
(1992) 03 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 1757 of 1984

B.S. Verma

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:

Delhi School Education Act, 1973 — Section 20
Delhi School Education Rules, 1973 — Rule 115(1)

Citation : (1992) 48 DLT 49 : (1992) 23 DRJ 211

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : S.C. Gupta, L.R. Goel and T.S. Kapoor, for the Appellant;

Judgement

S.C. Jain, J.

(1) In this writ petition filed under Article 226 of the Constitution of India, an order dated 29th February, 1984/1st March, 1984 passed by the Director of Education, Delhi Administration Delhi, respondent No.2 which purports to place the petitioner, Mr. B.S. Verma under suspension with immediate effect and non-payment of any salary or allowance to the petitioner from May, 1983 has been challenged being illegal, without authority and without Jurisdiction.

(2) As per the averments made in this writ petition Shri B.S. Verma, the petitioner was initially appointed as a Principal of the Shahid Udham Singh Samarak Uchattar Madhayarnik Vidiayals. Shashtri Nagar, Delhi (hereinafter referred to as the School) on his accepting appointment to that post offered to him vide orders dated 13th May, 1978. At that stage the School was up to Secondary standard and the post held by the petitioner was designated as Vice Principal on the directions of the Delhi Administration to do so. The said School is a recognised private School which is receiving aid in the room of maintenance grant from the Delhi Administration and is an aided School as defined in Section 2 (d) of the Act. The school is run by a registered society known as "Shahid Udham Singh Samarak Shiksha Samiti, Shastri Nagar, Delhi, herein referred to

as the Society.

(3) In the year 1982, differences arose between the two groups of the members of the Society in order to exercise powers in respect of the affairs of the Society, including management and running of the school. Both the groups resorted to litigation by filling civil suits against each other. A show cause notice dated 16th December, 1983 u/s 20 of the Delhi School Education Act was issued by the Administrator of the Union Territory of Delhi proposing to take over the management of the School in exercise of the powers conferred by sub section (1) of Section 20 of the Delhi School Education Act, 1973. After perusing the reply to the show cause notice, the Administrator of Union Territory of Delhi vide its order dated 28th April, 1984 ordered to take over the management of the said school for a period of three years with effect from 25th April, 1984 and directed under sub-Section (3) of Section 20 of the Act that the said School shall be managed through Director of Education and Shri S.N. Gupta, Officer, District North authorised by the Director of Education, Delhi Administration. However, before passing of this order of taking over the management of the school with effect from 25th April, 1984, the Director of Education vide his order dated 29th February, 1984/1st March, 1984 placed the petitioner Shri B.S. Verma, Vice Principal of the School under suspension with effect from that date. This order has been challenged in this writ petition.

(4) The learned counsel for the petitioner contended that respondent No. 2, the Director of Education has no authority under the Act or under the Rules to make the impugned order placing any employee of a school under suspension. It can be made only by the Managing Committee of the school in accordance with and subject to the conditions stipulated u/s 8 of the Act and Rule 115 of the Rules. Power to suspend any employee vests in the Managing Committee of the School subject to the approval of the Director of Education by virtue of sub section (4) of Section 8 and also sub-rule (1) of Rule 115, whereas the impugned order has been passed by the Director suo moto. Sub Section (5) of Section 8 confers upon the Director the power to accord his approval to such suspension as may be ordered by the Managing Committee under sub-Section 4 of Section 8 of the Act. The impugned order does not even purport to have been made in exercise of the power of approval under sub-Section (5) of Section 8 of the Act According to the learned counsel when the impugned order dated 29.2.1984/1.3.84 was made the management of the school was still with the Managing Committee of the school and it was taken over by the Director of Education with effect from 25th April, 1984 and Therefore this suspension order dated 29.2.84/1.3.84 passed by the Director of Education without the recommendation of the Managing Committee is illegal and ultra virus the Delhi School Education Act 1973 and Delhi School Education Rules, 1973. The learned counsel also contended that after restoring the management of the school to its duly elected Managing Committee the suspension order was revoked and that the petitioner was not found guilty of any of the charges alleged against him. The suspension order is silent of the fact that any disciplinary proceedings were pending against him at the time of the

passing of the suspension order and that he shall be paid the subsistence allowance during the period of suspension.

(5) The learned counsel for the respondents argued that the petitioner is guilty of huge embezzlement of school funds as pointed out by the school audit party which was deputed by the department for this purpose. The petitioner was not paid salary w.e.f. May, 1983 because there was no legal management of the school. The allowances for suspension period was offered to the petitioner, but he declined to accept the same. According to the learned counsel, when there is no legal management the Director of Education alone has powers to exercise jurisdiction to suspend any employee of the school. In this case, there was no legal management and the management of the school was taken over by the Director of Education and Therefore, the order of suspension by the Director of Education is legal and justified. Whenever the Management of the school is taken over by the Administrator the Managing Committee ceased to exist and becomes defunct and its functions are performed by the Administrator or any authorised officer.

(6) u/s 8 of the act, the Administrator is empowered to make Rules regulating, inter alia, the conditions of service for employment of recognised private schools. Sub section (4) of Section 8 provides that where the Managing Committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with prior approval of the Director, Sub section (5) further provides that where the intention to suspend an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable ground for such suspension, accord his approval to such suspension.

(7) Rules prescribe the condition of service for employees of recognized -private schools. Suspension is regulated and controlled by provisions made by Rule 115. Sub rule (1) empowers the Managing Committee to place an employee under suspension, subject of course to provisions of Sub section (4) and (5) of Section 8 and on fulfillment of the contingencies envisaged and prescribed by clauses (a) to (f) of Sub rule (1).

"THE legal position emerging from the statutory provisions of the Act and the Rules is clear with regard to the authority, the procedure and the circumstances in which suspension of an employee of a recognised school can be made. The basic power to place an employee under suspension is conferred upon the Managing Committee of the School. The exercise of that power is controlled by the requirement of approval of suspension by Director on his satisfaction that there are adequate and reasonable grounds for such suspension. The Director has no power, authority or jurisdiction himself to make an order placing any employee of the school under suspension. Power to place an employee under suspension can be exercised only by the appropriate appointing authority and by no one else without express authority to do so. That, indeed, is also the position preserved by the provisions made on the subject in the Act and in the Rules."

"IT may also be relevant here to point out that Section 20 in Chapter VII of the Act provides for taking over the management of schools, whenever the Administrator is satisfied that conditions envisaged under that Section are fulfilled. Whenever the management of any school is taken over, the person in charge of the management of such school is bound to deliver possession of the school properties to the Administrator or any officer authorised by him in this behalf as required by the sub section (2) of Section 20. After taking over the management of any school, the Administrator is given the discretion instead of himself exercising power and obligation envisaged in sub-sections (5) and (6) to arrange to manage the school through the Director or any other person authorised by the Director in this behalf called the "Authorised officer". Sub-Section (5) deals with the payment of rent for the building of the school and sub section (6) prescribes the manner and conditions for management during such period as the school remains under the management of the authorised officer. Clause (d) of sub-section (6) is important for the purpose of the present case. It expressly provides that during such period, no resolution passed at any meeting of the Managing Committee of the School shall be given effect to unless approved by the Administrator. From the above provisions, it is clear that even in cases where management of a school is taken over u/s 20 of the Act, the basic power and function of the Managing Committee as the appointing authority in relation to the employees of the school is not affected. But, abuse of power by the Managing Committee is controlled and prevented by the provision made in Sub clause (b) of Sub section 6 to ensure that no resolution passed by the Managing Committee of the School, during the period when the School remains under the management of the authorised officer, shall be given effect to unless approved by the "Administrator. Thus actions of the Managing Committee are supervised and kept under control to be given effect to only when approved by the Administrator. The aforesaid provision expressly made in clause (d) of sub section (6) of Section 20 of the Act indicates, beyond doubt, intention of the legislature neither to supersede the Managing Committee, nor to divest it of its powers and functions as the appointing authority vis-a-vis employees, nor to transfer the powers of the Managing Committee to be exercised directly by the Director. As such even when the Management of a school is taken over u/s 20 of the Act, the Director gets no authority exercisable by the appointing authority vis-a-vis the employees of the schools under the Act or the Rules framed there under."

"THE impugned order of suspension of the petitioner made by respondent No. 2, Director of Education is absolutely without power, authority and jurisdiction. This order of suspension was passed by the Director of Education on 29.2.84/1.3.1984 i.e. much before the actual Management of the school was taken over by the Delhi Administration vide order dated 28th February/1st March, 1984. On that date when suspension order was passed, the Management of the school was not with the Delhi Administration and the impugned order is, Therefore, ultra vires the Act and the Rules. On this ground alone the impugned

order is liable to be quashed. Besides this, the impugned suspension order is vocative of the provisions of Rules 115 and 116 of the Delhi School Education Rules 1973. Sub rule (2) of Rule 115 provides that no order for suspension shall remain in force for more than six months unless the managing committee for reasons to be recorded in writing, directs the continuation of the suspension period beyond the period of six months. It means that initially the suspension period cannot be more than six months. In this impugned suspension order no period of suspension is mentioned and as such it is vocative of rule 115 of the rules. Rules 116 of the rules provides that an employee under suspension shall in relation to the period of suspension be entitled to the subsistence allowance and other allowances admissible under the Rules but the impugned suspension order is silent on this point also. This order is, Therefore, also vocative of Rule 116 of the Rules. The impugned order does not even indicate that any disciplinary proceeding against the petitioner is contemplated or is pending. No order of the suspension of the petitioner could have been passed unless one or more of the conditions stipulated in sub rule (1) of Rule 115 existed in the case of the petitioner."

(8) Under these circumstances order dated 29.2.84/1.3.84 passed by respondent No. 2, Director of Education, Delhi placing the petitioner under suspension is hereby quashed. As the petitioner has already been reinstated, Therefore, there is no need of issuing any directions to reinstate the petitioner in service. The petitioner is entitled to full pay and allowances during the period of suspension. Write petition is allowed. Rule is made absolute. No order as to costs.