

(2013) 07 DEL CK 0295

In the Delhi High Court

Case No : Writ Petition (C) No. 1632 of 2012 and CM No. 3575 of 2012

Malvinder Kaur

APPELLANT

Vs

School Management of GHPS Hemkunt Colony and Others

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 30(1)
Delhi School Education Act, 1973 — Section 12, 8, 8(2), 8(4)

Citation : (2013) 07 DEL CK 0295

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Raj Kumar Sherawat, for the Appellant; Manpreet Kaur and Mr. Mansimran Singh for R-1 and R-2, Mr. Rajeev Sharma, for R-3, for the Respondent

Final Decision : Disposed Off

Judgement

Valmiki J Mehta, J.—Petitioner of this writ petition was employed as a teacher in the Guru Harkrishan Public School, and which school is represented by respondent nos. 1 and 2. Petitioner seeks two reliefs. First relief is for quashing of the charge sheet dated 4.1.2012 and second relief is for quashing of the suspension order dated 12.10.2011. Let me take the issue of the challenge to the suspension order first. Suspension order is challenged on three grounds before me. First is that the suspension order records a finding of guilt against the petitioner and therefore it is illegal. Second ground is that the suspension order, in law, cannot continue beyond six months. The third ground is that no prior or post facto approval has been taken of the Director of Education to the suspension order and therefore, the suspension order must fail.

2. So far as the first aspect is concerned, a reference to the suspension order dated 12.10.2011 shows that essentially the charge against the petitioner was that petitioner illegally got appointed as a teacher although, the petitioner did not meet the requisite qualifications. Petitioner is stated to have passed a course of Shiksha Visharad with English and History as teaching subjects from Hindi

Sahitya Sammelan-Allahabad in 2003, which as per the school is not recognized by N.C.T.E. or UGC. Also the petitioner, as per the education record submitted to the school, was having only 41.3% marks in B.A. (Third year) examination whereas a bachelor degree for appointment as a teacher in the school requires 45% marks. Of course, these are aspects which would be finally determined in the enquiry proceedings and I am not stating one way or the other with respect to the merits of the matter but these aspects are mentioned in the charge-sheet. I therefore, do not find that there is any pre-judging of the matter by the school by issuing of the suspension order because in fact a suspension order must contain reasons for suspension. This is so stated by the Supreme Court in the judgment of State of Orissa Vs. Bimal Kumar Mohanty, which observed as under:-

It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

(underlining added)

3. A reference to the aforesaid ratio of the judgment of the Supreme Court shows that object of suspension order is also to pass a message that a guilty employee cannot continue in service in spite of prima facie serious charges against him/her.

4. I may also mention that it is settled law that ordinarily orders of suspension are not interfered with by Courts except in rare cases. In the present case, though the petitioner is only to teach primary classes, however, one cannot overlook various guidelines which have been issued by the Central Government and other statutory authorities under the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009) requiring minimum qualifications of teachers. Adequate qualification of a teacher is thus an important ground for valid appointment. I therefore reject the argument that the suspension order has in any manner pre-judged the issue in the enquiry proceedings and therefore, the same is likely to fail.

5. The second argument urged on behalf of the petitioner for challenging the suspension order is that suspension order cannot continue beyond six months. This ground urged is very surprising because suspension order in this case is dated 12.10.2011 and even before the expiry of six months, the petitioner had rushed to this Court by filing this petition on 20.3.2012. I fail to understand as to how even before expiry of six months it can be contended that the suspension order must fail because it cannot continue beyond six months. In any case, there is no law that suspension order cannot continue beyond six months because Rule 115 of the Delhi School Education Act and Rules, 1973 entitles continuation of a suspension order after six months, of course, by passing of necessary orders of continuation in terms of Rule 115. This argument is therefore rejected.

6. The third aspect which is argued before me is that no prior or post facto approval has been taken of the Director of Education for suspending of an employee, and therefore, the suspension is illegal. Reliance is placed upon the judgment of the Supreme Court in the case of G. Vallikumari Vs. Andhra Education Society and Others, to argue that Supreme Court in G. Vallikumari (supra) has held the provision of Section 8(4) valid and therefore approval is required of the Director of Education. I have had an occasion to consider this aspect in many cases and one such case is decided on 10.04.2013 with lead case W.P. (C) 8412/2011 titled as Jatinder Kaur Saini v. School Management of G.H.P.S., Fateh Nagar & Ors., and in which I have held that since the respondent No. 2-school is an unaided private school, no prior or ex post facto permission for suspension is required by the Director of Education in view of two Division Bench judgments of this Court in the case of Kathuria Public School Vs. Director of Education and Another, and Delhi Public School and Another Vs. Shalu Mahendroo and Others, of the judgment in Jatinder Kaur Saini (supra) are relevant and which read as under:-

4. On the aspect of the challenge to the suspension order dated 7.10.2011, counsel for the petitioner relies upon the provision of Section 8(4) of the Delhi

School Education Act, 1973 and the judgment of the Supreme Court in the case of G. Vallikumari Vs. Andhra Education Society and Others, On the basis of the said provision and the Supreme Court judgment, it is argued that since the respondent No. 1 has neither taken prior or ex post facto approval of suspension, suspension order is not valid. Section 8(4) provides that prior approval is required for suspension.

5. The issue as to whether a private unaided school requires or does not require the approval of the Director of Education for suspending of an employee is no longer res integra and has been decided upon by a Division Bench of this Court in the case of Kathuria Public School Vs. Director of Education and Another, In Kathuria Public School (supra), the Division Bench of this Court has held that for a private unaided school, no prior or ex post facto approval is required for suspension of a teacher/employee of a school. In fact, in another very recent Division Bench judgment this court in Delhi Public School and Another Vs. Shalu Mahendroo and Others, has similarly held that no prior approval of the Director of Education is required before suspending of an employee and nor is an ex post facto approval is necessary.

6. In my opinion, the judgment in the case of G. Vallikumari (supra) relied upon by the petitioner has no application because the issue in that case was not regarding any prior or ex post facto approval required of the Director of Education for suspension of an employee. The issue in that case was whether in unaided minority schools for dismissal or removal etc of an employee there was or was not required any permission of the Director of Education and it was held that with respect to minority unaided institutions, for dismissal of an employee or removal of an employee, no prior permission is required of the Director of Education as Section 8(2) of the Delhi School Education Act, 1973 (which required prior permission for dismissal etc) did not apply to minority unaided schools.

7. Though counsel for the petitioner contends that the issue decided in the case of G. Vallikumari (supra) is much larger of application of Section 12 of the Delhi School Education Act, 1973, however, ultimately, the judgment in the case of G. Vallikumari (supra) basically reiterates the ratio of the Supreme Court in the case of Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, which struck down the constitutional validity of Section 8(2) of the Delhi School Education Act, 1973 so far as the minority unaided educational institutions are concerned. I note that the Division Bench of this Court in the case of Kathuria Public School (supra) has considered the judgment of the Supreme Court in the case of Frank Anthony Public School (supra), however, by reference to the larger Bench judgment of the Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, the Division Bench came to the conclusion that no prior permission or ex post facto permission is required for suspending of an employee of a private unaided school.

The relevant observation of the Division Bench in the case of Kathuria Public

School (supra) in this regard read as under:-

33. In our considered view, the judgment in T.M.A. Pai Foundation's case (supra) clearly and unambiguously sets out the legal position insofar as private unaided non-minority educational institutions are concerned. It must be borne in mind while considering the other prior judgments of the Supreme Court that T.M.A. Pai Foundation's case (supra) is a Constitutional Bench judgment of eleven Judges, which has gone into the general principles which are required to be followed. Thus, even if certain findings in respect of specific statutory provisions have been reached earlier by certain Benches of the Apex Court, it is the findings of T.M.A. Pai Foundation's case (supra), which would hold the fort. It cannot be countenanced that the observations made in T.M.A. Pai Foundation's case (supra) are in the nature of passing reference. The judgment of the Apex Court is fully binding on us. There are specific paragraphs dealing with different nature of institutions and private unaided non-minority educational institutions have been specifically dealt with. There cannot be any doubt that those paragraphs dealing with the subject matter have to be read as a whole and not by picking and choosing portions of the same. We are, however, in no doubt of the legal principle laid down in T.M.A. Pai Foundation's case (supra). Para 61 of the said judgment clearly states that in respect of such schools "maximum autonomy" has to be granted including in respect of rights of appointment and disciplinary powers. If the observations had rested at that, it may have been possible to contend that the provisions requiring prior or ex post facto permission for certain nature of disciplinary proceedings do not infringe "maximum autonomy" since the concept of "maximum autonomy" has not been defined and it is at least not "total autonomy". This is, however, not so. The grievance of the management has been considered in para 63 of the judgment dealing with the requirement in certain cases of prior permission by formulating dealing with the requirements in certain cases of prior permission by formulating such rules. The conclusions have been set forth in para 64 and 65. It has been emphasised that in case of a private institution, the relationship between the management and employees is contractual in nature. The action has to take place in pursuance to a fair disciplinary inquiry. The question, however, remains as to who would judge as to whether the inquiry is fair or not. For this purpose, it has been observed that the State Government shall determine in consultation with the High Court, the judicial Forum, in which the aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service. Thus, to facilitate the redressal of grievances of teachers and employees, a special forum is required to be provided not leaving such a person to the recourse of normal civil proceedings. In the enactment in question, such a Tribunal is already provided though the power is restricted as aforesaid only to dismissal, removal or reduction in rank. However, it is in these cases only that Sub-section (2) of Section 8 provides for prior approval of the Director. This is, of course, apart from the issue of suspension where also such prior approval or ex post facto approval within the stipulated time is required. Thus, the remedy has

been provided through a intervening confirming authority. In fact, the Supreme Court has gone as far as to state that where there are no such Tribunals in existence, the judicial forum shall be provided and till such a specialised Tribunal is set up, the right of filing the appeal would lie before the District Judge or the Additional District Judge as notified by the Government. Thus, the judgment itself ensures the creation of a judicial forum.

34. It has also been observed in T.M.A. Pai Foundation's case (supra) in para 64 that there was no reason why the management of a private unaided non-minority educational institution should seek the consent or approval of any Government authority before taking such action. Not only this, it has been further observed that it will not be necessary for the institution to get prior permission or ex post facto approval of a Government authority while taking disciplinary action against the teacher or any other employee. The matter is no longer open to debate in view of such a categorical pronouncement by the Supreme Court.

35. In our considered view, there can be no manner of doubt that in view of the pronouncement in T.M.A. Pai Foundation's case (supra), any such restriction requiring pre or post approval for disciplinary proceedings would not be permissible. This is the pronouncement of law by the Supreme Court under Article 142 of the Constitution.

38. There can be no doubt in view of the aforesaid that insofar as the unaided schools are concerned, the requirement of compliance of prior approval of the Director under Sub-section (4) of Section 8 insofar as the suspension is concerned, is not permissible. We are conscious of the pronouncements in Frank Anthony Public School Employees' Association's case (supra) dealing with the aspect of Subsection (4) of Section 8. However, the discussion in the said judgment was in the context of the applicability to a minority institution and where such a provision would violate the mandate of Article 30(1) of the Constitution providing for special protection to minority institutions. In view of the pronouncement in T.M.A. Pai Foundation's case (supra) in respect of disciplinary action as a whole, it cannot be said that the said provisions can be made applicable to unaided non-minority schools. It may be added at this stage that the Supreme Court as far back as in Katra Educational Society Vs. State of Uttar Pradesh and Others, had held the classification between privately managed institution and those maintained by the Government as justifiable and non-violative of Article 14 of the Constitution in respect of U.P. Intermediate Education Act. It is, thus, not necessary that what is good and applicable to institutions maintained by the Government should also apply to private unaided institutions.

44. The result of the aforesaid is that the provisions of Sections 8(2) and 8(4) of the said Act, Rules 115(2) and (5) and 120(1)(d)(iii) and (iv) and 120(2) of the said Rules requiring prior and ex post facto approval for disciplinary proceedings would have no application to private unaided schools. As a sequator to that, Sub-

section (5) of Section 8 would also really have no application to such private unaided schools. Needless to say that these directions are in respect only of unaided non-minority institutions since the relevant provisions have been held as inapplicable only to such institutions and that was the question raised before this Hon"ble Court. We draw strength for taking such a view even for the observations of the Supreme Court in Sunil Batra Vs. Delhi Administration and Others etc., where Justice V.R. Krishna Iyer, J. had observed that the interpretation of statutes which preserves and sustains the validity of the provision should be adopted and the Courts with functional flexibility should explore the meaning or meanings to adopt that construction which humanely constitutionalizes the statute in question. Thus, these provisions may have application to other institutions, but in view of the observations of the Supreme Court in T.M.A. Pai Foundation's case (supra) in respect of unaided non-minority institutions, these provisions would have no application to such institutions and such an interpretation based really on a reading down of the statutory provision would be the acceptable mode of interpretation of the statute.

(emphasis added)

8. I may note that the Division Bench judgment in the case of Kathuria Public School (supra) has been overruled on one point by a Full Bench of this Court so far as the requirement of going to the Delhi School Tribunal for any relief qua the suspension of employee is concerned, however that issue does not affect this case because I am entertaining the writ petition and not directing the petitioner to approach the Delhi School Tribunal to challenge his suspension.

9. In view of the above, the writ petition is dismissed so far as the challenge to the suspension order dated 7.10.2011 is concerned holding that there is neither prior nor ex post facto approval required for suspension of an employee of the respondent No. 2-school, which is an unaided private school. So far as the aspect of challenge to the show cause notice is concerned, the writ petition is dismissed as withdrawn with the aforesaid observations. The disciplinary proceedings which will be conducted by the respondent No. 2 against the petitioner will be in accordance with the provision of the Delhi School Education Act and Rules, 1973 including Rules 118 to 120 thereof.

7. The judgment of the a Division Bench of this Court in the case of Delhi Public School (supra) is subsequent to the judgment in the case of G. Vallikumari (supra). Also in the case of G. Vallikumari (supra) before the Supreme Court, there was no issue that for suspension of an employee, prior or post facto approval is or is not required of the Director of Education.

8. In view of the above, challenge of the petitioner to the suspension order is misconceived and is therefore rejected.

9. That takes me to the challenge laid by the petitioner to the chargesheet dated 4.1.2012. It is also argued that in terms of Rule 120, chargesheet can only be issued by a Disciplinary Committee, and in the present case, the chargesheet

shows that the same has been issued only by the Principal and there is no reference to the Disciplinary Committee having issued the chargesheet or the nominee of the Disciplinary Committee having issued the chargesheet. Copy of the counter-affidavit which has been handed over to me in Court filed on behalf of respondent No. 1 also does not deal with the same or make reference to as to whether the chargesheet dated 4.1.2012 was issued by the Disciplinary Committee or by a nominee of the Disciplinary Committee and not by the Principal.

10. In view of the above, prima facie, there is a violation of Rule 120. Accordingly, in the facts of the present case, so far as the reliefs seeking quashing of the chargesheet is concerned, the following directions are issued:-

(i) In case the Disciplinary Committee was in fact formed prior to the issue of the chargesheet, and which Disciplinary Committee deliberated on the issuing of the chargesheet dated 4.1.2012 against the petitioner, then the chargesheet dated 4.1.2012 will stand subject to the condition that the respondent No. 1-school will address a communication giving reference to the specific dates by which Disciplinary Committee was formed, and Disciplinary Committee deliberated for issuance of the chargesheet against the petitioner, and the Disciplinary Committee in fact either directed framing of a chargesheet by itself or by its nominee and which was so accordingly done.

(ii) In case, there is no Disciplinary Committee which was constituted with respect to the chargesheet dated 4.1.2012 against the petitioner, the chargesheet will not stand and will stand quashed in terms of Rule 120, reserving liberty to the respondent No. 1 to proceed for issuing of a fresh chargesheet and conducting of the enquiry against the petitioner in accordance with the applicable provisions of the Delhi School Education Act and Rules, 1973, including Rules 118 to 120.

In view of the above, the writ petition so far as the challenge to the suspension order is concerned is dismissed, however, so far as the issue of challenge to the chargesheet is concerned, it is disposed of with the directions given in para 11 above.