

(2017) 02 DEL CK 0232

In the Delhi High Court

Case No : 3171 of 2004

MRS. ASHA ARORA

APPELLANT

Vs

KALKA PUBLIC SCHOOL & ORS.

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2017) 02 DEL CK 0232

Hon'ble Judges : R.M.Sinha, Anuj Aggarwal

Bench : DIVISION BENCH

Judgement

1. By this writ petition under Article 226 and Article 227 of the Constitution of India, the petitioner Mrs. Asha Arora impugns the judgment of the Delhi School Tribunal dated 25.7.2002 by which Delhi School Tribunal has dismissed the appeal filed by the petitioner herein and upheld the order of the disciplinary authority dated 1.7.1997 recommending dismissal of the petitioner from the services as a Physical Education Teacher with the respondent no. 1/Kalka Public School.

2. Petitioner was issued a charge sheet dated 11.12.1996 on account of failing to comply with the directions of the respondent no.1/school as also for instigating students to boycott classes. The charge sheet containing the grave charges against the petitioner reads as under:- "Ref.No. KPS/MISC/96-97 Dated 11-12-96

Mrs. Asha Arora,

C-3/341; Yamuna Vihar,

Delhi-51

Sub: CHARGESHEET

You were suspended with immediate effect from 22-10-96 for gross misconducts

committed by you. Necessary approval of the competent authority in this regard was conveyed by Dy. Director of Education (South Zone) vide No.F.EO/z-s-25/96/1294 dated 19-11-96.

The Disciplinary Committee has decided to serve on you Charge-Sheet levelling the following charges:-

1. You were asked to prepare a Team of Junior students for any game of your choice. On 5th October, 96, when you were personally called by the Principal in her office at about 10.30 a.m. to know the progress, to which you could not give any satisfactory reply. You were verbally asked to be vigilant of your duties & responsibilities.
2. On 9th October, 96, it was found that you were not even keeping the attendance record properly pertaining to the students, who were supposed to form the team. Upon being verbally asked for negligence of duties, you could not give any satisfactory reply.
3. On 10th October, 96, the Principal instructed you not to do the duty of preparation of the team, so that other field duty could be considered and assigned to you. At this you felt offended and started shouting "I am doing duty the way I like and will continue to do same way".
4. (i) On 11-10-96 at about 7.30 a.m. at school Gate No.2, you started instigating a group of students of higher classes not to attend their classes. At your instigation, some students started instigating other students also not to attend the classes. The Principal, Vice Principal and some other teachers went there and directed the students to go to their classes, but at your provocation, a group of students continued to stay there and demanded that until the Principal gave assurance that no action would be taken against you, they would not attend the classes. You continued to instigate them and they did not attend their classes, and prevented other willing students from attending the classes. Though till then, no action was contemplated to be taken against you for your undesirable activities, while some changes in your duties were under consideration, you will-fully neglected the instructions and continued to incite the students to indulge in undesirable activities. Thereafter on 11-10-96, you instigated some students to gather at school Gate No.1, who went and blocked the School Gate No.1 and started shouting slogans "KPS MURDABAD, PRINCIPAL MURDABAD, NO ACTION AGAINST MRS. ASHA ARORA". You were repeatedly advised by the Principal and other staff members not to instigate students, and not to create any unhealthy scene at the school gate, but you did not care but you remarked "Bachay mere sath hai, yadi mein kahoon to bachay andar aa saktay hai". As a result of your continued instigation and provocation, the group of students continued shouting slogans against the Management. They prevented and did not allow the Team of students, which was to go for recording for Home T.V. at about 11.00 a.m. It was only after persuasion of some parents, who had reached the school by then, that the Team could go for recording. Thus as a

result of your continued provocation and instigation, normal functioning of the school was disturbed and studies suffered badly.

(ii) For creating the most unfortunate and ugly situation in the school and for committing act of gross misconduct, Memo bearing No.KPS/MISC/36/4413A dated 11-10-96 was issued to you, calling upon you to explain as to why disciplinary action should not be taken against you, but you refused to take the memo. Thus your refusal to take and acknowledge Memo dated 11-10-96 was a serious act of indiscipline.

5. (i) On 14-10-96, at about 7.30 a.m. you again started instigating the students at school Gate No.2 for not attending the classes. At your instigation, a group of students did not go to their classes and started threatening and preventing other students not to attend the classes. At your instigation, a group of students started shouting slogans like "KPS MURDABAD, PRINCIPAL MURDABAD, MANAGEMENT HAI HAI, NO ACTION AGAINST MRS. ASHA ARORA, AGITATION WILL CONTINUE." At about 10.45 a.m., on 14-10-96 itself the Principal was to go in the car from Gate No.1 for a meeting with the Chair-person of the Managing Committee of the school, but at your instigation, a group of students did not allow her to go out of the school, as they kept the school Gate No.1 blocked and ultimately the principal had to come back to office.

(ii) On 14-10-96 at about 11.00 a.m at your instigation, the group of students also started giving threat that they would damage the school buses parked at school gate, in case the Management did not give the undertaking that no action would be taken against you. At your instigation, the students turned so violent that police had to be called to save any unpleasant situation and prevent any harm to be caused to the students or property of the school. The police party came and controlled the situation.

(iii) On 14.10.96 at about 11.30 a.m., some parents came to see the Principal, when some senior teachers and police officials were also present in the room of the Principal. Hon"ble Member of Parliament Smt. Phoolan Devi, the guardian of two students, also reached there. While the Principal explained the situation, at your provocation some students started insisting on written assurance by the Management that no action would be taken against you. When the Hon"ble M.P. came out of the room, you deliberately took her to the play ground and started gathering the students and the teachers there, thus disturbing the normal functioning of school, for about an hour.

6. For delivery of suspension order dated 22.10.96 to you by hand, a special messenger was sent at your residence on 22.10.96. You read the suspension order, but refused to receive and acknowledge the same.

7. On 23.10.96, you came at school Gate No.1. The peon went at school Gate No.1 at about 7.50 a.m. to deliver to you the suspension order dated 22.10.96 and letter dated 23.10.96, but you again refused to receive the same. You again started instigating the group of students not to attend classes.

8. It is unfortunate that for your personal objectives, undesirable acts and deeds, you incited and instigated the students, who at your instigation behaved in most indisciplined, violent and riotous manner and created unpleasant & undesirable scene inside and outside the school, which lowered the reputation and prestige of the Institution.

9. Your above acts, deeds not only constitute grave misconducts and apart from the general meaning of misconduct, but these acts also constitute the misconducts of willfully neglecting your duties, indulging in malpractice of disturbing the normal school activities, inciting the students for indiscipline and instigating and provoking them to damage the property of school.

10. You are hereby asked to show cause within 15 days of receipt of this Chargesheet, as to why the disciplinary action should not be taken against you for the aforementioned misconducts. In case you do not submit your reply within the stipulated period, it will be presumed that you have nothing to explain and you accept the charges, and further action will be taken accordingly.

11. Your suspension order will remain operative till the final disposal of the matter.

for and on behalf of

DISCIPLINARY ACTION COMMITTEE Sd/-

ASHA MEHROTRA

Principal-cum-Manager KALKA PUBLIC SCHOOL."

3. Pursuant to the charge sheet disciplinary proceedings were conducted against the petitioner. Petitioner, however, chose not to participate in the inquiry. Management/school, however, led evidence of as many as ten witnesses and also proved various documents. The witnesses of the school were not cross-examined by the petitioner nor did the petitioner lead any evidence. The inquiry officer thereafter gave his report, which runs into about 105 pages, holding the petitioner guilty of the charges as stated in the charge sheet.

4. The Delhi School Tribunal by its impugned judgment has held the charges to be validly proved against the petitioner and has dismissed the appeal of the petitioner filed before the Delhi School Tribunal holding that the disciplinary committee was properly constituted, seeking of change of venue by the petitioner was not justified and the Directorate of Education had rightly given its approval for dismissal of the petitioner and that the first order of the earlier Director of Education denying approval only existed in the file and was never communicated to anyone.

5. Before this Court counsel for the petitioner argued the following aspects:- (i) Disciplinary Committee was not properly constituted as Mrs. Asha Mehrotra, Principal and Manager of the school who was part of the disciplinary committee was biased against the petitioner because the petitioner had complained with

respect to Mrs. Asha Mehrotra that staff members were forced to pay back substantial portion of their salaries under the threat of losing the jobs and for which complaints were made. Also, on 8.10.1996 the Principal told the petitioner to resign because such high salary as being paid to the petitioner, who was working as a Physical Education Teacher, could not be afforded by the school. Petitioner refused to resign and therefore the Principal adopted a hostile and harassing attitude towards the petitioner.

(ii) Petitioner had demanded change of venue of the inquiry proceedings from the school to any other venue, but this demand was illegally not acceded to and therefore inquiry report is bound to be set aside on this ground.

(iii) Admittedly in the present case one Director of Education had once/earlier declined approval to the school to dismiss the petitioner, but this order was revised by a subsequent Director of Education, and this the subsequent Director of Education could not have done by his subsequent order.

(iv) The punishment imposed upon the petitioner of dismissal of services is disproportionate to the charges made out against the petitioner.

(v) Delhi School Tribunal by the impugned judgment has incorrectly exercised the power of the first appellate court by not referring to in detail the report of the Inquiry Officer.

6. The first argument urged on behalf of the petitioner is misconceived for the reason that if the petitioner had to make out a case of bias, simply alleging the same was not enough, and that the petitioner had to necessarily prove her alleged case of bias by leading evidence before the Inquiry Officer. Petitioner in spite of repeated opportunities did not appear before the Inquiry Officer, did not cross-examine the witnesses of the school and did not lead her own evidence. Once that is so, a self-serving allegation of bias cannot be said to have been proved for this Court to believe the same. Also, even assuming what is stated by the petitioner against the Principal is correct, on that account only it cannot be held that the Principal was biased as a member of the disciplinary committee, inasmuch as, the charges in question relate to totally different aspects of indiscipline of the petitioner, and once the charges are proved, the so called bias cannot be said to have any impact on the findings of the charges by the Inquiry Officer and which report of the Inquiry Officer therefore is correct as also the order of the disciplinary authority recommending dismissal from services of the petitioner. Also, in view of Rule 118 of the Delhi School Education Rules, 1973 there is a statutory necessity for the Principal and Manager of the school/Mrs. Asha Mehrotra to be a part of the disciplinary committee.

7. The second argument of wrongly declining the change of venue argued on behalf of the petitioner is also a totally misconceived argument because the venue of the inquiry proceedings was the school and which was indeed convenient even for the petitioner. Counsel for the petitioner could not point out any provision of law that the inquiry proceedings could not be held in the school,

and accordingly once the respondent no.1/school has so done, there is no illegality in holding the inquiry proceedings in the school, and it is not open to the petitioner to argue that the petitioner was entitled to change of venue of the inquiry proceedings from the school and that on account of declining such request the inquiry proceedings must fail. This argument of the petitioner is also therefore rejected.

8. The third argument urged on behalf of the petitioner that the approval of dismissal was not granted by the earlier Director of Education and was thereafter subsequently wrongly granted by a later Director of Education appeared to be attractive at the first blush, however, admittedly, the first order of the Director of Education only remained in the file and was in fact never communicated to anyone including the petitioner or the respondent no.1/school. A non communicated order existing in the government file does not create any right or liability as per the law laid down by the Supreme Court in the case of Sethi Auto Service Station and Anr. Vs. Delhi Development Authority and Others, 2009 (1) SCC 180, and therefore, the Delhi School Tribunal was justified in its finding that the earlier non communicated order cannot be the basis for the petitioner to claim that no approval was given. Delhi School Tribunal has held that internal notings of the file do not amount to a final order and which is the correct proposition of law in view of the ratio of the judgment of the Supreme Court in the case of Sethi Auto Service Station (supra). The third argument urged on behalf of the petitioner is also therefore rejected.

9. The fourth argument urged on behalf of the petitioner of disproportionate punishment is also a misconceived argument because the charge sheet as reproduced above shows grave charges of indiscipline against the petitioner and which includes repeatedly instigating the students not to attend classes and causing unrest requiring calling of police. Such grave charges of indiscipline of not following the directions of the Principal and instigating the students not to attend classes resulting in police having to be called, vitiates the complete atmosphere in a school, and therefore, petitioner's services could not have been continued with the respondent no.1/school in such circumstances. Punishment would be disproportionate only if it shocks the judicial conscience, and the facts of this case do not shock judicial conscience of this Court so as to call the punishment of dismissal from services as a shocking disproportionate punishment. This argument of the petitioner is also therefore rejected.

10. The last argument urged by the petitioner was that the first appellate court has not exhaustively dealt with the inquiry report and has therefore incorrectly exercised powers as a first appellate court in para 9 of the impugned judgment. Para 9 of the impugned judgment reads as under:- "9. I have gone through the inquiry report and the proceedings of the Disciplinary Committee. I find that the Inquiry Officer has deal with every aspect of the allegations, in detail. The findings, given by the Inquiry Officer, as well reasoned. The Disciplinary Committee has also considered the findings carefully. Each member of the

disciplinary committee had the opportunity to express views on the findings. The Disciplinary Committee by a majority decided to dismiss the Appellant. The allegations of being bias, made against the 3 members of the Disciplinary Committee by the Appellant, appear to be an afterthought. The Appellant never participated in inquiry. Under the circumstances, I find no grounds for interfere in this case. The appeal is accordingly dismissed."

11. I have already stated above that the report of the inquiry officer is a very detailed report running into 105 pages. There is no requirement that a first appellate court has to retype and reproduce portions of the long Inquiry Officer's report and it is enough if the first appellate court adopts the inquiry report after stating that the inquiry report has been gone through by the first appellate court. This is all the more in the facts of the present case where admittedly petitioner did not cross examine the witnesses of the school. The school had led evidences of as many as 10 witnesses and proved documents. The petitioner on the other hand led no evidence whatsoever, and therefore, inquiry officer was correct in giving a finding against the petitioner as regards the charges in the charge sheet. In such a case, there is no point of lengthening of its judgment by the first appellate court by simply reproducing the pages of the inquiry officer's report before accepting the same and it was enough for the first appellate court, being the Delhi School Tribunal, to state that the inquiry officer's report has been gone through, and which detailed inquiry report is accepted by the first appellate court. This argument of the petitioner is also therefore rejected.

12. In view of the above, there is no merit in the writ petition and the same is therefore dismissed, leaving the parties to bear their own costs.