
(2011) 07 DEL CK 0273

In the Delhi High Court

Case No : Writ Petition (C) 2829 of 1996

Prabhu Dayal Public School and Others

APPELLANT

Vs

Anirudh Singh and Others

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Delhi School Education Act, 1973 — Section 8(2)
Delhi School Education Rules, 1973 — Rule 120, 47

Citation : (2012) 1 LLJ 737 : (2011) LLR 1016

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Raj Birbal, with Ms. Raavi Birbal, Mr. Mahinder Singh and Mr. Ankur Goel, for the Appellant; Prakash Gautam, Advocate For Respondents No. 7 and Ms. Avnish Ahlawat with Ms. Latika Chaudhary, Advocates For others Respondent, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mr. S. Muralidhar, J.—The Petitioner Prabhu Dayal Public School (hereinafter "the School") challenges an order dated 25th June 1996 of the School Tribunal, Delhi allowing the appeal filed by Respondent No. 1. By the impugned order the School Tribunal set aside the order dated 3rd January, 1992 passed by the School retrenching the services of Respondent No. 1 and directing his reinstatement as Transport Officer or absorption on any suitable post or equal status with all the service benefits.

2. The Petitioner is an unaided school in terms of the Delhi School Education Act, 1973 ("DSEA") and the Delhi School Education Rules, 1973 ("DSER"). Respondent No. 1 was appointed as a Transport Officer in a School on 1st February, 1988. It is stated that at that point in time the School had a large fleet of 17 buses and a full-fledged transport workshop for maintenance and repairs etc., of the buses. The Transport Officer's post was created in order to have effective supervision over the fleet of buses. The transport workshop had drivers,

conductors and staff totalling almost 40 persons. It is stated that over the years the management of the school experienced difficulties in providing transport to the students and therefore it decided to close down the transport workshop. It decided instead to utilize the service of contractors for supply of buses on contract basis with their own drivers and staff etc. The Transport Sub-Committee of the School submitted a report which was considered by its management on 22th June 1991 and it unanimously decided to abolish the post of the Transport Officer. Consequently, it decided to retrench the Services of Respondent No. 1.

3. The management of the School initially proceeded on the footing that the retrenchment of Respondent No. 1 with effect from 26th June 1991 did not require obtaining approval of the Directorate of Education ("DoE"). Respondent No. 1 at that stage filed appeal No. 22 of 1991 before the School Tribunal. Meanwhile, the School was advised to obtain approval from the DoE. It issued a letter dated 1st July, 1991 to Respondent No. 1 in supersession of its earlier letter dated 22nd June, 1991 stating that till such time the approval was not obtained from the DoE, Respondent No. 1 would be treated as continuing in employment. Although he would be paid salary no work could be allotted to him. On the basis of the above development, the appeal was dismissed as withdrawn by the School Tribunal on 17th January 1991.

4. On 31st December 1991, the DoE conveyed its approval to the School for retrenchment of Respondent No. 1. On that basis by the impugned letter dated 3rd January 1992 the School informed Respondent No. 1 that his retrenchment would now take effect from 7th January 1992. Thereupon Respondent No. 1 filed appeal No. 5 of 1992 before the School Tribunal.

5. By the impugned order dated 25th June 1996 the Tribunal allowed the appeal and held that the concept of retrenchment was foreign to DSEA and DSER and had been used by the School "deliberately, perhaps, to give an impression that the termination did not amount to dismissal or removal from service." Further, it was held that the removal of Respondent No. 1 was motivated by bias since while he was serving in the School two other employees, viz., Colonel J.R. Kochhar and Shri Jagmohan Singh had been assigned the functions of the Transport Officer. It was held that retrenchment was in fact a removal from service and inasmuch as no inquiry in terms of Rule 120 of the DSER was held.

6. On 27th March 1997 while issuing rule in the matter, this Court stayed the impugned order subject to the Petitioner depositing 50% of the awarded amount in this Court. Respondent No. 1 was permitted to withdraw the said amount on furnishing a personal bond to the satisfaction of the Registrar.

7. This Court has heard the submissions of Ms. Raavi Birbal appearing for the Petitioner, Mr. Prakash Gautam for Respondent No. 1 and Ms. Avnish Ahlawat for Respondent No. 4.

8. At the time when the Petitioner was retrenched, three others employees of the School working in the transport workshop, viz., Jawahar Lal Singh and Prahlad,

welders and Mr. Arbind Kumar, a helper were also retrenched. Their appeals were allowed by the School Tribunal by orders dated 25th June, 1996. The said order was challenged by the School in Writ Petition Nos. 3260, 3261 and 3262 of 1996. By a judgment dated 29th July, 2008 the learned Single Judge of this Court allowed the said writ petitions holding that the Tribunal had erred in holding that the concept of retrenchment was alien to the DSEA. It was observed that once the management had taken a decision to close down the Transport Department, the employees in the Department became surplus and the post which they were holding stood abolished. Since in any event retrenchment compensation had been paid, there was no violation of the Industrial Disputes Act, 1947 ("ID Act"). Consequently, the impugned orders of the School Tribunal were set aside and the workmen's appeals were dismissed.

9. Learned counsel for the Respondents sought to distinguish the above judgment on the ground that the three employees were workmen whereas Respondent No. 1 herein was a Transport Officer and perhaps not covered by the ID Act.

10. Be that as it may, this Court finds that the concept of retrenchment is not indeed alien to the DSEA. Section 8(2) of the DSEA reads as under:

Section. 8(2) Subject to any rule that may be made in this behalf, no employee of a recognized private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

11. The expression "be otherwise terminated" is wide enough to encompass the termination of service by retrenchment. Further, Rule 47 of the DSER also envisages retrenchment of employees.

12. In *Kathuria Public School v. Director of Education*, 2005 VI AD (Del) 893, this Court held that an unaided recognised school is not required to seek prior approval of the DoE in terms of Section 8(2) of the DSEA for dismissal or removal from service of an employee. The said decision was obviously not available when the impugned order was passed by the Tribunal. In any event, to that extent, the impugned order of the Tribunal holding that Rule 120 of the DSEA would apply to the removal of Respondent No. 1 is erroneous in law and cannot be sustained.

13. There was no basis for the Tribunal to conclude that retrenchment of Respondent No. 1 was initiated by bias. In the additional affidavit filed on behalf of the School, it is pointed out that both Colonel J.R. Kochhar and Shri Jagmohan Singh were not appointed as Transport Officers at all. Further, at the time of their employment in the School they were only assigned the work of indicating to the students and their parents the proper bus routes that had to be used. There was in fact only one driver in the entire School. Consequently, the School Tribunal proceeded on an erroneous basis.

14. This Court finds that the retrenchment of Respondent No. 1 did not in fact require prior approval of the DoE but it was, in any case obtained. Once the Transport Department was shut down, the post of Transport Officer automatically stood abolished. Consequently no illegality was committed in retrenching Respondent No. 1.

15. In the circumstances, the impugned order dated 25th June 1996 of the School Tribunal cannot be sustained in law and is hereby set aside.

16. Learned counsel for the Petitioner, on instructions, states that the School will not seek the refund of the 50% amount payable to Respondent No. 1 in terms of the impugned order of the Tribunal. The said statement is taken on record

17. The writ petition is accordingly allowed, but in circumstances, with no order as to costs. The bond furnished by Respondent No. 1 stands discharged.