

(2014) 07 DEL CK 0160
In the Delhi High Court
Case No : W.P. (C) 7255 of 2011

Ganesh Ram Bhatt

APPELLANT

Vs

Director of Education

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Delhi School Education Act, 1973 — Section 24, 8, 8(4) (5), 9

Citation : (2014) 144 DRJ 550

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Amarjeet Rai, Advocate for the Appellant; D. Rajeshwar Rao, Charanjeet Singh, Advocates, A.k. Meena, Dy. EO, Dilip Singh and Roshan Khan, Advocate for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The petitioner has filed the present petition praying inter alia that respondent No. 1/Director of Education (DOE) be directed to take appropriate action against the respondent No. 2/School (hereinafter referred as to "the School") as envisaged u/s 24 of the Delhi School Education Act, 1973 (in short "the Act") and permit him to resume and discharge his duties as the Principal of the School. Further, the petitioner seeks quashing of the order dated 28.4.2011 issued by the School, suspending him w.e.f. 30.4.2011 and the letter dated 26.7.2011, for continuing his suspension till further orders.

2. Briefly stated, the relevant facts of the present case are that on 16.8.1994, the petitioner was appointed as a Principal of the School. In the month of April 2011, the School issued memorandums to the petitioner levelling allegations against him with regard to various financial frauds, followed by a notice to show cause dated 23.4.2011 addressed to him wherein the Managing Committee of the School proposed to suspend him from service. The petitioner submitted his reply to the aforesaid notice to show cause vide letter dated 25.4.2011. Thereafter, on 28.4.2011, the School issued a memorandum to the petitioner

stating inter alia that vide decision dated 24.4.2011, the Managing Committee had decided to suspend him w.e.f. 30.4.2011 on the allegations of serious financial and administrative irregularities.

3. Aggrieved by the aforesaid memorandum of suspension, the petitioner submitted a series of representations to the respondent No. 1/DOE for issuing directions to the School to revoke his suspension. On 13.7.2011, the petitioner was informed that an Enquiry Officer had been appointed for conducting a preliminary enquiry into the allegations of financial and administrative irregularities committed by him. On 26.7.2011, the petitioner received a memorandum from the School informing him that the file in respect of his suspension proceedings was under process and the Managing Committee had decided that his suspension should continue till further orders. Aggrieved by the aforesaid decision, the petitioner filed the present petition in September 2011. It is an undisputed position that during the pendency of the present proceedings, the petitioner was removed from service by the School vide order dated 18.4.2013 and approval with regard to his removal from services was accorded by the respondent No. 1/DOE on 10.10.2013.

4. The limited issue raised in the present petition is the effect of the suspension order passed by the School under the first proviso of subsection (4) of Section 8 of the Act and the consequence of failure on the part of the respondent No. 1 to grant approval of the suspension within a period of fifteen days from the date of the immediate suspension, as contemplated in the second proviso thereof.

5. Learned counsel for the petitioner submits that the aforesaid issue is no longer res integra in the light of a decision of a Full Bench of this court in the case of Delhi Public School and Another Vs. The Director of Education and Others , followed by a coordinate Bench in the case of The Managing Committee of Raghumalarya Girls Senior Secondary School Vs. Govt. of NCT of Delhi & Ors. in WP(C) No. 2939/2012 decided on 13.9.2012, wherein it was held that upon expiry of fifteen days from the date of the order of suspension, the said suspension would lapse if the Director of Education does not grant appropriate approval.

6. Learned counsel for the School submits that after the petitioner had filed the present petition and notices were issued thereon, the School had received an intimation dated 13.1.2012 from the respondent No. 1/DOE, approving the petitioner's suspension on account of serious financial and administrative irregularities under Rule 115 of the Rules with retrospective effect, i.e., w.e.f. 30.4.2011. It is thus submitted that the respondent No. 1/DOE having granted retrospective approval with respect to the suspension of the petitioner, the terms and conditions prescribed in sub-section (4) of Section 8 stand satisfied and therefore, his suspension cannot be termed as illegal and in that duration, he would only be entitled to receive subsistence allowance.

7. In the first instance, it is relevant to peruse the provision of Sub-section(4) of

Section 8 of the Act, which is reproduced hereinbelow for ready reference:

8. Terms and conditions of service of employees of recognised private schools.-

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(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 u/s 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.

8. It is apparent from a perusal of the aforesaid provision that if the Managing Committee of a recognised private school intends to suspend any of its employees, then the said intention has to be communicated to the Director of Education and no suspension shall be made except with his prior approval. However, the first proviso of sub-section(4) of Section 8 empowers the Managing Committee to suspend an employee with immediate effect, without obtaining the prior approval of the Director of Education if it is satisfied that such an immediate suspension is necessitated by reason of the gross misconduct of the employee, as provided for under the code of conduct prescribed u/s 9 of that Act. The second proviso attached to sub-section (4) of Section 8 prescribes that no such immediate suspension shall remain in force beyond a period of fifteen days from the date of the actual suspension unless and until the same has been communicated to the Director of Education and he grants and his approval before the expiry of the said period.

9. In the present case, the respondent No. 1/DOE did not accord the approval to the suspension of the petitioner within a period of fifteen days reckoned from 30.4.2011. As a result, in the absence of prior approval of the respondent No. 1/DOE, when the School had invoked the first proviso of sub-section (4) of Section 8 of the Act to immediately suspend the petitioner, then the said suspension could have remained in force only for a period of fifteen days, reckoned from 30.4.2011.

10. The aforesaid issue came up for decision in the case of Delhi Public School (supra), where the Full Bench was requested to decide a reference made to it by a Single Judge for reconciling a conflict in the decisions of two Division Benches in the cases of Anand Dev Tyagi Vs. Lt. Governor of Delhi, and Prem Sehgal and Anr. Vs. The Director of Education, Delhi Administration, Delhi and Ors. in CWP

2333/1984 dated 19.7.1984, regarding an analysis and interpretation of Section 8(4) (5) of the Act and Rules 115 and 118 of the Rules. After examining the aforesaid provisions and considering the respective arguments advanced by the parties, the Full Bench held as below:-

30. In fairness to Mr. V.P. Singh, we may state that the main ground on which he wanted reading down of the provisions of Section 8 of the Act was his apprehension to the effect that even in a case where the alleged misconduct committed by an employee of the school is serious warranting immediate suspension and further even when the circumstances of the case justify the approval by the Director of Education, the Director of Education and/or his subordinate functionaries may defeat the objective by intentionally delaying the matter and thereby ensuring that no decision is taken within 15 days from the date of communication of the order of suspension. We have already stated that the petitioner has not challenged the virus of Section 8 of the Act. That apart, in such a situation the Managing Committee of the School would not be remediless. Illegal and/or arbitrary exercise of jurisdiction by the Director of Education in a given case can always be subject matter of judicial review and in such a case it would always be open to the Managing Committee of the school to challenge the inaction and/or wrong decision of the Director of Education. We may observe here that it is the statutory duty cast upon the Director to take appropriate decision within 15 days as to whether approval is to be given or not. He cannot, by delaying the matter beyond 15 days, make it a fait accompli. No doubt, if no decision is taken within 15 days from the date of communication of the order of suspension, the necessary consequence thereof is that the suspension order lapses. However, that does not mean that if no decision is taken at all or the matter is unnecessarily delayed, it would not be permissible for the Managing Committee of the school to insist the Director of Education to take a decision even after 15 days of the communication of the order of suspension. If such a decision is taken, though belatedly, the fresh order of suspension can always be passed. Further, if the Director of Education takes a decision and refuses to accord his approval to the order of suspension and if the Managing Committee in such a case feels aggrieved by the decision, it is always open for the Managing Committee to challenge the decision of the Director of Education by appropriate proceedings on well-established grounds of judicial review that would be available to the Managing Committee in a given case.

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 Subsection (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.

32. It is for the Director of School Education, therefore, to consider as to whether such immediacy was required in the facts and circumstances of the case.

33. The matter may also be considered from another angle.

34. An employer has an inherent right of suspension in the sense that it may not take any work from its employees. But in such a situation, he has to pay the entire to the employee. Thus, where in terms of an order of suspension passed under a statute, the employee would be entitled only to the subsistence allowance, as provided for in the rules, he would, in the event the inherent power of suspension of the employer is taken recourse to, be entitled to full salary.

35. In that view of the matter too, despite non-grant of approval by the Director of School Education, the Managing Committee, in the event it is found that it is expedient not to take work from the employee concerned, may take recourse thereto but as noticed hereinbefore, in such a situation, it will have to pay the entire salary and not the subsistence allowance alone.

36. We, therefore, are of the opinion that upon expiry of 15 days from the date of order of suspension, the order of suspension lapsed and the employee shall be entitled to all consequential benefits.

(emphasis added)

11. In view of the aforesaid decision of the Full Bench in the case of Delhi Public School (supra), there cannot be any doubt that upon expiry of fifteen days from the date of the order of suspension coming into effect, the said order automatically lapses and thereafter, an employee is entitled to all the consequential benefits. The contention of the learned counsel for the School that the letter dated 13.1.2012 issued by the respondent No. 1/DOE during the pendency of the present petition, according approval to the suspension of the petitioner with retrospective effect shall meet the requirements of sub-section(4) of Section 8 of the Act, is found to be devoid of merits. Quite clearly, the Act and Rules do not provide for an eventuality where if the respondent No. 1/DOE fails to accord his approval to the suspension, then the same would be deemed to be accorded, there being no deeming provision to the said effect in the Act. In other words, if a positive approval of the suspension of an employee made by the Managing Committee of the School is not granted by the respondent No. 1/DOE within the period prescribed under the Statute, then the said suspension would automatically cease to operate at the end of the fifteenth day, reckoned from the date of his suspension. Only in the event of approval being granted by the Director of Education and that too within the prescribed period of fifteen days, would such a suspension be valid for the extended period. Any other interpretation would render the second proviso of sub-section (4) of Section 8 of the Act, nugatory.

12. As a result, the act of the School in issuing the memorandum dated 26.7.2011 informing the petitioner that the Managing Committee had decided to continue his suspension till further orders, was illegal, the same having been issued without obtaining the approval of the respondent No. 1/DOE. As was observed by the Full Bench in the case of Delhi Public School (supra), in the

event the respondent No. 1/DOE did not take a decision on the earlier decision of suspension taken by the School and referred to him within the period of fifteen days from the date of communication of the said order, an option was still available with the Managing Committee of the School to issue a fresh order suspending the petitioner. However, in the present case, the Managing Committee of the School did not take any steps to pass a fresh order of suspension against the petitioner. Instead, after a lapse of almost three months from the date of issuance of the first suspension order, the school decided to continue the said suspension order which was impermissible and is contrary to the very purport and intent of the Act.

13. In view of the aforesaid facts and circumstances, this court is of the opinion that failure on the part of the respondent No. 1/DOE to take a decision on the recommendation made by the Managing Committee of the School with regard to the petitioner's suspension within a period of fifteen days, would result in the period of suspension having elapsed at the end of the fifteenth day. Failure on the part of the respondent No. 1/DOE to communicate a decision within the stipulated period, cannot be interpreted to mean that the petitioner would automatically remain under suspension till further orders. Neither can the subsequent approval granted by the respondent No. 1/DOE on 13.1.2012 be treated as having a retrospective effect. There being no deeming provision in the statute, the impugned suspension order dated 28.4.2011 passed in respect of the petitioner died a natural death at the end of the fifteenth day, reckoned from 30.4.2011.

14. As a result of the aforesaid discussion, the present petition is allowed. The respondent No. 2/School is directed to pay the petitioner, his unpaid salary and allowances as admissible, for the period reckoned w.e.f. 15.5.2011 onwards, within four weeks from today. The petition is disposed of and the parties are left to bear their own costs.