

(2022) 10 DEL CK 0080

In the Delhi High Court

Case No : Letter Patent Appeal No. 37 Of 2022, Civil Miscellaneous Application
No. 2141 Of 2022

Delhi Public School Dwarka

APPELLANT

Vs

Sarika Prasad And Others

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Delhi School Education Rules, 1973 — Rule 116, 118
Indian Penal Code, 1860 — Section 294, 341, 354, 354(3A), 354(D), 506, 509
Delhi School Education Act, 1973 — Section 8, 8(2), 8(3), 8(4), 8(5), 9

Citation : (2022) 10 DEL CK 0080

Hon'ble Judges : Satish Chandra Sharma, CJ; Subramonium Prasad, J

Bench : Division Bench

Advocate : Puneet Mittal, Rupendra Pratap Singh, Khagesh B. Jha, Shikha Sharma Bagga, Aditi, Avnish Ahlawat, Nitesh Kr. Singh, Palak Rohmetra, Laavanya Kaushik, Aliza Alam

Final Decision : Dismissed

Judgement

Subramonium Prasad, J

1. The Appellant seeks to challenge the judgment dated 10.12.2021 passed by the learned Single Judge in W.P.(C) 1112/2021 whereby the learned Single Judge has set aside the Order of Suspension dated 24.02.2020 and the Order dated 20.08.2020 extending the suspension of Respondent No.1 herein. The learned Single Judge has also held that Respondent No.1 shall be entitled to back-wages.

2. Shorn of details, the facts leading to the instant appeal are as under:-

i. Respondent No.1 herein was appointed as Computer Teacher on ad hoc basis in the Appellant School on 03.04.2006 and the appointment was to continue till 12.05.2006. It is stated that on 18.07.2006, Respondent No.1 was confirmed as TGT Computer Science (Grade-IV) in the Appellant School.

ii. It is stated that a complaint was filed by Respondent No.1 herein regarding

sexual harassment by Respondent No.5 herein. It is stated that an FIR bearing FIR No.813/2015 dated 06.10.2015 was filed by the Respondent No.1 against Respondent No.5 at Police Station Dwarka North for offences under Section 294, 354, 354(3A), 354(D), 506, 509 IPC. It is further stated that a cross-FIR bearing FIR No.31/2017 dated 30.01.2017 was registered by Respondent No.5 at Police Station Dwarka North for an offence under Section 341 IPC against Respondent No.1. Proceedings were also initiated by Respondent No.1 against Respondent No.5 before the Delhi Commission for Women.

iii. Respondent No.1 was put under suspension on 24.02.2020. The facts further reveal that suspension of Respondent No.1 was extended on 20.08.2020. The Director of Education granted his approval on 11.03.2021 with retrospective effect from 24.02.2020. Respondent No.1 was finally dismissed from service on 16.08.2021.

iv. Respondent No.1 approached this Court by filing W.P.(C) 1112/2021 praying for the following reliefs:-

"A) Issue a writ of mandamus or any other appropriate writ directing the Respondent No.1 to revoke the suspension order dated 24.02.2020 and the order dated 20.08.2020 extending the suspension order dated 20.02.2020;

B) Issue a writ of mandamus or any other appropriate writ directing the Respondent No.1 to revoke the articles of memorandum/charges dated 24.07.2020;

C) Issue a writ of mandamus or any other appropriate writ directing the Respondent Nos.1 & 2 to revoke the Inquiry Proceedings initiated against the Petitioner;

D) Issue a writ of mandamus or any other appropriate writ directing the Respondent Nos. 1 & 2 to disclose the constituents of the Disciplinary Committee/ Authority that needs to be constituted as per Rule 118 of the DSEAR, 1973;

E) Issue a writ of mandamus or any other appropriate writ directing the Respondent No. 2 to transfer back Petitioner to Delhi Public School, Dwarka from the Delhi Public School Society, East of Kailash;

F) Pass any other or further orders that this Hon'ble Court may deem necessary in the facts and circumstances of the case or in the interest of justice."

v. The narrow compass in which the matter was argued before the learned Single Judge is whether the suspension of Respondent No.1 was in accordance with the provisions of the Delhi School Education Act, 1973 (hereinafter referred to as 'DSE Act').

vi. The learned Single Judge by the judgment impugned herein held that the suspension of Respondent No.1 was in violation of the provisions of the DSE Act inasmuch as the Appellant School did not take the approval of the Director of Education within 15 days from the date of suspension. The learned Single Judge,

therefore, set aside the Order of Suspension dated 24.02.2020 and Order dated 20.08.2020 extending the suspension. The said judgment has been challenged by the Appellant in the instant appeal.

3. For a better appreciation of the issue, it is necessary to extract Section 8 of the Delhi School Education Act, 1973:-

"8. Terms and conditions of service of employees of recognised private schools.—

(1) The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognised private schools:

Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee: Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.

(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 under section 11.

(4) 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 the prior approval of the Director:

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 9, of the employee:

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.

(5) Where the intention to suspend, or the immediate suspension of, an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension."

4. A perusal of Section 8(4) of the DSE Act shows that if the Managing Committee of a private school intends to suspend its employee, then the suspension order cannot be passed without prior approval of the Director. However, proviso to sub-Section 4 of Section 8 of the DSE Act provides that if the school cannot await the approval from the Director and the situation warrants that the employee should be suspended with immediate effect without prior approval of the Director since the employee has committed gross misconduct, then the approval or prior permission of the Director should be taken within 15 days of the suspension, and the order of suspension shall remain in force only for a period of 15 days.

5. Sub-Section 5 of Section 8 of the DSE Act mandates the Director to accord approval on the suspension, if he is satisfied that there are adequate and reasonable grounds for such suspension.

6. Applying the said rules in the present case, Respondent No.1 was suspended on 24.02.2020 by invoking the proviso to sub-Section 4 of Section 8 of the DSE Act, in such a scenario approval from the Director ought to have been received on or before 11.03.2020.

7. The facts of the case further reveal that suspension of Respondent No.1 was extended on 20.08.2020 and the Director of Education granted his approval on 11.03.2021 retrospectively from 24.02.2020. Respondent No.1 was finally dismissed from service on 16.08.2021.

8. Mr. Puneet Mittal, learned Senior Counsel for the Appellant, contends that since Respondent No.1 was guilty of gross misconduct, proviso to sub-Section 4 of Section 8 of the DSE Act was invoked and Respondent No.1 was kept under immediate suspension. He states that in compliance with the DSE Act, the Appellant sent a letter to the Director of Education on the very same day i.e. 24.02.2020 seeking approval of suspension. He states that the nationwide lockdown imposed due to COVID-19 led to the delay in initiating disciplinary proceedings and the Appellant School was sending reminders to for approval of suspension and sent letters dated 03.03.2020, 22.05.2020, 17.06.2020, 19.06.2020 & 01.07.2020 seeking approval of the suspension.

9. Mr. Mittal contends that the Director of Education wrote a letter on 29.06.2020 to asking whether due process has been followed while suspending Respondent No.1 to which a reply was received on 01.07.2020. He states that there was regular correspondence going on between the Director of Education and the Appellant School regarding approval of suspension. He states that since the approval was not forthcoming, the Appellant School sent a letter dated 20.08.2020 extending the suspension. Disciplinary proceedings were initiated against Respondent No.1. He states that on 11.03.2021, the Director of Education accorded approval to the Order of Suspension dated 24.02.2020.

10. Mr. Mittal states that the School cannot be found fault with for the inaction and lapse on the part of Directorate of Education i.e. Respondent No.2 and 3 in

not granting approval for suspension. He states that several reminders were sent by the Appellant School to the Directorate of Education for approval of suspension. He further states that from July 2020, regular correspondence was going on between Director of Education and the Appellant regarding suspension of Respondent No.1. He states that since approval has been received with effect from 24.02.2020, there is no infirmity in the Order of Suspension dated 24.02.2020, and, therefore, the judgment passed by the learned Single Judge deserves to be set aside. He further contends that in any event, from 11.03.2021, when the approval was received, the Appellant School should be absolved from payment of suspension allowance.

11. Mr. Mittal places reliance on a judgment passed by a Division Bench of this Court in *N. N. Seth & Ors. v. Renu Gupta & Ors.*, (2006) SCC OnLine Del 142 to contend that this Court while interpreting Section 8 (4) and 8 (5) of the DSE Act has held that there is no bar to pass a fresh suspension order being passed subsequently or extension of suspension even after the suspension period lapses since there is no rule prohibiting the same.

12. Mr. Mittal has drawn the attention of this Court to the facts of the case in *N. N. Seth* (supra) to contend that, in that case the employee was suspended on 26.05.2000 and order of extension of suspension was passed on 13.06.2000, 13.07.2000 and 29.07.2000. The facts of that case are that after initial order of suspension on 26.05.2000, the Director of Education had refused to grant permission of suspension and 15 days' time expired on 10.06.2000 and the employee was reinstated in service on 12.06.2000. However, the management then wrote letter on 02.06.2000 to the Director of Education seeking approval of extension of suspension period and the Director of Education approved the suspension and extended the suspension for another one month upto 11.07.2000. The Petitioner therein joined the school on 12.07.2000 and the management on 13.07.2000 suspended the employee therein for a period of 15 days. Thereafter, the employee was again suspended from 31.07.2000. The question that arose therein was that whether further suspension order could be passed on 13.07.2000 for a period of 15 days after the employee had joined the school and could further suspension orders be passed? Mr. Mittal states that the contention taken there was once the Director of Education had refused to grant approval to the order of suspension by order dated 24.11.2000 then the Director of Education could not have granted approval to extension of suspension upto 31.03.2001.

13. The High Court in that circumstance permitted the school to pass a fresh order of suspension after the Director of Education refused the suspension on the ground that there was no bar to pass further orders of suspension.

14. Mr. Mittal contends that in the present case fresh suspension orders had been passed on 20.08.2020 which had been permitted by the Division Bench of this Court in *N.N.Seth* (supra) as the Director of Education has upheld the suspension with retrospective effect on 11.03.2021. He states that Section 8(4) and 8(5) of

the DSE Act are to be interpreted in a practical manner. He states that looking at the number of schools, it is practically impossible to take approval from the Director of Education within a period of 15 days and if the timeline is applied strictly, then it will become unworkable. He states that it is only for this reason that the Director of Education passed the Order on 11.03.2021 with retrospective effect from 24.02.2020, i.e. the date of suspension of Respondent No.1.

15. Per contra, Mr. Khagesh B. Jha, learned counsel for Respondent No.1, supports the judgment passed by the learned Single Judge and contends that the Order dated 11.03.2021 according retrospective approval to the Order of Suspension of Respondent No.1 with effect from 24.02.2020 cannot be valid. He states that the Statute has prescribed the timeline and the timeline has to be adhered scrupulously.

16. Heard Mr. Puneet Mittal, learned Senior Counsel for the Appellant, Mr. Khagesh B Jha, learned Counsel for Respondent No.1, Ms. Avnish Ahlawat, learned Standing Counsel for GNCTD, and perused the material on record.

17. The short question which arises for consideration is whether the Order of Suspension dated 24.02.2020 can survive beyond a period of 15 days or not.

18. The learned Senior Counsel for the Appellant has placed heavy reliance on the judgment passed by this Court in N. N. Seth & Ors. v. Renu Gupta & Ors., (2006) SCC OnLine Del 142, and the relevant paragraphs of the judgment as contained in paras 26, 27, 31 & 32 reads as under:-

"26. The details of the suspension periods as well as ex post facto approval of the Director of Education are as follows:

"Period of Suspension Date of ex post approval of the Directorate of Education.

27.05.2000 to 11.7.2000 13.06.2000

12.07.2000 to 13.11.2000 18.08.2000

14.11.2000 to 31.03.2001 24.11.2000

01.04.2001 to 30.04.2001 25.04.2001

01.05.2001 to 30.06.2001 23.05.2001

01.07.2001 "suspension revoked 19.07.2001"

27. From the facts stated above, it is clear that from 27.5.2000 i.e. the date of suspension till 10.6.2002 which is the date when the Director of Education finally granted approval for removal of respondent No. 1 from the school, there is no period of suspension which could be said to be not approved by the Director of Education. Throughout the period of suspension, the respondent No. 1 was paid subsistence allowance in accordance with the Rule 116 of the DSER.

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31. No doubt in *Delhi Public School v. The Director of Education*, 2002 VIII AD (DELHI) 645, the Court held that:

"....the effect of non-grant of approval of a suspension order within 15 days from the date of suspension is that in view of Section 8(4) the suspension lapses after 15 days vide the second proviso to Section 8(5)."

32. However, in our opinion, there is no bar to a fresh suspension order being passed subsequently, or extension of suspension even after the suspension period lapses, since there is no rule prohibiting this."

19. It is trite law that when there is power coupled with duty which mandates that the power to do the thing in a certain way, the thing must be done in that way or not at all, and all other modes of performance are necessarily forbidden (Refer: *Taylor v. Taylor*, (1875) 1 Ch. D 426; *Nazir Ahmad v. The King-Emperor*, 1936 SCC OnLine PC 41). The Apex Court in *J K Housing Board & Anr. v. Kunwar Sanjay Krishan Kaul & Ors.*, (2011) 10 SCC 714, has observed as under:-

"32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefore in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. Merely because the landowners failed to submit their objections within 15 days after the publication of notification under Section 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to."

20. The question as to whether the order of suspension received expires after 15 days from the date of communication in the event no order of the Director of Education approving the same is received for the same period is no longer res integra. A full Bench of this Court in *Delhi Public School & Anr. v. Director of Education & Ors.*, 2003 (67) DRJ 419 (FB), has observed as under:-

"17. Sub-section (2) of Section 8 of the Act mandates that subject to any rule that may be made, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor his services shall otherwise be terminated except with the prior approval of the Director. Sub-section (3) of Section 8 provides for a right of appeal upon such employee to the Tribunal. Sub-section (4), as has been referred to and quoted above, relates to the power of suspension. Sub-section (5) of Section 8 provides that where intention to suspend or immediate suspension of an employee is communicated to the Director, he may, if he satisfies that there are adequate and reasonable grounds for such suspension, accord his approval thereto.

18. A statutory requirement to obtain approval of the Director of Education, in the event an employee is placed under suspension, was upheld in *Frank*

Anthony's case (supra).

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21. In view of the afore-mentioned pronouncement of the Apex Court, there cannot be any doubt whatsoever that on the expiry of 15 days from the date of communication of the order of suspension, an order of suspension lapses, in the event no order of the Director of Education approving the same is received within the said period.

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31. What we are called upon to decide in this case is the effect on the suspension order passed by the Managing Committee under first proviso to sub section (4) of Section 8 of the Act and the effect of non-grant of approval in such a case within a period of 15 days from the date of suspension as contemplated in the second proviso thereof. To that, our answer is that such an order of suspension lapses after a period of 15 days as is clearly contemplated by the second proviso." (emphasis supplied)

21. Another Division Bench of this Court in *Sharda Devi Sanskrit Vidyapeeth v. Director of Education & Anr.*, 2016 SCC OnLine Del 3950, while dealing with the same issue as to whether the school can be penalized for delay and lapse on the part of the Director of Education in deciding the representation, has observed as under:-

"15. In *Gurudevdatla VKSSS Maryadit v. State of Maharashtra*. (2001) 4 SCC 534, it was observed that the cardinal principle of interpretation of statutes is that words of a statute must be understood in the natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. Efforts must be made to give meaning to each and every word used by the legislature and the words and language used in the statute should not be brushed aside if they have proper application in circumstances conceivable within the contemplation of the statute. The object behind sub-section 4 to Section 8 is to protect the employees, who should not be suspended without approval from the Director of Education. In emergent situations an employee can be suspended but the suspension is unenforceable where approval is not granted by the Director within 15 days."

22. Section 8(4) and 8(5) of the DSE Act have been legislated to protect the employees of a private school from the harassment of school authorities. Section 8(4) of the DSE Act mandates that an employee cannot be put under suspension unless an approval is received from the Director of Education. Proviso to sub-Section 4 of Section 8 of the DSE Act carves out an exception that in certain circumstances, in case of gross misconduct where the school cannot wait for the approval of the Director of Education, the school if it is satisfied that immediate suspension of the employee is necessitated for gross misconduct, as is prescribed

under Section 9 of the DSE Act, can suspend an employee without waiting for approval of the Director of Education. The second proviso makes it clear that such suspension shall be in force for a period of 15 days and unless is communicated and approved by the Director of Education within 15 days, the suspension lapses.

23. The full Bench of this Court in Delhi Public School (*supra*) has made it clear that it is a statutory duty of the Director of Education to pass orders under Section 8(4) and 8(5) of the DSE Act. These provisions made earlier were to ensure that employees are not put under suspension and are provided with subsistence allowance, which is a right of an employee, awaiting approval of suspension from the Director of Education.

24. It is settled law that the words of the Statute must be understood in their natural and ordinary sense according to their grammatical meaning unless such conclusion leads to absurdity unless there is something in the context or in the object of the Statute to suggest to the contrary.

25. The Apex Court in Gurudev Datta VKSSS Maryadit & Ors. v. State of Maharashtra & Ors., (2001) 4 SCC 534, has observed as under:-

"26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute..."

26. Similarly, the Apex Court in Dr. Jaishri Laxmanrao Patil v. State of Maharashtra, (2021) 8 SCC 1, has observed as under:-

"207. The words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise between the subject of the enactment and the object which the legislature has used. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. [Workmen v. Dimakuchi Tea Estate, 1958 SCR 1156 : AIR 1958 SC 353]

208. It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature [New India Sugar Mills Ltd. v. CST, 1963 Supp (2) SCR 459 : AIR 1963 SC 1207] . However, the object-oriented approach cannot be carried to the extent of doing violence to the plain language used by rewriting the section or structure words in place of the actual words used by the legislature [CIT v. N.C. Budharaja & Co., 1994 Supp (1) SCC 280] .

209. The logical corollary that flows from the judicial pronouncements and opinion of reputed authors is that the primary rule of construction is literal construction. If there is no ambiguity in the provision which is being construed there is no need to look beyond. Legislative intent which is crucial for understanding the object and purpose of a provision should be gathered from the language. The purpose can be gathered from external sources but any meaning inconsistent with the explicit or implicit language cannot be given.

210. In *Aron Saloman v. A. Saloman & Co. Ltd.* [Aron Saloman v. A. Saloman & Co. Ltd., 1897 AC 22 (HL)] the House of Lords observed that the intention of legislature is a "slippery phrase". What the legislature intended can be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. A construction which furthers the purpose or object of an enactment is described as purposive construction. A purposive construction of an enactment is one which gives effect to the legislative purpose by (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose. [Bennion on Statutory Interpretation, 5th Edn., p. 944.] If that is the case, there is no gainsaying that purposive interpretation based on the literal meaning of the enactment must be preferred."

27. Respondent No.1 was put under suspension on 24.02.2020 and the approval of Director of Education ought to have been received on or before 11.03.2020 and pursuant to the said date, Respondent No.1 could not have been kept under suspension and the order of approval granted by Director of Education on 11.03.2021 would not revive the order of suspension which had lapsed on 11.03.2020.

28. This Court, therefore, does not find any reason to interfere with the judgment passed by the learned Single Judge. The LPA is dismissed. Pending application(s), if any, stand disposed of.