

(2012) 09 DEL CK 0506

In the Delhi High Court

Case No : Writ Petition (C) 5752 of 2012

Managing Committee, Hindon Public School and Another

APPELLANT

Vs

Hemant Kumar and Another

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Delhi School Education Act, 1973 — Section 8(3)

Citation : (2012) 193 DLT 325 : (2012) 132 DRJ 287

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : B.K. Singh and Mr. Parvinder Singh, for the Appellant; Hemant Singh, for Ms. Sonia Arora, for R2, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.

CM. NO. 11810/2012 (Exemption)

Exemption allowed, subject to all just exceptions. CM disposed of.

W.P.(C) 5752/2012

1. Vide the instant petition, petitioner has assailed the impugned order dated 20.10.2011 passed by Id. Presiding Officer, Delhi School Tribunal. Instant petition has been argued mainly on the grounds that Id. Tribunal has failed to consider the limitation provided u/s 8(3) of Delhi School Education Act, 1973, which requires that an employee of recognized private school, who has been dismissed or reduced or removed may, within three months, prefer an Appeal before Appellate Tribunal.

2. However, in the present case services of respondent no. 1 were terminated on 24.08.2004 and his termination was duly communicated to him. But, the respondent no. 1 preferred an Appeal before the Id. Tribunal on 22.11.2006 i.e. with a delay of 739 days without any sufficient reason or cause.

3. On the other ground, Id. counsel for the petitioner has argued that the Tribunal failed to consider that the respondent no. 1 was involved in the activity of moral turpitude. During course of his service, petitioner Management received various complaints of sexual harassment from parents of Girl Students and also from female staff of the School, which allegedly affected the reputation of the School and such conduct of Respondent No. 1 teacher was against the interest of the institution and the future of the students as well.

4. On perusal of the impugned order, the Ld. Tribunal has opined as under:

Admittedly the Appellant was working in the Respondent School in the capacity of Trained Graduate Teacher. The Respondent School failed to place on record proceedings of any domestic inquiry allegedly held by it. No report of the Inquiry Officer has been filed. The inquiry allegedly conducted relates to an inquiry on the complaints filed by the Appellant to the Directorate of Education.

The memorandum dated 20.10.2006 issue by the Dy. Director of Education (reproduced above) shows that the Respondent School had not conducted any domestic inquiry into the allegations of sexual harassment of the female colleagues and the girl students as alleged. Not even the charge-sheet was served upon the Appellant. The removal from service is a major penalty in terms of Rule 117 of Delhi School Education Rule-1973 (hereinafter referred to as the Rule). No major penalty can be imposed upon an employee except after a domestic inquiry in terms of Rule 12 of the Rules. Act of the Respondent School in terminating the services of the Appellant without holding a domestic inquiry was in gross violation of law. Services of the Appellant have been terminated illegally and arbitrarily. Appeal is accordingly allowed. Appellant is directed to be reinstated in service with 50% of the back-wages from the date of termination of service i.e. 25.08.2004 till date. He shall be paid full salary and all other benefits w.e.f. from today i.e. from the date of orders. Appeal is accordingly disposed of. File be consigned to Record Room.

5. The case of respondent no. 1 before the Tribunal was that he was appointed as TGT (Social Studies) in Hindon Public Sr. Secondary School, Harsh Vihar, Delhi-93 on 15.07.2002 against a permanent post, however, not given any formal letter of appointment. In August, 2004, he asked the petitioner School for providing him his Provident Fund number. Upon this, School authorities became annoyed and asked him not to come to the School w.e.f. 25.08.2004. Thereafter, he lodged a complaint with the Provident Fund Department on 24.08.2004. On 25.08.2004, he was not allowed to enter the School. He went to School in September, 2004, but was sent back with the assurance that a communication in writing would be sent to him.

6. Finally, he lodged a complaint with the Director of Education on 18.01.2005. He sent a representation to the Principle of the petitioner school on 06.04.2005. Thereafter, Director of Education directed the Education Officer on 27.04.2005 to look into the matter.

7. Accordingly, District Education Officer, vide his letter dated 24.06.2005 asked the respondent no. 1 to attend his office for an enquiry on 28.06.2005. He accordingly appeared there and submitted the relevant record.

8. Thereafter, he received a letter from one Mr. S. Kumar from Govt. Boys Senior Secondary School, Mandoli, Delhi informing him that he was appointed as an Enquiry Officer. He was called upon to appear in his office on 29.07.2005. He attended the enquiry proceedings and submitted his written submissions.

9. Director of Education vide its letter dated 20.10.2005 asked the Management of the Petitioner School to reinstate respondent no. 1 and hold a domestic enquiry in respect of the charges leveled against him.

10. On 26.07.2005, respondent no. 1 went to the School for doing his duty. However, he was not permitted to do so. Again he went on 29.10.2005 and 07.11.2005, but was not allowed to join the duty.

11. On 20.10.2005, brother of the Manager of the petitioner school known as Baba misbehaved with the respondent no. 1. Thereafter, respondent no. 1 wrote a letter to Director of Education apprising him of this incident. The petitioner school lodged a complaint with the local police.

12. Respondent no. 1 again approached the Director of Education on 01.12.2005 and 04.04.2006. On 12.04.2006, on his visit to the Deputy Director of Education, he was informed that the Director of Education has rejected the representation of the petitioner school and the petitioner school was asked to reinstate him.

13. I note, before the Tribunal, the petitioner school made its case that respondent no. 1 was never appointed against a permanent post. His appointment was for limited period from 05.03.2002 to 30.03.2003 as another teacher had applied for leave. He was given fresh tenure of appointment by the petitioner school from 01.07.2003 to 31.08.2004 as a teacher named Ms. Suman Lata had taken leave.

14. The petitioner herein further submitted that respondent no. 1 was not assigned any class w.e.f. 24.01.2006 keeping in view his conduct, even though his tenure was going to expire on 31.04.2008. The petitioner refused to extend his period of appointment which was going to expire on 31.04.2008 as there were allegations of sexual harassment by the teaching staff as well as some parents of the girl students against the respondent no. 1.

15. The further contention of the petitioner herein before the Tribunal was that one Sh. S. Kumar was appointed as Enquiry Officer, who conducted an enquiry and all charges against the respondent no. 1 were proved.

16. I note, Ld. Tribunal has also considered the reply filed by Director of Education, wherein it is submitted that the petitioner school did not seek any approval from the Director of Education of extension of period of probation of respondent no. 1. They also placed on record its order dated 20.10.2005, which

is as under:

The explanation submitted by the Manager / Principal of Hindon Public Sec. School, Harsh Vihar Delhi - 93 vide letter dated 12.09.2005 regarding the termination of services of Sh. Hemant Kumar, teacher has been examined and it has been found that the school has not followed the procedure as laid down under DSEAR 73 for imposing major penalty on its employee.

The school Management is directed to reinstate the services of Sh. Hemant Kumar. However, the charges against him may be looked into as mentioned in Rule 118 of DSEAR-1973. The disciplinary proceedings should be completed within one month.

17. In view of the facts and circumstances recorded above, if the Tribunal has condoned the delay after its satisfaction, then I am of the considered view that it has rightly exercised its powers vested in it.

18. On the aspect of the complaint against the respondent no. 1 regarding the sexual harassment, Id. Tribunal has opined that the petitioner school failed to place on record the proceedings of any domestic enquiry allegedly held by it. No report of an enquiry officer was filed before the Tribunal.

19. Moreover, it is recorded by the Tribunal that a memorandum dated 20.10.2005 issued by the Director of Education shows that the petitioner school had not conducted any domestic enquiry into the allegation of sexual harassment of the female colleagues and the girl students as alleged. Not even a charge sheet was served upon respondent no. 1.

20. Therefore, after considering the submission Id. Counsel for both the parties, Id. Tribunal has further recorded that the removal from service is a major penalty in terms of Rule 117 of Delhi School Education Rules - 1973. No major penalty can be imposed upon an employee except after a domestic enquiry in terms of Rule 120 of the Rules.

21. In view of the above discussion, I find no discrepancy in the order passed by the Id. Tribunal.

22. Consequently, instant petition stands dismissed. No order as to costs.

CM. NO. 11809/2012 (Stay)

In view of the above, instant application become infructuous and disposed of as such.