Judge''s order, based on settled principles for the conclusions that may be drawn, we see no reason to do so, having regard to the totality of the circumstances in this case. As noticed earlier, a plain reading of the impugned judgment, especially, paragraphs 25-27 would reveal that the Single Judge has undertaken a threadbare analysis of the entire facts. In the earlier, immediately preceding portion of the judgment, learned Single Judge undertook a similar analysis with regard to position of law. We feel that the said analysis does not call for any interference by this Court. The counsel''s emphasis that without a finding that the penalty in a given case is "shockingly" disproportionate, the Court cannot substitute it, exercising the jurisdiction of the decision-maker, does not persuade this Court. It is the disproportionality of the punishment, by whatever name called, i.e., "shocking", "serious" or "gross" having regard to the totality of the proven facts, which is to be seen in every case. A case might reveal facts where the penalty is shockingly disproportionate, and the Court may substitute it without saying that the penalty is shockingly disproportionate. Conversely, in another instance, the penalty might not be disproportionate at all, despite which the Court might say it is. Ultimately, it is a matter of substance, and not semantic form, that the Court has to look into. Here, the Court finds no reason to differ from the order of the Tribunal and the judgment of the Single Judge on this aspect. In view of the above findings, the appeal is unmerited; it is accordingly dismissed without any order as to costs.

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