
(2001) 02 DEL CK 0035

In the Delhi High Court

Case No : L. P. A. No. 498 of 1998

Dhanpatlal Virmani Senior Secondary School and another

APPELLANT

Vs

Shri J.D. Kapoor and others

RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Citation : (2001) 3 AD 770 : (2001) 90 DLT 441 : (2001) 58 DRJ 21

Hon'ble Judges : Mahmood Ali Khan, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Mr. Ravi Sikri, for the Appellant; Mr. K.C. Mittal and Mr. Atul Bandhu, for the Respondent

Judgement

Dalveer Bhandari, J.—This appeal is directed against the order of the learned Single Judge dated 27.7.1998 passed in Civil Writ Petition No. 4471 of 1995.

2. Brief facts necessary to dispose of this appeal are recapitulated as under :

3. During the year 1982-83 the task of compilation and preparation of results of Class VI-B was entrusted/assigned to the class in charge, Radhey Shyam Gupta, rained Graduate Teacher (for short hereinafter referred to as TGT) working in the school of appellant No.1. The results for the said year were scheduled to be declared by 30.4.1983.

4. It is alleged by the appellant that despite having made several requests, respondent No.4 failed to return the relevant record. The Principal of the school vide letter dated 20.4.1983 advised respondent No.4 to return the complete result sheets and the award lists of Class VI-B. It is further alleged by the Principal of the school that the peon reported to him that respondent No.4 tore the original letter along with its copy into pieces and threw it into the dustbin. Consequently, the Principal of the school apprised about the impertinent, rude and recalcitrant conduct and behavior of respondent No.4 to the Manager of the school and the Education Officer of Zone VI. An emergency meeting of the managing committee of the school was held on 26.4.1983. The managing

committee unanimously resolved as under:-

- 1) The students be promoted to 7th class on the basis of the 1st, 2nd and annual examination results of 1983 (6th B only).
- 2) Re-examination in the subject of Sanskrit of 6th B class be arranged immediately.
- 3) Charges against Shri R.S. Gupta, TGT be framed for insubordination.
- 4) Another reminder be sent to him.
- 5) The facts and the action taken by the Managing Committee be intimated to the Education Officer of the Zone.

5. It is alleged by the appellant that no response/reply was received from respondent No.4, and ultimately the Principal lodged a complaint with the SHO, Roshanara Police Station, Roop Nagar, Delhi. According to the appellant the managing committee had put respondent No.4 under suspension on 16.5.1983 in terms of sub-section (4) of Section 8 of the Delhi School Education Act, 1973 read with Rule 151 of the Delhi School Education Rules, 1973.

6. It is alleged that a charge sheet dated 8.3.1984 Along with the statement of allegations and article of charges was issued to respondent No.4. An enquiry was held and on the receipt of the report of the enquiry officer, the disciplinary authority took a tentative decision for the removal of Radhey Shyam Gupta, respondent No.4 from service. According to the requirement of Rule 120 of the Delhi School Education Rules, 1973 a notice to show cause was issued to respondent No.4. Thereafter, the disciplinary authority vide letter dated 16.9.1988 sent all the requisite documents to the Director of Education for approval in terms of Rule 120 of the Delhi School Education Rules, 1973 for imposition of punishment of removal from service. The Director of Education declined to grant approval vide order dated 31.8.1989.

7. It is alleged that thereafter the Director of Education was requested to reconsider/review the decision taken by his predecessor about 2 years and 3 months ago. The Director of Education after a lapse of 2 years and 3 months reviewed the order of his predecessor even without giving notice to respondent No.4 and accorded approval to the punishment of removal from service on respondent No.4.

8. Aggrieved by the said decision an appeal was filed by respondent No.4. Notice was issued to the school management. Reply was filed. It is submitted by the appellant that though the appeal filed by respondent No.4 was beyond limitation, the Tribunal set aside the order dated 27.11.1991 which contained punishment of removal from service. The Tribunal further quashed the order dated 22.11.1991 of the Director of Education granting approval to the tentative decision of the disciplinary authority. The relevant portion of the order of the Tribunal is reproduced hereunder:-

"The order of approval of the Director of Education is liable to be set aside. Since it is a condition precedent of the sub-section (2) of Section 8 of the Delhi School Education Act, that no removal from service can be without the prior approval of the Director of Education and since the approval has been found bad in law, the removal order also falls with the edifice on which it stood. Appeal is allowed.. The appellant shall be treated in service throughout and shall be entitled for consequential benefits including full pay, increments etc."

9. The Tribunal while setting aside the order of the Director of Education held that the said order is silent on circumstances under which the earlier order was reviewed. It is also mentioned in the order that the circumstances under which the subsequent order was passed is shrouded with infirmities and is wanting so far as the doctrine that any person against whom adverse order is sought to be passed has to be given reasonable opportunity of being heard is concerned. For the above reasons the said order of approval of the Director of Education is liable to be set aside. Learned Single Judge approved the order of the Tribunal and dismissed the petition of the management.

10. The management aggrieved by the order of the Tribunal preferred a writ petition before this Court. The learned Single Judge while dismissing the writ petition held that the challenge by the management to sub-sections 2 and 3 of section 8 is not justified. The learned Single Judge observed that the management allowed the order dated 31.8.1989 (of the Deputy Director of Education refusing to grant approval) to become final. It is also observed that having allowed the order of refusal to grant approval to become final, the management cannot be permitted to challenge the said order after the tribunal had dealt with the matter.

11. The learned Single Judge further observed that the provision had been incorporated for the benefit of the teachers. The school management can always have recourse to the remedy under Article 226 of the Constitution of India on non-grant of approval by the Director of Education.

12. In the impugned judgment law declared by the Supreme Court in *The State of West Bengal Vs. Anwar Ali Sarkar*, and *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, was considered. These cases have laid down the scope of Article 14 of the Constitution of India and the learned Single Judge did not find any discrimination in the provision of sub-sections (2) and (3) of Section 8 of the Delhi School Education Act, 1973. In the light of the principles laid down by the Supreme Court in the aforesaid judgments, the attack on sub-sections (2) & (3) of Section 8 of the Delhi School Education Act, 1973 was held to be untenable. The Learned Single Judge also held that when the approval was not granted by the Director of Education the management could not give effect to its order of removal. The management cannot go against that order.

13. The Learned Single Judge also held that it is well settled that the power to

review must be provided in the statute and when the legislature in its wisdom has not provided any provision of review, the concerned authority cannot exercise the power of review. The order of the Director of Education dated 22.11.1991 reviewing the earlier order was without any authority of law.

14. The management of the school aggrieved by the judgment of the learned Single Judge has approached this Court in appeal, on the ground that the order of the Director of Education is administrative in nature and such orders can always be reviewed even without there being a specific provision of review. It is also submitted that every authority has an inherent right to correct its wrong order as per the well established principles of law, as laid down in *Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others*, and *Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others*, .

15. It is submitted by the learned counsel for the appellants that while reviewing the earlier order dated 31.8.1989 even after a lapse of two years and three months on 22.11.1991 the Director of Education was under no obligation to give notice to respondent No.4.

16. In reply to the submissions of the appellant the learned counsel for respondent No.4 submitted that the review is a creation of the statute and unless there is a provision in the statute, the order cannot be reviewed. He placed reliance on the decision of the Supreme court in *Major Chandra Bhan Singh Vs. Latafat Ullah Khan and Others*, in support of his submission.

17. Reliance has also been placed on *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, to establish that the order of the Director of Education was in the nature of a quasi judicial order and such orders cannot be reviewed unless there is a provision of review in the statute. It is also laid down in this case that an authority which is not a court, but is empowered by the statute to decide valuable rights between the parties, the decision of the authority is a quasi judicial order.

18. In *Province of Bombay Vs. Kusaldas S. Advani and Others*, , the Hon''ble Supreme Court has discussed at considerable length the nature of the two kinds of Act, judicial and administrative, and has also laid down certain tests for ascertaining whether the act of a statutory body is a quasi-judicial act or an administrative act.

19. *Atkin L.J.*, as he then was, in *Rex v. Electricity Commissioners* 1924 1 KB 171 attempted to define quasi-judicial order.

20. The definition reads as follows:

"Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

It will be noticed that this definition insists on three requisites each of which must be fulfilled in order that the act of the body may be quasi-judicial act, namely, that the body of persons

1. must have legal authority,
2. to determine questions affecting the rights of parties, and
3. must have the duty to act judicially.

This definition has been accepted by leading Indian and English judgments of the apex courts.

Since a writ of certiorari can be issued only to correct the errors of a court or a quasi judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition in the definition given by Atkin L.J. Therefore in considering whether in taking action under S.53A the State Government is to be regarded as functioning as a quasi-judicial body or a mere administrative body it has to be ascertained whether the statute has expressly or impliedly imposed upon the State Government a duty to act judicially."

21. Reliance has been placed on Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, particularly on para 15 at page 528 where it is mentioned that a quasi judicial authority cannot review its own order. Reliance has also been placed on The Board of Revenue, U.P. and Others Vs. Vidyawati and Another, and A.K. Kraipak and Others Vs. Union of India (UOI) and Others, .

22. The Hon"ble Supreme Court in the celebrated Constitutional Bench judgment of A.K. Kraipak (supra) observed that the dividing line between a administrative power and a quasi judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised.

23. We are regulated, controlled and governed by the rule of law, Therefore, it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. In the aforesaid case it is stated that the requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

24. According to the aforesaid judgment of the Supreme Court the power which was exercised by the Director of Education within the ambit of Delhi Education Act and order passed therein has to be termed as a quasi judicial order. The review is a creation of the statute and unless there is a provision in the statute, the order cannot be reviewed. The principles of natural justice are clearly applicable to the orders passed by the Director of Education affecting valuable rights of the parties.

25. The Hon''ble Supreme Court in a.K. Kraipak's case has also laid down that the aim of rules of natural justice is to secure justice or to put it negatively to prevent mis-carriage of justice. These rules can operate only in areas not covered by mis-carriage of justice. The rules of natural justice are not embodied or incorporated in a statute. What particular rule of natural justice should apply in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.

26. Even assuming that the order passed by the Director of Education was administrative in character and could be reviewed without there being any specific provision of review in the Delhi Education Act but the moot question which arises for consideration is whether the Director of Education could review the order of this predecessor after a lapse of two years and three months without even giving a show cause notice to the affected party, i.e., respondent No.4 The answer has to be in the firm negative. Non-observation of the basic principles of natural justice has led to grave mis-carriage of justice in the instant case.

27. We have no hesitation in coming to the definite conclusion that the order of Director of Education reviewing the order of his predecessor after two years and three months without giving a show cause notice is indeed illegal and unsustainable in law. The Tribunal has rightly set aside the order to the Direction of Education and learned Single Judge of the this Court was also fully justified in confirming the order of the Tribunal.

28. We have also examined the submission of the appellants that sub-sections (2) and (3) of Section 8 of the Delhi School Education Act which gives right of appeal only to the employee and not to the management is violative of Articles 14 and 19(1)(g) of the Constitution of India. This is a beneficial provision incorporated for the benefit of the affected teachers. Even the management is not without any remedy. The learned Single Judge has rightly held that against the order of the Director of Education refusing to grant approval, the management can always have recourse to the remedy under Article 226 of the Constitution of India. This submission is rejected being devoid of any merit.

29. In the Management of MCD vs. Prem Chand Gupta & Ors. reported in 1999 X AD (SC) 371 the Hon''ble Supreme Court in somewhat similar facts and circumstances directed that the workman would be entitled to be reinstated in service with continuity but in view of the peculiar facts the court directed that the

workman be paid 50% of back wages from the date of his termination till his actual reinstatement in service.

30. We may place on record that after hearing rival submissions from the learned counsel for the parties we have also unsuccessfully explored the possibility of amicable settlement. The learned counsel for respondent NO. 4 submitted that he is entitled to get back wages and allowances to the tune of about Rs. 19 lakhs.

31. We have carefully examined that facts and circumstances of this case and the rival submissions advanced by the learned counsel for the parties. The following conclusions are irresistible :-

(a) The respondent NO. 4 is alleged to have withheld the examination results and records of Class VI-B. Despite repeated requests, reminders and persuasion respondent No.4 did not return the examination results and important records to the school. The Principal of the school had to go the extent of filing the FIR against respondent No. 4. The alleged misconduct of respondent no. 4 is indeed unpardonable. He had demonstrated lack of devotion to duty and scant regard to the interest and future of his pupils.

(b) Similarly, the Director of Education has also seriously erred in reviewing the order of his predecessor after two years and three months without giving notice to respondent No. 4 (who was vitally affected by the order). The order of the Director of Education disregarding the principles of fair play and natural justice has led to grave miscarriage of justice.

32. The crucial question which falls for our determination is what should be a just, fair and an appropriate order in view of the aforesaid conclusion ? The grant of a just and appropriate relief is indeed the most important and difficult task for the Courts.

33. In this case, both the appellants and respondent No. 4 must equally share the blame. In the backdrop of the facts and circumstances of this case, we have to determine whether because of the erroneous order of the Director of Education, respondent No. 4 be granted relief of reinstatement and full back wages or he be totally denied relief, because of his conduct. We have to properly modulate the relief after carefully weighing totality of the facts and circumstances of this case, we must pass the order which is just, fair and appropriate. There must be perfect correlation between the misdeeds of respondent No. 4 with the punishment awarded to him. Similarly the Director of Education and the school should be penalised to the extent of their lapses.

34. When we apply the aforesaid norms and principles, then in our considered opinion the following order would be absolutely just and eminently fair in the facts and circumstances of the case.

35. The order by which the services of respondent No. 4 were terminated was correctly set-aside by the Tribunal and upheld by the learned Single Judge. The logical consequence of this declaration would be that respondent No. 4 would be

entitled to be reinstated in service with continuity and in normal course would be entitled to full back wages. In the peculiar facts of this case, in our opinion this would not be appropriate order. Our reasons for not granting full back wages from the date of termination till actual reinstatement are because of the alleged impertinent, rude and recalcitrant conduct and behavior of respondent No. 4.

(a) Respondent No. 4 would be reinstated within two months in service with continuity and get all other consequential benefits on that score.

(b) So far as the back wages are concerned, the impugned order of the learned Single Judge is modified by directing that respondent No. 4 will be entitled to get 50% back wages from the date of his termination till his actual reinstatement in service of the appellant school. This amount shall be paid within two months. IN case of any delay inn making the payment of the said amount the respondent shall be entitled to interest on the delayed payment @ 15% per annum.

(c) Respondent No. 4 will also be entitled to all consequential benefits including increments in the available time scale and revision of the time scale, if any, and any other further service benefits as per rules and regulations of the appellant school. Respondent No. 4 shall be treated to have been in continuous service of the appellant school from the date of termination till reinstatement.

36. The appeal is partly allowed and disposed on n the aforesaid terms. In the facts and circumstances, we direct the parties to bear their own costs.