

(1988) 10 DEL CK 0004
In the Delhi High Court
Case No : Civil Writ No. 2854 of 1987

P.K. Bansal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-10-1988

Acts Referred:

Citation : (1989) 37 DLT 37

Hon'ble Judges : P.K. Bahri, J;N.N. Goswamy, J

Bench : Division Bench

Advocate : S.C. Gupta and B.K. Aggarwal, for the Appellant; Nemo for Respondent No. 1, Ashoka Jain and D.K. Kapur and Raj Sharma, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bahri, J.—By virtue of this writ petition brought under Article 226 of the Constitution of India, the petitioner seeks quashing of orders dated January 31, 1986, of respondent No. 3 and February 11 1986 of respondent No. 4 and decision of Delhi School Tribunal dated August 12 1987 on the ground that the same are illegal, arbitrary and without jurisdiction and void ab initio. He has also sought directions to respondents 3 & 4 for taking back the petitioner on duty with full back wages and continuity of service.

2. The facts, in brief, are that the petitioner was working as Head-clerk-cum-Assistant in the scale of Rs. 425-750 with effect from April 1, 1976, in Nava Hind Girls Senior Secondary School, New Rohtak Road, New Delhi, Respondent No. 4, which is a recognised aided school under Director of Education, Delhi Administration Respondent No 3, under the Delhi School Education Act, 1973 (for short "the Act"). The petitioner was charge-sheeted on April 6, 1983. The Enquiry Officer after recording some evidence submitted her report to the Disciplinary Authority which is stated to have taken a decision that eleven charges out of thirteen stood proved A show-cause notice under Sub-rule (ii) of Rule 120(1)(d) of the Delhi School Education Rules, 1973 (for short "the Rules")

proposing the penalty of removal from service was served on the petitioner who made his representation. Ultimately, the petitioner is stated to have tendered an apology before the Disciplinary Authority. The Disciplinary Authority in its meeting held on November 9, 1985, decided to drop the inquiry proceedings against the petitioner on accepting his apology and directed that the petitioner be reinstated in his job and the petitioner joined the duty on November 11, 1985. It appears that the Deputy Director of Education, who received some communication from the Manager of the School, directed that the services of the petitioner be terminated. The petitioner filed an appeal against such direction u/s 8(3) of the Act before the Delhi School Tribunal. The appeal came to be dismissed vide order dated August 10, 1987. Various other points have been raised in this writ petition which are not necessary to be referred to because on a very short point this writ petition appears to have a merit and the impugned orders are liable to be quashed.

3. It has been averred in the petition that there is no provision under the Delhi School Education Rules or under the Delhi School Education Act, 1973, which empowers the Director or Deputy Director of Delhi Administration to review the order of the Disciplinary Authority and pass an order terminating the services of the petitioner. Shri Y.P. Purang, Deputy Director of Education in Delhi Administration, has filed a counter affidavit opposing the writ petition. On the question whether such a power exists or not in the Director or Deputy Director of Education, reference has been made to the well-known principle that if a particular authority has a power to make an appointment then by inference the said authority would be deemed to have power to terminate the service of such an appointee. Reference has been made to various rules framed under the Act in support of the contention that the order made by the Deputy Director of Education and the decision given by the Delhi School Tribunal are valid and legal. In short, we have to see whether the provisions of the Act and the Rules give such a power of imposing the penalty of removal from service of an employee in the aided recognised school, to the Director of Education or not? Admittedly, no provision of the Act gives any such power to the Director of Education. Reference is only made to Rules 115 to Rule 120 by both the parties in support of their respective contentions. Rule 115 recognises the power of the Managing Committee to place an employee of a recognised private school under suspension and Rule 115(2) proviso lays down that if the suspension is to be continued beyond a period of six months, the Director may revoke the order of suspension if he is of the opinion that the same is being unreasonably prolonged. Section 116 provides for grant of subsistence allowance to a suspended Employee. This Section also gives a right to the employee to file an appeal to the Director if Managing Committee fails to pay any subsistence allowance within 30 days from the date from which the payment becomes due. These two sections incorporate the role of Director only to see that a suspended employee is not dealt with unfairly by the Managing Committee and Director can provide relief to an aggrieved employee as contemplated in the said provisions. Section 117 lays

down the minor and major penalties which could be imposed on an employee by the employer. Rule 118 lays down the constitution of the disciplinary committee in respect of every recognised school. Rule 119 makes it clear that no order imposing a minor penalty shall be made except after informing the employee in writing of the proposal to take action against him and provides for an opportunity to the employee to make a representation against the proposed action. Rule 120 is the most important rule which deals with the procedure for imposing major penalty and it needs to be noticed in order to see whether this rule gives any power to the Director of Education for imposing any penalties on the employees of such a school. So, the same is reproduced below :

""Procedure for imposing major penalty :--

(1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below :

(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defense and also to state whether he desires to be heard in person ;

(b) on receipt of the written statement of defense, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if considers it necessary so to do, appoint an inquiry officer for the purpose ;

(c) at the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry regarding his findings on each of the charges together with the reasons Therefore :

(d) the disciplinary authority shall consider the record of the inquiry and record his findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed it shall :--

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer ;

(ii) give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action ;

(iii) on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the Director for his prior approval;

(iv) after considering the representation made by the employee against the

penalty, the disciplinary authority shall record its findings as to the penalty which it proposes to impose on the employee and send its findings and decision to the Director for his approval and while sending the case to the Director, the disciplinary authority shall furnish to him all relevant records of the case including the statement of allegation charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made, and the proceedings of the disciplinary, authority.

(2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director.

(3) Any employee of a recognised private school who is aggrieved by any order imposing on him the penalty of compulsory retirement or any minor penalty may prefer an appeal to the Tribunal".

4. A bare perusal of the above Rule shows that only where the Disciplinary Authority is to come to the conclusion that a major penalty of some particular kind is to be imposed on a particular employee that the reference is necessary to be made to the Director of Education for getting his approval because it is clearly laid down that no order with regard to imposition of a major penalty shall be made by the Disciplinary Authority except after the receipt of the approval of the Director. It is evident and almost crystal clear that the role of the Director is visualised only where the Disciplinary Authority has formed the opinion that any of the major penalties should be imposed on the employee. It is only thereafter that a show-cause notice is issued to the employee and the Disciplinary Authority after considering the representation of the employee against the proposed penalty has to then record necessary findings as to the penalty which it proposes to impose and then send its findings and decision to the Director for his approval. So, unless and until the Disciplinary Authority takes a decision for imposing a particular major penalty, there arises no question of the Disciplinary Authority forwarding anything to the Director for its approval. It is nobody's case that if the Disciplinary Authority comes to the decision that it is not a fit case for imposing any major penalty but it decides to impose any of the minor penalties, then the decision is to be referred to the Director for approval. If that is so, it is not understood that when in the present case the Disciplinary Authority has taken a decision not to impose any of the major penalties on the employee, how the question would arise for sending the finding and the decision to the Director of Education for his approval.

5. It has been argued by the learned counsel for the respondents that 95% of the salaries of the employees are being reimbursed by the Delhi Administration. So, it is the duty of the Delhi Administration through its Director of Education to see that the school is being run properly and the employees working in the school are also performing their duties in a proper way. It is contended that the Director has an overall supervisory role to perform so that standard of education in such private school is kept at the highest and in achieving that object it is the duty of the Director to see that there exists necessary healthy conditions in the

school so that the school functions in the best manner and to achieve that objective the Director has a role to see that no unsuitable employee is kept in the school inasmuch as where such serious charges are brought against an employee and those charges are proved, still the employee should not go scot free and be kept in the school which would result in lot of indiscipline in the school which would have adverse effect on the overall standard of the school.

6. We have gone through the provisions of the Act and the Rules and we find that no such all pervasive role has been assigned to the Director of Education. The duties and powers of the Director of Education have been delineated clearly in the Rules. It is too much to say that the Director of Education could act on matters which do not come within his jurisdiction or powers as envisaged in the Rules. Counsel for the respondents made reference to Section 16 of the General Clauses Act which is to the following effect:

"Whereby any (Central Act or Regulation), a power to make any appointment is conferred, then unless a different intention appears, the authority having (for the time being) power to make the appointment shall also have power to suspend or dismiss any person appointed (whether by itself or any other authority) in exercise of that power".

7. It has been argued that as Director's approval is necessary for imposing a major penalty, so it should be held that the Director by inference has power to look into the order of the Disciplinary Authority as to whether the Disciplinary Authority had taken a right or wrong decision in imposing or not imposing the major penalty. It is really not understood as to how anything laid down in Section 16 of the General Clauses Act is of any help to the respondents in support of their contention that the Director has the power to impose the major penalty. In the present case, the rules quoted above clearly lay down the field of action with regard to the role of the Director vis-a-vis imposition of major penalties. Once the rules make it evident that the approval of the Director would be needed only where Disciplinary Authority makes a decision for imposing a particular major penalty, there could be no occasion for the Director to move into the picture where no such decision has been taken by the Disciplinary Authority. Once the Disciplinary Authority comes to the conclusion that no major penalty is to be imposed, the rules do not envisage that such a decision has to be approved by the Director of Education before such a decision is to be given effect to. If such a power is to be inferred to vest in the Director of Education, it would lead to contradiction in interpretation of the Rules because it is admitted on all sides that if the Disciplinary Authority finally decides to impose a minor penalty, no approval of the Director is required. If that is so, it is not understandable when the Disciplinary Authority takes a decision not to impose even the minor penalty on a particular employee how the approval of the Director becomes necessary before such a decision of the Disciplinary Authority is implemented. The Director has to act within the four corners of the Rules. If the Director passes any order not in consonance with the Rules, such order has to be struck down as being void.

and beyond the powers of the Director.

8. Counsel for respondent No. 4 has argued that it is for the Managing Committee to pass any order regarding reinstatement of a particular employee and the Disciplinary Authority by itself had no power to direct reinstatement of the petitioner even though the Disciplinary Authority took a decision for not imposing any of the penalties on the petitioner. He has argued that it is for the Managing Committee to decide whether the suspension order of the petitioner should be revoked or not after the Disciplinary Authority had taken a decision not to impose any penalty on the petitioner. The petitioner in the present case has impugned the validity of the orders made by respondents 3 & 4 by which the Deputy Director of Education had passed the order of removing the petitioner from service. The said order on the face of it being illegal and void and beyond the powers of the Director of Education, so the orders made by the Director of Education and which have been given effect to by respondent No. 4 and upheld by Delhi School Tribunal, are required to be quashed.

9. It is not shown that the Managing Committee has the power to review the decisions of the Disciplinary Authority. So, the moment the Disciplinary Authority had given a decision that no penalties are to be imposed on the petitioner, the legal effect is that the petitioner has to be reinstated in his job and this order made by the Disciplinary Authority was implemented as the petitioner stood reinstated for some months and the Managing Committee of respondent No. 4 also paid salary to the petitioner after he was reinstated. So, there arises no question of the petitioner being still treated under suspension so as to enable the Managing Committee of respondent No. 4 to pass a formal resolution of revocation of his suspension

10. In view of the above discussion, we make the Rule absolute, quash the impugned orders and direct the respondents to reinstate the petitioner with full back wages and continuity of service. The petitioner shall be paid his arrears of salary and other benefits within three months. The petitioner shall have costs from the respondents which we quantify at Rs. 1,000/-.