

(2007) 02 DEL CK 0022

In the Delhi High Court

Case No : Writ Petition (C) No. 2404 of 1992

Krishan Kumar

APPELLANT

Vs

Management of Delhi Public School

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 32
Delhi School Education Act, 1973 — Section 8, 8(2), 8(3), 8(4)
Delhi School Education Rules, 1973 — Rule 115(1)(2)(3), 120
Penal Code, 1860 (IPC) — Section 279, 304

Citation : (2007) 138 DLT 87 : (2007) 95 DRJ 182

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : A.K. Verma, for the Appellant; Puneet Mittal, for R1, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—In this writ petition, the petitioner has assailed the order dated 25.9.1990, issued by respondent No. 1, to the petitioner, stopping the monthly salary of the petitioner w.e.f. 10.9.1990, as also the order dated 13.2.1992, issued by respondent No. 3/ Delhi School Tribunal, rejecting the appeal of the petitioner filed u/s 8 of the Delhi School Education Act, 1973 (hereinafter referred to as 'the Act').

2. The brief facts relevant for deciding the present case are that the petitioner was appointed by respondent No. 1 school as a bus Driver w.e.f. 01.12.1983, for a period of six months in terms of the letter of appointment dated 01.12.1983. On completion of services of one year, vide letter dated 19.12.1984, the petitioner was appointed on probation for further period of six months w.e.f. 01.12.1984. It is stated by the petitioner that he continued in service till the year 1990, when he was served with a copy of the circular dated 25.9.1990, issued by the Principal of respondent No. 1, addressed to the Accounts Department of the school, directing the Department to stop the monthly salary of the petitioner

w.e.f. 10.9.1990 onwards, till further orders.

3. The petitioner claims in the writ petition that as he was not served with any notice to show cause or any letter discontinuing his service, the action of respondent No. 1/school was illegal, arbitrary and contrary to the provisions of the Delhi School Education Act, 1973 and Delhi School Education Rules, 1973. Against the aforesaid action of the respondent No. 1/ school, the petitioner made a representation dated 4.6.1991 to the respondent No. 2, Directorate of Education, seeking directions against the respondent No. 1/ school to reinstate him in service w.e.f 10.9.1990 and pay him full back wages with continuity in service. The aforesaid representation of the petitioner was rejected by the respondent No. 2 vide letter dated 15.11.1991, wherein it was indicated that his services were terminated on the ground of concealment from the management of the fact that at the time of his appointment, a criminal case was pending against him and that he had failed to submit a conduct certificate to the Management of the school issued by two responsible persons, which was a prerequisite for regular appointment.

4. Aggrieved by the aforesaid rejection order, the petitioner filed an appeal before the respondent No. 3, on 13.2.1992, being appeal No. 4/1992, which was rejected vide order dated 13.2.1992, holding inter alias that an appeal u/s 8 (3) of the Act could be filed by an employee who is dismissed/ removed or reduced in rank, within a period of three months from the date of the impugned order and as the impugned order in question, passed by the respondent No. 1/ school was passed on 25.9.1990, i.e. more than 15 months ago, the appeal was barred by limitation and thus the same was dismissed.

5. Learned Counsel for the petitioner assailed the aforementioned order and submitted that the respondent No. 1/ school did not obtain any prior approval from the Directorate of Education, before taking the action of removing the petitioner from services, as envisaged u/s 8 (2) and (4) of the Act read with Rules 115 (1) (2) (3) as also Rule 120 of the Delhi School Education Rules. It was submitted that having failed to follow the procedure prescribed under the Act before terminating his services and suspending his salary, the entire action of the respondent No. 1/school was vitiated in law. It is further submitted that the respondent No. 1 has violated the principles of natural justice as no opportunity was granted to the petitioner to defend himself, nor was any enquiry held by respondent No. 1/school before taking the action of termination and thus the termination of his services was without following the due process of law.

6. Per contra, counsel for the respondent submitted that the impugned order dated 13.2.1992, passed by the respondent No. 3/ Tribunal is legal and valid inasmuch as the petitioner failed to prefer any appeal against the order dated 25.9.1990, as envisaged u/s 8 (3) of the Act which provides for a period of three months to file an appeal. It was submitted that the petitioner did not pursue his case diligently and offered no plausible Explanation for condoning the delay in filing the appeal. It was submitted that even against the order dated 25.9.1990

passed by the respondent No. 1/school, the first representation was made by the petitioner to respondent No. 2/ Directorate of Education only on 4.6.1991, i.e. after a lapse of 9 months and that furthermore, the appeal that the petitioner preferred u/s 8 (3) of the Act was also filed on 13.2.1992, after about 3 months from the date on which the Directorate of Education turned down the representation of the petitioner, vide order dated 15.11.1991.

7. On merits, it was submitted by counsel for the respondent that the petitioner has not approached this Court with clean hands and has concealed material information and thus disentitled himself from claiming any relief in equity for the reason that the petitioner failed to reveal to this Court as also the tribunal, the fact that there was a criminal case pending against the petitioner and a complaint was lodged against him, vide FIR No. 102/1983, in respect of an offence committed by the petitioner on 13.3.1983, when he was employed with the DTC and was driving a bus in a rash and negligent manner, which resulted in the death of a person. Counsel for the respondent submitted that this fact was intentionally withheld by the petitioner from the respondent No. 1/school at the time when he was given temporary appointment by the school in December" 1983. It is further submitted that the aforesaid criminal case ultimately resulted in the conviction of the petitioner. He was held guilty under Sections 279/304A IPC and was convicted by the order dated 28.2.1991. The respondent stated that even at the time of filing of the rejoinder in present proceedings, the petitioner failed to make any reference to the aforesaid conviction, much less to file a copy of the order of conviction, despite the fact that the respondent No. 1/ school had enclosed a copy of the aforesaid order dated 28.2.1991 along with its counter affidavit.

8. Counsel for the respondent also submitted that in view of the aforesaid conduct of the petitioner, he is not entitled to any relief from this Court as the petitioner played a fraud on the respondent No. 1/school at the time of his employment and it is settled law that when fraud has been played, all consequences flowing there from stand revoked. In support of his contention, counsel for the respondent placed reliance on a judgment of the Apex Court entitled Bank of India and Another Vs. Avinash D. Mandivikar and Others, .

9. Counsel for the respondent has also produced before Court the original file maintained by the respondent No. 1/school pertaining to the petitioner containing various reminders issued by the respondent No. 1/school to the petitioner from time to time calling upon him to furnish his conduct certificate as also full details of his previous service and of the pending case, so as to enable the school to take further action. It was submitted that despite the said reminders, the petitioner remained evasive and did not submit any conduct certificate. Counsel for the respondent also drew my attention to the letter dated 17.11.1986, issued by the petitioner in reply to a reminder sent by the respondent No. 1/school, wherein the petitioner categorically denied that any case of accident was pending against him and went on to state that the case

pending against him was already over. It is pertinent to note here that in fact the judgment in respect of FIR No. 102/1983 was delivered only in the year 1991 and that the aforesaid case was pending at the time when the petitioner issued the aforesaid denial.

10. Counsel for the respondent also placed reliance on a judgment rendered by the Apex Court in M.C. Mehta's case reported as M.C. Mehta v. UOI and Anr. 1997 (SCC) 770, which was a PIL concerned with the management and control of traffic in the National Capital Territory Region and also the NCT, Delhi and in particular, dealt with matters pertaining to public safety by motor vehicles and other public transport. In the said judgment, one of the directions passed by the Apex Court, by invoking Articles 32 and 142 of the Constitution of India was as below:

1(A)(f) Every holder of a permit issued by any of the Road Transport Authorities in the NCR and NCT, Delhi will within ten days from today, file with its RTA a list of drivers who are engaged by him together with suitable photographs and other particulars to establish the identity of such persons. Every vehicle shall carry a suitable photograph of the authorised driver, duly certified by the RTA. Any vehicle being driven by a person other than the authorised driver shall be treated as being used in contravention of the permit and the consequences would accordingly follow.

No bus belonging to or hired by an educational institution shall be driven by a driver who has

- less than ten years of experience;
- been challaned more than twice for a minor traffic offence;
- been charged for any offence relating to rash and negligent driving.

All such drivers would be dressed in a distinctive uniform, and all such buses shall carry a suitable inscription to indicate that they are in the duty of an educational institution.

(C) We direct that this order will be carried out notwithstanding any other order or directions by any authority, court or tribunal, and that no authority shall interfere with the functioning of the police and transport department insofar as implementation and execution of these directions is concerned.

11. It was, Therefore, stated by counsel for the respondent that even otherwise, the petitioner cannot be permitted to rejoin the services of the respondent No. 1/school as he had admittedly been charged and convicted for an offence relating to rash and negligent driving. The school being an educational institution, the respondent could not permit the petitioner to drive school vehicles and thus put into jeopardy, the life and limb of its students.

12. I have heard learned Counsels for the parties and have also perused the court record as also original records produced by the respondent No. 1/school.

Having gone through the said records as well as the judgments cited by the counsels for the parties, I am of the opinion that the impugned order dated 13.12.1992, passed by respondent No. 3 as also the circular dated 25.9.1990, issued by respondent No. 1/ school is not liable to be quashed. The petitioner has failed to reveal very material information with respect to the factum of pendency of a criminal case against him, not only to the respondent No. 3 at the time of filing an appeal, but even at the time of filing the present petition. There is not a whisper in the writ petition with regard to the pendency of the said criminal case or the fact that the petitioner had been repeatedly called upon by the respondent No. 1/ school to give the particulars of the said pending case to the school. In fact, as noted above, even at the time of filing the rejoinder, the petitioner deftly skirted the issue. On perusal of the records produced by the school, it transpires that the petitioner was issued a letter dated 22.10.1990 by the Vice Principal of the respondent No. 1/ school, calling upon him to intimate the details of the criminal prosecution pending against him in Court, as also the details of his service with his previous employer, namely, the DTC. The said letter bears the signatures of the petitioner, duly acknowledging receipt thereof. Instead, the petitioner falsely replied to the school on 17.11.1986 that no case of criminal prosecution was pending against him and that the said case was already over. Thereafter, another letter dated 03.1.1991, was issued by the respondent No. 1/ school to the petitioner, whereby he was again informed that as he had intentionally concealed the fact that there was a criminal case pending against him in respect of an accident and he had fraudulently got himself appointed in the school, the school was unable to take him back in service.

13. The record further reveals that when the petitioner made a representation to respondent No. 2, the said department called upon the respondent school to forward the details with regard to the termination of the petitioner's services vide letter dated 20.7.1991, which was duly replied to by the school under cover of letter dated 24.7.1991, enclosing therewith reply dated 2.5.1991, issued by the school in response to a legal notice dated 12.4.1991, issued on behalf of the petitioner to the school.

14. It is settled law that fraud vitiates every solemn act. The consequences of playing a fraud have been considered and reiterated by the Supreme Court in a number of judgments including the following:

- (i) Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others, .
- (ii) Roshan Deen Vs. Preeti Lal, .
- (iii) Ram Chandra Singh Vs. Savitri Devi and Others, .
- (iv) Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others, .
- (v) Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, .
- (vi) Bank of India and Another Vs. Avinash D. Mandivikar and Others, .

(vii) State of A.P. v. T. Suryachandra Rao (2005) 5 Scale 621.

15. It has been stated in the case of Ram Chandra Singh (supra) as below:

Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*.

A similar plea was examined by the Supreme Court in the case of Bank of India and Anr. v. Avinash D. Mandivikar and Ors. (supra) where an appointment was obtained by the respondent/ employee by producing a false caste certificate and his services were terminated. While upholding the order of termination of the services of the petitioner, the Supreme Court placed reliance on a judgment rendered earlier in the case of R. Vishwanatha Pillai Vs. State of Kerala and Others, wherein it was held as below:

The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favor. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are

of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud.

16. The conduct of the petitioner in making false averments to the respondent/school at the time of his initial appointment in December 1983, and even thereafter when specifically confronted and called upon to explain and state as to whether any criminal case was pending against him in the Court of law, was clearly fraudulent and malafide. The misrepresentation made by the petitioner was intentional and made with the purpose of misleading the respondent No. 1/school and saving his job. In the aforementioned facts and circumstances, there is force in the submission made by the counsel for the respondent No. 1/school that the respondent No. 1/ school cannot be faulted in discontinuing the services of the petitioner.

17. The respondent No. 1/ school could not have endangered the safety of young students, by permitting the petitioner to drive the school bus even after becoming aware of the fact that a criminal case of rash and negligent driving was pending against him. It was with the purpose of ensuring that stringent and effective measures are put into place for maintaining public safety and dealing with the danger posed to the public by the motor vehicles etc. that detailed orders were passed by the Supreme Court in M.C.Mehta's case, issuing various directions to the Police and other authorities. As per one such direction pertaining to educational institutions, contained in para 1(A) (f) of the judgment, the petitioner having admittedly been charged and convicted for the offence of rash and negligent driving, forfeited his right for appointment in any educational institution like the respondent No. 1/school.

18. The plea of the petitioner that the respondent school failed to take any prior approval of the Directorate of Education before removing him from service as envisaged under the Act, also holds no water in the light of petitioner's own conduct and gross misrepresentation on his part in the present case. In any case, this objection also does not survive in view of the rejection letter dated 15.11.1991, issued by respondent No. 2, Directorate of Education, while disposing of representation of the petitioner dated 4.6.1991. The plea of the petitioner that the circular dated 25.9.1990 was issued to him by school authorities, without any notice to show cause and without any justification is also baseless and belied from a perusal of the records produced by the school, which reflect that the petitioner duly received various letters from the respondent No. 1/ school, including letter dated 22.10.1990 calling upon him to furnish details of the criminal case pending against him and finally, he was issued a letter dated 3.1.1001, expressing the school's inability to take the petitioner back in service in view of his intentionally withholding the fact of the pendency of the aforesaid case against him at the time of his initial appointment, right up to 1991. The fact that the petitioner chose to sleep over his rights, if any, for a period of nine months from the date of the order passed by the respondent No. 1/school, before he approached the respondent No. 2, and for a period of almost 1 1/2

years before preferring an appeal, without offering any plausible Explanation, disqualifies him from seeking any relief in the present petition.

19. In the aforesaid facts and circumstances of the case, I am of the opinion that this is not a fit case where the Court should exercise its powers of judicial review under Article 226 of the Constitution of India, for the reason that equity cannot be invoked in favor of the petitioner who sought his appointment by playing fraud on the respondent No. 1/school in the first instance and perpetrated the fraud by making repeated misrepresentations. The petitioner having entered in the service by making false representations, does not deserve any sympathy or indulgence of this Court. The writ petition is dismissed as being devoid of merits with costs quantified at Rs. 5,000/-.