

(2009) 02 DEL CK 0165

In the Delhi High Court

Case No : Writ Petition (C) No. 4050 of 1992

Mrs. Ranjana

APPELLANT

Vs

The Manager, City Public Co-Education Middle School and
Others

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Delhi School Education Rules, 1973 — Rule 120

Citation : (2009) 02 DEL CK 0165

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : S.N. Rai, for the Appellant; Amit Kumar Gupta, Vaibhav Bharti and Vinit Jain, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This writ petition is challenging the order dated 17th August, 1990 passed by the respondent No. 1 school and the order dated 12th September, 1991 passed by Delhi School Tribunal in Appeal No. 14/1991 titled Mrs. Ranjana v. City Public Co-Education Middle School, Anaj Mandi, Shahdara, Delhi.

2. Briefly stated the facts of the case are that the petitioner had been appointed as an Assistant Teacher by the respondent No. 1 school on 29th November, 1985 on the assumption that she was a holder of B.Ed. degree from a recognized university. After serving the respondent school for about three years or so, the Education Officer of the Directorate of Education wrote a letter No. EO/Z-XIII/E/89/2803 dated 13th September, 1989 to the respondent No. 1/ school wherefrom the petitioner had obtained the certificate that is Maithili University, Darbhanga, is not a recognized university. On 19th September, 1989, another letter was sent by the Manager of the School advising the petitioner to obtain B.Ed. degree from a recognized university as early as possible and in case she has already taken the exam, she was requested to furnish this information by way of an affidavit on a properly stamped paper. On the basis of this

communication sent by the Directorate of Education, a letter dated 20th February, 1989 was issued to the petitioner that she must produce original B.Ed. degree of a recognized university.

3. In response to this letter, the petitioner gave her reply on 11th October, 1989 that the recognition of B.Ed. degree of Maithili Vidyapith is already under active consideration of Parliamentary Board and therefore till the final decision in the matter is taken, no precipitative action be taken against her in the matter. Since the petitioner did not produce the certificate, she wrote on 23rd March, 1990 to the Manager of the respondent No. 1 school stating therein that as the forms for almost all the universities have been closed, therefore she may be given some time to obtain the B.Ed. degree from a recognized university. After this letter was written, the petitioner did not furnish any information to the respondent No. 1 school as to whether she has taken admission in any recognized university for the purpose of pursuing her B.Ed. course or not. Consequently, an order dated 17th August, 1990 was sent to her terminating her services forthwith and she was further directed to collect her cheque for the termination period. This order was sent to the petitioner by post as she stopped attending her duties in the school from 17th August, 1990 itself. This order was challenged by the petitioner before the Delhi School Tribunal which dismissed the appeal of the petitioner on the ground that under Clause 8(iii) of Delhi School Education Act as the petitioner has not been dismissed, removed or reduced in rank, therefore the appeal of the petitioner before the Tribunal is not maintainable. This judgment was given by the Tribunal on 12th September, 1991.

4. The petitioner has challenged this order of termination dated 17th August, 1990 as well as the order of the Tribunal dated 12th September, 1991 on the ground that the respondent No. 1 school was fully satisfied with the services rendered by the petitioner in the school and the degree which was furnished by her was from a recognized university inasmuch as this was recognized by the State of Rajasthan for which she had placed a letter dated 2nd May, 1988 issued by the Assistant Administrative Officer, Department of Education, Govt. of Rajasthan stating that the degree of B.Ed. granted by Maithili Vidyapith is a recognized degree. Therefore, it was urged that it ought to be assumed that the degree issued to the petitioner was a recognized degree. In addition to this, it was alleged that the respondents did not comply with the Rule 120 of the Delhi School Education Act, 1973 which was mandatory in nature.

5. The respondent No. 1 school has contested the claim of the petitioner by filing a detailed counter affidavit. It has been averred that the degree of B.Ed. furnished by the petitioner is not from a recognized university and for this they had received instructions from the Directorate of Education which they could ill afford to ignore. It has been further stated in the counter affidavit that not only the show cause notice before termination was given but also the fact that she was given sufficient opportunity to obtain a degree after pursuing the course from any other recognized university. Since neither the degree was produced nor

the proof of pursuing the B.Ed. degree from any recognized university was furnished by way of an affidavit, respondent No. 1 was constrained to dispense with the services of the petitioner.

6. I have heard the learned Counsel for the respondents. I did not have the advantage of hearing the arguments so far as the petitioner is concerned. The learned proxy counsel, Mr. S.N. Rai has stated that the counsel for the petitioner, Mr. K.N. Rai could not come to the Court as he is busy in Supreme Court and requests for an adjournment. The request for adjournment was disallowed keeping in view the fact that the matter pertains to the year 1992 and adjournments have been sought earlier also.

7. I have perused the record. The only question which arises for consideration is as to whether the petitioner was having a degree of B.Ed. from a recognized university or not? The petitioner, as a matter of fact, admitted in a letter dated 23rd March, 1990 addressed to the Manager of the School that she does not have the degree from a recognized university. In this regard, respondents have placed on record all the communications between the respondent No. 1 school and the petitioner as well as the correspondence between respondent No. 1 school and the Directorate of Education. Apart from that, the respondents have also placed on record the photocopies of the two degrees which are purported to have been produced by the petitioner before the respondent No. 1 school. In both these degrees, the name of the petitioner, Mrs. Ranjana, wife of Sri Anirudha Prasad is shown to have qualified the B.Ed. degree in the year 1985 in 2nd Division. But in case both these degrees are compared, not only the handwriting of the two degrees with which the name of the petitioner has been filled up appears to be different, but the contents of the degrees itself are differently printed. In one of the degrees, the 2nd Division of the petitioner is shown to be numerical II and in the other, it is shown in the words. Therefore, this clearly gives rise to a doubt that the petitioner, at the point of time when she took employment with the respondent No. 1 school, i.e. in the year 1985, she was not qualified to be appointed as a Teacher because she did not have the requisite degree of B.Ed. If that be the position, the factum of the petitioner not having been given a show cause notice before termination of her service is totally unwarranted. The record shows that the petitioner was not having a degree of B.Ed. from a recognized institution and therefore could not get her services confirmed by getting the impugned orders set aside. She was, as a matter of fact, was not qualified to be appointed as a Teacher at all.

8. Therefore, I find that there is no merit in the writ petition. The submission of the learned proxy counsel for the petitioner that her case was akin to that of the other persons, namely Balwinder Kaur and Rekha Devi, whose services were retained by the respondent No. 1 school is not correct because both these Teachers were having the B.Ed. degrees from the recognized university.

9. Since the very appointment of the petitioner was illegal as she was not having the requisite degree, therefore the appointment itself being void ab initio and it

was not necessary for the respondent No. 1 school to have issued the show cause notice before termination of service of the petitioner.

10. I, accordingly, uphold the validity of the order dated 17th August, 1990 terminating the service of the petitioner. So far as the order of the Tribunal passed on 12th September, 1991 is concerned, although at that point of time the jurisdiction of the Tribunal was only to consider the appeals where in the incumbent has been dismissed, removed or reduced in rank, but this has been now changed on account of judgment in Kathuria Public School Vs. Director of Education and Another, . For the reasons mentioned above, there is no merit in the writ petition and the same is accordingly dismissed.

CM No. 10788/2003

Since the writ petition has been dismissed, no orders are called for on this application. The same is also dismissed accordingly.