

(2005) 01 DEL CK 0010
In the Delhi High Court
Case No : WP (C) . 8613 of 2003

Ajay Singh

APPELLANT

Vs

Delhi Police Public School and Others

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Citation : (2005) 117 DLT 516 : (2005) 79 DRJ 688

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Sandeep Sethi and Pawan Bindra, for the Appellant; Rakesh Khanna, for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner, Mr. Ajay Singh, by this writ petition, assails the invocation of Rule 115(4) of the Delhi Education Rules, 1973, whereby he was placed under suspension by an order bearing No.DPPS/2360 dated 7.11.2003, from the date of his original termination from service w.e.f. 31.1.2002. Petitioner further assails the rejection of his representation dated 27.11.2003 against an order dated 7.11.2003, by communication dated 2.12.2003, justifying the deemed suspension from the date of original order in terms of Rule 115(4) and further holding that no statutory approval u/s 8 of the Delhi Education Act was required.

2. During the course of submissions, Mr. Sandeep Sethi, learned senior counsel for the petitioner, has confined relief to petitioner's claim for his dues from 1.2.2002 to the date of passing of the order of suspension i.e., 7.11.2003. The submission of Mr. Sethi is that Rule 115(4) could not have been invoked and is not attracted. Hence after the original termination order has been set aside, there can be no deemed suspension from the said date and the suspension order can only be prospective without prejudice to the petitioner's rights to assail the same.

3. For an appreciation of the matter in controversy, let me notice the facts, as

are borne out from the record.

4. Petitioner was employed as a Post Graduate Teacher in Physics with respondent No. 1 Delhi Police Public School. Respondent/School is a recognized private unaided School. The Managing Committee of respondent No. 1/School on the allegations of misconduct, accused the petitioner of misbehavior with wards, coercing students for tuition etc., and for neglecting duties and classes, using of indecent and vulgar language and cruelty towards students. The Managing Committee of respondent No. 1/School is reported to have subsequently passed a Resolution that in view of inordinate delay in disciplinary proceedings and to curb in discipline in School and in the purported interest of students, proceeded to terminate the services of the petitioner. The impugned order was passed on 30.1.2002, terminating the services w.e.f. 31.1.2002, pursuant to the resolution of 7.1.2002. As a result of the said termination, the benefit of concessional fees available to the wards of the petitioner was also withdrawn. Petitioner assailed the order of termination before the Delhi School Tribunal, Delhi. The Delhi School Tribunal held that the Managing Committee of respondent No. 1/School did not follow the procedure, as laid down under the Delhi Education Rules and Act. No approval had been obtained from the Directorate of Education before imposing the punishment. No Disciplinary Committee had been constituted and no inquiry was conducted. In the result, the Tribunal held that respondent Nos.4 and 5 did not hold any inquiry and had not sought the approval of the Directorate of Education before terminating the services of the petitioner, held the order as not sustainable. Appeal was accepted and the impugned order was set aside. Petitioner after the impugned order of termination being set aside, made a representation for being permitted to join the services. It is in this back ground that the respondent passed the order dated 7.11.2003 under Sub-Rule (4) of Rule 115 of the Rules, suspending the petitioner. As noted earlier, vide order dated 2.12.2003, petitioner's representation dated 27.11.2003 was also rejected, holding that prior approval in terms of Section 8 of the Act was not required for passing the order of suspension, as the approval was inherent in Sub-Rule (4) of Rule 115.

5. The controversy in the present writ petition thus revolves around the validity of the order of suspension purported to be under Sub-Rule (4) of Rule 115, relating back to the original termination from service, which has been set aside.

For facility of reference Sub-rule (4) of Rule 115 is reproduced as under:

"115. Suspension

xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or rendered void, in consequence of, or by, a decision of a court of law or of the Tribunal, and the disciplinary authority on a consideration of the circumstances of the cases decides to hold further inquiry against such employee on the same allegations on which the penalty of dismissal, removal or

compulsory retirement was originally imposed, such employee shall be deemed to have been placed under suspension by the managing committee from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case."

6. Mr. Sandeep Sethi submits that the essential ingredients of Sub-Rule (4) of Rule 115 for its invocation were not satisfied. The provision could have been invoked in cases, where the order of dismissal, removal or compulsory retirement is set aside and the Disciplinary Authority on a consideration of circumstances decides to hold "further inquiry against such employee on the same allegations." In the instant case, as noted earlier, there had been no inquiry. The Managing Committee had proceeded to take action without holding any inquiry on the ground of matter likely to be inordinarily delayed. Mr. Sethi submits that the words used are "further inquiry". Hence the sine qua non for its application was a case, where inquiry had been held and further inquiry was required on account of circumstances. These were not intended to cover cases, where the order imposing punishment is quashed on either technical grounds or cases, where there has been some infraction of Rules and procedure, like, complete documents not being supplied or facts being such, which warrant a further inquiry. Mr. Sethi submits that these were not intended to cover cases, where the setting aside or quashing was on merits, as in the present case, the Tribunal had found that this was a case of no inquiry and moreover requisite statutory approval from the Directorate of Education had not been obtained.

7. Mr. Rakesh Khanna, counsel for the respondent opposing the submissions of Mr. Sethi submitted that a restricted meaning to the expression "further inquiry" was not warranted. Mr. Khanna submitted that in view of the specific provision of Sub-Rule (4), since a further inquiry had been ordered, the order of suspension would relate back to the date of original dismissal. He submitted that an inquiry report has been received in a sealed cover, which is to be considered by the Disciplinary Authority. Mr. Khanna submitted that sub-Rule (4) of Rule 115 has to be interpreted in a manner, which permits a fresh inquiry or an inquiry when none has been held. He submitted that there was no reason to give a restricted meaning to the expression "further inquiry", where existence of an earlier inquiry is held to be sine qua non for its application. By way of illustration, he submitted that if an employee is arrested and not granted bail for alleged offences and his services are terminated without inquiry under the Rules but is either acquitted subsequently in criminal trial or in appeal and seeks reinstatement, in such case, the use of expression "further inquiry" would be an appropriate one, even though an inquiry may or may not have been held. He seeks to draw support from State of U.P. and Others Vs. Ajit Singh and Another, .

8. I find considerable merit in the submission of Mr. Sethi. In the instant case,

the Delhi School Tribunal set aside the order of termination in appeal, holding that no inquiry had been held and there was a violation of the Delhi School Education Act and the Rules there under and approval, as required of the Directorate of Education, had not been sought. It was a case, where no inquiry had been held and the termination order had been passed based on an internal report. It was not a case, where an inquiry had been made and for good reasons further inquiry was called for and the deeming provision Sub-Rule (4) of Rule 115 had to be viewed in the context of Rule 120, which prescribed the procedure for imposition of a major penalty. It stipulated that no order imposing a major penalty shall be made except after an inquiry. It was only after such inquiry was made that the stage for application of Sub-Rule (4) of Rule 115 could come. This also received support from the use of the expression "decides to hold further inquiry" as well as 1st line of the proviso, which provided that "further inquiry was not to be ordered except to meet a situation, where the order had been passed purely on technical grounds without going into merits." The Managing Committee of respondent No. 1/School dispensed with the services by simply referring to the report of the Principal. Such a report cannot be equated with an inquiry envisaged under Rule 120. The Delhi School Tribunal held that the School had not followed the procedure laid down under Delhi Education Rules and the Act while imposing major penalty, specifically Rules 119 and 120 had not been followed. No Disciplinary Committee had been constituted and no inquiry was held. This order was challenged by the respondent in a writ petition bearing No. 1509/2003. The said writ petition was withdrawn and the order has become final. It is no longer open to the respondent to canvass that an inquiry had been held. Reference may also be usefully made to the decision of Mahender Singh v. Union of India and anr., reported at 1991 Supp (2) Supreme Court Cases 127. The said judgment while dealing with an analogous provision under C.C.A. Rules, 1965 Rule 10(4) held as follows:-

"There are three requirements for the application of Rule 10(4) (i) the government servant is dismissed, removed or compulsory retired as a measure of penalty; (ii) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a court of law; (iii) the disciplinary authority, decided to hold a further inquiry against the government servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders.

In the present case the original order of termination was not passed against the appellant as a measure of punishment. It was a "simpliciter termination" of the appellant's service and the Tribunal has set aside that order on the ground that it amounts to punishment and the order of punishment could not have been made without holding an inquiry against the appellant. But that is not the same thing to state that the management made an order terminating the services of

the applicant by way of the penalty. Therefore, Rule 10(4) has no application to the case of the appellant. Moreover, since there was no inquiry leading to the removal of the appellant in the first instance, the decision to hold fresh inquiry does not attract Rule 10(4). The retrospective suspension of the appellant is Therefore unjustified and without authority of law.

However, the fresh order of suspension after the termination order was set aside would operate prospectively and the appellant would be entitled to reinstatement with all back wages till that day since the original order of termination has been set aside by the Tribunal."

9. In view of the foregoing discussion and the judicial pronouncement in Mahender Singh v. Union of India and Anr., (Supra), as noted above, it is held that in the present case, it was not open to the respondent/School to invoke Sub-Rule (4) of Rule 115 of the Delhi Education Rules and pass an order, providing for suspension of the petitioner retrospectively from 30.1.2002. The said order of termination having been set aside on merits and there having been no inquiry, it was not a case, where Sub-Rule (4) of Rule 115 could be invoked. The suspension of the petitioner can only be prospective. A writ of mandamus shall issue to the respondent to pay to the petitioner his salary, emoluments and dues from 1.2.2002 to the date of the impugned suspension order i.e. 7.11.2003.