

(2012) 09 DEL CK 0445

In the Delhi High Court

Case No : Writ Petition (C) No. 5943 of 2012 and CM. No. 12238 of 2012 (for Stay)

Air Force Senior Secondary School and Others

APPELLANT

Vs

Pushpa Sah and Others

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2012) 8 AD 236

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : K.K. Sharma, with Ms. Bhanita Patowary, for the Appellant; J.P. Sengh with Mr. Mayank and Ms. Ankita Gupta, Advocates for Respondent No. 1 and Mr. Sativk Varma, Advocate for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner has assailed the impugned order dated 31.08.2012 passed by the Presiding Officer, Delhi School Tribunal, whereby he has opined that the order dated 14.03.2011 has been passed illegally and the same is not sustainable in the eyes of law. The act of the petitioner school in awarding penalty of compulsory retirement, as per the directions of the Directorate of Education, is void and illegal. He has further opined that the Chairman alone is not competent to impose any major penalty upon any employee of the school. The last paragraph of the impugned order dated 14.03.2011 has been quashed as that being illegal and not sustainable in the eyes of law. Before parting with the impugned judgment, the learned Tribunal has observed as under:-

Before parting it may be mentioned here that the Hon''ble High Court vide its orders dated 26.08.2008 had directed the Respondent School to take action, if any, against the Appellant within a period of four months from that date. The Respondent School took a prolonged period of three years for doing so. The

inordinate delay on the part of the Respondent School has caused harassment and agony to the Appellant. For this reason too, the impugned orders dated 14.03.2011 is not sustainable in the eyes of law. The Appellant had been litigating since 1993. She is out of employment for the last about 20 years and knocking the doors of the Respondent School, Directorate of Education and Courts. The Respondent School is thus burdened with costs of Rs. 5 lacs. Out of these costs, 50% shall be paid to the Appellant and the remaining 50% shall be deposited with the Delhi Legal Aid Services Authority, Patiala House, New Delhi. A copy of these orders be sent to the Director of Education who is directed to follow Act and Rules in its true spirit and take prompt actions in deciding the disciplinary matters.

2. The instant petition has been filed mainly on the grounds as under:-

(i) that the learned Tribunal has taken a hyper technical view of the matter while returning a finding that power to impose penalty on the employee of a school vests only in the Disciplinary Authority and not in the Directorate of Education.

(ii) The learned Tribunal has committed an error in observing that the Chairman alone is not competent to impose any major penalty on any employee of the school.

(iii) As there was no delay on the part of the petitioner in compliance of the order dated 26.08.2008, in such circumstances, the observation made by the learned Tribunal is absolutely without any basis and the same is contrary to record.

3. In addition, it is also stated in the instant petition that there has been no violation of Rule 120(1)(d) of the Delhi School Education Act and Rules, 1973. The Presiding Officer also failed to appreciate that there was no delay on the part of the school as the order dated 26.08.2008 was duly complied with within the specified time as directed by this Court on 19.12.2008. Further the learned Tribunal has failed to appreciate that the charges contained in the charge-sheet dated 28.07.1973 were duly proved against respondent No. 1 and she did not prefer to file any explanation/representation on the charges despite opportunity, hence respondent No. 1 cannot be given the benefit for her wrongs on technical grounds. The learned Tribunal has wrongly applied the ratio of judgment passed by this Court in a case of B.S. Verma Vs. Delhi Administration and Others, . The same is not applicable to the facts and circumstances of the present case.

4. Brief facts of the case are that respondent No. 1 joined the services of the Air Force Senior Secondary School, Race Course, New Delhi in the rank of Librarian on 15.07.1989. A charge sheet was issued on 28.07.1993 to the respondent No. 1 and after a departmental enquiry, she was removed from the services of the petitioner school vide order dated 14.01.1997. The said order was challenged by way of an appeal vide No. 27/1997 preferred before the Delhi School Tribunal, which was disposed of vide order dated 17.12.2002 by directing the petitioners school to constitute a fresh Disciplinary Committee with the approval of the Directorate of Education. The learned Tribunal had also given its observations

that the Disciplinary Committee so constituted was required to consider afresh the allegations against the respondent No. 1 and conduct a fresh inquiry. The operative portion of the judgment dated 17.12.2002 passed by the Tribunal is as under:-

11. In view of the circumstances, I find that the decision of the Disciplinary Committee in this case cannot be said to be conforming to the principles of natural justice and is, therefore, liable to be set aside.

12. The appeal is, therefore, accepted and this case is remanded back with the directions that the Respondent shall constitute a fresh Disciplinary Committee with the approval of the Director of Education, who shall ensure that the constitution of the Disciplinary Committee is such that no bias can be alleged against the said Committee. The Disciplinary Committee so constituted shall consider afresh the allegations against the Appellant and if they do consider a fresh inquiry may be ordered by them on the charge sheet already given to the Appellant or on a modified charge sheet. A new Inquiry Officer may be appointed if any inquiry is ordered by such a Disciplinary Authority and decisions be taken in accordance with the Delhi School Education Rules, 1973 afresh. The Disciplinary Committee so constituted shall also take decision whether the Appellant has to be reinstated, if so, from what date or whether the Appellant should remain under suspension during this period.

5. Thereafter, the Managing Committee of the petitioner school passed a resolution dated 14.05.2003 vide which it resolved to constitute a fresh Disciplinary Committee. On 27.09.2003, the Disciplinary Committee sought a fresh reply from the respondent No. 1 against the charge sheet issued to her earlier. The Disciplinary Committee also changed the Inquiry Officer and one Sh. Rajiv Bakshi had conducted the fresh inquiry.

6. On 15.10.2004, the petitioner school sought the approval of the Directorate of Education for imposing the major penalty of dismissal from service upon respondent No. 1. The Directorate of Education did not send any communication either to the petitioner school or to respondent No. 1.

7. On 23.02.2005, the respondent No. 1 filed a Writ Petition (C) No. 3353/2005 in this Court, whereby she sought setting aside of the letter dated 18.10.2004. This Court vide interim orders dated 25.02.2005 directed the Directorate of Education not to convey its approval/disapproval to the proposed penalty upon respondent No. 1 till the next date of hearing which was 16.05.2005.

8. As per the directions, the Directorate of Education had placed before this Court its approval/disapproval in a sealed cover on 26.08.2008. On opening the sealed envelope, it was found that the Directorate of Education vide its order dated 25.08.2008 had conveyed its disapproval to the proposal of imposing penalty of dismissal from service upon respondent No. 1. The Directorate of Education had also directed the school management to follow the procedure laid down under Rule 120 of the Act and Rules.

9. Vide order dated 26.08.2008, this Court observed as under:-

The Director of Education vide its order dated 25.08.2008 has conveyed its disapproval with the recommendations of the school authorities of Air Force Senior Secondary School as communicated vide letter dated 15.10.2004 and has directed the school management to follow the procedure laid in Rule 120 of the Delhi School Education Rules-1973. In view of the said decision taken by the Director of Education, the grievance made by the petitioner in this Writ Petition is rendered Infructuous.

Mr. K.K. Sharma, Learned Counsel appearing on behalf of School management says that further action against the petitioner shall be taken in terms of office order dated 25.08.2008 passed by the Director of Education. Needless to mention that the school management shall take whatever action if proposes to take against the petitioner expeditiously preferably within four months from today. The petitioner is directed to cooperate in the enquiry, if held against her in accordance with law. This writ petition is disposed of accordingly leaving the parties to bear their own costs.

10. As respondent No. 1 did not receive any communication from the petitioner school for a period of about one and a half years. Thereafter, he filed a Contempt Petition vide No. 504/2010 before this Court. The same was disposed of vide order dated 25.11.2010 on the statement of DEO that department would take appropriate action expeditiously. Accordingly, the aforementioned petition was disposed of.

11. The learned Tribunal has recorded that during the course of arguments, the petitioner school had filed a communication dated 19.12.2008 addressed by it to the Directorate of Education. Relevant paragraphs i.e. 4, 5 and 6 of the said communication are reproduced below-

As stipulated in para 120 (d) (iii) and (iv) of DSER, 1973 the DAC meeting was held on 17.12.2008 at this station, which deliberated on each charge of the charge sheet dated 28.07.1993, the findings and documents in support of each charge as contained in the inquiry report submitted by Mr. Rajiv Bakshi on 28.06.2004. The committee also deliberated on the reply dated 01.09.2004 submitted by the charged officer Ms. Pushpa Sah.

The committee having gone through entire records, has come to the conclusion that a major penalty of dismissal from service is to be imposed on Ms. Pushpa Sah. A copy of the minutes of the Disciplinary Committee meeting is enclosed as Annexure I. Also, enclosed as Annexure-II is a folder containing copies of documents and correspondence relevant to the case including Brief of Case, Charge sheet, inquiry report and reply of charged officer.

It is requested that committee's proposal may be approved as per Rule No. 120 of DSER 1973.

12. Thereafter, the petitioner school sought approval of the Directorate of

Education for imposing a major penalty of dismissal from service upon respondent No. 1 as the Disciplinary Authority after deliberating upon the matter opined so. In reply thereto, the Directorate of Education vide its letter dated 24.12.2010 conveyed to the petitioner school that the penalty of dismissal from service was a harsh one and advised the petitioner school to impose the major penalty of compulsory retirement upon her.

13. The relevant portion of the letter dated 24.12.2010 is reproduced below-

The above cited matter was examined thoroughly having regard to the facts and circumstances of the case and Competent Authority is of the considered view that omissions and commissions on the part of the employee do not merit the harshest of the penalties (Dismissal). The ends of justice would be met if the major penalty of Compulsory Retirement (as per Rule 117 b II) is imposed upon Mrs. Pushpa Sah. The management of the school may take further action accordingly.

This issue with the prior approval of the Competent Authority.

14. As directed by the Directorate of Education, the petitioner school issued the impugned order dated 14.03.2011 giving the details of the past events. In the last two paragraphs of the aforesaid order, the petitioner school has stated as under-

And whereas, the Director of Education, after considering all facts of the case, evidences on record, submission made by Smt. Pushpa Sah and recommendations of the DAC, arrived at a conclusion that end of justice will be met if a major penalty of compulsory retirement is imposed upon her and thus accorded approval vide no. DE-55/DND/EO/Z-26/2010/592 dated 24.12.2010.

Now, therefore, the undersigned being the competent authority, hereby imposes a major penalty of compulsory retirement upon Smt. Pushpa Sah, Librarian, Air Force Senior Secondary School, Race Course, New Delhi with effect from 14.03.2011.

S/d

(M. Singh)

Air Commodore Chairman

School Management Committee

15. In the facts and circumstances of the case, the learned Tribunal has framed three questions, which read as follows-

i. Whether the Hon''ble High Court vide its orders dated 26.08.2008 directed the Respondent School to conduct the departmental inquiry afresh or it simply directed for reconsideration of the quantum of punishment.

ii. Whether it is within the powers of Directorate of Education to alter the

punishment while according its approval to the penalty proposed by the Respondent School upon the Appellant.

iii. Whether the impugned orders dated 14.03.2011 are sustainable in the eyes of law when it says that the Chairman alone is competent to impose major penalty of compulsory retirement on the directions of the Directorate of Education.

16. To question No. (i), the learned Tribunal perused the order dated 26.08.2008 passed by this Court. Accordingly, he observed that the order dated 25.08.2008 issued by the Directorate of Education became Infructuous. In other words, nothing had survived in the matter for the simple reason that the Directorate of Education conveyed its disapproval to the petitioner school when it sought to impose the penalty of dismissal from service. The learned Tribunal has also observed that the petitioner school was also asked by the Directorate of Education to follow the procedure laid down in Rule 120 of the Act and Rules. At that stage, Mr. K.K. Sharma, counsel for the petitioner school expressed his desire to take action against respondent No. 1 in terms of letter dated 25.08.2008 issued by the Directorate of Education.

17. It is further observed that this Court also directed the respondent No. 1 to cooperate in the inquiry, if held against her. This Court did not ask the petitioner school to mandatorily proceed against the respondent No. 1. This Court left it entirely to the discretion of the petitioner school as respondent No. 1 was directed to cooperate in the "inquiry", if held. The expression "inquiry" means a full-fledged departmental inquiry. It does not mean a partial inquiry.

18. The learned Tribunal has further recorded that the Directorate of Education had laid emphasis on Rule 120 of the Act and Rules. Rule 120 of the Act and Rules contains the procedure for conducting a departmental inquiry. The Directorate of Education also did not ask the petitioner school to go ahead for deliberating only on the quantum of punishment.

19. Learned counsel for petitioner school has argued before the learned Tribunal that the petitioner school was required to correct the defect in the inquiry proceedings as related to Rule 120(d) of the Act and Rules. The Disciplinary Authority also did not meet after 22.07.2004 i.e. the date on which the inquiry report was served upon the respondent No. 1. The Disciplinary Authority never had the occasion to consider the inquiry report and the representation of respondent No. 1. By no stretch of imagination, it can be said that the Directorate of Education wanted the petitioner school to simply review its decision on the quantum of punishment. This Court in W.P.(C) No. 3353/2005 had observed that in view of the disapproval conveyed by the Directorate of Education, the said petition became In fructuous and the petitioner school was given liberty to conduct a fresh departmental inquiry, if it wished so. Clearly, the prosecution as well as the defence were required to examine their witnesses even if charge sheet remained the same.

20. Learned counsel for the petitioner school also argued that the expression "as

far as may be" appearing in Rule 120 of the Act and Rules provides discretion to the Disciplinary Authority to ratify the charge sheet. To strengthen his arguments, learned counsel relied upon a case of Samarth Shiksha Samiti Vs. Directorate of Education and Another, .

21. Learned Tribunal has recorded in its impugned judgment that the term "disapproval" means non-acceptance of the whole proposal. The Directorate of Education is empowered either to accord its approval or disapproval to the act of the school concerned. Law does not allow the Directorate of Education to suggest modifications and issue orders as per its dictates as power of imposing punishment vests only in the Disciplinary Authority.

22. In the case of Miss Raj Soni Vs. Air Officer in Charge Administration and another, , the Supreme Court held as under:-

11. The recognises private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India.

23. Accordingly, the learned Tribunal has opined that orders dated 14.03.2011 based upon the above interpretation, are, therefore, totally illegal and not sustainable in the eyes of law.

24. As regards to question No. (ii), the learned Tribunal has applied the case of B.S. Verma (supra). In that case, while dealing with the question of approval of suspension by the Directorate of Education, this Court has observed as under:-

The legal position emerging from the statutory provisions of the Act and the Rules is clear with regard to the authority, the procedure and the circumstances in which suspension of an employee of a recognises school can be made. The basic power to place an employee under suspension is conferred upon the Managing Committee of the School. The exercise of that power is controlled by the requirement of approval of suspension by Director on his satisfaction that there are adequate and reasonable grounds for such suspension. The Director has no power, authority or jurisdiction himself to make an order placing any employee of the school under suspension.

Power to place an employee under suspension can be exercised only by the appropriate appointing authority and by no one else without express authority to do so. That, indeed, is also the position preserved by the provisions made on the subject in the Act and in the Rules.

25. On this issue, the learned Tribunal has opined that power to impose a penalty upon an employee of the school vests only in the Disciplinary Authority and not in the Directorate of Education. The act of the petitioner school in awarding the

penalty of compulsory retirement as per the directions of the Directorate of Education is void and illegal.

26. As regards question No. (iii), the learned Tribunal has opined that the constitution of the Disciplinary Authority is provided under Rule 118 of the Act and Rules. The Chairman alone is not competent to impose any major penalty upon any employee of the school. Accordingly, the last para of the impugned orders dated 14.03.2011 was held illegal and not sustainable in the eyes of law.

27. Mr. K.K. Sharma, learned senior counsel appearing on behalf of the petitioner school has submitted that initially respondent No. 1 was dismissed from service. On being sent a communication to the Directorate of Education, the Disciplinary Authority received the instructions from them to award her the punishment of compulsory retirement and accordingly the order was passed against respondent No. 1.

28. He further argued that the Chairmen being part of the Disciplinary Committee is empowered to pass any order on behalf of the Disciplinary Authority. The Tribunal has failed to appreciate the fact that the petitioner school has complied with Rule 120 of the Delhi School Education Act and Rules, 1973.

29. The petitioner school is a recognised school under the Act, therefore, the petitioner management is under statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers/employees of the school. When an authority is required to act in a particular manner under a statute, thereafter it is left with no option but to follow the same. The Director has no power, authority or jurisdiction to make himself an order placing any teacher/employee of the school under suspension or directing the school to pass an order in a particular manner. The action against teacher/employee can be taken by an appropriate appointing authority and by no one else without express authority to do so. Under Rule 118 of the Acts and Rules the constitution of the disciplinary authority is provided, therefore, the Chairman alone is not competent to impose any major penalty on any teacher/employee of the school. The Director of Education directed the petitioner school to pass the order against the petitioner while complying Rule 120 of the Act and Rules. The school authorities without complying with Rule 120 of the Act and Rules only decided the case on quantum of punishment.

30. Though, as pointed out by Mr. K.K. Sharma, Id. Sr. Counsel appearing on behalf of the petitioner, the respondent No. 1 initially received Rs. 5,000/- and, thereafter, Rs. 3 lakhs plus in 2005, but thereafter, she did not receive a single penny.

31. The Tribunal also burdened the petitioner with cost of Rs. 5 lakhs for the reasons that the petitioner school took a prolong period of three years in complying with the order dated 26.08.2008 passed by this Court. The inordinate delay on the part of the petitioner school caused harassment and mental agony to the respondent No. 1. The petitioner continued to fight for the last about 21

years with the authority, before the tribunal and the Courts.

32. I note, the respondent No. 1 did not get the subsistence allowance during inquiry. She continued to ask the petitioner school specifically that she was not able to engage the defence assistance and could not join the inquiry. The petitioner school did not reply to her representations but concluded the ex parte inquiry in one day only. The respondent No. 1, therefore, has not given any opportunity of being heard. There is a clear violation of principles of natural justice. The respondent No. 1, as discussed above, approached this Court twice and thereafter, twice to the learned Tribunal. This is the fifth round of litigation. Moreover, the tribunal has dealt with all the issues raised before it.

33. In view of the above, I do not find any discrepancy in the judgment passed by the learned Tribunal. Therefore, I am not inclined to interfere with the judgment passed by the learned Tribunal.

34. The writ petition is dismissed accordingly. No orders as to costs.

CM. No. 12238/2012 (for stay)

With the dismissal of the petition itself, the instant application has become Infructuous. Therefore, the same is disposed of accordingly.