

(2014) 01 DEL CK 0289

In the Delhi High Court

Case No : Writ Petition (C) 479 of 2014 and CM No. 943 of 2014

Dr. Abhay Nath Jha

APPELLANT

Vs

Col. Satsangi's Kiran Memorial Public School and Another

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 24

Citation : (2014) 01 DEL CK 0289

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Anil Aggarwal and Ms. Urmil Sharma, for the Appellant; L.K. Garg, Advocate for R-2 and Mr. B.N. Mudgal, D.E.O., Zone-24, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J.—Issue notice to the respondents. Mr. Garg, who accepts notice on behalf of respondent no. 2, says he does not wish to file a reply.

2. Since the issue raised, is only a question of law as facts necessary for disposal of the writ petition as presently positioned, are not in dispute, accordingly, I proceed to hear and dispose of the writ petition.

3. This is a writ petition filed wherein, the following broad reliefs have been sought:

(i) That respondent no. 1 be directed to implement the order passed by the Directorate of Education i.e., Respondent no. 2 which is dated 14.10.2013.

(ii). That the salary and other consequential benefits of the petitioner be fixed in accordance with the provisions of the Fifth (5th) and Sixth (6th) Pay Commission.

(iii). That the petitioner be paid: travelling allowance, HRA, LTC and other benefits alongwith arrears, in accordance with, the provisions of the Fifth (5th) and Sixth (6th) Pay Commission.

4. It is the stand of the petitioner that he had joined respondent no. 1 school, as a Residential Junior Lecturer (Biology), in the Pay Scale 1800-60-2400-80-2800-EB-100-4000 plus DA and other allowances, on 25.03.1996.

4.1. The services of the petitioner were confirmed w.e.f. 25.03.1997 vide communication dated 14.09.1997.

4.2. It is averred that on 05.07.2000, the petitioner was made to head the Biology Department. According to the petitioner, a certificate in that behalf was issued by respondent no. 1 school on 03.03.2003. The petitioner claims that apart from the subject, in respect of which, he was appointed i.e., Biology, he was entrusted with the responsibility of taking additional classes for Biotechnology.

4.3. Apparently on 04.02.2013, a show cause notice was issued to the petitioner for relieving him from service w.e.f. April, 2013.

4.4. The broad charges levelled against the petitioner was that: the subject of biotechnology, was introduced in the school having regard to the petitioners qualifications; that respondent no. 1 school had invested a sum of Rs. 2,96,404/- as per his recommendations for purchasing equipments and necessary material to help and aid in teaching the said subject; and that since 2003-2004, the strength of students, in respect of the said subject, which was 21 in number, had reduced in 2012-2013 for class XI to "Nil" and class XII to "9".

5. Having regard to the above charges levelled against the petitioner, his explanation was sought as to why biotechnology, as a subject should not be discontinued for the academic year 2013-2014, as none of the students of class XI had opted for the same in the academic session 2012-2013, and that, there was likely to be no enrolment, in the following academic year, which is, 2013-2014.

6. Apparently, the petitioner submitted two replies to the said show cause notice. The first reply, was a brief reply, which is dated 05.02.2013; while the second reply, was a more detailed reply, which is dated, 01.03.2013.

7. In the context of the above, it is averred by the petitioner that on 15.07.2013, he was informed that with the implementation of the Sixth (6th) Pay Commission, the post of Junior Lecturer had been abolished, and that, it had been re-designated as PGT, on the same terms and conditions, which obtained in his initial appointment letter.

8. Consequent thereto, the petitioner, apparently, alongwith other co-employees submitted a joint representation to the Additional Director Education(Vigilance) qua respondent no. 1 school.

8.1. The representation, apparently, alleged that, respondent no. 1 school, had violated the provisions of the extant rules and regulations which governed the school. It was also alleged that the management of respondent no. 1 school was

indulging in harassment of its teachers.

8.2. A charge was also levelled that due wages, were not being paid, to the teachers by respondent no. 1 school.

9. It is in this background, a complaint/representation was made by the petitioner to respondent no. 2. Respondent no. 2, it appears called for a reply from respondent no. 1 school which was duly furnished vide communication dated 10.09.2013. Respondent no. 2, after considering the complaints/representations of the petitioner and also the reply of representation no. 1 school, passed an order dated 14.10.2013.

9.1 Notably, respondent no. 2 while observing in its order dated 14.10.2013 that the show cause notice issued to the petitioner was "unjustified", directed that the same be "dropped immediately in the interest of justice". It appears that respondent no. 1 has not complied with the directive issued by respondent no. 2, despite, a reminder having been sent by the petitioner on 29.11.2013; a copy of this representation appears to have been served on respondent no. 2, amongst others.

10. It is in this background that the petitioner has approached this court by way of a petition under Article 226.

11. Mr. Garg, who appears on advance notice, on behalf of respondent no. 2 submitted that since the school is an "unaided" private school, there is very little that respondent no. 2 can do, to get respondent no. 1 school to comply with its directive dated 14.10.2013.

11.1 In the context of the aforesaid submission of Mr. Garg, I put to him, as to the provisions, to which, recourse was taken by respondent no. 2, in the first instance when it entertained the complaints/representations of the petitioner and called upon respondent no. 1 school to file a reply. Mr. Garg, has not been able to assist me in this behalf.

11.2 Mr. Garg, in support of his contention has, however, relied up a judgment of the Division Bench of this court in the case of Kathuria Public School Vs. Director of Education and Another, . Specific reliance is placed by Mr. Garg on the observations of the Division Bench made in paragraph 43 of the judgment.

12. In view of what has been observed by me hereinabove, it is quite clear that despite the judgment in the case of Kathuria Public School having been pronounced, respondent no. 2 chose to exercise its powers, therefore, it cannot lie in the mouth of respondent no. 2 to atleast contend qua this petition that it acted without jurisdiction. Having done so, it should atleast seek to enforce its directive; as it is not the submission of Mr. Garg that the directive issued was illegal. What compounds the problem is that despite a copy of the representation dated 29.11.2013 having been filed with it, there has been no response to the same by respondent no. 2.

12.1 As indicated above, one of the reliefs which has been sought by the petitioner is to seek implementation of the directive dated 14.10.2013, passed by respondent no. 2.

12.2 The other reliefs, in my view, also need to be examined by respondent no. 2, in the first instance.

13. To my mind, prima facie, respondent no. 2 appears to have been vested with coercive powers u/s 24 of the Delhi School Education Act, 1973. However, I do not wish to expound upon the same since, respondent no. 1 school is not before me. Therefore, in fitness of things, in my opinion, respondent no. 2 should first examine this issue by calling upon the concerned parties in furtherance of its own directive dated 14.10.2013.

14. The writ petition and the pending application are disposed of with a direction to respondent no. 2 to take necessary steps in that behalf in pursuance of its directive dated 14.10.2013. It is made clear that while seeking enforcement and/or implementation of its directive dated 14.10.2013, it would give due opportunity to the concerned parties, which would include respondent no. 1 school. Respondent no. 2 will also examine the tenability of the remaining reliefs, which have been sought for by the petitioner. It is made clear that either way, respondent no. 2 will pass a speaking order. In case the petitioner is aggrieved by the order ultimately passed by respondent no. 2, it shall have liberty to take recourse to an appropriate remedy in accordance with the law.

15. Needless to say, respondent no. 2 will act with expedition and endeavour to complete this entire exercise on or before 15.03.2014. Dasti.