

(2005) 02 DEL CK 0070
In the Delhi High Court
Case No : Writ Petition (C) 2133 of 2000

Apeejay School

APPELLANT

Vs

Gopi Chand and Others

RESPONDENT

Date of Decision : 07-02-2005

Acts Referred:

Citation : (2005) 117 DLT 521 : (2005) 80 DRJ 353

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : H.L. Tikku and Yashmeet Kaur, for the Appellant; T.A. Francis and Ashutosh Kumar, for the Respondent

Judgement

Mukul Mudgal J.

CM No. 3413/2000

Allowed, subject to all just exceptions.

WP(C) NO. 2133/2000

1. Rule. With the consent of the learned counsel for the parties the matter is taken up for final hearing.

2. The petitioner is a school covered by the provisions of the Delhi School Education Act, 1973 (hereinafter referred to as the Education Act). The respondent No. 1 sought a reference to the Labour Court on the basis of a complaint arising from the termination of his services. On 23.6.1992 a reference in the following terms was made by the Secretary (Labour).

"Whether the services of Sh. Gopi Chanda have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?"

3. It is not in dispute that this writ petition raises the question as to whether the making of a reference for adjudication is barred by the provisions of the

Education Act. The learned senior counsel for the petitioner Shri H.L. Tikku has cited a judgment of this Court in Mr. Amar Nath Vs. Director of Education, Govt. of NCT of Delhi and Others, wherein in paragraphs 3 and 4, it was held as follows:-

"3. Learned counsel for the respondent has cited the judgment of the Hon"ble Supreme Court in Shashi Gaur Vs. NCT of Delhi and Others, to contend that even the purported retrenchment challenged by this writ petition would fall under jurisdiction of Section 8 of the Act and Therefore there is no bar to approach this Court under Article 226 of the Constitution. The Hon"ble Supreme Court laid down the following position of law in Shashi Gaur's case (supra):-

"7. This judgment and the interpretation put to the provisions of Sub-sections (2) & (3) of Section 8 undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction of Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted u/s 11 of the Act. The statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Governmental authorities, having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that availability of an alternative remedy oust the jurisdiction of the Court under Article 226 of the Constitution."

4. Thus the above decision of the Hon"ble Supreme Court makes it clear that while the petitioner may be directed to approach the Delhi Schools Tribunal nevertheless in suitable and appropriate cases, the discretionary jurisdiction of this Court under Article 226 of the Constitution is not ousted. The Hon"ble Supreme Court has clearly held that the correct interpretation of Section 8 of the Act requires that it be widely construed so as to bring also within its ambit such termination of services which are otherwise than by way of dismissal, removal or

reduction in rank. Thus there is no reason why the petitioner who challenges the termination of his services by the proposed retrenchment ought not approach The Delhi Schools Tribunal for relief u/s 8 of the Act. Accordingly, the petitioner is permitted to withdraw the present writ petition and seek an appropriate remedy under Delhi School Education Act to ventilate the grievances sought to be raised in this writ petition, i.e., the proposed cessation of the services of the petitioner by way of retrenchment."

4. The learned counsel for the petitioner has also relied upon the judgment of another Single Judge of this Court in Jitender Kumar vs. Director of Education & Ors., 2000 4 AD (DEL) 444 and has referred to paragraph 3 thereof which held as under:-

"3. Admittedly, there is no document filed by the petitioner on the basis of which he could claim that he was the employee of the respondent school. In fact petitioner has annexed Annexure-B as per which bus No. DL 1P 6003/DL 1P A 1803 which he was driving belongs to Patel Education Society. Whether the petitioner was the employee of the society or the school would be a disputed question of fact which can be decided after taking evidence. If the petitioner was the employee of the society, he was not governed by the Delhi School Education Act and Rules and in such a case his remedy would be to raise industrial dispute which is alternate efficacious remedy. Even if the claim of the petitioner is accepted that he was the employee of the school then also his remedy is to file appeal against the termination before the Delhi School Tribunal u/s 8 of the Delhi School Education Act as it is contended that termination is by way of punishment. In either case writ petition is not maintainable and Therefore the same is accordingly dismissed with liberty to the petitioner to seek remedy before the appropriate forum provided under the law."

5. In my view both the aforesaid decisions were in respect of direct writ petitions preferred by the employee under Article 226 of the Constitution of India and action taken against them by the employer and whether the High Court should have exercised its writ jurisdiction when the statutory remedy is under the Education Act. Neither in the aforesaid judgments of this Court nor in the judgment of Hon'ble Supreme Court in Shashi Gaur Vs. NCT of Delhi and Others, , was the issue whether industrial adjudication is barred by the provisions of the Education Act decided.

6. The learned counsel for the respondent No. 1 Shri T.A. Francis has referred to Section 25J of the Industrial Disputes Act to contend that this sub section provides for overriding jurisdiction of the Industrial Disputes Act. Section 25J of the Industrial Disputes Act reads as under:-

"25J. Effect of Laws inconsistent with this Chapter -(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders made under the Industrial Employer (Standing Orders) Act, 1946 (20 of 1946)];

[Provided that where under the provisions of any other Act or rules, orders or notifications issued there under or under any standing orders or any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favorable to him than those to which he would be entitled under this Act; the workman shall continue to be entitled to the more favorable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.]

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter.]"

7. Without going into this question of law which is kept open for decision in appropriate proceedings, since the learned counsel for the parties have agreed that the adjudication of the claim be made under the Delhi School Education Act, the parties are directed to appear before the Tribunal on 9th March, 2005. The respondent is permitted to file statement of claim before the Tribunal on the next date of hearing. The Tribunal is directed to ensure that the reference is disposed of not later than 31st December, 2005.

8. In view of the above agreement between the parties with the consent of the parties, the reference dated 23.6.1992 made to the Labour Court stands set aside.

9. The writ petition stands disposed of with the above directions. All pending applications also stand disposed of.