
(2013) 04 DEL CK 0340
In the Delhi High Court
Case No : LPA 349 of 2008

Apeejay School

APPELLANT

Vs

Suresh Chander Kalra

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Delhi School Education Act, 1973 — Section 11, 11(6), 8(3)

Citation : (2013) 203 DLT 531 : (2013) 2 ILR Delhi 1555

Hon'ble Judges : D. Murugesan, C.J.; Jayant Nath, J

Bench : Division Bench

Advocate : H.L. Tikku and Ms. Yashmeet, for the Appellant; Ankur Arora, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant Nath, J.—By this Appeal the petitioner Apeejay School seeks to challenge the Order of the learned Single Judge dated 30.05.2008 whereby the Order dated 17.12.2007 of the Delhi School Tribunal was upheld. The Delhi School Tribunal vide its said order directed that the respondent was an employee of the appellant i.e. Apeejay School, Sheikh Sarai-I, New Delhi and he continues to be an employee of the appellant. The Tribunal hence rejected the contention of the appellant that the respondent had abandoned the job and directed that the appellant be allowed to join his service and he would be entitled to arrears of salary alongwith other consequential benefits. It is the case of the appellant that the respondent herein was appointed by the Society as an Internal Auditor. It is stated that the respondent worked with the Society's School at Saket from October 1997 to 16.06.1998 and thereafter was deputed to the Society's School at Sheikh Sarai, New Delhi w.e.f. 08.06.1998 and worked there till 21.09.2004. It is stated that he was thereafter asked to resume his duty w.e.f. 22.09.2004 at Head Office of the Society. It is further stated that the respondent absented himself from duty w.e.f. 11.10.2004 without any prior intimation or permission and thus abandoned his job voluntarily.

2. The respondent has denied the said contentions and allegations made by the Appellant. It is the contention of the respondent that he was an employee of the School and that the Management illegally instructed him that he will be retained in the Society itself and he was asked to start signing the attendance register of the Society w.e.f. 1.10.2004. He further claims that on 11.10.2004 when the respondent joined his duty in the School at Sheikh Sarai, the Principal and other officials of the Society orally informed him that his services are terminated forthwith.

3. By the Order dated 17.12.2007 the Delhi School Tribunal held that the respondent continued to be an employee of Apeejay School and directed the Petitioner School to allow the respondent to join his service and also directed payment of his arrears of salary with consequential benefits. This Order was upheld by the learned Single Judge vide Order dated 30.05.2008.

4. At the outset, Mr. H.L. Tikku, learned Senior Counsel for the appellant submits that the respondent has been reinstated in service and the Appellant does not in any way challenge the order of the Tribunal to the extent it directs the respondent to be taken back in service. He, however, submits that the Appellant seeks to challenge the direction of the Tribunal for grant of full back wages and consequential benefits inasmuch as the order of the Delhi School Tribunal granting the said relief is erroneous.

5. Learned senior counsel for the appellant relies on Section 11(6) read with Section 8(3) of the Delhi School Education Act, 1973 read with Rule 121 of the Delhi School Education Rules, 1973 to submit that the Delhi School Tribunal while ordering reinstatement has no powers to grant back wages. The learned senior counsel relies upon judgment of this Court in the case of *The Manager, Arya Samaj Girls Higher Secondary School and Another Vs. Sunrita Thakur etc.*, to argue that the said Judgment categorically holds that the Tribunal has no jurisdiction to make any order with regard to the salary and allowances to be paid to the employee on reinstatement. In the alternative, it is the next submission of learned senior counsel for the appellant that even otherwise there was no basis for grant of back wages and consequential benefits as the respondent had failed to plead or prove that he was not gainfully employed for the period when he was not working with the Appellant School.

6. Next, the learned senior counsel for the Appellant submits that by the Order dated 16.09.2008 of this Court, the Appellant was directed to deposit the entire amount in Court in terms of the Order of the Tribunal, out of which 50% amount was to be released in favour of the respondent subject to his filing an undertaking that in the event the Appeal is allowed he will refund the amount subject to orders of this Court. He further submits that the Appellant has deposited Rs. 5.98 lacs pursuant to the said directions of the Hon'ble Court and 50% of the said amount has been released in favour of the respondent. He submits that as the respondent is an employee of the appellant, they would be willing to sort out the present matter if the 50% of the amount which is lying

deposited in the Court is refunded to them and balance 50% amount which has already been withdrawn by the respondent is retained by the respondent.

7. The learned counsel appearing for the respondent admits that in the Petition filed u/s 11 of the Delhi School Education Act, before the Tribunal there is no averment whatsoever about the respondent being unemployed during the period after he had ceased to work for the Appellant School. He further states that his client would not like to accept the offer of the Appellant School for retention of 50% back wages already withdrawn by him to sort out the matter.

8. We do not propose to deal with the submissions of the learned senior counsel for the Appellant regarding powers of the Delhi School Tribunal to direct payment of back wages and consequential benefits in view of the facts of this case. Admittedly there is no attempt on the part of the respondent to plead or prove that he was not gainfully employed subsequent to his cessation of employment with the Appellant School w.e.f. 11.10.2004 till filing of the Appeal before the Delhi School Tribunal and thereafter. This is admitted by the counsel for the respondent.

9. The legal position regarding payment of back wages while ordering reinstatement is well settled. Reference may be had to the Judgment of the Hon''ble Supreme Court in the case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, wherein in para 22 the Hon''ble Supreme Court has held as follows:-

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

10. Reference may also be made to the judgment of the Hon''ble Supreme Court in the case of Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma, where the Hon''ble Supreme Court has held as follows:-

Applying the above principle, the inevitable conclusion is that the respondent was not entitled to full back wages which according to the High Court was a natural consequence. That part of the High Court order is set aside. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he placed materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.

11. Reliance may also be made to the judgment of the Hon''ble Supreme Court titled M.D., Balasaheb Desai Sahakari S.K. Ltd. Vs. Kashinath Ganapati Kambale,

12. In view of the above, in our opinion the Delhi School Tribunal while directing

payment of arrears of salary alongwith other consequential benefits has failed to consider whether in the facts of the case the said relief ought to have been granted to the respondent. The Tribunal has proceeded on the basis that back wages would follow the relief of re-instatement. The respondent failed to plead or prove that he was not gainfully employed during the period in question. In the absence of any such averment or evidence to the effect the back wages and other consequential benefits could not have been granted by the Tribunal to the respondent. The impugned order to the extent of back wages cannot be sustained. In view of the above, we set aside the impugned order only to the extent it directs payment of arrears of salary alongwith other consequential benefits to the respondent. The present Writ Petition is accordingly disposed of. The stay order dated 16.09.2008 stands vacated.