
(2008) 05 DEL CK 0160
In the Delhi High Court
Case No : C.W.P. No. 4188 of 2008

Dharamvir Singh

APPELLANT

Vs

N.C.T. of Delhi and Others

RESPONDENT

Date of Decision : 29-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 8

Citation : (2009) 1 ILR Delhi 213

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Maldeep Sidhu, for the Appellant;

Final Decision : Disposed Off

Judgement

Anil Kumar, J.—The petitioner challenges the order of suspension dated 6th August, 2007 passed against him by respondent No. 3. The petitioner contended that he has been working as Sweeper with respondent No. 3 since 20th March, 1995 and he became a member of a union because of which threats were given to terminate his services. The petitioner, therefore, filed a writ petition along with some other employees being CWP No. 2102/2001 which was disposed of by order dated 20th February, 2002 as it was stated on behalf of the school that the services of the petitioner and other employees will not be terminated without following due process under the Act and rules framed there under.

2. The petitioner, thereafter, again filed another writ petition being W.P.(C.) No. 5868/2007 which was also disposed of by order dated 13th August, 2007, consequent to the undertaking of the respondents that services of the petitioner would not be terminated without following the due process of law under the Delhi School Education Act, 1973 and the Rule framed there under.

3. The respondents No. 3 took a decision to initiate disciplinary proceedings against the petitioner and a charge sheet dated 19th September, 2007 was

issued to him. Before issuing the charge sheet, the petitioner was suspended by letter dated 6th August, 2007 which is impugned by him on the ground that respondent No. 3 has not followed rules framed under Delhi School Education Act, 1973 and the charges of molestation of five years' old girl student against the petitioner are false and fabricated and the petitioner has not been allowed even subsistence allowance and the inquiry officer has been persisting on hurriedly concluding the inquiry without even allowing the defense assistant as the petitioner as prayer for appointment of a lawyer which was declined.

4. A Division Bench of this Court in *Kathuria Public School Vs. Director of Education and Another*, relying on *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, had held that it is advisable that the specialized Tribunal constituted should look after the legal matters relating to hearing of grievances of teachers and employees. The Division Bench relying on *T.M.A. Pai Foundation (Supra)* had held that specialized Tribunal should hear any grievance of the teacher. It was further held that no restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal and consequently the Tribunal should be able to hear all the grievances including in respect of suspension of a teacher or an employee and, therefore, the Tribunal constituted under the Delhi School Education Act should be able to hear all the grievances of the staff and teachers and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act. The Division Bench in para 42 at page 910 had held as under:

42. No restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal. Under the said Act in question, the Tribunal is already constituted. Thus, all that is to be done is that the Tribunal should be able to hear all grievances including in respect of suspension by a teacher or an employee. Taking into consideration the observations made by the Apex Court in *T.M.A. Pai Foundation case (supra)*, we are of the considered view that pending necessary legislative action by the State, the Tribunal constituted should be able to hear all grievances of the staff and teacher and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act. The result would be that if a teacher is aggrieved by a suspension order or its prolongation, the grievance can be made before the Tribunal depending upon the fact and circumstances of the case.

5. Considering the facts and circumstances, the petitioner has an alternative remedy to approach Delhi School Tribunal constituted under the Delhi School Education Act, 1973 to considering the whether the suspension order dated 6th August, 2007 is liable to be set aside and declared null and void on the grounds as has been raised by the petitioner.

6. Therefore, in the facts and circumstances there are not grounds for this Court to exercise its jurisdiction under Article 226 of the Constitution of India. It is for the petitioner to exhaust his alternative remedy available to him under the Delhi School Education Act, 1973 and Rules framed there under and to approach Delhi

School Tribunal. In the circumstances, the writ petition is disposed of. The Petitioner shall be entitled to approach Delhi School Tribunal under the Delhi School Education Act, 1973 or to invoke any other remedy, if available to him. With these directions the writ petition and all pending applications are disposed of Dasti to the counsel for the Petitioner.