

(2010) 07 DEL CK 0232

In the Delhi High Court

Case No : Writ Petition (C) 2612 of 1998

M.M. Sharma and Others

APPELLANT

Vs

The Directorate of Education and Another

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Delhi School Education Act, 1973 — Section 11, 8(2), 8(4), 8(5)

Delhi School Education Rules, 1973 — Rule 114A, 115(2), 115(5), 120(1), 120(2)

Citation : (2010) 07 DEL CK 0232

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Amrita Sharma, for the Appellant; Arvind Gopal, for R - 1 and R.M. Sinha, for R - 2, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The three petitioners, being the employees of the respondent No. 2 Vaishali International Public School, a recognized unaided private school within the meaning of The Delhi School Education Act, 1973, by this writ petition seek a declaration that the letters dated 2nd/3rd March, 1998 submitted by them, of resignation from the respondent No. 2 school, are void and inconsequential and a mandamus directing the respondent No. 2 school to treat the petitioners to be in continuous service and entitled to protection of pay and all other benefits. The petitioners claim that during March, 1998 the Chairman of the respondent No. 2 school told them that the school would be shut down by 31st March, 1998 and they would be relocated in other branches of the school; on such representation/assurance, their signatures on the resignation letters were taken and which they signed in good faith; however the respondent No. 2 school failed to accommodate the petitioners in the other branches and as such the petitioners on 7th April, 1998 withdrew their letters of resignation dated 2nd/3rd March, 1998. The petitioners contend that under Rule 114A of The Delhi School Education Rules, 1973, the resignation of an employee of a recognized school is to be accepted within a period of 30 days from the date of the receipt of

the resignation by the Managing Committee with the prior approval of the Director. The petitioners contend that the respondent No. 2 school on 10th March, 1998 had sought such approval from the respondent No. 1 Directorate of Education (DOE) and which approval was declined vide letter dated 6th May, 1998. The contention of the petitioners is that since their resignations dated 2nd/3rd March, 1998 could not have been accepted by the respondent No. 2 school without the approval of the DOE and which approval had not been received till 7th April, 1998, when the resignations were withdrawn, the resignations were withdrawn before acceptance, as is permissible in law and the respondent No. 2 school cannot avail itself of any benefit from the said resignations.

2. The respondent No. 2 school in the counter affidavit has relied upon the proviso to Rule 114A (supra) to the effect that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period. It is thus contended that the letter dated 6th May, 1998 declining the approval, issued after the expiry of 30 days, is of no avail in as much as on the expiry of the said 30 days, there was deemed approval of the DOE.

3. The writ petition was dismissed vide order dated 5th July, 2000. The petitioners preferred an intra Court appeal being WA No. 566/2000. The Division Bench vide order dated 19th August, 2004 in the appeal remanded the matter for fresh consideration.

4. The relief claimed by the petitioners of reinstatement in the respondent No. 2 school is now not possible. The respondent No. 2 school had filed W.P.(C) No. 4855/1998 challenging the order of the DOE refusing permission to the respondent No. 2 school to shut down. A Single Judge of this Court vide order dated 25th May, 2005 set aside the decision of DOE and allowed the school to shut down and gave liberty to the teachers of the school to seek their remedy against the school. The Association of Teachers of the respondent No. 2 school preferred an LPA No. 1721/2005 against the said order. The Division Bench vide judgment dated 18th August, 2006 allowed the appeal and held the writ petition WP(C) No. 4855/1998 (supra) liable to be dismissed. However, since in the interregnum, the premises wherefrom the respondent No. 2 school was operating had been sold off, the Division Bench granted the relief to the said teachers, not of reinstatement but of payment of the arrears of salaries and other statutory dues in terms thereof. In view of the said judgment, the reinstatement of the petitioners in any case is not possible. If the petitioners succeed in establishing that their resignations validly stood withdrawn, the petitioners would be entitled to the benefit of the said judgment. However, if the petitioners are found to have resigned, they would not be entitled to the benefit of the said judgment of the Division Bench.

5. It may also be recorded that the respondent No. 2 school in the counter affidavit in this writ petition has sought to contend that it is a minority school and

hence Rule 114A was not applicable to it. However, the Division Bench in the judgment aforesaid had negated the said plea of the respondent No. 2 school. It may also be recorded that the respondent No. 2 school, besides on the letters of resignation, has also sought to rely on certain documents of settlement of accounts with the petitioners. However, the said documents have been denied by the petitioners and no adjudication with respect to the said plea in any case can be undertaken in the writ jurisdiction.

6. Since the filing of the writ petition and the order aforesaid in appeal, a Division Bench of this Court in *Kathuria Public School v. Director of Education* 2005 (vi) AD (Delhi) 893 has held that Section 8(2) & (4) & (5) of the School Act and Rules 115(2) & (5), Rule 120(1)(d)(iii) & (iv) & Rule 120(2) of the School Rules requiring prior or ex-post facto approval for disciplinary proceedings would have no application to private unaided recognized schools. Though Rule 114A requiring a recognized school to accept resignation submitted by any employee only with the approval of the Director, does not find mention in the judgment in *Kathuria Public School* (supra) but the reasoning therein, for holding the aforesaid provisions of the School Act and the Rules requiring approval of the DOE to be not applicable to unaided recognized schools, would apply to Rule 114A also. Once it is held that the respondent No. 2 school was not required to obtain any approval of the DOE prior to accepting the resignation of the petitioners, then the edifice of the writ petition falls. It is mentioned in the letter dated 10th March, 1998 of the respondent No. 2 school seeking approval of the DOE that the Managing Committee of the respondent No. 2 school has accepted the respective resignations tendered by the petitioners and for this reason only the approval was being sought. The withdrawal of the resignations on 7th April, 1998 is clearly of a date after the resignations had been accepted. The writ petition is liable to fail for this reason only.

7. I find that in *Mrs. Mala Tandon Thukral Vs. Director of Education and Others*, an argument was raised before a Single Judge of this Court for inapplicability of Rule 114A to an unaided recognized school because of the judgment of the Division Bench in *Kathuria Public School*. However, the matter was decided without considering the impact of *Kathuria Public School*. The matter having not been considered in the light of *Kathuria Public School*, the same is not considered as a precedent for the present purposes.

8. I may notice that the parties have also agitated qua the interpretation of Rule 114A. However, in view of the same being not applicable to the respondent No. 2 school as aforesaid, the said decision is not necessary.

9. The question of very maintainability of this writ petition was also in issue owing to the remedy of appeal before the Delhi School Tribunal constituted u/s 11 of the School Act. Whereas, the counsel for the respondent No. 2 school contends that the ambit of the jurisdiction of the Tribunal (supra) has been considerably widened vide the judgment in *Kathuria Public School*, the counsel for the petitioners relies upon *Sonica Jaggi Vs. Lt. Governor and Others*, . I find

the Supreme Court in *Shashi Gaur Vs. NCT of Delhi and Others*, to have unequivocally held that the Tribunal has jurisdiction in all matters of termination of services of the employees of the school, whether by way of removal, dismissal, reduction in rank or even otherwise. Though *Shashi Gaur (supra)* was noticed in *Sonica Jaggi (supra)* case but the Division Bench of this Court in *Sonica Jaggi* only observed that grievances like fixation of salary cannot be the subject matter of an appeal before the Tribunal. The present is however not such a case and even if the averments of the petitioners are to be believed, is a case of illegal removal from service.

10. Though on account of the view taken hereinabove qua applicability of Rule 114A to unaided recognized schools, that dispute is not required to go to the Tribunal but the petitioners have also pleaded that the resignation letters were obtained from them by misrepresentation. If that be the case of the petitioners, then notwithstanding the dismissal of this writ petition, the petitioners would be entitled to approach the Tribunal. The School Act provides a limitation for preferring an appeal before the Tribunal. However, since the petitioners were pursuing the remedy in this Court and further since one of the pleas of the petitioners qua applicability of Rule 114A has been negated owing to a subsequent judgment of this Court, the petitioners would be entitled to approach the Tribunal for reliefs, if any, entitled to qua their termination. If the petitioners so approach the Tribunal within six weeks from today, the Tribunal shall adjudicate the same treating the same to have been filed within time.

11. The writ petition is, therefore, dismissed with the liberty aforesaid.

No order as to costs.