
(2013) 07 DEL CK 0268
In the Delhi High Court
Case No : Writ Petition (C) 1366 of 2011

Ms. Bindu Khanna

APPELLANT

Vs

Managing Committee and Others

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Delhi School Education Act, 1973 — Section 8

Citation : (2013) 07 DEL CK 0268

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Madhumita Bhattacharjee, for the Appellant; Ferida Satarwala, Advocate for Respondent No. 1 and Mr. Ashok Chhabra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—In this writ petition, the petitioner challenges the chargesheet issued by the respondent No. 1/school. The chargesheet is dated 29.09.2010. This very chargesheet dated 29.9.2010 was challenged by the petitioner in W.P. (C) 7759/2010. Petitioner is also challenging the suspension order dated 23.4.2010. W.P. (C) 7759/2010 titled as Bindu Khanna Vs. Managing Committee The Pinnacle School Thr Its Chairman filed by the petitioner challenging the same chargesheet dated 29.9.2010 was unconditionally withdrawn on 24.11.2010. This order reads as under:

Learned counsel for the petitioner wants to withdraw the writ-petition. As prayed, the same is dismissed as withdrawn.

2. In law, once legal proceedings are withdrawn without liberty being given to file a fresh case the principle of Order 23 Rule 1 CPC will apply. Though the provisions of CPC do not strictly apply to writ petitions, underlying principle of Order 23 Rule 1 will apply. The principle of Order 23 Rule 1 states that no one should be allowed to keep on filing repeated litigations on the same cause of

action and for seeking the same relief. Since the earlier writ petition wherein the same chargesheet which is challenged in the present writ petition was dismissed as withdrawn without any liberty being prayed, the present writ petition will be barred by the principle akin to Order 23 Rule 1 CPC. I may also state that the principle of constructive res judicata will also in substance apply to these proceedings because whatever basis should have been averred in the earlier case if not done, then there would be no entitlement to seek relief as claimed in the earlier case in the subsequent case on additional facts/basis. This is the principle of constructive res judicata as found in Expl. IV of Section 11 CPC. Since the earlier writ petition was withdrawn the constructive res judicata principle will apply and any new basis to challenge the chargesheet dated 29.9.2010 could have been raised in the earlier writ petition which was dismissed as withdrawn cannot now be permitted. I may note that the counsel for the respondent No. 1 states that enquiry proceedings are completed, and petitioner did not appear in the enquiry proceedings despite notice and Enquiry Authority being the Enquiry Officer has now given his report.

3. The second relief which is prayed for in the present writ petition is challenge by the petitioner to the suspension order dated 23.4.2010. So far as this is concerned, petitioner was given liberty by the order dated 12.1.2011 in Review Petition No. 8/2011 in W.P. (C) No. 3021/2010 to file independent proceedings, and hence the present writ petition is filed. However, challenge to the suspension order is misconceived for the reasons given hereinafter.

4. Before discussing the contention raised on behalf of the petitioner, it is necessary to reproduce the law as to suspension and which is contained in the judgment of the Supreme Court in the case of State of Orissa Vs. Bimal Kumar Mohanty, which observed as under:-

It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged

misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

(underlining added)

5. The aforesaid judgment therefore makes it clear that it is permissible to suspend the employee considering the gravity of charges or so as not to give an impression that in spite of recalcitrant attitude employee can continue with full benefits till the enquiry proceedings are completed. Orders of suspension are ordinarily not interfered with by the Courts. I may also note that in the present case counsel appearing for the respondent No. 1-school states that the suspension order has remained in force only for six months and after six months the suspension order was not extended and hence he makes a statement that suspension order stands revoked after the end of six months and it is after the end of six months that the petitioner would be entitled to be paid her complete salary. I may note that though counsel for the respondent No. 1-school states that the complete salary has been paid to the petitioner after six months" period of suspension, this is however disputed by the petitioner. I within the scope of this writ petition however do not have to look into that aspect.

6. The suspension order is challenged before me on four main grounds which are:-

(i) The respondent No. 1-school is vindictive against the petitioner because the petitioner took up courage for claiming her monetary dues.

(ii) There is in fact no grave misconduct and consequently no suspension order can be passed.

(iii) The order of suspension is hit by Section 8 of the Delhi School Education Act, 1973 because no prior or post facto approval of the Director of Education was taken.

(iv) The Managing Committee in the present case is not properly constituted because there have been no elections in the school which is run by a family and therefore in the absence of proper Managing Committee the suspension order

against the petitioner cannot stand.

7. First two arguments urged on behalf of the petitioner can be dealt with together. Even assuming for the sake of arguments that respondent No. 3 is assumingly vindictive, yet, if the conduct of the charged employee is such that suspension should be imposed, then, I do not find that the suspension order can be challenged. In order to understand the gravity of misconduct of the petitioner, and who is a teacher in the school, let us refer to the memorandum of charges against the petitioner. This memorandum of charges (without the detailed factual matrix with respect to each of these charges which would be contained in the statement of imputation of facts) are as under:-

MEMORANDUM OF CHARGES

1. That on or about 15-11-2005, you insulted a teacher by the name of Ms. Sukham Rana in the presence of the students of Class VI-B resulting into grave mental trauma and insult.

2. That on 05-04-2001, a complaint was received by the School against you from Mrs. M.M. Lopez for your misbehaviour with Mrs. M.M. Lopez and with teachers in the presence of the students.

3. That on 12-09-2006 and 14-09-2006, complaints were received against you that you have been deliberately refusing to comply with the administrative directions of the senior officials of the School and your behaviour has been unbecoming of a dedicated teacher.

4. That on 14-09-2006, you were served with a show cause notice for indiscipline, you refused to even sign the letter given to you and you have been repeatedly disobeying the orders of the Senior Coordinators relating to corrections of the papers.

5. That you used uncalled for words in the office of the Principal and made uncalled for allegations and your conduct has been totally unfit to be a teacher.

6. That on 23-01-2008, at about 12.30, you left the school without any permission of the Principal and or filling any leave application, as such you violated the code of conduct for teachers.

7. That on several occasions you acted disrespectfully with the direction of the Management and disregarded the instructions of the Management.

8. That you wilfully did not perform your duties and your conduct is in violation of Rule 123 of Delhi School Education Act and Rules.

9. That apart from the teaching duties, all the teachers were assigned and allocated the transport duties but you refused to accept the memo carrying any duties. Similarly you also refused to sign certain other memos and circulars which were sent to all the teachers.

10. That on 05-09-2008, you created uncalled for scene at Kamani Auditorium

before the beginning of the musical event on being told to be polite and not to disturb, you shouted on the teacher incharge of the function in the presence of other teachers and all throughout in the programme you were rude.

11. That an Office Memo dated 01-10-2008 was served on you and you have been all throughout misbehaved with the teachers and management.

12. That on 09-04-2010, you refused to obey the orders of the Coordinator and refused to give the lessons plan for Class VII and VIII thereby disobeying the orders of the Coordinator resulting into misconduct and indiscipline.

13. That on 12-04-2010, you again misbehaved with the Coordinator and refused to submit the lessons plan.

14. That on being called to obey the orders of the Coordinator by the Secretary to the Principal, you misbehaved with the Secretary and used foul language in front of the other staff members of the School.

15. That all throughout your conduct has been unbecoming of a teacher and there have been various complaints against you by the students, teachers and parents and you have been instigating the other teachers and staff against the Management of the School.

In my opinion, the aforesaid charges show categorical acts of indiscipline by the petitioner which acts include of insulting other teachers and employees of the school, deliberately refusing to comply with the directions of the senior officials, leaving school without any permission and so on. Surely, these aspects fully justified the Management to suspend the petitioner in view of ratio of the judgment of the Supreme Court in the case of Bimal Kumar Mohanty (supra). The first two arguments raised on behalf of the petitioner are therefore rejected.

8. The third argument raised on behalf of the petitioner that no prior or post facto approval was taken of the Director of Education u/s 8 of the Delhi School Education Act, 1973, this issue already stands decided against the petitioner by two Division Bench judgments of this Court in the cases of Kathuria Public School Vs. Director of Education and Another, and Delhi Public School and Another Vs. Shalu Mahendroo and Others, I may note that the Division Bench judgment of Kathuria Public School (supra) has been overruled by a Full Bench only on a limited point that the suspension order which was directed by the Division Bench to be challenged before the Delhi School Tribunal cannot be challenged before the Delhi School Tribunal but has to be challenged in this Court and which has been so done by the petitioner in this case.

9. Final argument of the petitioner that there is no Managing Committee is an argument really of desperation. This type of general averments of no elections being held and school being controlled by a particular family have no bearing on the suspension of the employee in the facts of this case. Issues of suspension are looked into de hors the technical argument of alleged incorrect constitution of the Managing Committee unless there is prejudice to a charged teacher. If there is

Managing Committee, that Managing Committee is entitled to act for and on behalf of the school in accordance with the Delhi School Education Act and Rules, 1973. Petitioner thus has no locus standi to simply challenge constitution of the Management Committee of the respondent No. 1-school because no prejudice is pleaded or established. In view of the above, this writ petition is dismissed, leaving the parties to bear their own costs.