
(2017) 02 DEL CK 0271

In the Delhi High Court

Case No : 3661 of 2007

MAMTA SHARMA

APPELLANT

Vs

DIRECTOR OF EDUCATION, & ORS.

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Delhi School Education Rules, 1973, <a href=13381 — Rule
99>Rule 99, Rule 47, <

Citation : (2017) 02 DEL CK 0271

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : D.K. Rustagi, Medha Arya, Saurabh Chadda

Final Decision : Dismissed

Judgement

1. By this writ petition under Article 226 of the Constitution of India, the petitioner Smt. Mamta Sharma seeks the relief that she be directed to be reabsorbed as per Rule 47 of the Delhi School Education Rules, 1973 either in the respondent no. 3/school or in any other aided school of the respondent no. 2/ Directorate of Education at the post of Assistant Teacher.

2. The facts of the case are that there is a dispute which has earlier arisen as to whether or not the petitioner herein was or was not an employee of the respondent no. 3/school, which is the Hanuman Mandir Middle/Senior Secondary School, or that the petitioner was only an employee of the unrecognized primary sections of the school and which was a separate school by the name of Hanuman Mandir Public School.

3. (i) With respect to the aforesaid dispute, parties reached the Delhi School Tribunal (DST), and the DST passed its judgment dated 30.4.1996 holding that in view of the documents filed by the petitioner herein and the respondent no. 3/ school herein, before the DST, the petitioner herein, and who was the appellant

before the DST, cannot be allowed to suffer a disadvantage of not being taken as a teacher of the respondent no. 3/Hanuman Mandir Middle/Senior Secondary School herein, and that the petitioner, appellant in the appeal before the DST, was held by the DST to be not an employee of the Hanuman Mandir Public School but an employee/teacher of Hanuman Mandir Middle/Senior Secondary School, i.e the respondent no. 3 herein, an aided school. (ii) It may be noted however that the DST which passed the judgment dated 30.4.1996 holding the present petitioner to be an employee of the respondent no.3/school herein, simultaneously made observations that the entitlement of the present petitioner would be to

take her monetary emoluments and pay not from the 95% grants-in-aid given by the respondent no. 2/Director of Education to the respondent no.3/school but only from the 5% funds which are provided by the private management of the respondent no.3/school herein. These observations were made by the DST because admittedly the respondent no.3/school herein i.e Shri Hanuman Mandir Middle/Secondary School was an aided school to which 95% of the funds came from the respondent no. 2/Director of Education as aid with only 5% finances being provided by the managing committee of the school. The relevant observations of the DST, in this regard, read as under:-

"The counsel for appellant further contended that the admission by the Respondent that the appellant was at times given the classes for teaching in the recognized aided school shows that as if she was appointed as a part-time teacher in the recognized aided school, but as per Rule 101 of the Delhi School Education Rules the part time appointment of a teacher has to be on regular basis and this admission itself attracts the provisions of Delhi School Education and entitles the appellant to seek relief thereunder. As regards the plea of the Respondent that in case of appointment of a teacher in a recognized aided school the prior approval of the Director is a condition precedent on account of receiving 95 per cent aid from the Directorate of Education the Counsel for appellant referred to Rule 66(2) of the Rules. Rule 66 of the Delhi School Education Rules, 1973 which provides for adequate number of qualified teaching and other staff as approved by the Director in order to be eligible to receive grant-in-aid. At the same time it also provides that the pay of unqualified teachers shall not be an admissible charge for the assessment of grant-in-aid for the school unless an exemption has been made by the Director (Education) in this behalf. In other words, there is no bar to employ unqualified teachers for the higher schools even if the grant-in-aid has been given for the entire school but the only embargo is that the pay of such a teacher shall not be paid from grant-in-aid." (emphasis added)

4. The judgment of the DST dated 30.4.1996 in favour of the present petitioner was challenged by the respondent no.3/school herein by means of W.P. (C) No. 2567/1996 before this Court. During the pendency of this writ petition, the petitioner and the respondent no.3/school entered into an understanding dated

31.12.1997, and the said understanding/agreement reads as under:-

"SHRI HANUMAN MANDIR MIDDLE SCHOOL

BLOCK-37, SHAKTI NAGAR, DELHI-110007

DATED: 31.12.97

AGREEMENT

An agreement of compromise made the 31st day of December, 1997 between Shri Hanuman Mandir Middle School, Shakti Nagar, Delhi represented by Shri Ramswarup Gupta, Chairman of its Managing Committee (hereinafter referred as the "school") of one part and Shrimati Mamta Sharma (hereinafter called the teacher) of the other part whereby it is agreed as followed:-

1) That the school will withdraw its writ petition no.2567/96 challenging the order of the Educational Tribunal of Delhi dt. 30.4.96 and the teacher will withdraw her writ petition no.3390/97 pending before the High Court of Delhi on the following terms and conditions:-

2) That the school will reinstate the teacher as per order of the Tribunal. Since the English Medium Class/Class/Section which the teacher was teaching had already closed therefore the Teacher will become surplus immediately after her reinstatement.

3) That the school will pay to the teacher salary for 33 months amounting to Rs.34,320.23 at the rate of Rs.1040/- p.m. which was the rate of the last month drawn salary in full payment of her claim of consequential benefits as per Rule 121 (2) of Education Act & Rules 1973.

4) That the school will also pay to the teacher salary of one day only for the period of her employment after reinstatement before becoming surplus.

5) That the school will give preference to the teacher and 5(five) other teachers whose appeals were also allowed by the Tribunal at the time of filing of vacancies in future to reabsorb the teachers in the school. The school will also try its best to get the teachers absorbed in the Government School or in aided school, as specified by the administrator as per Rule 47 and after following recruitment Rule 96 subject to the Approval of the Director.

Witnesses 1. sd/- Ram Swarup Gupta

1. sd/- 2. sd/- Mamta Sharma

315, Lal Jyoti Apartment

Sector-9, Rohini

2. sd/- Delhi-55"

5. In view of the understanding dated 31.12.1997 arrived at between the

petitioner and the respondent no.3/school herein, the writ petition was withdrawn by the respondent no.3/school, in view of the compromise and the settlement entered into between the parties, in terms of the order of the learned Single Judge dated 10.3.1998, and which order reads as under:-

"ORDER

10.03.98 Present : Mr. P. Nandrajog for the petitioner.

CW. 2567/96 & CM 1972/98

It is represented by Mr. Nandrajog, learned counsel for the petitioner, that the petitioner school has settled the matter with the respondent no. 1. Therefore, he has been instructed to withdraw the writ petition in view of the compromise.

The writ petition is dismissed as withdrawn.

sd/-

K. Ramamoorthy, J

March 20, 1998"

6. (i) By this writ petition, the petitioner firstly contends that the respondent no.3/school is bound by para 5 of the settlement dated 31.12.1997 and thereby the respondent no.3/school should not appoint Assistant Teachers in terms of DPC of the respondent no.3/school to be held on 8.11.2002, and that instead the petitioner should be given automatic re-absorption against the post of Assistant Teacher which was also to be filled in by the DPC in its meeting dated 8.11.2002, and which was on account of the past services of the petitioner with the respondent no.3/school and which achieved finality in terms of the judgment of the DST dated 30.4.1996 and the settlement entered into between the petitioner and the respondent no.3/school dated 31.12.1997. Related to this first argument is the issue that if the petitioner cannot be absorbed in the respondent no.3/school, then, petitioner claims that in view of Rule 47 of the Delhi School Education Rules, the petitioner be got absorbed in any other aided school of the respondent no.2/Director of Education. (ii) The second argument urged on behalf of the petitioner is that the order dated 10.3.1998 withdrawing the writ petition by the respondent no.3/school will not have the effect of disturbing the finality of the judgment of the DST dated 30.4.1996, and once the judgment of the DST dated 30.4.1996 is taken as final, petitioner has to be taken as an employee of the respondent no.3/aided school and hence since there are vacancies available for appointment as an Assistant Teacher with the respondent no.3/school, hence such vacancy should be filled in on account of the petitioner having been declared as an employee of the aided school being the respondent no.3 vide the judgment of the DST dated 30.4.1996.

7. Let us examine the first argument and contention urged on behalf of the petitioner as to whether the judgment of the DST dated 30.4.1996 gives the status to the petitioner of an Assistant Teacher in an aided school being the

respondent no. 3 herein.

8. Before making any observations in regard to the status of the petitioner, whether she is or is not an employee of an aided school being the respondent no.3, certain aspects are to be emphasized, and which have already been partially stated above, and which are that the respondent no. 3/school is an aided school. 95% of the finances for running of the respondent no. 3/school come from the respondent no. 2/Director of Education with only 5% of the finances being provided by the private managing committee of the respondent no. 3/school. In such private aided schools, and there are innumerable such schools in Delhi, with respect to appointments of teachers and employees of such schools, recruitment which is done is in terms of Rules 98 and 99 of the Delhi School Education Rules. As per these rules there is a requirement of a specific Selection Committee comprising of specific members of particular designations, including the necessary requirement of there being the nominee of the Director of Education on the Selection Committee, and in case there is no nominee of the Director of Education then a prior approval of the Director of Education has to be taken before confirmation of services of the employee in an aided school who is appointed by the Selection Committee. Rules 96 to 99 of the Delhi School Education Rules reads as under:-

"96. Recruitment (1) Nothing contained in this Chapter shall apply to an unaided minority school.

(2) Recruitment of employees in each recognised private school shall be made on the recommendation of the Selection Committee.

(3) The Selection Committee shall consist of:-

(a) in the case of recruitment of the head of the school,-

(i) the Chairman of the managing committee;

(ii) in the case of an unaided school, an educationist is nominated by the managing committee, and an educationist nominated by the Director;

(iii) in the case of an aided school, two educationists nominated by the Director, out of whom at least one shall be a person having experience of school education;

(iv) a person having experience of the administration of schools, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director;

(b) in the case of an appointment of a teacher (other than the head of the school):

(i) the Chairman of the managing committee or a member of the managing committee nominated by the Chairman;

(ii) the head of the school;

(iii) in the case of a primary school, a female educationist having experience of school education;

(iv) in the case of an aided school, one educationist to be nominated by the Director, and one representative of the Director;

(v) in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director.

(c) in the case of an appointment of any other employee, not being an employee belonging to "Group D":

(i) the Chairman of the managing committee or a member of the managing committee, to be nominated by the Chairman;

(ii) head of the school;

(iii) a nominee of the Director;

(iv) in the case of an aided school, two officers having experience of the administration of school, to be nominated by the Director;

(d) in the case of an appointment of a Group "D" employee:

(i) the Chairman of the Managing Committee or a member of the Managing Committee nominated by the Chairman;

(ii) the head of the school;

(3A) Notwithstanding anything contained in sub-rule (3), in the case of an aided minority school, the educationists nominated under paragraph (iii) of clause (a) of sub-rule (3), persons nominated by the Director under paragraph (iv) of clause (a) of sub-rule (3), educationists nominated under paragraph (iv) of clause (b) of sub-rule (3), an expert nominated under paragraph (v) of clause (b) of sub-rule (3), a person nominated under paragraph (iii) of clause (c) of sub-rule (3), officers nominated under paragraph (iv) of clause (c) of sub-rule (3), a person nominated under paragraph (iii) of clause (b) of sub-rule (3), shall act only as advisers and will not have the power to vote or actually control the selection of an employee.

(3B) Notwithstanding anything contained in sub-rule (3), the selection committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number.

(4) Nomination of any educationist or expert as a member of the Selection Committee shall be made out of a panel prepared for the purpose by the Advisory Board.

(5) The Chairman of the managing committee, or, where he is not a member of the Selection Committee, the member of the managing committee who is nominated by the Chairman to be a member of the Selection Committee, shall be the Chairman to the Selection Committee.

(6) The Selection Committee shall regulate its own procedure.

(7) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reasons for such non-acceptance and refer the matter to the Director for his decision and the Director shall decide the same.

(8) Where a candidate for recruitment to any post in a recognised school is related to any member of the Selection Committee, the member to whom he is related shall not participate in the selection and a new member shall be nominated, in the case of any aided school, by the Director, and in the case of any other school, by the managing committee, in place of such member.

(9) No managing committee shall entertain any application for employment from a person who is already serving as teacher in a recognised school, whether aided or not, unless the application from such person is duly forwarded by the manager of the school in which such applicant is serving:

Provided that every application from such person shall be forwarded by the manager, but any application in excess of three in a year shall not be forwarded unless the managing committee, for reasons to be recorded by it in writing, so directs:

Provided further that no such teacher shall be relieved of his duties except after the expiry of a period of:-

(i) three months, in the case of a permanent teacher, from the date on which notice of intimation to leave the school is given; and

(ii) one month, in the case of a teacher who is not permanent, from the date on which notice of intimation to leave the school is given: Provided also where the managing committee is in a position to provide for a substitute for such teacher earlier than the respective period specified in the foregoing proviso, the managing committee may relieve the teacher of his duties on the expiry of such earlier period.

97. Relaxation to be made with the approval of the Director.- Where the relaxation of any essential qualification for the recruitment of any employee is recommended by the appropriate selection committee, the managing committee of the school shall not give effect to such recommendation unless such recommendation has been previously approved by the Director.

98. Appointing authority.- (1) The appointment of every employee of a school shall be made by its managing committee.

(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:-

Provided further that the provision of this sub-rule shall not apply to a minority aided school.

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to

him under sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.

(5) Where any appointment made by the managing committee of an aided school is not approved by the Director, such appointment may (pending the regular appointment to the post) be continued on an adhoc basis for a period not exceeding three months and the salary and allowances of the person so continued on an adhoc basis shall qualify for the computation of the aid to be given to such school.

99. Prohibition against the employment of dismissed employees.- No aided school shall employ, except with the previous approval of the Director, an employee who has been dismissed from service by another aided or Government school."

9. Therefore, it is seen that petitioner can seek benefit of employment with the respondent no. 3/school as an aided school employee, finances for whose monetary emoluments and salary will be paid by respondent no. 2/Director of Education, would only be if the requirement of Rules 96 to 99 of the Delhi School Education Rules are satisfied or if in the judgment of the DST dated 30.4.1996 the petitioner is held, in unqualified language to be an employee of the respondent no. 3/aided school in the sense that petitioner will have to be paid her salary and monetary emoluments from the 95% finances provided by the respondent no.2/Director of Education.

10. This Court has already reproduced above certain observations of the DST in its judgment dated 30.4.1996 and which show that whereby it has been held that though the petitioner should not be prejudiced by holding her not to be an

employee of the respondent no. 3/school, yet, the employment of the petitioner with the respondent no. 3/school was held by the DST to be subject to the condition that her salary as a teacher shall not be paid from the grants-in-aid given by the respondent no. 2/Director of Education to the respondent no. 3/school. To put it in other words, in view of the relevant observations of DST in the judgment dated 30.4.1996, petitioner was not taken as a classical employee of an aided school and the petitioner was taken as an employee of the respondent no.3/school subject to the fact that the salary and monetary emoluments to be provided to her were to be from the finances of the private managing committee which gives 5% of the finances to the respondent no.3/school. Therefore, I am unable to agree with the contention of the learned counsel for the petitioner that petitioner is a classical employee of an aided school, which the respondent no.3/school is. Petitioner is only a peculiar employee, in the peculiar circumstances, in specific fact situation, as found by the DST, to be an employee of the respondent no.3/school, but, her salary and monetary emoluments were to be paid by the private managing committee which gives 5% of the finances and not from the 95% finances provided by the respondent no.2/Director of Education.

11. (i) Learned counsel for the petitioner then argued that one Smt. Sarla Aggarwal, and who was also a teacher in the respondent no.3/school had succeeded in her LPA no. 511/2002 titled as Sarla Aggarwal Vs. The Director of Education and Ors., and whereby the Division Bench of this Court as per its judgment dated 6.11.2006 held that Smt. Sarla Aggarwal was to be an employee of the respondent no.3/school as a classical employee of a classical aided school of the Director of Education, and therefore, it was prayed that petitioner be similarly treated as Smt. Sarla Aggarwal. (ii) Again, I cannot agree with this submission urged on behalf of the petitioner in seeking her parity with Smt. Sarla Aggarwal's case inasmuch as the judgment in Smt. Sarla Aggarwal's case dated 6.11.2006 shows that Smt. Sarla Aggarwal after her judgment of the DST, and which was the same as the judgment of DST in this case dated 30.4.1996, had got employment with the respondent no.3/school because respondent no.3/school had by a letter dated 11.7.1998 (i.e after the decision of the DST dated 30.4.1996 as also similarly of the compromise dated 31.12.1997 with the respondent no.3/school as was of the petitioner with the respondent no.3/school), to the Director of Education as regards the employment of Smt. Sarla Aggarwal with the respondent no.3/school and thus in the facts situation as found in the

case of Smt. Sarla Aggarwal a Division Bench of this Court held that since Smt. Sarla Aggarwal was found to be an employee of the respondent no.3/school as stated in the letter dated 11.7.1998 of the respondent no.3/school to the Director of Education, and to which there was no refusal by the Director of Education, hence by applying Rule 98(4) of the Delhi School Education Rules, there is deemed to be existing approval by the Director of Education to the appointment of Smt. Sarla Aggarwal. The Division Bench however while giving

regularization of the appointment of Smt. Sarla Aggarwal with the respondent no.3/school in the facts situation in the case of Smt. Sarla Aggarwal, however, it was with the further direction that Smt. Sarla Aggarwal would get salary from the grants-in-aid of the Director of Education not from 11.7.1998 but only prospectively w.e.f 1.12.2006 i.e from the month after the date of the judgment of the Division Bench dated 6.11.2006. Therefore, the judgment of the Division Bench in the case of Smt. Sarla Aggarwal dated 6.11.2006 cannot in any manner help the petitioner to seek parity with Smt. Sarla Aggarwal and hence for her regularization/appointment as an Assistant Teacher with the respondent no.3/school.

12. Another argument which was urged on behalf of the petitioner was by placing reliance upon a letter of the respondent no.2/Director of Education dated 21.6.2007 which according to the counsel for the petitioner gives general approval for absorption of each and any surplus teacher of the respondent no.3/school at any time prior to 21.6.2007. To understand the argument of the petitioner let me reproduce this letter dated 21.6.2007 of the respondent no.2/Director of Education to the respondent no.3/school and which reads as under:-

"GOVT. OF NCT OF DELHI

DIRECTORATE OF EDUCATION

(POST FIXATION CEL)

ROOM NO.252-A, OLD SECTT., DELHI

No.DE.22/11/PFC/Aided/2006-07/2787-91 Dated: 21-6-07

To

The Manager/Authorized Officer,

Sri Hanuman Mandir School,

Shakti Nagar,

Delhi

Sub:- Post Fixation for the year 2006-07 in r/o your school. (School I.D.: 1207148)

Sir,

I am directed to convey the approval of Director of Education regarding creation/abolition of posts in respect of your school as per report enclosed.

The staff rendered surplus due to abolition of posts, if any, and already surplus staff available in your school will continue to be borne on the establishment of your school and will draw salary from your school till absorbed by the department against available vacancies.

The Director of Education has accorded the sanction for the continuance of the remaining posts to the post fixation for the year 2006-07 till further order in r/o your school as per Post Fixation Report attached.

The expenditure involved on this account is debitable to the Head of Account-Major Head "2202" A.2 (2)(7)-Assistance to Non Govt. Schools under Demand No.6 of Delhi area (Non Plan) for the year 2006-07.

The post fixation for the years 2004-2005 and 2005-2006 may please be treated same as for the year 2003-2004.

Sd/-

(P.K.DABAS)

Asstt. Director of Education (PFC)"

13. A reading of this letter dated 21.6.2007 shows that firstly this letter is of 21.6.2007 i.e around nine and a half years after the compromise between the petitioner and the respondent no.3/school dated 31.12.1997. By the compromise dated 31.12.1997 entered into between the petitioner and the respondent no.3/school petitioner was no doubt reinstated by the respondent no.3/school, but petitioner was simultaneously also declared as a surplus employee. Therefore, the subject matter of the petitioner being a surplus employee in 1997, could never have been the subject matter of a much much later general letter dated 21.6.2007 addressed by the respondent no.2/Director of Education to respondent no.3/school and as reproduced above. Whatever doubt remains that the letter dated 21.6.2007 is not for any and every surplus employee ever employed by the respondent no.3/school, the same becomes clear from the fact that the subject matter of the letter is with respect to the post fixation for the year 2006-2007 and therefore, vacancies of 2006-2007 and consequently with respect to surplus staff of the year 2006-2007. Also, there is further clarification in the last line of this letter dated 21.6.2007 that the contents of the letter dated 21.6.2007 for the post fixation of 2006- 2007 would also only be for the years 2003-2004, 2004-2005 and 2005-2006 i.e not for any other earlier years. Once that is so, I do not understand how the letter of the respondent no.2/Director of Education dated 21.6.2007 in any manner furthers the case of the petitioner for the petitioner to be treated as an absorbed and regular employee of the respondent no.3/school only because of the letter dated 21.6.2007. This argument urged on behalf of the petitioner is also therefore rejected.

14. (i) The last argument which was urged by the petitioner was by placing reliance upon the judgment of the Supreme Court in the case of Narayan Prasad Lohia Vs. Nikunj Kumar Lohia, (2009) 17 SCC 359. Relying on this judgment, it was argued on behalf of the petitioner that if a case is withdrawn from a Court of appeal, that will not have the effect of disputing the finality of a judgment under appeal, and when this ratio is applied to the order of withdrawal dated 10.3.1998 of W.P. (C) No. 2567/1996 filed by the respondent no.3/school against the

judgment of the DST dated 30.4.1996, it will only have the effect of upholding the judgment of the DST dated 30.4.1996 and hence of the petitioner has to be declared as an employee of the aided school which is the respondent no.3/school. (ii) This last argument urged on behalf of the petitioner is once again without basis because the order dated 10.3.1998 in the petitioner's case shows that the writ petition being W.P. (C) No. 2567/1996 was withdrawn because of the compromise i.e the petitioner and the respondent no.3/school admitted to the finality of the compromise dated 31.12.1997 and which has already been reproduced above. This compromise no doubt gives reinstatement to the petitioner in the respondent no.3/school but simultaneously declares her surplus on the very next day. Therefore, it cannot be argued that the judgment of the DST dated 30.4.1996 is not amended/modified by virtue of the compromise between the petitioner and respondent no. 3/school dated 31.12.1997. The facts in the case of Narayan Prasad Lohia (supra) are different than the facts of the present case, and especially because of the language of the order dated 10.3.1998 withdrawing W.P. (C) No. 2567/1996, and which is that the writ petition was withdrawn "in view of the compromise" i.e giving finality to the compromise dated 31.12.1997.

(iii) In any case, I do not see any substance in the last argument urged on behalf of the petitioner for the reason that even assuming the judgment of the DST dated 30.4.1996 is taken as final, I have already discussed in detail above that the said judgment of the DST dated 30.4.1996 does not give appointment of the petitioner as a classical employee of a classical aided school and the employment of the

petitioner with the respondent no.3/school in terms of the judgment of the DST dated 30.4.1996 was with the condition that her salary and emoluments will be not out of the grants-in-aid given by the respondent no.2/Director of Education i.e the salary and emoluments of the petitioner would only be from 5% private finances of the private managing committee of the respondent no.3/school.

15. In view of the above discussion, I do not find any merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.