

**(2013) 08 DEL CK 0409**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 8058 of 2011 and CM 18144 of 2011

Guru Harkrishan Public School

APPELLANT

Vs

Director of Edu. and Another

RESPONDENT

---

**Date of Decision :** 06-08-2013

**Acts Referred:**

**Citation :** (2013) 08 DEL CK 0409

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** A.P.S. Ahluwalia, Mr. S.S. Ahluwalia and M.S. Ahluwalia, for the Appellant; Bandana Shukla, for Ms. Ruchi Sindhwani, for R-1, Mr. Sanjeev Ralli and Ms. Alpha Phiris Dayal for R-2, for the Respondent

**Final Decision :** Disposed Off

---

## **Judgement**

Valmiki J Mehta, J.—By this writ petition, Guru Harkrishan Public School/petitioner impugns the order of the Delhi School Tribunal dated 18.8.2011. By the impugned order, respondent no. 2-teacher has been reinstated in service alongwith 50% back wages. Whereas the case of the petitioner-school before the Tribunal was that the respondent no. 2 gave resignation which was accepted, the respondent no. 2 urged before the Tribunal that before the resignation was accepted, the respondent no. 2 withdrew the resignation.

2. After the matter was heard at length, learned senior counsel for the petitioner, on instructions states that petitioner will reinstate the respondent no. 2 in service and as stated in detail later, however, back wages could not have been granted by the Tribunal in view of the judgment of a learned Single Judge of this Court in the case of The Manager, Arya Samaj Girls Higher Secondary School and Another Vs. Sunrita Thakur etc., and which has been relied upon by another learned Single Judge in the order dated 5.10.2006 in CM(M) 316/1996. These judgments interpreting Rule 121 of the Delhi School Education Rules, 1971 holds that it is only the Managing Committee of the school which will decide this aspect.

3. I have gone through the judgment in the case of The Manager, Arya Samaj, Girls Higher Secondary School & Anr. (supra) and the order in CM(M) 316/1996 and which categorically state that after reinstatement of an employee, in view of Rule 121 of the Delhi School Education Rules 1973, the Delhi School Tribunal or the Court has no power to order what should be the back wages and this aspect has to be decided by the Managing Committee of the School.

4. Counsel for respondent no. 2 has however pointed out to me an order passed by a Division Bench of this Court on 16.12.2002 in LPA 493/2002 in the case of M/s. Apeejay School Vs. P.O. Delhi School Tribunal and Anr., and in which, after reference to Rule 121 of Delhi School Education Rules, the Division Bench in view of the fact that litigation has gone on for several years in spite of Rule 121, ordered payment of back wages. However, the Division Bench does not discuss in any manner Rule 121 including the categorical language therein which provides that only the Managing Committee is entitled to fix remuneration of a reinstated employee on the appeal of the employee being allowed by the Delhi School Tribunal. With utmost respect there is no ratio which can be called out of the order of the Division Bench. The Division Bench has also not considered the judgment of the learned Single Judge in the case of Sunrita Thakur (supra) and which thus does not stand overruled, and which must be because the judgment of the learned Single Judge would not have been cited before the Division Bench.

5. Therefore, so far as the issue of interpretation of Rule 121 of Delhi School Education Rules is concerned, but the same has been done in the two judgments of the two learned Single Judges however the Division Bench in M/s. Apeejay School (supra) while referring to Rule 121 has not applied the same and has done so without laying down any ratio with respect to the said rule. It is hence necessary that clarity be there as to whether or not the Delhi School Tribunal or the Court has or has not the power at the time of reinstating an employee whose services were terminated, to grant back wages and other monetary emoluments. For the sake of convenience, I reproduce Rule 121 of the Delhi School Education Rules, 1973 and which reads as under:-

Rule 121. Payment of pay and allowances on reinstatement (1) When an employee who has been dismissed, removed or compulsorily retired from service is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, as the case may be, the managing committee shall consider and make a specified order:

(a) with regard to the salary and allowances to be paid to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as the period spent on duty.

(2) Where the managing committee is of opinion that the employee who had been dismissed, removed or compulsorily retired from service had been fully

exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service or suspended prior to such dismissal, or compulsory retirement from service, as the case may be:

Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representations and after considering the representation, if any, made by the employee, direct, for reasons to be recorded by it in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowances as it may determine.

(3) The payment of allowances shall be subject to all other conditions under which Midi allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances.

6. In my opinion, with utmost humility, on a literal interpretation of Rule 121, there cannot be any doubt that as a consequence of the Delhi School Tribunal directing reinstatement of an employee whose services have been terminated, qua such reinstated employee it is only the Managing Committee of the school which has to make a specific order with respect to salary and allowance for the period of his absence from duty, including the period of suspension.

7. Since this issue will come up in a large and innumerable number of cases, therefore, it would be necessary that a larger Bench of this Court be constituted with respect to the interpretation of Rule 121 as to whether a Court or the Delhi School Tribunal can pass orders with respect to back wages of a reinstated employee, although the categorical language of Rule 121 specifically gives this power only to the Managing Committee of the school.

8. Let this case papers be placed before Hon'ble the Acting Chief Justice for passing of appropriate orders for constitution of a larger Bench and matter be thereafter listed before the larger Bench/Full Bench on 23rd September, 2013.

9. That leaves us with the issue of compliance of the order of the Tribunal with respect to reinstatement of respondent no. 2 and learned counsel for respondent no. 2 states that without prejudice to the rights of the petitioner-school to take action against the respondent no. 2 in accordance with the provisions of the Delhi School Education Act and Rules, 1973, the petitioner-school will reinstate the respondent no. 2 within a period of two weeks from today. Let that be done.

10. In view of the above, the writ petition is disposed of so far as the issue of reinstatement by directing the petitioner to reinstate the respondent no. 2 as stated above is concerned, however on the aspect of entitlement or otherwise of the Tribunal or this Court to pass orders with respect to back wages of a reinstated employee in view of Rule 121 is concerned, the same is referred to the

larger Bench/Full Bench of this Court and the matter be accordingly listed on 23rd September, 2013. The record of the Delhi School Tribunal which has been received in this Court be kept in this Court till the issue of interpretation of Rule 121 is decided by the larger bench, and thereafter, the said Bench would pass the appropriate orders with respect to the record of the Delhi School Tribunal.