

(2013) 05 DEL CK 0073

In the Delhi High Court

Case No : Writ Petition (C) No. 2942 of 2013

Mrs. Shalu Mahendroo

APPELLANT

Vs

Delhi Public School and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0073

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : V. Shekhar, with Ms. Shaveta Chaudhary, for the Appellant; Puneet Mittal, Advocate with Mr. Nitin Sharma, Advocate with Mr. Ankur Aggarwal, Advocate for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner impugning the communication dated 22.3.2013 whereby the suspension of the petitioner has been continued for a further period of six months during the pendency of the departmental enquiry. On behalf of the petitioner, following arguments have been urged to challenge the continuation of the suspension order:-

(i) The communication dated 22.3.2013 addressed to the petitioner shows as if it is not the Managing Committee but the Disciplinary Action Committee which has extended the period of suspension and which is in violation of Rule 115(2) of the Delhi School Education Act and Rules, 1973 which requires the extension to be made by the Managing Committee and not by the Disciplinary Action Committee.

(ii) Secondly, it is argued that the suspension order communicated to the petitioner falls foul of the self-same Rule 115(2) inasmuch as the suspension could only be extended for reasons to be recorded in writing whereas the communication dated 22.3.2013 addressed to the petitioner is a bland communication not containing any reason for extension of suspension order.

2. Since the language of the communication dated 22.3.2013 would be relevant

to decide the issue argued on behalf of the petitioner, I would at this stage seek to reproduce the said communication in its entirety and which reads as under:-

CONFIDENTIAL

Personal File No. DPSr/N-T/SM/37

March 22, 2013

Ms. Shalu Mahendroo

UDC

DPS Rohini

SUSPENSION ORDER

Whereas, you were placed under suspension vide order dated October 3, 2012. And, whereas, the said suspension order was placed before the duly constituted "Disciplinary Action Committee" in its meeting held on Tuesday, March 19, 2013. The Committee recommended that the suspension in r/o. Ms. Shalu Mahendroo, UDC, be extended for a period of 180 days w.e.f. April 2, 2013 without any change in the subsistence allowance being paid. The same was approved by the Managing Committee, DPS Rohini in its meeting held on March 19, 2013 at the DPS Society.

Therefore, I hereby extend your suspension for a period of 180 days w.e.f. April 2, 2013. However, there would be no change in the subsistence allowance being paid.

Rita Sen

3. When we see the communication it is quite clearly found that the extension of the suspension is by means of decision of the Managing Committee because the Managing Committee has specifically approved the recommendations of the Disciplinary Action Committee. Surely, the Managing Committee will only decide if there is a recommendation of the Disciplinary Committee. Disciplinary Committee recommended and the Managing Committee has thereafter accepted the recommendations. The argument therefore urged on behalf of the petitioner that it is not the Managing Committee which took the decision to extend suspension is therefore a misconceived argument and is rejected.

4. So far as the second argument on behalf of the petitioner is concerned, it cannot be disputed that extension of suspension order has to be by means of reasons to be recorded in writing. Rule 115(2) however does not provide that these reasons which are recorded in writing have to be necessarily communicated to the employee unless specifically asked for. Reasons however must exist in the file and without the reasons existing in the file there cannot be extension of the suspension. These reasons, of course, can be reviewed in legal proceedings inasmuch as reasons have to be justifiable reasons but since the Managing Committee has given reasons and I agree with the same, I do not find

any substance in the argument urged on behalf of the petitioner that there is unnecessary extension of suspension order. Counsel for the respondent No. 1-school has shown me the record being the minutes of the Managing Committee meeting dated 19.3.2013 and which contains the following portion so far as the issue of the continuation of suspension and the order for paying of the same subsistence allowance to the petitioner as was originally fixed:-

Mrs. Sen recused herself when this point was taken up.

Smt. Shovana Narayan, Chairperson, DPS Rohini requested Mrs. Kiran Kumar, Vice Principal and staff representative on the Disciplinary Action Committee, to give a brief account of the progress of the Departmental Enquiry against Ms. Shalu Mahendroo, UDC, DPS Rohini.

Mrs. Kumar informed the members about the progress report submitted by the Inquiry Officer Dr. Zeenat Khader. She further informed that Ms. Shalu Mahendroo, the Charged Officer, along with her defence assistance Mr. Atul Mahendroo was following delaying tactics by asking the witnesses too many questions which are repetitive and irrelevant. So far in 7 hearings not even one witness has finished the cross examination by the Defence Assistance.

She conveyed that the Disciplinary Action Committee after going through the progress of the enquiry felt Ms. Shalu Mahendroo's suspension period should be further extended to another 180 days w.e.f. April 2, 2013 and the subsistence allowance should remain the same. All members agreed to the decision of the DAC.

Admiral M.M. Chopra, Vice Chairman DPS Society and Member Managing Committee, DPS Rohini, initiated a discussion on how Discipline should override Justice. He said that it is not advisable to have enquiries and hearings going on for a long time since it is economically unviable. The vacancy for the suspended person lies for a long time. School money which can be spent on more constructive matters is spend on subsistence allowance for the charged officer for a prolonged period. He suggested if an opinion could be sought by the DPS Society to limit the period of suspension and expedite the process of enquiry.

5. It is therefore clear that there are reasons recorded in the file. I do not have to very clinically examine the reasons but even if I do so it is quite clear that in the seven hearings fixed, cross examination of not even one witness has been concluded by the petitioner.

6. The only ground which is urged in the petition as to why the suspension order cannot be extended because there is no fault of the petitioner is ground (H) which is only relied upon, and which reads as under:-

H. BECAUSE the impugned order is passed without considering the fact that there are no reasons directly attributable to the Petitioner for prolonging the disciplinary enquiry. The Petitioner along with her defence counsel has presented herself on every date fixed by the Enquiry officer for proceeding with the enquiry.

7. In my opinion, the pleadings in the writ petition quite clearly fall short of the standard required for completing and making out a cause of action that it is not the petitioner who is guilty of delay in departmental proceedings and the entire or most of the delay has occurred only on account of departmental authorities. Vague averments cannot lead to arising of a cause of action more so because there are detailed reasons given by the Managing Committee. Also the writ petition does not contain necessary averments as to the proceedings before the Enquiry Authority being delayed not on account of the petitioner but on account of other aspects including alleged defaults of the School Management or the Enquiry Officer or the Presenting Officer of the school and that what are the total number of hearings which have taken place and adjournments took place on account of faults of the respondent-school etc. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.