
(2006) 10 DEL CK 0048
In the Delhi High Court
Case No : WP (C) 14419 of 2006

Mrs. Meemansa Dixit

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Citation : (2006) 10 DEL CK 0048

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : A.P. Dhamija, for the Appellant; Avnish Ahlawat and Tejika for respondent 1 and Vikram Singh and Naveen Chawla for respondents 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—The burning question of discussion in this writ petition is whether in a disciplinary inquiry initiated by the above said school, the petitioner is entitled to have assistance of the legal practitioner. The petition was limited to this question only vide order sheet dated 18.9.2006. The gist of the petitioner case is this. She is working as Post Graduate Teacher (English) in J.P.M. Senior Secondary School for Blind, respondent No. 2, since 1993. One another inquiry is pending against Ms. Sonia Puri. The petitioner is a defense witness in that case. It is alleged that the management was not interested that the petitioner should depose during inquiry as defense witness. The petitioner received a letter on 21.8.2006. In the said letter, it was mentioned that since the inquiry is being held under the provisions of Rule 120 of 1973 rules, petitioner would not be permitted to have the assistance of legal practitioner during the course of inquiry but no such reference to the rules, which prohibits the assistance of legal practitioner was mentioned. The petitioner sent representations but those did not ring the bell. Ultimately the instant writ was filed.

2. A three fold argument was advanced by the learned Counsel for the petitioner. First of all, in the case of Ms. Sonia Puri, against whom disciplinary inquiry was

initiated, she was allowed to have assistance of legal practitioner. It is alleged that denial of the same right to the petitioner, who is similarly circumstanced, is mala fide and arbitrary.

3. For the following reasons, I place no value to this contention. The inquiry against Ms. Sonia Puri was conducted by Mr. Moksh Mahajan, inquiry officer. The copies of the inquiry report and charges framed against Ms. Sonia Puri have been placed on record. At page 6 of the inquiry proceedings, the inquiry officer, himself made the following remarks:

Being a legal practitioner, I have allowed advocates to represent the parties on both sides. It is also for the reason that both the parties have their full say on the matter keeping the principles of natural justice in mind.

4. It is crystal clear that the facts of that case are entirely different. In that case, inquiry officer was a lawyer, presenting officer was a lawyer. Consequently she was allowed to have the services of a lawyer. In the case of the petitioner, the learned Counsel for the respondents made it clear that inquiry officer or presenting officer are not lawyers. Consequently, the petitioner cannot derive any benefit from the peculiar facts in the case of Ms. Sonia Puri.

5. Secondly, learned Counsel for the petitioner vehemently argued that unless or until there is specific provision, which debars the petitioner from having legal assistance he cannot be deprived of this legal right. The learned Counsel for the petitioner submitted that the authority cited by the respondent in *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, is not applicable to the facts of this case because the Industrial Employment (Standing Orders) Central Rules, 1946 wherein Section 14 Clause ba itself provides, "In the inquiry, the workman shall be entitled to appear in person or to be represented by an office bearer of a trade union of which he is a member".

6. This argument is vulnerable to refutation. The following authorities evince the hollowness of his argument. In *Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi* (Supra) it was held:

Ordinarily it is considered desirable not to restrict the delinquent's right to be represented by counsel or an agent of his choice, but it is a different thing to say that such a right is an element of the principles of natural justice and denial thereof would invalidate the enquiry. The right to be represented through counsel or agent can be restricted, controlled or regulated by statutes, rules, regulations or standing orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of rules of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent.

7. In a recent authority, the position was further clarified. In *The management of National Seeds Corporation Ltd. v. Rama Reddy* 2006 (9) Scale page 701 it was

observed:

7. The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation.

8. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules.

8. The last submission made by learned Counsel for the petitioner was that Hon"ble Mr. Justice S. Ravindra Bhat has stayed the disciplinary proceedings in which this is one of the grounds. A copy of the order dated 14.12.2005 in the case of Bir Bahadur Singh Rathour v. Director of Education and Ors. has been placed on record. I have gone through this order. There is no inkling in the order that it was stayed due to non-availability of legal aid. It was stayed for some other ground. The mere fact that the non-availability of legal aid was one of the grounds does not have any bearing on the facts of this case in view of the above cited Apex Court authorities. Consequently, this argument, too, deserves no consideration.

9. The writ is without merit and Therefore dismissed. There shall be no orders as to costs.