
(2008) 07 DEL CK 0157

In the Delhi High Court

Case No : Writ Petition (C) No's. : 3260 of 1996, 3261 of 1996 and 3262 of 1996

Prabhu Dayal Public School

APPELLANT

Vs

Prahlad and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Delhi School Education Act, 1973 — Section 8, 8(2)
Industrial Disputes Act, 1947 — Section 25F

Citation : (2008) 8 ILR Delhi 182 Supp

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—3 different orders, each dated 25.6.1996 and near identical worded are the subject matter of challenge in the aforesaid 3 writ petitions. The orders have been passed by the Delhi School Tribunal allowing the appeals filed by the first respondents in the three writ petitions. Briefly noted relevant facts are that Prahlad, Jawahar Lal Singh and Arbind Kumar, the first respondents in WP(C) Nos. 3260/1996, 3261/1996 and 3262/1996 were employed by the petitioner school as:

(i) Jawahar Lal Singh : Welder.

(ii) Prahlad : Welder.

(iii) Arbind Kumar : Helper.

2. The school was having its own transport fleet and was maintaining a workshop for repair of the buses. With passage of time the buses became worn out. Heavy expenditure was being incurred on repair of the buses. The stage reached when 17 buses had to be written off. Only 9 remained. The management had two options. One was to outsource the transport i.e. employ contract carriages for transporting children to and from the house to the school. The second option was to purchase new buses. A decision was taken to deploy contract carriages to

ferry students to and fro from the house and the school. The result was that the transport department of the school was scaled down and the in-house workshop was closed down. Meaning thereby, there was no need to employ any welders. Number of helpers needed had to be reduced.

3. To put it pithily, the posts of welders stood abolished. Some posts of helpers also were abolished.

4. Since the first respondents were workmen and had worked for more than 240 days in the school, the school proceeded to act u/s 25(F) of the Industrial Disputes Act 1947. Orders were passed retrenching the first respondents and simultaneously paying the retrenchment compensation.

5. The workers filed appeals before the Delhi School Education Tribunal. They alleged that the concept of retrenchment was alien to the Delhi School Education Act. They alleged that as employees of a recognized private school their services could not be dispensed with except in accordance with law. They alleged that u/s 8(2) of the Delhi School Education Act 1963 an employee of the school could be either dismissed or removed but after an inquiry.

6. The contention of the school before the Tribunal was that where a post is abolished the person holding the post loses lien thereon and has to go home. In case of workmen, the procedure of retrenchment has to be followed.

7. The Tribunal has found favour with the contention urged by the workmen. The finding returned in each of the 3 appeals is as under:

I have heard the learned counsel of both the parties and perused the material/documents placed on record. According to the learned counsel for the appellant, the word or expression "retrenchment" does not figure in the provisions of the Delhi School Education Act, 1973 (hereinafter referred to as "the Act") or the Delhi School Education Rules, 1973 (hereinafter referred to as "the Rules"). Normally, the word which figures in this context, the learned counsel states, is "removal" appearing in section 8(2) of the Act. Whatever connotation one may give to the word "retrenchment" or words "services are no longer required", may be for any reason either because of closure of the establishment or of closure of work for which a particular employee is employed, but the actual effect flowing from such an action is the removal from service. The learned counsel has further submitted that a person who substantially holds a permanent post has a right to continue in service, subject, of course, to the rule of superannuation and the rule as to compulsory retirement and if for any other reason that right is invaded and if he is asked to leave a service, the termination of the service must inevitably mean the defeat of this right to continue in service and, as such, it is in the nature of the penalty and amounts to removal. While confuting the proposition and theory of removal from service as canvassed by the learned counsel for the appellant, the learned counsel for the respondents has, on the other hand, referred to the provisions of section 8(2) and (3) of the Act whereby the remedy against dismissal, removal or reduction in rank is by way of appeal to the

Tribunal and if the services are terminated otherwise than by way of dismissal, removal, etc., these have to be with the prior approval of the Director of Education. He has argued that the appeal is not maintainable under sub-section (3) of section 8 of the Act on the ground that there was neither dismissal nor removal nor reduction in rank.

I have given my careful consideration to the facts and circumstances of the present case. To my mind, the word "reinstatement" is foreign to the scheme of the Act and the Rules and has been used by the respondents knowingly, perhaps, with a view to give an impression that the termination did not amount to dismissal or removal from service.

8. It is settled law that retrenchment is not termination for misconduct. In the decision reported as State of Punjab Vs. Jagir Singh, it was observed as under:

11. It is not in dispute that the workman did not perform any duty since 2.5.1979. The Labour Court made its award only on the ground that before issuing the order of termination dated 3.8.1979, no disciplinary proceeding was held in terms of the Punjab Civil Services (Punishment and Appeal) Rules and furthermore the mandatory requirements of Section 25-F of the Industrial Disputes Act, 1947 were not complied with. The findings of the Labour Court are inconsistent and self-contradictory. If the services of the workman were terminated for misconduct, the question of payment of any retrenchment compensation or service of any statutory notice would not arise. The question of compliance with the provisions of Section 25-F of the Industrial Disputes Act would arise, if the services of the workman concerned were terminated on a ground other than misconduct.

9. Suffice would it be to state that the Tribunal did not understand the legal issue which was involved in the appeal before the Tribunal. It was not the case of the management that it had terminated the services of the workman on account of an alleged misconduct

10. The Tribunal failed to appreciate that where a post is abolished on account of non-availability of work the incumbent loses lien to the post and since he loses lien to the post he must go home. The exception drawn is under the Industrial Disputes Act 1947 where a workman has to be retrenched when no work is available and has to be paid retrenchment compensation.

11. I fail to understand as to from where has the Tribunal held that the concept of retrenchment is alien to the Delhi School Education Act 1973.

12. It has to be understood that the Industrial Disputes Act 1947 and the Delhi School Education Act 1973 operate in their own spheres and in case of overlapping, subject to the rule of repugnancy and subject to the rule that the special act overrides the general act, every attempt has to be made to give effect to the statutory provisions of the two enactments.

13. In the instant case with the management taking the decision to close down

the transport department the employees in the transport department obviously became surplus, in that, the post which they were holding came to be abolished. But for the fact some of them were workman, others, i.e. none workman had to suffer cessation of their employment. The respondents were lucky. Being workman they got the necessary protection under the Industrial Disputes Act 1947 and on said count while dispensing with their services the management rightly paid retrenchment compensation.

14. For the reasons noted herein above the petitions have to be allowed and impugned orders have to be quashed.

15. Ordered accordingly.

16. Impugned order dated 25.6.1996 passed in Appeal No. 33/92 filed by Prahlad, impugned order of even date passed in Appeal No. 32/92 filed by Jawahar Lal Singh and the impugned order of even date passed in Appeal No. 3/95 filed by Arbind Kumar are quashed. The three appeals are dismissed.

17. Before concluding I note that in terms of the orders passed by the Tribunal, 50% of the wages have been paid to the workman when interim orders were passed staying the operation of the impugned orders. I record the consent of learned counsel for the petitioner that notwithstanding the writ petitions being allowed his clients would not recover the said amount paid to the first respondents. No costs.