

(2019) 07 DEL CK 0518

In the Delhi High Court

Case No : Civil Writ Petition No. 5860 Of 2018, Civil Miscellaneous Application
No. 22817 Of 2018

Deepika Kapila

APPELLANT

Vs

Director Of Education And Ors

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Delhi School Education Rules, 1973 — Rule 115, 117(b)(iv), 120, 120(2)

Citation : (2019) 07 DEL CK 0518

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : V.K. Garg, Somyajit Pani, Noopur Dubey, Chhitranjan Singh, Latika Chaudhary

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, the petitioner seeks direction thereby quashing the impugned suspension order dated 23.05.2003 and impugned charge memo dated 09.03.2018.

2. Further seeks direction to reinstate the petitioner w.e.f. 23.01.2003 along with the payment of arrears, accruals, back wages and other consequential benefits.

3. Brief facts of the case are that the petitioner was appointed as Language Teacher (Hindi-Gen] in the pay scale of Rs. 5500-175-9000 by respondent no.1 on 09.12.1997 and subsequently selected by the selection committee as PGT [Hindi] on 05.03.1999 w.e.f. 01.07.1999.

4. The respondent no.1 school is fully aided by Government of NCT of Delhi, however, by order dated 29.02.2008 and 14.01.2013, the aforesaid school was taken over by the Government of NCT of Delhi.

5. The allegations against the petitioner are that on 03.10.2002 upon receipt of

anonymous information by an informer, a false F.I.R bearing No. 644/2002 was lodged at police station Lajpat Nagar alleging that the petitioner had produced a fake certificate as to her educational qualification. In pursuance to the said FIR, the petitioner was arrested on 26.11.2002 but thereafter released on 04.12.2002. Thereafter, the then Manager of the respondent no.1 sent a notice on 07.10.2002 asking the petitioner to produce copies of her B.Ed and M.A. certificates. On 23.01.2003, respondent no.1 issued a Show Cause Notice calling upon the petitioner to explain certain information which the petitioner allegedly suppressed from the respondents. The petitioner replied to the said notice on 27.01.2003 explaining the entire position that she has been falsely implicated and that her certificates/ degrees are original and genuine which were handed over to the investigating officer.

6. Accordingly, the petitioner was allowed to join and resume her services from 05.12.2002, however, the respondent no.1 arbitrarily withheld the salary of the petitioner. The school authorities would see no reason and were adamant in not releasing the pay and allowances of the petitioner.

7. Being aggrieved by the guidelines and unethical attitude of respondent no.1, the petitioner sent a legal notice on 05.02.2003 demanding the respondents to release her salary and allowances which were not being paid since October, 2002. Thereafter, the petitioner received a suspension order under Rule 115 of the Delhi School Education Rules, 1973 dated 23.01.2003 and in continuance of the same, the approval of the aforementioned suspension was mechanically given by the Directorate of Education, Government of NCT of Delhi through the Office of the Education Officer vide letter dated 25.03.2003. Due to inaction on the part of the respondents, the petitioner having left with no other alternative, approached this Court by way of a Writ Petition bearing W.P.(C) 5223/2003 and the same was disposed of vide order dated 11.05.2006 directing the respondent no. 1 to release the salary/subsistence allowance of the petitioner. However, on 26.04.2005 the respondent no.1 served the petitioner with the Memorandum of Charge bearing Reference No.1829 which was duly replied to by the petitioner vide letter dated 08.05.2005.

8. Learned senior counsel appearing on behalf of the petitioner submits that on 23.07.2005, Mr. Sri Pal Singh, Retired Principal was appointed as the Enquiry Officer by respondent No.1 who then sent a notice dated 18.09.2006 directing the petitioner to appear before him on 27.09.2006 which was duly replied to by the petitioner vide Letter dated 23.09.2006 through which the petitioner unambiguously stated that a criminal trial on the same set of allegations is pending before the. Learned Metropolitan Magistrate, Patiala House Courts, New Delhi and any defense and oral evidence in the quasi judicial parallel enquiry will vitiate the proceedings pending before the trial court. The petitioner further requested the Enquiry Officer to keep the enquiry proceeding in abeyance till the adjudication of the trial.

9. The petitioner also filed his reply to the chargesheet dated 08.05.2005. The

inquiry officer with all bias and vendetta, vide Memorandum dated 27.09.2006 closed the enquiry proceedings. The Enquiry Officer erred in coming to this conclusion and closing the enquiry proceedings even though a reply to his Memorandum of Charge was submitted by the petitioner.

10. Learned senior counsel further submitted that not even an iota of judicious reasoning was given while closing the said enquiry proceeding and the same seems to be done in haste in order to fulfill some ulterior motive.

11. Being aggrieved by the lackadaisical attitude of the respondent no.1 and the manner in which the entire controversy of the petitioner was being handled which exposes the ulterior attitude of the respondent no.1, the petitioner approached this court vide Writ Petition (Civil) No. 15637/2006 and the same was disposed of vide order dated 19.03.2013 directing the respondent No. 1 to give a personal hearing to the petitioner and pass a speaking order in accordance with law within a period of four months from the date of the order.

12. The relevant portion of the order is as follows:

"4. In view of the above, the writ petition is dismissed as not pressed and Disciplinary Committee of the respondent no.1-school is directed to give a personal hearing to the petitioner and thereafter pass a speaking order in accordance with law. Petitioner will be entitled to file a written representation before the Disciplinary Committee which issues a final order. It is agreed that the Disciplinary Committee will hear the petitioner and pass a speaking order within a period of four months from today."

13. It is further submitted that nothing has been done despite the order of this Court. After two years, the petitioner received a letter dated 03.02.2015 which was received on 05.02.2015 asking the petitioner to appear before the Disciplinary Action Committee [in short DAC] on 09.02.2015. However, upon receipt of the letter, petitioner promptly replied to know the constitution of the Committee and the legality of the DAC.

14. Vide order dated 19.03.2013, this court had directed the disciplinary authority to hear and pass an order after giving personal hearing to the petitioner whereas respondents asked her to appear before a Disciplinary Action Committee on 09.02.2015 which was contrary to the directions of this court. There was no response either from DAC or from the school as regard to the enquiry proceedings. The petitioner sensed malafide and proceeded to appear before the DAC scheduled on 09.02.2015. However, she was not allowed to enter into the school. She was stopped at the gate and she had to come back without attending the meeting. The plight of the same was ventilated in her letter dated 09.02.2015. The petitioner also made an application dated 24.11.2016 under Right to Information and became aware that the meeting of the Disciplinary Authority Committee (DAC) was held in the office of the Authorized Officer of respondent no.1 on 09.02.2015 and the Officials of the DAC therein allegedly passed the "Speaking Order". However, no such copy of the speaking

order has been received by the petitioner till date.

15. Learned counsel further submitted that in order to victimize and harass the petitioner, the respondent issued a second memorandum of charge, on 09.03.2018 which was received on 12.03.2018. The petitioner promptly replied to the same on 20.03.2018 along with additional reply.

16. Counsel further submitted that the said memo of charge has been issued with vendetta. The petitioner was endlessly waiting for the response from the respondent and eventually made an application seeking resignation on the ground that the long 15 years of pending enquiry ruined the career of the petitioner. Her family life has been shattered and she was carrying never ending stigma of suspension even till today.

17. Further submits that neither the respondents concluded the inquiry nor accepted the resignation of the petitioner due to their personal vendetta and despite directions dated 19.03.2013, the disciplinary authority has not taken final decision on the inquiry report submitted on 27.09.2006.

18. On the other hand, in the counter affidavit filed by the respondents, it is stated that since the petitioner was in police custody for more than 48hrs, therefore, she was put under suspension w.e.f. 25.11.2002. Further stated that Sh. Pal Singh a retired Principal of Directorate of Education Govt. of NCT of Delhi was appointed as the Inquiry Officer by the Disciplinary Authority/Committee of SRSD Senior Secondary School, Lajpat Nagar IV, New Delhi 110024 to enquire the alleged charge framed by the Crime Branch Delhi Police against the petitioner and others who were stated to have obtained the job by submitting fake testimonials/degrees. Since the petitioner did not participate in the inquiry proceedings, the inquiry officer submitted ex-parte inquiry report on 03.10.2006 holding the petitioner guilty and recommended her dismissal from service. However, the then management of the school did not take any action against the petitioner on the ground that the disciplinary Inquiry against the petitioner had been suspended because of her court case.

19. The respondent thereafter directed the then Managing Committee to complete Disciplinary proceedings against the petitioner as per Rule 117 (b) (iv) of Delhi School Education Act 1973 and Rules. In the meanwhile, the school had been taken over by the Directorate of Education pursuant to order dated 30.01.2014 in W.P.(C) No.5367/2013. At the time of taking over the school, the management of the school forcefully removed all files/documents from school records including the records related to petitioner. As a result, the authorized officer could not take any action against petitioner with respect to the inquiry proceedings against the petitioner for securing job on the basis of fake certificates.

20. Ms.Latika Chaudhary, counsel appearing on behalf of the respondents submits that vide order dated 19.3.2013 passed in W.P.(C) 15637/2006, this court issued directions that the Disciplinary Committee will give personal hearing

to petitioner before passing of any penalty order. Accordingly, the Directorate of Education on 07.07.2014 directed DDE (SE) to complete the disciplinary proceedings against petitioner. The Disciplinary Action Committee for conducting disciplinary proceedings against the petitioner was constituted. The approval of competent authority was obtained for appointment of Inquiry Officer IO i.e. Sh. K.C. Arora retired EO and Presiding Officer (PO)/Sh. Sunil Kumar Sharma. The Inquiry Officer was directed to complete the inquiry within a month as per direction of the worthy Directorate of Education. The Inquiry proceedings were completed and its report was submitted by the Inquiry Officer. The petitioner, thereafter, submitted an application seeking resignation on 10.03.2018 stating that she was suspended from the school by the then Managing Committee vide order dated 25.11.2002 as she was arrested in criminal case which is still pending before the learned CJM Saket Court New Delhi.

21. Learned counsel further submitted that at present the petitioner is under suspension and a criminal case is pending against her for procuring job by producing false certificate, in corroboration with the management of the school SRSD of which her father had been manager to secure gainful employment for his daughter in the school. When the inquiry proceedings started against her, she submitted an application for resignation on 10.03.2018, which was rejected by the competent authority, on the grounds that she is not clear from the vigilance point of view.

22. Learned counsel for the respondents further submitted that the petitioner under suspension tendered an application for voluntary retirement of her services (VRS) on 09.05.2018, which was on flimsy grounds. Accordingly, that was rejected by the competent authority after due consideration on 21.05.2018.

23. Learned counsel further submitted that the inquiry has been conducted as an ex-parte as the petitioner did not cooperate and deliberately delayed the proceedings. As per the inquiry report submitted by the inquiry officer (IO) all the charges Nos.1 to 4, are proved beyond doubt. The DAC unanimously decided in the meeting held on 14.09.2018 at 2:00 pm to impose major penalty under Rule 120 DSEAR, 1973 Dismissal from Service which shall ordinarily be a disqualification for future employment in any aided school and forwarded the case for seeking approval of the Directorate of Education in terms of provision of Rule 120(2) of DSEAR 1973.

24. The said Directorate has accorded approval of penalty of dismissal from service which shall ordinarily be a disqualification for future employment in any aided school in terms of provisions contained under Rule 117 (b) (iv) of DSEAR 1973. Accordingly, penalty is totally justified in the eyes of law. There have been a number of decisions by the Apex Court in which procuring a service on the basis of false documents are suppression of information and it has been held that it amounts as equal to denying the rights of qualified candidates.

25. I have heard learned counsel for the parties at length and perused the

material available on record.

26. The fact remains that the petitioner was put under suspension vide order dated 23.05.2003 and as per Rule 115 of the Delhi School Education Rules, 1973, suspension cannot go beyond six months until and unless it is extended by the competent authority by recording reasons. During the inquiry, the petitioner did not participate but continued to seek documents required to participate in the inquiry. After the inquiry was conducted, the petitioner came before this court on the ground that there is not even an iota of judicious reasoning and evidence while closing the enquiry proceedings and the same was done in order to fulfill some ulterior motive.

27. Being aggrieved, the petitioner filed Writ Petition (Civil) No. 15637/2006 and the same was disposed of vide order dated 19.03.2013 directing the Respondent No.1 to give a personal hearing to the petitioner and pass a speaking order in accordance with law within a period of four months from the date of the order.

28. Despite the directions issued by this Court, after 2 years, the petitioner received a letter dated 03.02.2015 which was received on 05.02.2015 asking the Petitioner to appear before the Disciplinary Action Committee on 09.02.2015. However, upon receipt of the letter, the Petitioner promptly replied to know the constitution of the Committee and the legality of the aforementioned committee.

29. It is pertinent to mention here that vide order dated 19.03.2013, this court directed the disciplinary authority that after giving personal hearing to the petitioner pass a speaking order, whereas, respondents asked her to appear before a disciplinary action committee on 09.02.2015 which was contrary to the directions of this court.

30. The directions passed by this court was violated on two counts; (a) this court directed the respondent no.1 to give personal hearing to the petitioner and thereafter pass a speaking order in accordance with law; (b) the petitioner will be entitled to file written representation before the disciplinary committee which shall pass a final order. Thus, it was agreed that the disciplinary committee will hear the petitioner and pass a speaking order within a period of four months from the date of the order. The disciplinary committee has not passed a speaking order within a period of four months granted by this court.

31. At this stage, since the case against the petitioner is of 2003, the liberty cannot be given to the respondent no.1 to pass order on the inquiry report which was submitted on 27.09.2006. Thus, there is again violation of the directions passed by this court and the settled law that the suspension cannot be extended beyond six months until and unless fresh decision is taken to extend the same by giving a plausible reason.

32. In this case, though the inquiry was ex-parte and after the direction passed by this court, an opportunity was given to the petitioner to appear in person before the Disciplinary Authority but he was asked to appear before different

committee, contrary to the directions. Moreover, she questioned the constitution of committee.

33. In that eventuality, the respondents had only one option that since the petitioner did not appear, therefore, after giving the petitioner an opportunity to appear in person, the respondent no.1 had to pass an order on the inquiry report submitted by the inquiry officer.

34. Accordingly, I hereby quash suspension order dated 23.05.2003 and emanating proceedings thereto. Consequently, the petitioner is reinstated in service with 50% of the back wages and other consequential benefits.

35. It is pertinent to mention here that the petitioner submitted her resignation on 10.03.2018 and the same was not accepted till date by the respondents. Thereafter the petitioner sought voluntary retirement of service on 09.05.2018 and the same was also rejected by the competent authority on 21.05.2015.

36. As the second chargesheet dated 09.03.2018 is concerned, the same has been stayed by this court on the ground that the second chargesheet is not permissible under the law. Thus the said chargesheet dated 09.03.2018 is also quashed.

37. I hereby make it clear that the reinstatement order shall be issued within a period of four weeks from the receipt of this order and arrears shall be given within eight weeks thereafter.

38. In view of above, the petition is allowed and disposed of.

39. The pending application stands disposed of.