

(2013) 05 DEL CK 0492
In the Delhi High Court
Case No : W.P.C. No. 4661 of 2012

Babu Lal

APPELLANT

Vs

Guru Harikrishan Public School and Another

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 5 AD 91

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Ehrasz Zafar, for the Appellant; Sudhir Nandrajog, with Mr. Bhagwant Singh, Ms. Manpreet Kaur and Mr. Mansimran Singh, for R1 and 2 in W.P.C. Nos. 4661/2012 and 13566/2009 and Cont. Cas (C) Nos. 956/2009 and 607/2012, Ms. Shawna Bari for Mr. Rajiv Nanda, for R-2 in W.P.C. No. 4661/2012, Mr. Sidharth Yadav, for R-3 in W.P. (C) 13566/2009, for the Respondent

Judgement

Valmiki J Mehta, J.

W.P.(C) 4661/2012

1. In this writ petition the issue is as to whether or not the petitioner resigned from respondent No. 2-School. Whereas the petitioner contends that the petitioner has not resigned and the resignation has been fraudulently obtained/ illegally taken by respondent No. 2-School, the respondent No. 2-school says that the petitioner resigned without any coercion or any pressure or fraud by respondent No. 2. Therefore, there is disputed question of fact which requires trial before a Civil court/tribunal. It has been similarly held by a learned single Judge of this Court in the case of Sh. Radhey Shyam Sharma V. The Managing Committee, Mahasya Chunni Lal Saraswati Bal Mandir and Anr. decided on 13.05.2011 in W.P.(C) 3245/2011 and which order reads as under:-

1 The petitioner claims to have been employed as a Caretaker in the respondent No. 1 Mahasya Chunni Lal Saraswati bal Mandir, an unaided recognized School within the meaning of the Delhi School Education Act, 1973, from the year 1992

till 2002. He claims that in the year 2002 he was forced to submit his resignation and which was accepted resulting in termination of his employment. He first preferred an appeal to the Delhi School Tribunal and which was rejected as not maintainable vide order dated 30th September, 2008. He thereafter preferred W.P.(C) 7116/2009 which was withdrawn on 7th may, 2010 with liberty to approach the appropriate forum in accordance with law. Thereafter the present writ petition has been filed seeking the relief of quashing the termination order dated 22nd March, 2002 of the respondent No. 1 school and for direction for reinstatement.

2 The relief claimed by the petitioner is dependent upon as to whether the resignation admittedly submitted by the petitioner was forced upon him or not. The said enquiry cannot be undertaken in writ jurisdiction as it would necessarily entail examination and cross examination of witness. It appears that for this reason only, the earlier writ petition preferred by the petitioner was withdrawn with liberty to approach the appropriate fora.

3 Yet another question which arises is to the very maintainability of the writ petition. As per the judgment of the Division Bench of this Court in Kathuria Public School Vs. Director of Education and Another, the respondent no. 1 School did not require approval of the respondent no. 2. Directorate of Education for accepting the resignation of the petitioner. Thus the Directorate of Education had nothing to do in the relationship of employer-employee between the petitioner and the respondent No. 1 School, insofar as the said resignation was concerned. The said part of the judgment W.P.(C) 3245/2011 of the Division Bench has been disturbed by the Full Bench in judgment dated 27th August, 2010 in O. Ref. No. 1/2010 titled Presiding Officer, Delhi school Tribunal Vs. GNCTD. Once it is held that the Directorate of Education is not concerned in the termination of employment by the respondent no. 1 School, even if any, the writ petition even otherwise would not be maintainable.

4 At this stage, the counsel for the petitioner seeks to withdraw the writ petition with liberty to file a civil suit.

5 Dismissed as withdrawn with liberty aforesaid. No order as to costs.

RAJIV SAHAI ENDLAW, J.

MAY 13, 2011

It is not possible for this Court while exercising jurisdiction under Article 226 of the Constitution to decide the disputed question of facts. Of course, it is not that this Court does not have such jurisdiction, however, the Court prefers that such disputed question of facts be decided after detailed evidence is led by both the parties in an appropriate court/tribunal.

2. Accordingly, counsel for the petitioner says that the petitioner will file appropriate civil proceedings to challenge the removal of the petitioner from respondent No. 2-school inasmuch as the petitioner states that the petitioner

never voluntarily resigned from respondent No. 2-school.

3. There are interim orders which have been passed in this case on 14.08.2012 permitting the petitioner to join duties. These interim orders, without in any manner commenting one way or the other on the validity of the same, are extended for a period of 8 weeks to enable the petitioner to seek interim orders in civil proceedings/civil suit and the concerned court/tribunal will decide the question of the grant of interim orders uninfluenced by the continuation of the interim orders. I hasten to clarify that continuation of the interim orders is no reflection one way or the other on the entitlement or the disentitlement of the petitioner with respect to interim orders, and this aspect will be independently considered by the concerned court/tribunal where the petitioner's civil proceedings/civil suit would be filed.

4. The writ petition is, accordingly, dismissed as withdrawn, subject to the aforesaid liberty and observations. It is further clarified that petitioner is given liberty to claim all reliefs which are claimed in this writ petition in the civil proceedings in the concerned court including before the Delhi School Tribunal before which the petitioner proposes to file the civil proceedings. W.P.(C) 13566/2009

5. The main issue urged in this writ petition was the claim that petitioner could not have been suspended from the respondent No. 2-school without prior or ex post facto approval of the Director of Education. I have already pronounced judgments on this issue in a batch of cases. On 10.04.2013 with lead case W.P. (C) 8412/2011 titled as Jatinder Kaur Saini v. School Management of G.H.P.S., Fateh Nagar & Ors., and in which I have held that since the respondent No. 2-school is an unaided private school, no prior or ex post facto permission for suspension is required by the Director of Education in view of two Division Bench judgments of this Court in the case of Kathuria Public School Vs. Director of Education and Another,) and Delhi Public School and Another Vs. Shalu Mahendroo and Others, Accordingly, the petitioner cannot challenge the issue of suspension on the ground of lack of permission from Director of Education.

6. So far as the relief of challenge to the suspension on merits is concerned, in my opinion, this issue will also be appropriately dealt with in civil proceedings in the concerned court including before Delhi School tribunal/civil suit which the petitioner states that the petitioner will file inasmuch as suspension order will merge in the resignation, if at all valid, of the petitioner from the respondent No. 2- school. In this case, interim orders were granted on 03.12.2009. As per interim orders, operation of the communication dated 14.11.2009 suspending the petitioner was stayed. These interim orders are continued for a period of 8 weeks from today to enable the petitioner to seek appropriate interim orders in the civil proceedings/civil suit which the petitioner proposes to file. I add that continuation of interim orders is not a reflection one way or the other on the entitlement or disentitlement of the petitioner to interim orders in the civil proceedings/civil suit. The writ petition is dismissed as withdrawn, subject to the

aforesaid liberty and observations.

Cont. Cas (C) 956/2009 & 607/2012

Learned counsel for the petitioners do not press these petitions with liberty to urge interim orders in the civil proceedings/civil suit which the petitioners propose to file. Without prejudice to the respective rights and contentions, these contempt petitions are, accordingly, disposed of with the liberty as prayed for.