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(2004) 02 DEL CK 0045

In the Delhi High Court

Case No : CW No. 640 of 1980

Mrs. Usha Sharma — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Citation : (2004) 110 DLT 116 : (2004) 73 DRJ 240 : (2004) 3 SLJ 98

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : E.X. Joseph and Sonia Singhani, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner prays that notice dated 28.3.1980 (should read 28.2.1980) issued by the Principal of respondent No.4 school notifying that services of the petitioner shall stand terminated w.e.f. 30.4.1980 be quashed. Letter dated 7.4.1980 issued by respondent No.5 terminating the services of the petitioner be quashed. Respondents No.4 and 5 be directed to reinstate the petitioner in service as Assistant Teacher in the school w.e.f. 7.4.1980 with all consequential benefits of pay and allowances, promotions, seniority and continuity of service.

2. Respondent No.4 is Meera Model School, established by respondent No. 5 Oberoi Education Society (Regd.). Petitioner was employed as an Assistant Teacher under respondent No.4 school w.e.f. 11.7.1966.

3. The school was an unrecognised school and, Therefore, provisions of Delhi School Education Act,1973, Delhi School Education Rules,1973 and the directives issued by the Director of Education from time to time were not applicable to the school.

4. The school was granted recognition by the Directorate of Education on 1.5.1977.

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5. Section 8 of Delhi School Education Act,1973 stood attracted the moment recognition was granted to the school. The said Section deals with the terms and conditions of service of the employees of recognised private school. Sub-Section (1) of Section 8, inter alia, provides :

"The Administrator may make rules regulating the minimum qualifications for recruitment and the conditions of service, of employees of recognised private schools."

6. Chapter IV of Delhi School Education Rules,1973 also stood attracted to the school. As per Rule 50 sub-rule (XIX), school became obliged to allow the Director of Education to inspect its record, Under Rule xviii, the school became obliged to comply with instructions of the Director of Education as may be issued by him to secure the continued fulfillment of the conditions of recognition.

7. Rule 100 of the Delhi School Education Rules,1973, which stood attracted, required the school to employ teachers having minimum specified qualifications. The school had no power to relax the qualifications except with the approval of the Director of Education as per the mandate of Rule 97 of the Rules.

8. The undisputed position is that as on 1.5.1977 when the school was granted recognition, the minimum educational qualifications required for the post of Assistant Teacher as prescribed by the Director of Education were :-

"(I) Higher Secondary/Sr. Secondary/ Intermediate or Graduate from recognised University/Board;

(ii) Two years JBT/BTC Certificate/ Diploma or B.Ed. From a recognised institution/University.

9. Further admitted position is that the petitioner was a metriculate having a one year diploma in Child Education awarded by the Institute of Vocational Studies Teachers Training Centre. Petitioner claims that the said certificate is equivalent to a JBT/BTC certificate/diploma. However, it may be noted that the said certificate is pursuant to one year training course but the requirement of the eligibility norm is two years JBT/BTC certificate/ diploma.

10. Treating the petitioner as not being qualified to be appointed as an Assistant Teacher and it being a term of recognition of the school that it would not employ any unqualified teacher. Petitioner was informed, as per the stand of the school and the society to obtain the requisite qualifications. We do not have any such contemporaneous letter on record. However, on record we have letter dated 16.3.1978 wherein the petitioner was informed in reference to earlier letter dated 7.12.1977 that the management reminds her to obtain necessary educational qualifications for absorption in the school. It was written in the letter that it appears that no attempts have been made by the petitioner to obtain necessary qualifications. Petitioner was directed to submit the proof of the action taken by her to obtain the requisite qualifications. It was directed to the petitioner that she must submit the necessary proof by the first week of

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April,1978, failing which her services shall be terminated.

11. Petitioner responded vide letter dated 18.3.1978. She claimed to be qualified. The letter of the petitioner did not find favor with the authorities. On 1.9.1978, she was once again directed to obtain the requisite qualifications.

12. Petitioner responded by letter dated 8.9.1978, inter alia, she wrote as under :

"I am to refer to your letter No.1050, dated the 1st September,1978, regarding improvement of my educational qualifications and absorption in the Mira Model School (Recognised) and to request you to please let me know the qualifications which you expect me to possess at this stage as your letter in this respect is silent. By the way, I am trying to seek admission in intermediate.

2. As regards my absorption in the Mira Model School this question does not arise at all as I am already working in this institution since 1966 and am still continuing; any my services from this institution have never been terminated. Presently, I am posted i the Mira Nursery School (run by the same management) on the specific request of the Principal of the Mira Model School to assist the Nursery Section in their new admission rush.

3. The present dispute is of pay-fixation only which seems to have cropped up under some mis-understanding on the part of the management as the management is not giving me even the minimum of the scale of Asst. Teacher, duties of which I have been performing before recognition and even after recognition, although the Chairman of the Oberoi Education Society is fully empowered to give minimum of the grade to an erstwhile teacher of Mira Model School.

4. I may also add here that HALF OF THE SALARY OF ASSTT. TEACHER PAID TO ME SINCE 1.5.77 HAS ALSO BEEN STOPPED WITH EFFECT FROM JULY PAID IN AUGUST FOR THE REASONS BEST KNOWN TO THE MANAGEMENT. This seems to be an act of provocation and also if I am correct, an infringement of one of the conditions of recognition of this Institution.

5. In the end, I request you to please:

i) Treat my present educational qualifications experience as sufficient for Asstt. Teacher as heretofore;

ii) Pay me full salary as to other teachers in the school w.e.f. 1.5.77.

6. On my part, I will try to improve my educational qualifications as far as practicable. Already on your request, I have sought Nursery Training at a cost of more than Rs.1500/- and a lot of inconvenience. I will further increase my qualifications as desired by you provided facilities to acquire those qualifications are available and the same is feasible for ladies of my age and circumstances.

13. Letter dated 8.9.1978 addressed by the petitioner, to my mind, is an attempt by the petitioner to deflect the issue. She was made aware right at the time

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when the school was granted recognition that she had to obtain necessary qualifications for which, time was granted to her. The petitioner was obviously attempting to cloud the issue when she wrote letter 8.9.1978. On the one hand, she claimed a right to have the educational qualifications relaxed, on the other hand, she asserted that she possess the requisite qualifications and the third stand taken was that she would improve her educational qualifications.

14. In all fairness to the petitioner and to help her out, the school wrote on the issue to the Director of Education. On 4.11.1978, the Director of Education wrote to the school as under :

"The Manager,

Mira Model School,

Janakpuri, N.Delhi.

Sub: Relaxation of Educational Qualification in respect of Smt. Prem Lata Datta, Asstt. Teacher.

Sir,

With reference to your letter No.MMS/EDU/1099 dt. 26.10.78 on the subject cited above, it is to inform you that Smt. Prem Lata Datta has been granted relaxation in qualification for two years with effect from the date of starting of session i.e. 1.5.78. Hence, she will have to be retained in the same post and scale which she was enjoying earlier. She may, however, be informed in writing for completion of her qualifications for the said post within this stipulated time.

Similar action be taken in the case of Smt.Usha Sharma, Asstt.Tr.

Yours faithfully,

EDUCATION OFFICER:ZONE X BOYS"

(It be noted that the letter though pertains to Mrs. Prem Lata Datta, deals with petitioner as well)

15. On 10.11.1978, the school and the society duly intimated to the petitioner the requirement of the Director of Education as conveyed to the school under cover of letter dated 4.11.1978. It was clearly indicated to the petitioner that she should obtain the requisite qualifications latest by 30.4.1980, failing which the school would have no option but to discontinue her service.

16. In the meanwhile, the school sent a bio-data of the petitioner seeking clarification on the issue as per the stand of the petitioner that the diploma obtained by her was to be treated as adequate equivalent qualification.

17. It was a half hearted attempt at the behest of the petitioner. Being fully made aware that the diploma which she possessed was inadequate for two reasons. Firstly, it was one year course. Requirement of the rule was two years

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JBT/BTC certificate/diploma or B.Ed. And secondly, the diploma obtained by the petitioner was not from a recognised institute. Directions were sought from the Director of Education as to what should the school do in the circumstances where it was placed. Correspondence continued. On 22.2.1980, the Director of Education informed the school as under :

"Sub: Clarifications regarding untrained and unqualified staff.

With reference to your letter No. MMS/staff dated 15th October,1979, on the subject cited above, I have been directed to inform you that the training of Bal Sewika Course in respect of Smt. Prem Lata Datta, Asstt. Teacher and Diploma in Child Education in r/o Smt.Usha Sharma, Asstt. Teacher are not recognized for the purpose of appointment of Nursery Teacher of Delhi Administration."

18. Pursuant to the aforesaid letter dated 22.2.1980 written by the Director of Education, school issued letter dated 28.2.1980 to the petitioner informing her as under:

"Mrs. Usha Sharma is hereby informed that her services shall stand terminated with effect from the afternoon of 30th April,1980, since the Directorate of Education, Delhi Administration, vide letter No.400 dt. 23.2.80 to whom the case had been referred, has found her wanting in requisite professional training qualification for the post of Assistant Teacher in this school. Apart from this, it has been noted regretfully that she has failed to obtain the requisite qualification within the stipulated period of two years allowed o her by the Education Department.

Due to her ineligibility for the post, the school management express their inability to retain her in the school beyond 30.4.80. She has been duly informed, well in time."

19. Petitioner responded by letter dated 4.3.1980. She insisted that she was qualified. She further insisted that she was entitled for grant of relaxation of the norms. It being too late in the day for the petitioner to keep on harping on a stand, which was time and again conveyed to her as being incorrect, on 7.4.1980, petitioner was informed that her services were being discontinued. Cheque for the month of April,1980 was tendered to her.

20. Learned counsel for the petitioner contended that u/s 8 of Delhi School Education Act, management of the school could not terminate the services of the petitioner without the approval of the Director of Education. Sub-section (2) of Section 8 was brought in aid, which reads as under :-

"Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise removed except with the prior approval of the Director."

21. Counsel contended that no approval was taken from the Director of

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Education and, Therefore, the impugned orders are liable to be struck down.

22. Facts as noted by me above, show that it is not a case of punitive action being taken against the petitioner. Dismissal, removal or reduction in rank contemplated by Sub-Section (2) of Section 8 of Delhi School Education Act,1973 is in the context of a penal order being passed. Facts show that the petitioner was not qualified and hence was not eligible to be appointed as a teacher on permanent post in a private school which was recognised under Delhi School Education Act,1973. The petitioner was appointed by the school when it was an unrecognised school and at that point of time, the provisions of the Act and the rules were not applicable to the school. When the school obtained recognition, it was a term of recognition that the school would comply with the provisions of the Act, rules and directions issued by the Director of Education from time to time. Under the rules, minimum educational qualifications were prescribed, making a person eligible to be appointed as an Assistant Teacher. The certificate obtained by the petitioner pursuant to a one year course from the Institute of Vocational Studies Teachers Training Institute was not only of one year duration but was not from a recognised institute. In any case, the Director of Education held it not to be appropriate equivalent qualification. As far as the school is concerned, that was the end of the matter for the school. It could not go contrary to the directions of the Director of Education. Petitioner has not challenged the directives issued by the Director of Education to the school. Correspondence between the school and the Director of Education show that the school made every attempt to get the eligibility norms relaxed or get the approval of the Director of Education for permanent absorption of the petitioner. The Director refused either of the two. To my mind, right so. Educational qualifications for a teacher are a must. They ought not to be relaxed. It is not a case where the school acted unilaterally. Facts noted above show that the school remained in touch with the Director of Education and sought his guidance at every stage. The Director of Education at each stage required the petitioner to obtain the required educational qualifications. This fact was duly conveyed to the petitioner in the year 1977 itself. Though she reiterated her position that she was qualified but she undertook to obtain the requisite qualifications which she did not obtain. From 1977 to 1980, three years were granted to the petitioner to obtain the qualifications. The matter was finally set to rest by the Director of Education when letter dated 22.2.1980 was addressed to the school. It cannot, Therefore, be said that the school has terminated the services of the petitioner without the approval of the Director of Education. In fact, it is not a case of termination of service, it is actually a case of non-confirmation of the services of a person who was employed but does not possess the necessary qualifications for being appointed to the post in question and having been granted enough opportunity to obtain necessary qualifications does not do so and as a consequence his services are terminated.

23. Facts on record do not make out any case to grant relief to the petitioner. The writ petition is accordingly dismissed. However, there shall be no order as to

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costs.

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