

(2010) 05 DEL CK 0130
In the Delhi High Court
Case No : Writ Petition (C) 6583 of 1999

Darshana Bhandari

APPELLANT

Vs

Directorate of Education and Another

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Delhi School Education Rules, 1973 — Rule 29

Citation : (2010) 05 DEL CK 0130

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : None, for the Appellant; Rakesh Agarwal and Pulkit Agarwal, for the Respondent

Judgement

Indermeet Kaur, J.—The petitioner is aggrieved by the communication dated 20.07.1999 and also the second communication dated 08.10.1999 vide which the Director of Education had permitted the respondent No. 2 school to discontinue the subject of Physical Education with the rider that the services of the petitioner namely Ms. Darshana Bhandari should be continued for utilization for other general physical education activity in the school. Vide the second communication dated 08.10.1999 the respondent school had given an option to the petitioner to get her post reduced from PGT to TGT (physical education) failing which her services would be terminated. Both these communications are under challenge and the subject-matter of this writ petition.

2. Factual Matrix of the case is as follows:

(i) The petitioner was appointed against a regular post of PGT i.e. physical education teacher on 10.05.1990.

(ii) On 16.6.1992, her services were confirmed.

(iii) Around February, 1999, the respondent school wrote to the Director of Education seeking permission to close down physical education as a subject as a senior secondary education as there were not enough students who were opting

for the said subject

(iv) The Director of Education vide letter dated 20.07.1999 permitted the school to discontinue with the subject with the condition that the services of the present petitioner namely Smt. Darshana Bhandari would be continued for utilization for other general physical education activity in the school.

(v) Petitioner has challenged this communication. It is stated that under the Delhi School Education Rules, the physical education even otherwise is a compulsory and mandatory subject and the services of the petitioner were required in the school. She has illegally been reduced in rank from PGT to TGT.

(vi) On 24.9.1999, the respondent school gave an option to the petitioner to give her consent for her reversion as a TGT which was declined by her vide letter dated 28.09.1999.

(vii) A second communication was addressed to her by the school on 08.10.1999 giving her an outer limit of three days to either accept her reversion to TGT or else she shall face termination as it was stated that the petitioner had fallen in the "surplus" category.

(viii) The petitioner having little choice had agreed for her reversion vide her letter dated 12.10.1999 reserving her right to address her grievances before the appropriate forum.

(ix) Her representation to the Director of Education on 20.10.1999 received no response.

(x) Present writ petition was filed on 28.10.1999.

3. Counter affidavit has been filed by respondent No. 2. Respondent No. 1 has not filed any response. In the counter filed by the respondent school the factual averments are not in dispute. It is, however, submitted that since physical education had been abolished as a subject in the school, the services of the petitioner had fallen surplus and as such it had become necessary to reduce her in rank from PGT to TGT.

4. The Delhi School Education Rules, 1973 also prescribed physical education as a subject; reference may be made to Rule 29 of the said Rules. Be that as it may, learned Counsel for the respondent has drawn the attention of this Court to Section 8 Sub-clause (2) and Sub-clause (3) which are the terms of service of employees of recognized private schools as engrafted in the Delhi Education Rules 1973. They inter alia reads as follows:

8. Terms and conditions of service of employees of recognized private schools-

(1)

(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the

Director.

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted u/s 11.

5. The Tribunal has been constituted u/s 11 of the said Act. Sub-clause (1) states that the Administrator shall, by notifications, constitute a Tribunal, to be known as the "Delhi School Tribunal". Sub-clause (5) states that the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sitting. Sub-clause (6) states that the Tribunal shall for the purpose of disposal of an appeal preferred under this Act have the same powers as are vested in a court of appeal by the Code of Civil Procedure, 1908, (5 of 1908) and shall also have the power to stay the operation of the order appealed against on such terms as it may think fit.

6. The grievance of the petitioner is that she has been reduced in rank from PGT to TGT. This condition of her service is a dispute which falls within the ambit and scope of the Delhi School Education Tribunal. The petitioner has admittedly not approached the said forum. The rules stipulate that the aggrieved employee will approach the Tribunal within three months from the date of the communication to him of his order either of dismissal, removal or reduction in rank.

7. Since, the petitioner has an alternate efficacious remedy which she has not availed of and also in view of the judgment of this Court, reported in Kathuria Public School Vs. Director of Education and Another, wherein it has been held that grievances of the staff of school which includes teachers can be addressed before the Tribunal, it is directed that the petitioner may approach the appropriate forum i.e. the Delhi School Education Tribunal to get her grievances addressed. The period spent by the petitioner in pursuing this petition will be excluded for the purposes of her seeking the remedy in the appropriate forum i.e. before the Delhi School Education Tribunal.

8. With this direction writ petition is disposed of. No orders as to costs. A copy of this order be communicated to the petitioner at her address as mentioned in the petition.