

(2012) 05 DEL CK 0355

In the Delhi High Court

Case No : Writ Petition (C) No. 5390 of 2011

Managing Committee Naval Public School

APPELLANT

Vs

Neera Chopra

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0355

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Jyoti Singh, with Ms. Tina Bajwa, Ms. Sahila Lamba and Mr. Amandeep Joshi, for the Appellant; Chetan Lokur, Advocate for Mr. Viraj R. Datar, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—By this petition, the petitioner has prayed to issue writ of certiorari to quash the order dated 27.5.2011 passed by the Delhi

School Tribunal in appeal No. 41 of 2003 whereby the tribunal has held that the foundation in the present case is totally illegal and non est. There

cannot be any superstructure in the absence of a foundation. All proceedings conducted by the respondent school (petitioner herein) on the basis

of the charge-sheet which did not exist in the eyes of law are illegal and without any authority of law. It is, further, recorded that the inquiry report,

show-cause notice relating to proposed penalty and finally the impugned orders removing the appellant (respondent herein) from the service are

hence illegal and the same were set aside. The Learned tribunal also directed, the petitioner (respondent herein) to be reinstated in service with

50% of the back-wages and all other consequential benefits.

2. Mrs. Jyoti Singh, learned Senior Advocate appearing on behalf of the

petitioner, has argued that the tribunal has gone wrong while deciding the appeal of the respondent and submitted that the charge-sheet was issued on 14.1.2003 which formed the basis of penalty and the same was issued by the Chairman of the Managing Committee and not by the Disciplinary Committee.

3. The chargesheet, thereafter, was circulated amongst the members on 17.1.2003. A resolution was adopted by the members to ratify the charge sheet dated 14.1.2003 issued by the Managing Committee. Learned senior counsel further submitted that the contention of the appellant

(respondent herein) was that the procedure adopted by the school is impermissible and unsustainable in view of the mandatory provision of Rule

118 of Delhi School Education Rules-1973. The framing of the charges by any authority other than the Disciplinary Authority constituted in terms

of Rule 118 of the Rules is contrary to the provisions of Rule 120 of the Rules and as such vitiates not only the chargesheet but all proceedings

conducted in relation thereto.

4. Learned counsel further submitted and relied upon the reply filed by the petitioner before the tribunal that the school is having a disciplinary

committee comprising of Chairman, Acting Principal and two staff representatives. She submits that the Managing committee itself is a Disciplinary

Authority and this view was upheld by a Co-ordinate Bench of this Court in WP(C) No. 4694/2003 titled as Mohan Lal Saran v. Union of India

and Others that the Disciplinary Authority inherently exists within the Managing Committee, therefore, the Disciplinary Committee is a part of the

Managing Committee.

5. The another limb of the argument putforth by petitioner before the tribunal is that the Chairman of the Managing Committee gave the chargesheet

to the respondent on behalf of the existing Disciplinary Authority. The charge sheet was served upon the respondent on 14.1.2003 and the same

was allegedly ratified by the Disciplinary Committee on 17.1.2003.

6. The petitioner has relied upon the case of Maharashtra State Mining Corporation Vs. Sunil Pathak, wherein it was held by the Apex Court that

the ratification related back to the date of dismissal orders validated the same.

7. Learned counsel further submitted that the main issue before the tribunal was that the charge sheet dated 14.1.2003 to respondent was issued

by the Chairman of the Managing Committee and not by the Disciplinary Authority as required under Rule 120 of the Rules, as on 14.1.2003 no

Disciplinary Committee existed.

8. It is submitted that the stand taken by the petitioner before the tribunal was that the charge sheet dated 14.1.2003 was ratified by the

Disciplinary Authority just within two days in a meeting held on 17.1.2003.

9. She argued that the Managing Committee and the Disciplinary Authority is the one and the same thing. Issuance of charge sheet dated

14.1.2003 issue by the Chairman of the Managing Committee is not illegal and improper.

10. She relied upon the findings given in case of Mohan Lal (Supra). The relevant paras of the said judgment are reproduced as under:

39. Who is disciplinary authority qua the petitioner may now be dealt with. Petitioner relies upon Rule 118 to contend that it is the disciplinary

committee constituted under Rule 118 which is the disciplinary authority and it is the said body which alone can initiate and inflict a penalty under

Rule 120. Respondent No. 3 school relies upon Rule 59(2) (e), Rule 98 and the scheme of management of the school to urge that it is the

managing committee of the school which is the disciplinary authority.

40. Rule 118 and 120 have been noted by me in para 7 and 27 above. Rule 59 (2) (e) reads as under:-

Rule 59(2)(e)--The duties, powers and responsibilities of the managing committee, which shall include control over appointments, disciplinary

action, and control on staff, and shall also provide that no financial irregularity is committed or any irregular procedure is followed.

41. Rule 98(1) reads as under:-

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

42. It was not disputed by the petitioner that as per the scheme of management of the school, in terms of Rule 59(2)(e) the managing committee of

the school was the appointing authority of the petitioner and exercised disciplinary control over him. It is, thus, clear that as per Rule 59(2)(e) read

with the scheme of the management of the school and Rule 98, the managing committee of the school is the appointing authority. It is also the body

authorized to take disciplinary action against the petitioner.

43. It is to be noted that neither under the Act nor under the rules "disciplinary authority" has been defined. However, Rule 59(2) (e) mandates that

the scheme of the management of every recognized school shall provide the duties, powers and responsibilities of its managing committee which

shall include control over appointments and disciplinary action. Indeed, scheme of management of respondent No. 3 school so provides. Thus, the

disciplinary authority contemplated by Rule 120 would be the managing committee of the school. It may further be noted that Rule 121 stipulates:-

121. Payment of pay and allowances on reinstatement. (1) when an employee who has been dismissed, removed or compulsorily retired from

service is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension

preceding the dismissal, removal or compulsory retirement, as the case may be, the managing committee shall consider and make a specified

order-

(a)...

(b)...

48. The rules clearly refer to the managing committee of a school as being the body competent to initiate disciplinary proceedings and take action

against an employee of a recognized school. The words "Disciplinary Authority" in Rule 120 must mean the managing committee. Rule 118 refers

to the "the disciplinary committee". Marginal note to the rule cannot control it's meaning. Even otherwise, rules have to be read harmoniously.

11. Learned senior counsel submitted that as decided by this Court as referred above that neither under the Act nor under the Rule "Disciplinary

Authority" has been defined, however, Rule 59 (2) (e) mandates that the scheme of management of every recognized school shall provide the

duties, powers and responsibilities of its managing committee which shall include control over appointments and disciplinary action. Indeed, scheme

of management of respondent No. 3 school so provides. Thus, the disciplinary authority contemplated by Rule 120 would be the managing

committee of the school.

12. It is further recorded, indeed, the scheme of management of school so provide, thus, the disciplinary authority contemplated by Rule 120

would be the managing committee of the school.

13. Mr. Chetan Lokur, learned counsel for the respondent submitted that the reliance of the petitioner has no relevance, at this stage, because the

writ petition filed by Mohan Lal was allowed in favour of the petitioner and the school, being aggrieved, challenged before the Division Bench and

the same stands disposed of as under:-

Writ court disposed of his writ petition by impugned order dated 27.01.2004 prohibiting Respondent No. 3 from proceeding with show cause

notice dated 15.7.2003. This respondent was also asked to reappoint the inquiry officer for conducting the inquiry afresh and to take further action

in accordance with law. While doing so, writ Court rejected Appellant's contentions that show cause notice was not issued by the Competent

Authority which according to him was Disciplinary Committee under Rule 118 and not the Managing Committee under Rule 120/59(e).

When his appeal was taken up for consideration, it was brought to our notice that Respondent No. 3 had implemented the writ court order by re-

appointing the Inquiry Officer and by conducting a fresh inquiry in which Appellant had participated culminating with punishment order dated

21.09.2004. It was submitted by the Respondent Counsel on this that this appeal has become infructuous because Appellant had to challenge the

new order by way, if he was so advised.

Appellant's Counsel submits that writ court's view on implementation of Rule 118 and 120/59(2)(e) would remain intact if his appeal was

dismissed and that since this issue went to the root of the matter and it would come in his way in his challenge to the new order.

Appellant's concern on this can be taken care of by providing that it shall be open to Appellant to take advantage of whatever grounds may be

available to him in case he is advised to challenge the new punishment order dated 2(sic)1.09.2004 including his perception and interpretation of

Rule 118 and 129/59(2)(E) OF DSE Rules and in that event Appropriate Court could be free to consider his plea uninfluenced by the Ld. Single

Judge in interpreting these rules.

14. Mr. Lokur further submitted that it was clarified by the Division Bench of this Court that the tribunal would consider the relevant issues raised

before it without influence of the judgment passed by the learned Single Judge, in incorporating these rules.

15. He submitted that as Rule 59 (1)(b) provides the managing committee shall constitute and under Rule 118 of the Rules, there is composition of

Disciplinary Committee. Therefore, the Rule 59 and Rule 118 are different and for the different purposes.

16. Admittedly, the charge sheet was issued on 14.1.2003 by the Chairman of the Managing Committee, not on behalf of the Managing

Committee. Thereafter, it was ratified on 16.1.2003, i.e., two days after the charge sheet and the same has also been signed by the Chairman only

and not by the Managing committee and there is no resolution on record thereto. Learned counsel further submits that the judgment passed by the

tribunal is proper and the petition deserves to be dismissed.

17. I note that the tribunal has recorded in para 16 that, had the legislature intended that the Disciplinary committee and the Managing committee

shall be one and the same thing, then, there was no need of having two separate committees with separate constitutions and separate roles to play.

Any charge framed by the Managing committee would amount to usurping the powers of the Disciplinary Committee. Any charge framed against

an employee by the Managing Committee is, therefore, an illegal one and non est. It is void ab initio as it is framed without any authority of law.

18. On the issue, whether the framing of charge by the Managing Committee can be ratified by the Managing Authority, the tribunal opined that the

act which is non est and void ab initio cannot be legalized as it never existed.

19. Keeping the above discussion and submissions into view, I find no infirmity in the order passed by the tribunal. Hence, I concur with the same.

The petition along with the pending applications stands dismissed with no order as to costs.