

(2015) 08 DEL CK 0174

In the Delhi High Court

Case No : LPA 750 of 2013

Army Public School and Others

APPELLANT

Vs

Satya Chhitaka and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Citation : (2015) 08 DEL CK 0174

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Asha Jain Madan, for the Appellant; M.A. Niyazi, Anamika Niyazi and Pulkit Chaudhary, Advocates for the Respondent

Judgement

Pradeep Nandrajog, J—The respondent No. 1 filed WP(C) 11481/2009, pleading therein that the appellant (impleaded as respondent No. 1 in the writ petition) issued an advertisement in the Hindustan Times on October 16, 2006 inviting applications to fill up vacant posts of Primary Teachers, Trained Graduate Teachers and Post-Graduate Teachers. Respondent No. 1 applied for being appointed as a teacher and post a written examination and an interview held on January 14, 2007 and February 09, 2007 respectively, she was issued letter offering appointment on April 02, 2007 appointing her as a Primary Teacher, but on contract basis for one year commencing on April 02, 2007 itself and ending on March 31, 2008. It was indicated to respondent No. 1 that her basic pay would be Rs. 4500/- (Rupees Forty Five Hundred only) per month and she would be entitled to Dearness Allowance, Dearness Pay, House Rent Allowance and Medical Allowance. She pleaded that in para 4 of the letter offering appointment it was indicated to her that her performance would be reviewed after three years and the outcome of review would be intimated to her by the management. She pleaded that thereafter, on April 17, 2008 she was issued another appointment letter recording therein that on temporary basis, commencing from April 08, 2008 till May 17, 2008 she would be appointed as a Primary Guest Teacher and that her services would be terminated automatically on May 17, 2008. She

pleaded that on May 19, 2008 she was informed that no assurance could be given to her of being regularized, but was informed that from July 01, 2008 till May 20, 2009 her appointment would continue as a Primary Guest Teacher. Respondent No. 1 pleaded that the appellant sought age relaxation qua her and other teachers from the Directorate of Education on August 13, 2008 and that on January 31, 2009, the Directorate of Education informed, with copy of the letter to respondent No. 1, that the Directorate of Education was actively considering whether respondent No. 1 should be granted relaxation in the age for being appointed as a Primary Teacher. She pleaded that on February 05, 2009 she was informed that her appointment as a Primary Guest Teacher was temporary, to meet the need of the school due to non-availability of qualified experienced teachers, and therefore she was being informed that the temporary vacancy would exist only till March 28, 2009 and thereafter qualified teachers would be appointed on regular basis. Respondent No. 1 pleaded that she made a request to be granted benefit of age relaxation and made a permanent teacher and in response was served with a letter terminating her service on March 25, 2009.

2. Though respondent No. 1 laid a challenge to the letter terminating her service in the pleadings, but in the writ petition no specific prayer to said effect was made. The prayer made was that a mandamus be issued to the appellant directing her services to be regularized.

3. Opposing the writ petition the appellant pleaded that the respondent No. 1 was appointed on contract basis from April 02, 2007 till March 31, 2008 against a temporary vacancy and after the contract period expired the respondent No. 1 was appointed as a Guest Teacher from April 08, 2008 to May 17, 2008. Vide letter dated July 07, 2008, she was again appointed on contract basis as a Teacher against a temporary vacancy from July 01, 2008 till May 20, 2009, which period was curtailed to March 28, 2009 as per the letter dated February 05, 2009 issued by the appellant to the respondent No. 1, and therefore she had no right to continue in service because the tenure which was fixed under contract came to an end by efflux of time.

4. In a counter affidavit filed by the Directorate of Education, Government of Delhi, it was pleaded that the Directorate received a request from the Principal of the appellant school for age relaxation to be granted to the staff, including the Head of the School and in said communication the status of the respondent No. 1 was shown as that of a probationer. The said list has been annexed as Annexure R-1 to the counter affidavit filed by the Directorate of Education. It contains the name of 64 teachers and the name of respondent No. 1 is at serial No. 29. Her status is shown as a teacher under probation. That the said request was processed by the competent authority and was finally allowed. The decision to grant age relaxation was conveyed to the school on April 28, 2009. That on May 25, 2009 the Directorate of Education received a representation from respondent No. 1 that despite being granted age relaxation her services have been illegally terminated. Thereupon the Directorate of Education enquired the status of

respondent No. 1 from the school and was informed that during different durations the respondent No. 1 was appointed either as a contractual teacher or as a guest teacher.

5. Vide impugned order dated March 03, 2013, after noting the case pleaded by respondent No. 1 as aforesaid, the learned Single Judge has held that his decision dated August 30, 2013 in WP(C) 1439/2013 Army Public School & Anr. vs. Narendra Singh Nain & Anr. squarely covered the issue, and after reproducing copiously paragraphs 2 to 8 of his decision in Narendra Singh Nain's case, the learned Single Judge held that giving appointment, terminating the appointment and re-appointing the employee was held by him to be a fraud in Narendra Singh Nain's case and that contractual appointment could be made by a school recognized under The Delhi School Education Act, 1973 only in exceptional cases of emergency. On said reasoning, holding further that a letter dated March 30, 2009, had been adversely commented upon by him in his decision in Narendra Singh Nain's case, the learned Single Judge has held that respondent No. 1 was entitled to the letter dated February 05, 2009 being quashed and accordingly the same has been quashed. Respondent No. 1 has been allowed to rejoin service and as regards back wages the learned Single Judge has held that management of the appellant school would pass the necessary orders under Rule 121 of The Delhi School Education Rules, 1973.

6. We need to re-write the relevant facts because we find that the parties have filed a lot of documents, some of which have simply been filed without any reference thereto in the pleadings, and quite a few documents which are referred to in the pleadings have simply been referred to as an annexure without any pleading regarding the effect of the document. Further, the pleadings are set out as per convenience of the parties and a clear picture which emerges from the documents has not been stated by the either party.

7. It all happened like this. The Director of the Army Welfare Education Society submitted an application on June 07, 2006 to the Directorate of Education proposing to establish a new school in Zone-20, District South- West i.e. the Army Public School, Shanker Vihar, Delhi Cantonment - the appellant. Pending grant of approval to establish the school the Army Welfare Education Society issued an advertisement on October 16, 2006 inviting applications from eligible candidates to be appointed as Primary Teachers or Post Graduate Teachers. For females the upper age limit notified was 39 years. Minimum qualifications notified were as per requirement of CBSE. Respondent No. 1 submitted her application to the Society in terms of the public notice and she cleared the written test held by the Society. On February 09, 2007 respondent No. 1 was called for an interview but was informed that currently there was no vacancy, but should she be successful at the interview her name would be kept in a reserve panel. On April 02, 2007, respondent No. 1 was offered appointment as a Primary Teacher on contract basis for the period April 02, 2007 till March 31, 2008. The appellant school started functioning with effect from April 09, 2007,

and we note that as of said date the Directorate of Education had yet to accord the necessary approval sought by the Army Welfare Education Society to establish the appellant school. On December 10, 2007, the appellant school informed the Directorate of Education that it had been functioning since April, 2007 and sent a reminder of the request made for the school to be granted recognition. On December 24, 2007 the Directorate of Education intimated that the appellant school had been recognized. The Army Welfare Education Society thereupon submitted a scheme for the management of the appellant school, a requirement of Rule 59 of the Delhi School Education Rules, 1973, seeking approval from the Directorate of Education to the scheme of the management. On January 18, 2008, the Directorate of Education constituted a committee to inspect the appellant school and in particular its record. The appellant school was directed to file an affidavit that it would appoint staff in accordance with the recruitment rules applicable to the post as per the Delhi School Education Act, 1973 and the rules framed under. The appellant school complied with the same when on February 06, 2008 its Manager : Brig.B.B. Verma furnished the necessary affidavit. On February 12, 2008 the Managing Committee of the appellant school met for the first time and passed various resolutions. On February 26, 2008 the Directorate of Education accorded approval to the Managing Committee as also the scheme of the management of the appellant school.

8. Since on March 31, 2008 the appointment of the respondent No. 1 on contract basis had come to an end, as per the appellant, with effect from April 08, 2008 till May 17, 2008 she was appointed as a guest primary teacher. After the summer vacations the appellant was again given appointment, as noted above, as a contractual teacher from July 01, 2008 till May 20, 2009, which period was curtailed vide letter dated February 05, 2009 to March 28, 2009.

9. But, what was conveyed to the Directorate of Education by the appellant school was that the respondent No. 1, as also all other teachers of the school were appointed on probation. As we have noted hereinabove in paragraph 4, to the Directorate of Education the appellant school had, while forwarding the list of its teachers, showing the name of respondent No. 1 at serial No. 29, made a request that such teachers who were over age on the date of their appointment should be allowed to be made permanent and for which the Director of Education was requested to accord necessary relaxation. As noted hereinabove in para 4, on April 28, 2009 the Directorate of Education accorded approval granting age relaxation to all such teachers appointed by the appellant school who were over age as on the date of their appointment. But as regards respondent No. 1, what the appellant school did was that on February 05, 2009 the appointment of the respondent No. 1 was curtailed till March 28, 2009 as against May 20, 2009, as informed to respondent No. 1 vide letter dated July 07, 2008.

10. From the facts noted hereinabove, which regrettably were not straightened and placed before the learned Single Judge nor before us, but have been culled

out by us from the stray pleadings and documents filed by the parties, the picture which emerges is that after the Army Welfare Education Society established the appellant school on June 07, 2006, it sought recognition of the appellant school from the Directorate of Education and pending that it issued an advertisement on October 16, 2006 inviting applications from the eligible candidates to be appointed as Primary Teachers or Post Graduate Teachers informing that the upper age for female candidates would be 39 years. Educational qualifications were notified. Respondent No. 1 submitted the application to the Society. She took the written test conducted by the Society. She cleared the same. She was called for an interview. She cleared the interview. She was offered appointment on contract basis from April 02, 2007 till March 31, 2008, but to the Director of Education it was told that the respondent No. 1 was on probation, and so were others. Conscious of the fact that many teacher appointed were over age when they were appointed, the appellant school sought age relaxation from the Directorate of Education and name of respondent No. 1 was included in the list for whom age relaxation was prayed for. It was repeatedly conveyed to the Directorate of Education that all these over aged teachers, including the respondent No. 1, were appointed through a process of selection against available posts and were on probation. The Directorate of Education conveyed to the appellant school on April 28, 2008 that it had accorded approval to grant age relaxation to all the teachers whose names were forwarded to the Directorate of Education for being accorded age relaxation. The date on which the appellant school sent the request to the Directorate of Education to accord age relaxation benefit to 64 teachers on probation in which name of respondent No. 1 was at serial No. 29 has not emanated from the pleadings of the parties, but we find that the list of said 64 teachers has been annexed as Annexure R-1 with the counter affidavit filed by the Directorate of Education to the writ petition filed by respondent No. 1, and the document is not denied by the appellant. We have therefore no hesitation in holding that the appellant school was playing ducks and drakes with not only the Directorate of Education but even respondent No. 1. While seeking recognition, the parent society which established the appellant school and even the appellant school, wrote to the Directorate of Education that they had appointed qualified staff, all of whom was on probation and requested the Directorate of Education to grant age relaxation benefit to those teachers who were over aged and in the said list, name of respondent No. 1 was included, clearly to show to the Directorate of Education that the school was acting as per law by not appointing any teacher on contract, but to the respondent No. 1 letters offering appointment for different duration were being issued sometimes informing her that she was on contract and sometimes informing her that she was a guest teacher.

11. In our opinion the appellant would be bound by the representations made by it to the Directorate of Education while seeking recognition, for the reason acting on those representations the appellant school got a benefit i.e. recognition. Had the Directorate of Education been informed that the appellant was appointing

teachers on contract basis, the appellant would not have been accorded recognition. It is trite that where a party takes a position and makes a representation based whereupon it receives a benefit the party concerned cannot be permitted to take a stand to the contrary. Estoppel would bind the party which wants to change its tracks.

12. The cunningness of the appellant is further evidenced from the fact that knowing fully well that the Directorate of Education was in the process of according approval to its request that benefit of age relaxation would be granted to such teachers who were shown as having been appointed against regular vacancy but on probation, it curtailed the tenure appointment of the respondent No. 1 which was up till May 20, 2009 to March 28, 2009. The decision of granting age relaxation was conveyed to the appellant on April 28, 2009. It is apparent that the appellant had learnt somewhere in February, 2009 that the necessary approval would be granted and thus on February 05, 2009 it wrote to respondent No. 1 that her contract tenure which was up till May 29, 2009 was being curtailed till March 28, 2009.

13. These are our reasons to hold against the appellant and concur with the final view taken by the learned Single Judge that terminating the services of the respondent No. 1 was an act of fraud, requiring the termination to be declared illegal and reinstatement of respondent No. 1 as directed by the learned Single Judge.

14. Therefore, we do not deal with the decisions cited by learned counsel for the appellant to bring home the point that where a person is appointed on a contract, when the tenure of contract comes to an end the service terminates by efflux of time and such a tenure appointment cannot confer any benefit on the employee. The said proposition of law is without any exception, but the facts of the instant case show that the appellant's school and the society had invited applications for permanent posts. A written examination followed by an interview was conducted. To some of the appointed teachers, which included the respondent No. 1 letter of appointment termed the appointed firstly on contract and when said period expired as a guest teacher for a tenure and when said tenure came to an end once again as a contract teacher, but to the Directorate of Education it was informed that all the teachers, including respondent No. 1 were appointed against regular vacancies and were on probation. Those who were over aged, a request was made that benefit of age relaxation be granted. On said representations made the appellant school got the benefit of recognition. The Directorate of Education granted age relaxation benefit to all over aged teachers including the respondent No. 1

15. We note that as per the decision taken by the learned Single Judge the appellant was required to pass an order in terms of Rule 121 of the Delhi School Education Rules, 1973 regarding wages to be paid to respondent No. 1 for the period interregnum her services were terminated and she being reinstated in service. We were informed at the hearing of the appeal that the appellant has

passed an order restricting wages, and in respect of which order, we simply observe that if respondent No. 1 is aggrieved therewith she may take resort to such remedies are available to her.

16. We note that pursuant to the order dated October 09, 2013 granting conditional stay to the appellant of the implementation of the impugned order a sum of Rs. 5,95,000/- (Rupees Five Lacs Ninety Five Thousand only) has been deposited by the appellant in this Court which has been kept in a fixed deposit and is bearing interest. We direct that said amount together with accrued interest thereon shall be paid to respondent No. 1 and the appellant would be entitled to adjust the said amount concerning such wages which would finally be payable to respondent No. 1 for the period interregnum she remained without a job and till she is reinstated in service. Regarding this period the appellant has already passed an order as per which respondent No. 1 is entitled to some wages and therefore as regards the appellant the amount which the appellant itself has determined would be receivable by respondent No. 1 and would be adjusted from the amount which respondent No. 1 would receive under this order. But as regards respondent No. 1, she would be entitled to remedies as per law if she is aggrieved by the decision/order of the appellant determining back wages payable to her.

17. The appellant shall bear the cost of the appeal and shall pay to the respondent No. 1 a sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) as costs in the appeal.

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