

**(2013) 09 DEL CK 0044**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 2518 of 2012 and CM 5392 of 2012

Maharaja Agarsain Educational Society and Another

APPELLANT

Vs

Mithlesh Gupta and Another

RESPONDENT

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**Date of Decision :** 30-09-2013

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2013) 09 DEL CK 0044

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

**Bench :** Single Bench

**Advocate :** O.P. Saxena and Ms. Sonia Chopra, for the Appellant; Kamlesh Kumar, Advocate for Respondent No. 1 and Mr. Omar Siddiqui, Advocate for Ms. Farida Satarawala, Advocate for GNCTD, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Valmiki J Mehta, J.—This writ petition impugns the judgment of the Delhi School Tribunal dated 16.3.2012. By the impugned judgment, Tribunal has held that respondent No. 1 herein was illegally removed from her services with the petitioner-school. Two issues were framed by the Tribunal pertaining to the jurisdiction of the Tribunal and also with respect to whether the resignation of the respondent No. 1 was valid in terms of Rule 114-A of the Delhi School Education Rules, 1973. Tribunal has held that it had jurisdiction to decide the issue of alleged resignation or removal from services as contended by the employee/teacher/respondent No. 1. Tribunal qua the second issue held that respondent No. 1's resignation is not legal because there was no resolution of the Managing Committee of the petitioner-school accepting the resignation within 30 days as per Rule 114-A of the Delhi School Education Rules, 1973. Before me, learned counsel for the petitioner has argued aforesaid two points which were urged before the Tribunal as also an additional point that there is a resolution of the Managing Committee accepting the resignation given by the respondent No. 1. So far as the aspect of Tribunal having jurisdiction to examine as to whether

there is resignation or else an illegal removal from the school is concerned, I have recently delivered a judgment in the case of *Daya Nand Adarsh Vidyalaya Vs. Deepa Chibber & Anr.* W.P.(C) 1009/2012 decided on 19.9.2013 in which it is held that issue of resignation as contrarily of illegal removal of the employee/teacher can be decided by the Delhi School Tribunal. Paras 3 to 6 of the judgment in the case of *Daya Nand Adarsh Vidyalaya (supra)* are relevant and the same read as under:

3. So far as the first ground that an appeal is not maintainable before the Delhi School Tribunal is concerned, I may note that the Supreme Court in the case of *Shashi Gaur Vs. NCT of Delhi and Others*, has held that any and every removal of a teacher/employee of a school has to be challenged by means of appeal which is to be filed before the Delhi School Tribunal. The relevant paras of this judgment are paras 5 to 8, which read as under:-

5. Mr. Das, the learned senior Counsel appearing for the appellant, contends that Section 8(3) provides for an appeal against an order of dismissal, removal or reduction in rank and not against any order of termination as is apparent from the provisions contained in Sub-section (2) of Section 8, which provides for obtaining prior approval of the Director before dismissal, removal or reduction in rank or otherwise terminating the services of an employee of a recognised private school. The very fact of absence of the expression "otherwise termination" available in Subsection (2) from the provisions of Sub-section (3) clearly demonstrates that against an order of termination which does not come within the expression "dismissal, removal or reduction in rank", the Legislature has not provided for an appeal to the Tribunal constituted u/s 11 of the Act.

6. In support of this contention, the Counsel also placed reliance on Rule 117 Explanation, which indicates that replacement of a teacher who was not qualified on the date of his appointment by a qualified one, will not amount to a penalty within the meaning of the said Rule [see Explanation (c)]. The learned Counsel also placed before us the observations made by this Court in the case of *The Principal and Others Vs. The Presiding Officer and Others*, wherein this Court had observed that for applicability of the provisions of Section 11 two conditions must co-exist, namely, (i) that the employee should be an employee of a recognised private school and (ii) that he should be visited with either of the three major penalties, i.e., dismissal, removal or reduction in rank.

7. This judgment and the interpretation put to the provisions of Sub-sections (2) and (3) of Section 8 undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal. removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted u/s 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Governmental authorities, having been given certain

control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that availability of an alternative remedy ousts the jurisdiction of the Court under Article 226 of the Constitution.

(emphasis added)

4. In view of the aforesaid judgment of the Supreme Court in the case of Shashi Gaur (supra), in my opinion, there can be no doubt that once a teacher/employee of a school takes up a case that she has been illegally removed, this aspect very much falls within the jurisdiction of the Tribunal. The mere fact that in determining this issue the Tribunal has also to consider that whether or not the teacher or employee has resigned or not cannot mean that Tribunal will have no jurisdiction because it is only on arriving at a conclusion that there is no valid resignation, would thereafter the Tribunal arrive at a decision of illegal removal of a teacher/employee of a school. Surely, a teacher/employee who is illegally removed, will naturally approach the Tribunal as per the ratio of the Supreme Court in the case of Shashi Gaur (supra), and surely the defence which is laid out by the school to justify the action of the school would not mean that the issue will not remain that of removal of the teacher/employee from the school. In fact, it is reiterated that it is because of the assertion of the respondent no. 1 that she has been illegally removed from the school, and which case has been accepted by the Tribunal, that the impugned judgment has been passed in favour of respondent no. 1 and against the petitioner.

5. So far as the judgment in the case of Sh. Radhey Shyam Sharma (supra) relied upon by the petitioner is concerned, I fail to understand at all as to how this judgment would apply in this case because in the said case there is no issue which is decided that an appeal against a termination order does not lie to the DST except there is narration of facts only with regard to earlier proceeding only as a factual history of the case. It has to be noted that the learned Single Judge has only noted the factum of appeal not being maintainable before the Delhi School Tribunal as narration of facts and there is no finding of any validity of the

plea that where an employee has been removed by forcibly accepting the resignation whether that issue cannot be decided by the Tribunal. The order dated 13.5.2011 accepting the narration of facts thereafter holds that in a writ petition disputed questions of facts cannot be decided of whether the resignation was a forced resignation or not. Therefore, the judgment in the case of Radhey Shyam (supra) relied upon by the petitioner does not help the petitioner.

Also in the case of Radhey Shyam Sharma (supra), no reference is made to the binding judgment of the Supreme Court in the case of Shashi Gaur (supra) and therefore, I am bound to follow the ratio of the Supreme Court in the case of Shashi Gaur (supra) and not any observations which were made in the order dated 13.5.2011 passed in Radhey Shyam Sharma (supra) case.

6. The Full Bench judgment of this Court in the case of Presiding Officer (supra) also in my opinion, does not help the petitioner because the paras which are relied upon in the judgment on behalf of the petitioner, being paras 23 and 24 only state that the language of Section 8(3) has to be interpreted as per its normal meaning, but surely that normal meaning is the meaning which has to be ascribed by the judgment in the case of Shashi Gaur (supra). The Full Bench judgment of this Court in the case of Presiding Officer (supra) has referred to the ratio in the case of Shashi Gaur (supra). The observations which were made in the case of Shashi Gaur (supra) in paras 23 & 24 were with respect to whether an order of suspension can or cannot be challenged before the Delhi School Tribunal, although, the word "suspension" is not found in Section 8(3) of the Act, and therefore, the observations of the Full Bench in paras 23 and 24 were in aid to the conclusion that the order of suspension cannot be appealed before the Delhi School Tribunal u/s 8(3) of the Act.

I therefore reject the argument that the appeal filed by respondent no. 1 before the Delhi School Tribunal was not maintainable.

2 In view of the above, I hold that the appeal before the Tribunal was maintainable when the employee claims his illegal removal from services and the school contends that there is valid resignation.

3. The next issue urged by the petitioner-school is that Tribunal could not have passed the impugned judgment without giving a finding that the letter of resignation was false/fake/fabricated/forged as was urged on behalf of the respondent No. 1.

To this aspect I may note that Tribunal can always decide an issue before it on legal basis taking the issue on demurrer i.e. it is permissible for the Tribunal to decide that even if the letter of resignation was not forged or fabricated or fake, yet, since the legal position required as per Rule 114-A was not complied with, hence the resignation becomes illegal. The Tribunal has observed the following for holding illegality of resignation:

13. The letter of resignation relied upon by the Respondent School is reproduced

as below:

The President,

MAP School,

Narela Delhi-110040.

Sub: Through Proper Channel

Sir,

With due respect I have to say that due to some unavoidable family circumstances, it is not possible for me to continue teaching your school.

Hence I hereby tender my resignation with my own will, kindly accept my resignation with immediate effect.

Thanking you,

Sd/-

Yours faithfully,

V& PO Barawala

Delhi-110029

Dated:

Resgn. Received on 13.12.2008

Forwarded for recommendation Pls.

Sd/(Vice Principal)

13.12.2008

Secretary

Resignation accepted with immediate effect.

Sd/(Secretary)

21.12.2008

Principal Pl. May kindly inform The employee accordingly.

Sd/(Secretary)

21.12.2008.

14. Clearly the resignation of the Appellant was never placed before the Managing Committee. As referred to above, the Managing Committee is required to have two members nominated by the Directorate of Education. There was no meeting of the Managing Committee. The resignation as reproduced above was accepted by the Secretary as alleged on 21.12.2008. Vide another endorsement

of the same date the Secretary asked the Principal to inform the Appellant of the said acceptance of resignation. Acceptance of the resignation of the Appellant is, therefore, bad in the eyes of law. In the case of Urmil Sharma vs. Directorate of Education, 1996 (III) AD (Delhi) 48; the Hon''ble High Court held that a resignation would become effective only on its acceptance by the competent authority.

4 Therefore, in my opinion, the argument urged on behalf of the petitioner is not correct that Tribunal could not have decided the resignation issue without enquiring first into the allegations of forgery/fabrication etc.

5. Finally, it is argued before this Court that petitioner-school's Managing Committee had accepted the resignation of the respondent No. 1, and therefore, requirement of Rule 114-A stands complied with. Learned counsel for the petitioner sought to draw attention of this Court to certain averments made in the writ petition, however, the arguments urged carries no substance for two reasons. Firstly, the writ petition is conspicuously silent as to the date of the resolution passed by the Managing Committee accepting the alleged resignation of the respondent No. 1. Secondly, since this issue was specifically decided by the Tribunal, and if the petitioner-school was to contend that Managing Committee had passed a resolution, surely this resolution should have been filed, but copy of this resolution has not seen the light of the day till date. I cannot agree that petitioner-school should be granted time to place the resolution on record, and which aspect I would have considered if at least there was a date given in the writ petition of the Managing Committee accepting the resignation.

6. No other issue is urged or pressed before this Court. In view of the above, there is no merit in the writ petition, and the same is therefore dismissed, leaving the parties to bear their own costs.