

(2011) 08 DEL CK 0486

In the Delhi High Court

Case No : W. P. (C) 5772 of 1998 and C Ms 11029 of 1998 (for stay) , 2530 of 1999 (for stay) , 8682 of 2000 (release of salary)

Jitender Kumar Goel

APPELLANT

Vs

Director, Directorate of Education and Others

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Delhi School Education Rules, 1973 — Rule 118

Citation : (2011) 7 AD 592 : (2011) 181 DLT 752 : (2011) 125 DRJ 449

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Ajay Kumar Tandon, for the Appellant; Vinay Sabharwal, Neha Sabharwal, for R-3 and Aditya Madan, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The Petitioner, who was working as a Superintendent in the D.A.V. Public School, Paschim Vihar, New Delhi ("School"), Respondent No. 3, has challenged in this writ th petition an order dated 30th April 1998 placing him under suspension pending th disciplinary proceedings. He also challenged an order dated 7August 1998 issued by the School rejecting his allegation of bias against the Inquiry Officer ("IO").

2. While directing notice to issue in this petition on 11November 1998 an interim order was passed by this Court restraining the IO from making any final report. On the th next date, i.e., 12nd February 1999 this Court was informed that the IO had prepared a final report on 26th October 1998. On 25February 1999 an order was issued by the Chairman of the School removing the Petitioner from service with immediate effect. The Petitioner filed CM No. 2530 of 1999 seeking stay of the operation of the order th dated 25February 1999. He also prayed for a direction to the Respondents to constitute an independent disciplinary committee ("DC") and appoint an impartial IO. In reply it was stated by the Respondents that despite numerous opportunities the th Petitioner had failed to participate in

the enquiry proceedings. On 26 October 1998 the IO had submitted his final enquiry report holding the Petitioner guilty of the charges against him. On 2 November 1998 a tentative decision on the proposed rd penalty was taken by the DC and on 3 November 1998 a copy of the enquiry report was sent to the Petitioner by registered AD post, under postal certificate ("UPC") and through courier. While the registered AD came back with the postal remark "refused", the cover dispatched UPC was not returned undelivered and the one sent through courier was accepted by the Petitioner's mother and returned back after reopening and restapling the envelope. It is stated that the statutory approval of the Director of nd Education ("DoE") was given on 22nd February 1999. Thereafter the penalty of the Petitioner from service became final and was communicated to the Petitioner by the th School by a letter dated 25 February 1999. No orders were passed by this Court in the above application CM No. 2530 of 1999.

3. Meanwhile, the Petitioner filed CM No. 7081 of 2000 stating that the Education th Officer (`EO") Zone 14 had by a letter dated 4th October 1999 conveyed to the School the decision of the DoE, on the representation of the Petitioner at a public hearing, directing reinstatement of the Petitioner with the rider that he should not be assigned any financial responsibility till the finalisation of the enquiry proceedings to be th conducted on the internal audit report dated 27 March 1998. In response thereto on th 8 October 1999 the School informed the DoE that there was no provision under the Delhi School Education Act, 1972 ("DSEA") or the Delhi School Education Rules nd 1973 ("DSER") permitting withdrawal of the approval granted on 22nd February 1999. Therefore, the said letter dated 4th October 1999 could not be implemented by the th School. On 17th January 2000 the DoE wrote to the School reiterating its order dated th 4th October 1999 and requiring the School to forthwith comply with the said order. Pursuant thereto on 3 July 2000 the Petitioner wrote to the School stating that he was reporting for duty. However, the Petitioner states that he was not permitted to. Again th on 10 July 2000 he made a request to the Secretary of the DAV Managing Committee ("MC") to direct the Principal to permit him to join duty. In the W.P. (C) No. 5772/1998 Page 2 of 9 circumstances, it was prayed that the Respondent should be directed to reinstate the th Petitioner. On 16 August 2000 rule was issued in this petition.

4. On 21st August 2000 CM No. 7081 of 2000 was dismissed by this Court by the following order:

The Petitioner seeks implementation of the orders of the Director of Education. This Court is not supposed to execute the orders of the Director of

Education.

Dismissed.

5. The Petitioner then filed CM No. 8682 of 2000 pointing out that the cheque for the Petitioner's salary for the period 25 February 1999 to 6 May 1999 was lying

with the Registry of this Court and should be released to him. When this application was listed for hearing on 25 September 2000 notice was directed to issue to Respondents. Final opportunity was granted on 4 January 2001 to file a reply to the said application.

6. Meanwhile, the Petitioner filed CM No. 1626 of 2001 on 30 January 2001 for a direction to the Respondent to allow the Petitioner to join duty during the pendency of the writ petition. Once again the order of the DoE directing the School to take back the Petitioner was enclosed with the application. This Court dismissed the application stating that similar application had already been dismissed on 21st August 2000 and the Petitioner was asked to deposit Rs. 1,000/- as costs.

7. At the time of his suspension by a letter dated 30th April 1998 the Petitioner had served more than 19 years. The said letter stated that disciplinary proceedings against the Petitioner were contemplated. It appears that the charges against the Petitioner were read out at the meeting of the Local Managing Committee ("LMC") in which it was alleged that the Petitioner was guilty of temporary embezzlement of funds, demanding and getting illegal gratification from the contractor working for the School. The Petitioner then made a detailed representation to the President of the MC of the Respondent No. 2 on 4 May 1998 inter alia pointing out that the DC in terms of the DSEA consists of the Chairman of the LMC (Mr. Baldev Raj Jindal), the Manager of the School, the Principal of the School, a teacher nominated by the LMC Chairman and a nominee of the Education Department. Of the above five members, the Manager of the School as well as the Principal of the School was the same person, one Mrs. S. Chawla. According to the Petitioner, the Chairman Mr. Baldev Raj Jindal and the manager of the School Mrs. Chawla were trying to harm him. He referred to certain unpleasant incidents involving the said two persons and adverted to the alleged illegal withdrawal of funds by Mrs. Chawla which according to him had been brought out in a report of one Mr. Satija, the Head of the Internal Audit party. In the circumstances, he requested that Mr. Jindal, Mrs. Chawla and the teacher nominated by the MC be not allowed to sit in the DC constituted to consider his case. He also wrote a letter to the DoE on 14 May 1998 reiterating the representation dated 4 May 1998.

8. A memorandum was issued on 10 July 1998 by the Chairman of the School to the Petitioner listing out the charges and imputations of misconduct. The first article of charge was that the Petitioner had drawn a sum of Rs. 5,000/- as advance on 3 February 1992 for getting a new water connection for the school. It was not utilized for the purpose for which it was drawn but was shown as adjusted in the accounts having been paid to the contractor on 24 December 1993. The contractor, Hukum Singh, had stated that he did not receive the cash of Rs. 5,000/-. Consequently, the charge against the Petitioner was that he had embezzled the said sum. The second article of charge was that on 25 October 1994 and 4 November 1996 the Petitioner had withdrawn an advance of Rs.

5,000/-and Rs. 10,000/-respectively and against the said amounts had adjusted the amounts of Rs. 7,289/-unauthorizedly without valid supporting documents. This amounted to embezzlement of the School funds by th manipulating the records. The third article of charge was that on 10June 1991 he withdrew a sum of Rs. 15,000/-for making payment to Mr. Hukum Singh. Instead he paid Mr. Hukum Singh a sum of Rs. 5,000 and unauthorisedly retained the balance amount of Rs. 10,000 which was later paid to Mr. Hukum Singh in two instalments of Rs. 5,000/-each. The charge was that he had unauthorizedly retained the school funds with him for his personal use. The fourth article of charge related to payment made of th Rs. 500 to a part-time night chowkidar on 10July 1997 for which he had prepared a receipt forging signature of the said person. The fifth article of charge was about the Petitioner not forwarding the names of the students for two examinations. The sixth article of charge was about his refusing to sign the instructions issued to him by the Principal. The seventh article of charge was that during the months of May 1996 to July 1996 he unauthorizedly took money from the contractor Mr. Chattar Pal Singh each time he handed over a cheque to the contractor for the work done by him. The eighth charge pertained to the Petitioner not attending to a case before the Labour Court concerning one Mr. Babu Lal. The ninth charge pertained to his not attending the Labour Court in connection with Smt. Kailash in the year 1996.

9. In the reply filed on behalf of Respondent No. 3 it is pointed out that approval of the nd DoE was sought for the suspension of the Petitioner. By a letter dated 2May 1998, the DoE was also requested to nominate a person to be on the DC. By a letter dated th 27May 1998 the DoE conveyed its approval to the suspension of the Petitioner and conveyed the name of Mr. V.K. Anand, Principal, Government Boys Senior th Secondary School, Mundka to be on the DC. The DC met on 25 June 1998 to discuss th the draft charges and on 9July 1996 framed the definite charges against the Petitioner. According to the Respondents, the memorandum was furnished to the th Petitioner on 10July 1998 at his residential address. A modification to the said charges was also notified to the Petitioner. Significantly, the name of the Principal Mrs. Chawla was omitted from the list of witnesses. The Petitioner replied to the th charge sheet on 20 July 1998.

10. The DC which met on 27th July 1998 comprising Mr. Jindal, Mrs. Chawla, a teacher's representative Mrs. Neera Khera and Mr. V.K. Anand appointed a retired th legal officer of the DoE was appointed as IO. An order to this effect was issued on 27th July 1998. The IO issued a letter to the Petitioner on 1st August 1998 at the School th address asking him to appear in the enquiry proceedings on 10August 1998. In his representations dated 5and 6August 1998 the Petitioner stated that the IO had intimate friendly relationship with the husband of Mrs. Chawla and therefore was not competent to act as the IO. He mandated that the IO was biased, mala fide and illegal. He stated that he was withdrawing from participating in the disciplinary proceedings.

11. The disciplinary authority which met on 7August 1998 rejected all the

allegations and sent him intimation to his residential address, i.e., C-577, Saraswati Vihar, New Delhi. A copy of the communication to this effect by one of the employees of the School has been enclosed as Annexure-XVI to the reply. The IO who held the proceedings on 10 August 1998 postponed it to 17 August 1998. On that date, i.e., 17 August 1998, the Petitioner wrote to the Chairman of the DC stating that the letter dated 7 August 1998 was delivered by the postman on 10 August 1998 at 4 pm, therefore, the Petitioner could not attend the meeting on that date. The Petitioner then sent a medical certificate stating that he was unwell. On 27 August 1998 he informed the School that he had been advised one week's rest. Meanwhile, he filed an appeal to the DoE complaining against the DC and sought reinstatement. The above complaint was rejected and a memorandum was issued to him on 26 August 1998 asking him to cooperate in the inquiry. This memorandum was received by the Petitioner on 27 August 1998. The DC which met on 9 September 1998 took note of the fact that the Petitioner had not participated in the five hearings of the enquiry proceedings in August-September 1998. It was decided that the IO should proceed even if the Petitioner chose not to participate thereafter. This decision was communicated to the Petitioner by a letter dated 9/10 September 1998.

12. The IO proceeded to hold the enquiry in the absence of the Petitioner and held him guilty of all the charges. The IO's report dated 26 October 1998 was considered by the DC in its meeting on 2 November 1998. A copy of the report was sent to the Petitioner on 3 November 1998 asking him to make his submissions thereon within fifteen days. Thereafter, at the meeting of the DC held on 23 November 1998 the inquiry report was accepted and a tentative decision was taken to remove the Petitioner from service "which shall not ordinarily be disqualification for his re-employment in any other private recognized school." On this basis, an approval was sought from the DoE by the School on 27 November 1998. On 22nd February 1999 the DoE granted approval to the penalty of removal from service being given to the Petitioner. However, it was made subject to final outcome of the present writ petition. Thereafter, on 25 February 1999 the Chairman of the DC conveyed to the Petitioner that he had been removed from service. However, this was followed by the communication dated 4th October 1999 from the EO conveying the direction of the DoE to reinstate him. When the School then wrote to the EO on 8 October 1999 stating that such withdrawal of approval was without the authority of law, the DoE by its letter dated 17th January 2000 reiterated the direction contained in the letter dated 4 October 1999.

13. Mr. Ajay Kumar Tandon, learned Counsel for the Petitioner submitted that the constitution of the DC was vitiated by bias. It was submitted that the internal audit report had found that serious financial irregularities had been committed by the Principal. The Petitioner was made a scapegoat by the Principal as a result thereof. The presence on the DC of the Principal who was the person responsible for the financial irregularities vitiated the entire enquiry proceedings. Likewise the presence in the DC of the Chairman who was inimical to the Petitioner was

also objected to. It was pointed out that the School disobeyed with impunity the direction of the DoE requiring the Petitioner to be reinstated. The charges were vague and stale and reflected the mala fides of the Principal of the School and the Chairman.

14. Countering the above submissions Mr. Vinay Sabharwal, learned Counsel for the Respondent No. 3 submitted that after the judgment of the Division Bench of this Court in *The Managing Committee of Geeta Bal Bharti Senior Secondary School and Another Vs. Director of Education and Others*, it was not necessary for a recognised private unaided school to obtain approval of the DoE either for suspending or removing from service an employee. In any event, such approval was in fact granted by the DoE by the letter dated 22nd February 1999. The subsequent letter dated 4th October 1999 of the EO was entirely without the authority of law and was therefore rightly ignored by the School. He pointed out that interestingly the earlier approval granted on 22nd February 1999 was not expressly withdrawn by the DoE in its letter dated 4th October 1999. He further states that the Petitioner's applications filed in the present writ petition seeking implementation of the order dated 4 October 1999 of the DoE were dismissed by this Court, one of them with costs of Rs. 1,000. It was submitted that the Principal acting in her official capacity and had no personal mala fides against the Petitioner. Rule 118 required her to be part of the DC. The allegations of bias against the IO and the Chairman were vague and unsubstantiated. Moreover there was in the DC a nominee of the DoE. The Petitioner did not avail of the numerous opportunities of participating in the enquiry and, therefore, could not be permitted to challenge the report of the IO. Mr. Sabharwal relied on the decisions of this Court in *V.K. Sabharwal v. N.P.T.I.* 2006 I AD (Del) 45 and *L.N. Karamakar Vs. The Chairman and Managing Director, Indraprastha Power Generation Co. Ltd. (IPGCL) and Others*,

15. The above submissions have been considered. The report of internal audit was initially communicated to the Principal on 3 April 1998 and comments were sought from her on various aspects of the said report. It appears that the decision to initiate proceedings against the Petitioner was taken thereafter on 30 April 1998. A comparison of the letter addressed to the Principal by the MC on the irregularities pointed out in the internal audit report with the charge sheet issued to the Petitioner shows that the latter was concerned with only some of the issues mentioned in the internal audit report. Also, the report of internal audit covered the period from 1992-93 to 1995-96. It is, therefore, evident that the internal audit report formed the basis of the enquiry against the Petitioner and the articles of charge were not drawn up mala fide to somehow shift the blame on to the Petitioner. The ground of staleness is also without merit since the audit report covered the period during which the events for which the Petitioner was proceeded against occurred.

16. The Petitioner's allegations of bias against the Principal, the EO and the Chairman remain unsubstantiated. The Petitioner could have participated in the

enquiry proceedings before the IO and placed whatever materials that he may have had to substantiate such allegations. The Respondent has placed on record documents to show that the Petitioner did receive notice of every hearing. On this aspect the facts of the present case are distinguishable from those in *Tilak Chand Magatram Obhan v. Kamala Prasad Shukla* 1995 (5) SLR 809. This Court does not find any force in the submission of learned Counsel for the Petitioner that the IO or the DC were biased against the Petitioner. This Court is also satisfied that there was no violation of principles of natural justice as far as the conduct of the enquiry proceedings was concerned. The report of the IO reveals a detailed recording and analysis of the evidence tendered in support of each article of charge. There is no scope for interference with the findings recorded in the inquiry report.

17. The DoE on 22nd February 1999 initially granted approval to the removal of the nd th Petitioner from service. The subsequent letter dated 4th October 1999 of the EO appears to have been issued on a representation made by the Petitioner at a public hearing conducted by the DoE. There is no provision in the DSEA or the DSER which permits the DoE to unilaterally "reverse" its decision to grant approval. The letter dated 4th October 1999, reiterated on 17th January 2000, issued by the DoE requiring the School to reinstate the Petitioner was without the authority of law. The Petitioner can take no advantage of such orders.

18. For all the aforementioned reasons, this Court finds no merit in this writ petition and it is dismissed as such. The interim order is vacated. The applications are disposed of. In the facts and circumstances, there shall be no order as to costs.