

(2013) 09 DEL CK 0149

In the Delhi High Court

Case No : Writ Petition (C) No. 1009 of 2012

Daya Nand Adarsh Vidyalaya

APPELLANT

Vs

Deepa Chibber and Another

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 30

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

Citation : (2013) 09 DEL CK 0149

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.K. Taneja and Mr. Amit Kumar, for the Appellant; Anil Sehgal, for R-1 and Ms. Sangeeta Sondhi and Mr. Rohit Nagpal, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, petitioner-school impugns the judgment of the Delhi School Tribunal (DST) dated 21.12.2011. By the impugned judgment DST accepted the appeal which was filed by the respondent no. 1 herein, and which appeal questioned the action of the petitioner-school in illegally terminating the services of the respondent no. 1. Whereas the case of the respondent no. 1 was that she was wrongly prevented from performing her duties and was removed from the school without following the procedure prescribed under the Delhi School Education Act and Rules, 1973, the case of the petitioner-school was that the respondent no. 1 had resigned from services on 4.7.2005 by submitting her letter of resignation. The Tribunal decided the appeal by holding that respondent no. 1 had not resigned and petitioner-school was guilty in illegally removing respondent No. 1 from the school. Before me learned senior counsel for the petitioner has urged the following grounds in support of the petition for setting aside the impugned judgment:-

(a) No appeal was maintainable before the Delhi School Tribunal u/s 8(3), inasmuch as the issues of resignation are not covered u/s 8(3). It is argued that

once a teacher resigns, thereafter the issue of resignation will not fall within the scope of Section 8(3) of the Act. In support of the proposition reliance is placed upon an order dated 13.5.2011 passed by a learned Single Judge of this Court in the case titled as Sh. Radhey Shyam Sharma Vs. The Managing Committee, Mahasay Chunni Lal Saraswati Bal Mandir & Anr. in W.P. (C) 3245/2011 and a full Bench judgment of this Court in the case of Presiding Officer Delhi School Tribunal Vs. Govt. of Nct of Delhi, .

(b) Respondent no. 1 was found to be fit to resume her duties on 1.1.2006, but yet she did not join the services, and hence she cannot claim that she has been wrongly removed.

I may state that although at one stage an argument was sought to be raised that Tribunal has decided the case without leading evidence, however, this argument was given up because no such ground was mentioned in the writ petition and in fact ground (F) at page 12 of the writ petition on the contrary only states that the issue of fact has been wrongly decided by putting the onus of proof on the petitioner instead upon the respondent no. 1.

2. So far as the first ground that an appeal is not maintainable before the Delhi School Tribunal is concerned, I may note that the Supreme Court in the case of Shashi Gaur Vs. NCT of Delhi and Others, has held that any and every removal of a teacher/employee of a school has to be challenged by means of appeal which is to be filed before the Delhi School Tribunal. The relevant paras of this judgment are paras 5 to 8, which read as under:-

5. Mr. Das, the learned senior Counsel appearing for the appellant, contends that Section 8(3) provides for an appeal against an order of dismissal, removal or reduction in rank and not against any order of termination as is apparent from the provisions contained in Sub-section (2) of Section 8, which provides for obtaining prior approval of the Director before dismissal, removal or reduction in rank or otherwise terminating the services of an employee of a recognised private school. The very fact of absence of the expression "otherwise termination" available in Sub-section (2) from the provisions of Sub-section (3) clearly demonstrates that against an order of termination which does not come within the expression "dismissal, removal or reduction in rank", the Legislature has not provided for an appeal to the Tribunal constituted u/s 11 of the Act.

6. In support of this contention, the Counsel also placed reliance on Rule 117 Explanation, which indicates that replacement of a teacher who was not qualified on the date of his appointment by a qualified one, will not amount to a penalty within the meaning of the said Rule [see Explanation (c)]. The learned Counsel also placed before us the observations made by this Court in the case of The Principal and Others Vs. The Presiding Officer and Others, wherein this Court had observed that for applicability of the provisions of Section 11 two conditions must co-exist, namely, (i) that the employee should be an employee of a recognised private school and (ii) that he should be visited with either of the three major

penalties, i.e., dismissal, removal or reduction in rank.

7. This judgment and the interpretation put to the provisions of Subsections (2) and (3) of Section 8 undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted u/s 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Governmental authorities, having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself conies to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that availability of an alternative remedy oust the jurisdiction of the Court under Article 226 of the Constitution.

(emphasis added)

3. In view of the aforesaid judgment of the Supreme Court in the case of Shashi Gaur (supra), in my opinion, there can be no doubt that once a teacher/employee of a school takes up a case that she has been illegally removed, this aspect very much falls within the jurisdiction of the Tribunal. The mere fact that in determining this issue the Tribunal has also to consider that whether or not the teacher or employee has resigned or not cannot mean that Tribunal will have no jurisdiction because it is only on arriving at a conclusion that there is no valid resignation, would thereafter the Tribunal arrive at a decision of illegal removal of a teacher/employee of a school. Surely, a teacher/employee who is illegally removed, will naturally approach the Tribunal as per the ratio of the Supreme Court in the case of Shashi Gaur (supra), and surely the defence which is laid out by the school to justify the action of the school would not mean that the issue will not remain that of removal of the teacher/employee from the school. In fact, it is reiterated that it is because of the assertion of the respondent no. 1 that she has been illegally removed from the school, and which case has been accepted

by the Tribunal, that the impugned judgment has been passed in favour of respondent no. 1 and against the petitioner.

4. So far as the judgment in the case of Sh. Radhey Shyam Sharma (supra) relied upon by the petitioner is concerned, I fail to understand at all as to how this judgment would apply in this case because in the said case there is no issue which is decided that an appeal against a termination order does not lie to the DST except there is narration of facts only with regard to earlier proceeding only as a factual history of the case. It has to be noted that the learned Single Judge has only noted the factum of appeal not being maintainable before the Delhi School Tribunal as narration of facts and there is no finding of any validity of the plea that where an employee has been removed by forcibly accepting the resignation whether that issue cannot be decided by the Tribunal. The order dated 13.5.2011 accepting the narration of facts thereafter holds that in a writ petition disputed questions of facts cannot be decided of whether the resignation was a forced resignation or not. Therefore, the judgment in the case of Radhey Shyam (supra) relied upon by the petitioner does not help the petitioner.

Also in the case of Radhey Shyam Sharma (supra), no reference is made to the binding judgment of the Supreme Court in the case of Shashi Gaur (supra) and therefore, I am bound to follow the ratio of the Supreme Court in the case of Shashi Gaur (supra) and not any observations which were made in the order dated 13.5.2011 passed in Radhey Shyam Sharma (supra) case.

5. The Full Bench judgment of this Court in the case of Presiding Officer (supra) also in my opinion, does not help the petitioner because the paras which are relied upon in the judgment on behalf of the petitioner, being paras 23 and 24 only state that the language of Section 8(3) has to be interpreted as per its normal meaning, but surely that normal meaning is the meaning which has to be ascribed by the judgment in the case of Shashi Gaur (supra). The Full Bench judgment of this Court in the case of Presiding Officer (supra) has referred to the ratio in the case of Shashi Gaur (supra). The observations which were made in the case of Shashi Gaur (supra) in paras 23 & 24 were with respect to whether an order of suspension can or cannot be challenged before the Delhi School Tribunal, although, the word "suspension" is not found in Section 8(3) of the Act, and therefore, the observations of the Full Bench in paras 23 and 24 were in aid to the conclusion that the order of suspension cannot be appealed before the Delhi School Tribunal u/s 8(3) of the Act.

I therefore reject the argument that the appeal filed by respondent no. 1 before the Delhi School Tribunal was not maintainable.

6. That takes me to the second argument urged that if the respondent no. 1 was fit to join the duty as per the medical certificate (filed at page 52 of the petition) w.e.f. 1.1.2006 but she did not join and hence her termination is valid, however, that argument cannot help the petitioner-school because if a teacher/employee was fit to join duty but does not join then the school can initiate departmental

proceedings by following the procedure under Rules 118 to 120 of the Rules framed under the Act, however, without complying with the procedure for removal, there is no automatic removal of a teacher/employee of a school on the ground that the said teacher/employee of a school had to join the duties but failed to join duties. I may note that the Supreme Court in the case of Management Committee of Montfort Senior Secondary School Vs. Shri Vijay Kumar and Others, has held that the teachers and employees of schools have statutory protection and they cannot be removed except by following the procedure laid down under the Act and Rules especially Rules 118 to 120 of the Delhi School Education Rules, 1973 which require conducting of a departmental enquiry after serving Article of Charges and the Disciplinary Authority thereafter passing an order on the basis of report of the Enquiry Officer. Para 10 of the judgment in the case of Montfort Senior Secondary School (supra) is relevant and the same reads as under:-

10. In St. Xaviers" case (supra) the following observation was made, which was noted in Frank Anthony"s case (supra):

A regulation which is designed to prevent mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30 is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhaibjai Sabhai (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it.

The effect of the decision in Frank Anthony"s case (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in Frank Anthony"s case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter

IV. The Tribunal constituted u/s 11 is the forum provided for enforcing some of these rights...

(underlining added)

It may be noted that the Supreme Court in the case of Montfort Senior Secondary School (supra) gave the benefit of statutory protection to teachers and employees of schools even for a minority unaided school and afortiori the observations also apply to non-minority schools.

7. Therefore, it is impermissible in law for the petitioner-school to contend that there is an automatic removal from services allegedly on the ground that the teacher/employee should have joined after the illness but did not join.

8. I may state that I am persuaded to dismiss this petition also as per the following findings and observations of the Tribunal as per which, the Tribunal has held that the respondent no. 1 did not resign from services, and in fact, petitioner-school illegally removed the respondent no. 1:-

(a) As per copies of the salary register and attendance register, respondent no. 1 was shown to be an employee even after the alleged date of resignation on 4.7.2005. In fact, the record of the school showed that after 2005, name of respondent no. 1 was shown in the registers with the expression "without pay", and therefore, the contention of the petitioner that respondent no. 1 resigned on 4.7.2005 is ex facie incorrect. Also, the petitioner-school did not file before the Court any other photocopies of the registers as per which the photocopies of the registers filed by respondent no. 1 would have been shown to be incorrect.

(b) As per the Rule 114(A) of the Delhi School Education Rules, 1973 resignation is only effective if there is a resolution passed by the Managing Committee accepting the resignation within 30 days of receipt of the same. Before the Tribunal, no resolution of the Managing Committee was filed within 30 days of the date of the alleged resignation of 4.7.2005 that the resignation was accepted. Petitioner-school only claimed acceptance of the resignation by the Managing Committee/Chairman and which procedure is admittedly in violation of Rule 114(A) of the Rules.

(c) If the respondent no. 1 had really resigned on 4.7.2005, then, whatever were the dues of respondent no. 1 as on that date would have been paid to the respondent no. 1, admittedly however, nothing has been filed on record either before the Tribunal or before this Court that any lump sum dues which were payable to the respondent no. 1 on her alleged resignation from the school were paid to the respondent no. 1. In fact, the Tribunal records that respondent no. 1's name continues to appear with respect to provident fund records even after the alleged date of resignation on 4.7.2005.

9. No other issue is pressed before me on behalf of the petitioner. In view of the above, the writ petition being without any merit, and an abuse of the process of law to harass a teacher, is accordingly dismissed with costs of Rs. 25,000/-.

Costs shall be paid to the respondent no. 1 within a period of four weeks from today.