
(2000) 05 DEL CK 0086
In the Delhi High Court
Case No : CWP.No.5151 of 1999

Delhi Public School and Others	Vs	APPELLANT
Mrs. Ketki Aggarwal and Another		RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Citation : (2000) 56 DRJ 121

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Raman Kapur, for the Appellant; Delhi School Education Act, 1973 - Section 8(3), for the Respondent

Judgement

A.K. Sikri, J.—Petitioner No.1 namely DPS, Vasant Kunj is an unaided recognised school. On 7.6.1994 an advertisement, issued by petitioner school, was published in Hindustan Times, inviting applications from trained and experienced candidates for the posts of PGT/TGT and PRT grades etc. Various persons including respondent No.1 responded to the aforesaid advertisement. Respondent No.1 gave her application for the post of TGT. Interview was scheduled for 29.10.1994 and respondent No.1 Along with other applicants appeared before Selection Committee on the aforesaid date. Selection Committee interviewed all the candidates who reported for interview. Petitioner school has produced the minutes of the Selection Committee meeting held on 12.11.1994, after the aforesaid interview, as per which 14 persons were selected for the appointments to the posts of Junior Teacher. In so far as respondent No.1 is concerned, it is mentioned in the minutes that she was selected to be appointed on the consolidated salary of Rs.2,500/-per month against leave vacancy for one year. It may be mentioned that except respondent No.1, other candidates were recommended for appointment in graded pay scale as Junior Teacher Gr. V and one Mrs.Vinita Mehra as Junior Teacher Gr.IV in the pay scale of Rs.1480-3200. Thus out of 14 Teachers recommended for appointments, 12 were recommended for appointment as Junior Teacher Gr.V in the pay scale of

Rs.1260-2500, 1 as Junior Teacher Gr. IV in the pay scale of Rs.1480-3200 and respondent No.1 as Junior Teacher on consolidated salary of Rs.2500/- per month against leave vacancy for one year. Respondent No.1 was offered the post of Junior Teacher on the aforesaid terms which were accepted. Letter dated 26.11.1994 addressed to respondent No.1, inter alia, reads as under:

"I am glad to offer you adhoc appointment as Junior Teacher at Delhi Public School Vasant Kunj for the period of one year starting from 29.11.1994 to 28.11.1995 on a consolidated salary of Rs.2,500/- per month subject to the approval of the Managing Committee.

Your service is purely temporary and can be terminated on one month's notice on either side. The appointing authority however, reserves the right to terminate your service before the expiry of the stipulated period of notice by making payment to you of a sum equivalent to the pay for the period of notice or unexpired portion thereof."

2. Respondent No.1 joined the duties as Junior Teacher on the basis of aforesaid offer contained in letter dated 26.11.1994 as per which tenure of appointment on ad hoc post of respondent No.1 was one year. Since respondent No.1 joined on 29.11.1994, this tenure was to come to end on 28.11.1995. After the completion of one year period, respondent No.1 was relieved from her duties w.e.f. 29.11.1995. Respondent No.1 filed appeal against the aforesaid termination u/s 8 of the Delhi School Education Act, 1973 before Delhi School Tribunal which was registered as Appeal No.9/96. In this appeal, respondent No.1 submitted that when she was selected after the interview by the selection committee pursuant to open selection after advertisement to this effect issued by the petitioner school, respondent No.1 should have been treated as appointed on regular basis. The act on the part of petitioner school in giving adhoc appointment on consolidated salary basis amounted to victimisation and exploitation of weaker section of the society which is against the provisions contained in Delhi School Education Act and the Rules. It was further stated that the petitioners are recognised private school within the meaning of Section 2(r) & (t) of Delhi School Education Act 1973 and are subject to compliance with Sections 8 & 10 read with Rules 98 & 101 in matters of all appointments and no appointment whether adhoc, temporary or part-time can be made outside these parameters. Vacancies were advertised under Rule 108, selection was made by Selection Committee under Rule 96, appointment was made by Appointing Authority under Rule 98. Thus she claimed that she was a direct recruit teacher and having served for the required period she was an "existing employee" u/s 2(i) of the Act. Accordingly, it was contended that impugned order terminating services of the respondent No.1 amounted to imposition of major penalty on the respondent No.1 without affording hearing or reasonable hearing to explain her position and Therefore it was in violation of Rule 118 read with 120 of Delhi School Education Rules.

3. The petitioner school contested the aforesaid petition submitting that since respondent No.1 was appointed against leave vacancy for a limited period of one

year on a consolidated salary of Rs.2,500/-per month, her disengagement after the expiry of one year, which was automatic by efflux of time, did not amount to dismissal or removal or reduction in rank and therefore appeal filed by the respondent No.1 was not maintainable.

4. After hearing the arguments of both sides, learned Delhi School Tribunal rendered the impugned judgment dated 5.8.1999 holding that it was a case of "removal" of service and as procedure for imposing major penalty under Delhi School Education Act, 1973 had not been violated, such action which amounted to major penalty, was bad in law and setting aside termination order dated 29.11.1995 it was held that respondent No.1 was entitled to be reinstated forthwith with all the consequential benefits. Relevant portion of the judgment of the Tribunal reads as under:

"The perusal of the aforesaid reveals that only an employee of a recognised private school against whom an order of dismissal, removal or reduction in rank is passed is entitled to file an appeal against such an order to the Tribunal. Now, since the respondent school is recognised private school, then obviously this Tribunal has the jurisdiction to decide the appeal against the dismissal, removal or reduction in rank. But then the next question that arises is as to whether the dispensing with of the service of the appellant would amount to dismissal or removal or not taking into view the contention of the respondents that the appellant was only an ad hoc appointee for a limited period of one year and as such her services were deemed to have come to an end automatically at the completion of the period of one year. For that it is borne from the records that the appellant had been selected in pursuance of an advertisement which invited the applications for appointment as regular teachers in the grade of Rs.1260-2800, this being so, their act of issuing the appointment letter to her terming as ad hoc appointment for a period of one year simply appears to be an artful device invented by the school authorities so as to by pass the provisions of the Delhi School Education as well as the Rules made thereunder, because neither in the Act nor in the Rules, the respondent has brought to my notice any provision for appointing an employee on ad hoc basis and it was never mentioned in the advertisement that the applicants could be taken of basis as well. Under the circumstances, this is nothing short of exploiting the employees. Hence here is a case wherein major penalty of the removal of service has been imposed upon the appellant. And the procedure for imposing major penalty has been prescribed under Rule 120 of the Delhi School Education Rules, 1973. The same provides that such major penalty can be imposed only after holding an inquiry and giving an opportunity to the appellant to defend herself. But, here in this case nothing of the sort has taken place. Thus her services have been dispensed with without giving her any opportunity whatsoever. So this removal from service is against the principles of natural justice and contrary to the provisions of the Act and the Rules made thereunder. Hence the appeal is accepted. Consequently the impugned order dated 25th November, 1995 issued by the respondent is hereby set aside and the appellant is entitled to be

reinstated forthwith with all the consequential benefits."

5. Aggrieved by the aforesaid judgment, present writ petition has been filed by the petitioner school. The question to be decided is as to whether dispensing with the services of the respondent No.1 amounted to "dismissal" or "removal" because appeal u/s 8(3) of the Delhi School Education Act is maintainable only when employee of a recognised private school is "dismissed", "removed" or "reduced-in-rank". Obviously it is not a case of reduction in rank. However whether it amounts to dismissal or removal is the bone of contention. The Tribunal has held it to be a case of service and while holding so it was influenced by the fact that respondent No.1 had been selected in pursuance of advertisement which invited the applications for appointment as regular teachers in the Grade of Rs.1260-2800 and that being so, act of appointment letter to respondent No.1 terming it as adhoc appointment for one year was not proper and by doing so, school authorities had by passed the provisions of Delhi School Education Act as well as Rules. According to the learned Tribunal, there was no provision in the Act or Rules for appointment of an employee on ad hoc basis nor it was mentioned in the advertisement that applicants could be taken on ad hoc basis as well.

6. I am constrained to hold that the very factual premise of the impugned judgment is not correct which has led to legal error as well. No doubt, petitioner school had issued advertisement for appointment of Junior Teachers in the pay scale of Rs.1260-2800 and respondent No.1 had applied for the said post pursuant to which she was called for interview. However Tribunal has lost sight of important fact that the Selection Committee did not recommend her selection for this post. The perusal of the minutes of the Selection Committee shows that whereas number of other persons were appointed as Junior Teacher in proper pay scale, respondent No.1 was not recommended for such regular appointment. In normal course, Therefore the respondent No.1 could not have got the appointment as Junior Teacher at all. However since there were certain leave vacancies, the Selection Committee recommended her to be appointed against leave vacancy for one year and Therefore in her case, consolidated salary was recommended. Petitioner school has in fact filed vacancy position as on 10.10.1994 as per which at least 2 teachers were on long leave for one year and one more teacher was proceeding on maternity leave from November 1994. Therefore respondent No.1, who was otherwise not found fit for appointment on regular basis as Junior Teacher by Selection Committee, was recommended to be appointed against leave vacancy for one year. This was proper course of action adopted by the petitioner school in the interest of students to fill the vacuum created by regular teachers by proceeding on long leave. Position would have been different if even after the favourable recommendation of Selection Committee for appointment of respondent No.1 as Junior Teacher on regular basis, she was given letter for ad hoc appointment. It seemed the Tribunal presumed it to be so and thus fell into error. However when this is not the factual position, the observations of the Tribunal that giving adhoc appointment was an

artful device invented by the school authorities to by pass the provisions of Delhi School Education Act is not correct. It is stated at the cost of repetition that but for leave vacancy, respondent No.1 would not have got the appointment at all even for a period of one year as she was not recommended for selection on regular basis. Once this factual position is put in a proper frame in aforesaid manner, further consequences thereof are not far to seek. The respondent No.1 no doubt applied for the post of Junior Teacher and was interviewed but not selected. However in view of leave vacancy, she was recommended for ad hoc appointment for one year. This was contractual appointment which was to come to end on 28.11.1995 by efflux of time. That being the nature of appointment offered to the respondent No.1 and specifically accepted by her and appointment having come end by efflux of time, dispensing with the services of the respondent No.1 cannot be dubbed as "removal" from service. In fact Section 8(3) of the Delhi School Act expression `dismissal, removal or reduction in rank' clearly implies such dismissal, removal or reduction in rank by way of punishment. This would be relatable to those employees who are in regular service of the school and whose services are terminated by way of punishment. If the order of dismissal, removal or reduction in rank is passed after holding the inquiry, such an order can be challenged by filing appeal before the Tribunal. Further even if no such inquiry is held but it is found that termination was punitive in nature (for this purpose even veil can be lifted to examine real nature of the impugned order taking into consideration the well established principles laid down by series of judgments) Tribunal can still term it as removal and has the jurisdiction to deal with such a case once punitive nature of the order is ascertained. In the present case, however when it is found on record that the appointment of the petitioner was against leave vacancy for a specific period of one year and has come to an end by efflux of time, by no stretch of imagination it can be termed as punitive and Therefore such termination would not come within the expression `removal from service". If any authorities are needed for such clear proposition of law, one may refer to the judgment of this Court in the case of Satya Prakash Vermani Vs. Govt. of N.C.T. of Delhi and Others, . That was also a case concerning school teacher of a recognised school who was appointed on consolidated pay on purely ad hoc basis for a limited period. The period of appointment having come to an end, the services of the petitioner in that case were terminated and he filed aforesaid writ petition challenging the same. This Court dismissed the writ petition by making the following observations:

"The order of appointment of the petitioner dated 11.7.1995 is annexed as Annexure-2 to the writ petition. The contents of the said letter show that the petitioner was offered the appointment in the post of teacher on a consolidated pay and the said appointment offered to the petitioner was purely temporary and on ad hoc basis effective for a limited period. The petitioner accepted the said appointment without any reservation. Having accepted the appointment and having served in the school for the limited period specified in the said letter

dated 11.7.1995, the petitioner cannot have the right to challenge the validity of the said order as the same is barred under the principles of waiver and estoppel. Besides, the entire right of the petitioner, if any, to claim continuation/regularization in the said post is based on that letter and Therefore, the foundation of the right if held to be bald and illegal, the petitioner cannot claim any right for continuation as well. The aforesaid appointment of the petitioner in the school was purely on ad hoc basis and as a temporary measure and it was for a limited period. With the expiry of the specified period the petitioner cannot have any further right to continue in the school. In Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, , it has been held by the Supreme Court that when the appointment is on ad hoc basis and for a limited period the right of the petitioner to hold the post expires with the expiry of the limited period and thereafter the petitioner has no further right to continue in the said post."

7. In fact this case is fully applicable, as in this case also petitioner had submitted that order of appointment was not in accordance with provisions of Delhi School Education Rules framed therein and petitioner could not have been appointed on adhoc basis and his appointment should have been on probation. It was also submitted that his services were terminated without obtaining the prior approval from the Directorate of Education. In the present case further strength of the petitioner that it is shown on record that respondent was not selected on regular basis and further that the ad hoc appointment was given against leave vacancy as there were teachers on long leave. Not only this it may be mentioned that petitioner has also produced on record the letter from Directorate of Education approving the action of the petitioner in terminating the services of the respondent No.1.

8. It was contended by respondent No.1 that contract appointment given to her was impermissible in law and since it was contrary to statutes , question of estoppel or waiver did not arise. She also relied upon the judgment of this Court in the case of Rajni Gupta Vs. The Mother's International School and Others, wherein it was held that after 90 days of service school teacher is treated as "existing employee" instead of stipulated "period of not less than 12 months". However the aforesaid judgment is not applicable and the thrust of the argument of respondent No.1 before the Tribunal as well as before this Court was based on wrong premise namely she had been selected pursuant to the advertisement given for the post of Junior Teacher but appointed on ad hoc basis instead of giving her regular appointment which action she dubs is impermissible in law and amounting to exploitation and victimisation. Therefore when the foundation of this argument itself is on a hypothesis which is proved to be wrong, it falls flat. It cannot be said that the petitioners are not even permitted to make the stop-gap arrangement and take the services by appointing a teacher on ad hoc basis for a particular period when regular teacher goes on leave. If the schools are not permitted to do this, it would lead to disastrous consequences as the only other alternative would be not to fill the leave vacancy and such an act of the school

would be derogatory to the interest of the students without there being a teacher in place of the one who has gone on long leave.

9. Therefore it is always open to the schools to make ad hoc appointment against leave vacancies or short term vacancies and there was nothing wrong in making this type of appointment by appointing respondent No.1 on ad hoc basis for a specified period.

The result of the aforesaid discussion is that this writ petition succeeds. Impugned judgment of the Delhi School Tribunal is hereby set aside. Rule is made absolute. Appeal filed by the respondent No.1 before Delhi School Tribunal is hereby dismissed.

There shall be no order as to costs.