

(2018) 04 DEL CK 0213
In the Delhi High Court
Case No : W.P.(C) 3819 of 2018

LAXMI PUBLIC SCHOOL AND ANR

APPELLANT

Vs

NUPUR MAHAJAN AND ANR

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Delhi School Education Act, 1973 — Section 117

Delhi School Education Act and Rules, 1973 — Rule 118, 120, 117

Citation : (2018) 04 DEL CK 0213

Hon'ble Judges : SUNIL GAUR

Bench : Single Bench

Advocate : Pramod Gupta, Atul Jain, Naushad Ahmed Khan,

Final Decision : Disposed Of

Judgement

SUNIL GAUR ,J.

1.Vide order of 31st March, 2016 (Annexure P-6), first respondent has been relieved of her designation of Vice Principal w.e.f. 31st March, 2016,

with clarification that the aforesaid relieving will not have any financial implication and first respondent shall continue to work as PGT (English) in

petitioner-School. However, the aforesaid order was revised by way of Office Order of 1st April, 2016 (Annexure P-7) by petitionerSchool.Â

Aforesaid Office Order of 1st April, 2016 states that first respondent has been relieved from the post of Vice Principal w.e.f. 31st March, 2016 upon

abolition of said post and she has been promoted and appointed as PGT (English) and there shall be no reduction in the present emoluments drawn by

her.Â

2.Aforesaid orders of 31st March, 2016 and 1st April, 2016 were challenged by first respondent before the Delhi School Tribunal (hereinafter referred

to as "the Tribunal"). Vide impugned order of 28th November, 2017, aforesaid orders of 31st March, 2016 and 1st April, 2016 have been set aside

being in contravention of provisions of the Delhi School Education Act and Rules, 1973 (hereinafter referred to as "the DSEAR, 1973"). While

taking note of the strained relations between the Chairman of petitioner-School and first respondent, the Tribunal has opined that the orders of 31st

March, 2016 and 1st April, 2016 have been maliciously passed without following the provisions of the DSEAR, 1973. It is observed in impugned order

that if first respondent was appointed as Vice Principal without following the norms or if she was not having the requisite qualification, then why first

respondent was appointed on the post of Vice Principal.Â Petitioner-School before the Tribunal had relied upon the consent letter of first respondent

and by way of an application had sought an interrogatory in respect of the consent letter of 31st March, 2016, which stands declined by the Tribunal

vide separate order of 28th November, 2017.Â

3.The facts are already noted in the opening paragraphs of main order of 28th November, 2017 and so, need no reproduction. The precise challenge to

main order by learned counsel for petitioners is on the ground that first respondent was not duly appointed as Vice Principal of petitioner-School

because no meeting of Departmental Promotion Committee was held nor was seniority list or ACRs of first respondent considered and so, holding of

an inquiry by resort to Rules 118 and 120 of the DSEAR, 1973 is not required. To submit so, reliance is placed upon decision of Co-ordinate Bench of

this Court in W.P. (C) 3264/2012 titled Managing Committee & Anr. v. Govt. of NCT of Delhi and Ors., rendered on 19th July, 2013 and decision of

Supreme Court in Shesh Mani Shukla v. District Inspector of Schools, Deoria and Others, (2009) 15 SCC 436.Â

4.On the contrary, learned counsel for first respondent supports the impugned order and submits that first respondent was duly promoted on the post

of Vice Principal and the relieving order amounts to demotion, which is major penalty as per Section 117 of the DSEAR, 1973, and thus, the procedure

for imposing major penalty as provided under Rule 120 of the DSEAR, 1973 has to be mandatorily followed and since it has not been done, therefore,

impugned order cannot be faulted with.Â

5.Upon hearing and on perusal of impugned orders, material on record and the

decisions cited, I find that the Tribunal has summarily concluded that impugned orders have been maliciously passed. There is no basis to reach to such a conclusion. The crucial aspect of first respondent not having requisite qualification or of the procedure being not followed while appointing her on the post of Vice Principal, has been arbitrarily brushed aside by putting the blame on petitioner. That is to say, impugned order questions petitioner as to why first respondent was appointed as Vice Principal without following the norms. Such an approach smacks of arbitrariness, which renders impugned order illegal. However, reliance placed upon consent letter of 31st March, 2016 giving no objection for being relieved from the post of Vice Principal in petitioner-School, is of no consequence because the relieving order of 31st March, 2016 (Annexure P-5) bears a note given by the Manager of petitioner-School to the effect that first respondent has refused to accept the relieving order and therefore, it has been sent by speed post. Had first respondent given no objection, then there is no reason why petitioner would have refused to accept the relieving order.Â Â

6. Pertinently, respondent-Directorate of Education in Reply (Annexure P-11) before the Tribunal has asserted as under: -

â??Abruptly abolishing a post of Vice Principal in the running senior secondary school/Respondent No. 1 by the Management/Respondent No. 2

transpires no confidence and cannot be seen as justification for the reduction of the rank of the Appellant.â??

7. Be that as it may. There is no bar to revise order of 31st March, 2016 vide which respondent was relieved from the post of Vice Principal. The said

order stands superseded by order of 1st April, 2016, which clearly states that upon abolition of post of Vice Principal, first respondent has been

relieved of her duties. So, it cannot be said that instant case is of demotion and thus, resort to Rule 117 or 120 of the DSEAR, 1973 is not required to

be made. Learned Tribunal has erred in holding so. Reliance placed upon decisions in Shesh Mani Shukla (supra) and Managing Committee (supra) is

of no assistance as in the said decisions, the question of abolition of post did not arise, whereas in the instant case, it does arise. Since the post of Vice

Principal in petitioner School has been abolished, therefore, the relieving of first respondent from the said post cannot be faulted with.Â

8. In view of aforesaid, impugned order of 28th November, 2017 is hereby

quashed and petitioner's order of 1st April, 2016 is hereby restored.

Before parting with this judgment, it is made clear that though it is the prerogative of petitioner-School to abolish any post, but in view of peculiar

background of this case, it needs to be clarified as to under what circumstances, such an unusual course was adopted. It needs to be spelt out as to

what were the administrative exigencies which necessitated adoption of such a drastic measure. In the event of revival of post of Vice Principal in

petitioner-School, the case of first respondent be promptly considered alongwith other aspirants in accordance with the applicable rules and the norms.

9.The facts of instant case persuade this Court to permit first respondent to have recourse to law if she is not satisfied with clarification so provided by

petitioner. To facilitate it, above clarification be provided by petitioner to first respondent within four weeks from today. Regarding the grievance of

first respondent about arrears of salary, etc., it is deemed appropriate to permit first respondent to make a Representation in this regard to petitioner-

School within a week from today and if it is so done, then petitioner-School shall ensure that arrears of salary, etc., if any, are promptly cleared. In

case it is found that there are no arrears, then a speaking order be passed in this regard, so that first respondent may avail of the remedies as available

in law, if need be.Â

10.With aforesaid directions, this petition and the application are disposed of.Â Â

Copy of this order be given dasti to learned counsel for the parties. Â