

(1985) 07 DEL CK 0023

In the Delhi High Court

Case No : Civil Writ Appeal No. 2333 of 1984

Prem Sehgal

APPELLANT

Vs

Director of Education

RESPONDENT

Date of Decision : 19-07-1985

Acts Referred:

Citation : (1986) RLR 147

Hon'ble Judges : Prakash Narain, C.J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Anand Banarjee, Rakesh Luthra, V.P. Singh, Y.K.Sabharwal, Madan Bhatia, J.K. Seth and R.C. Misra, for the Appellant;

Judgement

Prakash Narain, C.J.

(1) According to petitioners charges contemplated against respondent No. 4 and communicated to him and further charges which were still to be communicated after investigation were all such as would amount to breach of the code of conduct by respondent No. 4 and, Therefore, invited disciplinary action. It was for this reason that the Managing Committee took action u/s 8(4) read with Rule 115. In as much as prior approval of the Director was necessary to enforce suspension, this approval was sought by the communication dated 3.9.84. The approval was declined, as noticed earlier, by the Director's communication dated 11.9.84 In what circumstances and by what process such approval could be withheld or declined is the moot question.

(2) As we read the Act and the relevant Rules, we are of the opinion that in case of unaided schools, the principles of internal management being by and large unfettered has to be observed. There is no doubt that there exists a regulatory power but it can be exercised by Director of Education only on cogent and rational grounds. Unless the action of the Managing Committee is malafide or absolutely arbitrary, the director can not withhold approval. The approval was sought on the basis of charges already preferred after the Explanation of

respondent No. 4 had been received by the Managing Committee and to formulate further inquiry in the alleged misconduct and subject to further inquiry. A private unaided school is an autonomous body and so long as it acts as required by the provisions of the Act and the Rules, its autonomy cannot be interfered with. The employer is the Managing Committee and not the Director of Education. To permit the Director to interfere except in cases of arbitrariness or where mala fideism are spelt out would amount to undue interference with the powers of management. No autonomous body or indeed any body can function effectively if the management is made impotent. We find support for this principle in *Shyam Lal v. Smt. Kusum Dhawan* Air 1970 SC. 1247

(3) There is no allegation of mala fides against any member of the Managing Committee in the present case. The resolution to suspend respondent No. 4 was passed unanimously by the Managing Committee when three members of the Directorate of Education were present and who participated in the proceedings of the Managing Committee. It is indeed strange that Mrs. Ahluwalia acting as a member of the Managing Committee did not oppose suspension of respondent No. 4 but while sitting in the Directorate gave a different opinion. The Directorate is not entitled to examine the charges proposed to be preferred or preferred against an employee as if sitting in appeal and deciding as such. This is precisely what seems to have been done as we find from the nothings in the departmental file. Such examination of a case is impermissible. If a prima facie case is made out, the Directorate has to grant approval. We do not see how the allegations against respondent no. 4 turned out during the inquiry. A perusal of the file of the Directorate of Education very fairly placed before us makes very interesting reading.

(4) The Deputy Director of Education, who examined the request contained in the communication of September 3, 1984, discussed the points raised at considerable length and came to the conclusion that the request of the Managing Committee to grant approval for suspension was justified on the facts as they appeared at that stage. Mrs. Ahluwalia, the Additional Director of Education takes a different view and we will only say that her note docs not make very intelligible reading, The Director of Education agreed with the views of Mrs. Ahluwalia in declining to give approval for suspension "keeping in view full background of facts and law given in preceding pages and record on the correspondence side." At the hearing, we were told that the background adverted to by the Director of Education is the report of the investigation which was carried, out on the direction of the Chief Executive Councillor, earlier adverted to.

(5) The Inspection report has been placed on the record as annexure - R 1 Along with the additional affidavit sworn by Shri S.K. Shukia on 6. 3. 85. The chair - person of the Committee which gave this inspection was Mrs. Ahluwalia, as noticed earlier. This inspection and report was given in the wake of the call attention motion in the Metropolitan Council of Delhi. We have read through this report and would rather refrain from commenting upon it. Suffice it to say, that

the panel headed by Mrs. Ahluwalia appeared to think that they were inspecting a government school and not a private unaided school. Education imparted by a private unaided school has to conform to certain standards and must be imparted by teachers having requisite qualifications. The education must follow the prescribed syllabus but such schools cannot be treated as fiefdoms of the Director of Education.

(6) Coming now to the question of the manner of examining of the request for approval for suspension, we note that the charges had been given to respondent No. 4 and his Explanation was also received. These were duly considered by the Managing Committee and forwarded to the Director of Education. We cannot accept the argument on behalf of the respondent that at this stage the respondent No. 4 was entitled to further hearing being given by the Director of Education. No punishment was being inflicted upon him. The suspension sought to be made was pending formal enquiry. Hit Explanation received on the charges preferred was considered by the Managing Committee and also sent for the consideration of the Director of Education. That is about all the hearing that is permissible at this initial stage. The Directorate of Education was not required to discharge either a judicial or quasi judicial function. In the light of Rule (29(1) (b) and 2 (h) of the relevant rules if disciplinary action had lobe taken against head of the school, the suspension was absolutely necessary. We are not impressed by the argument of Mr. Madan Bhatia that Managing Committee had no power to suspend. Indeed, a reading of Section 8(4) clearly shows that an employee" can be suspended by the Management even with immediate effect and approval obtained latter on. But, normally approval would be obtained prior to suspension. This in itself spells out the principle of internal management being upheld. The supervisory power of the Director is, as we said earlier, only to be exercised to prevent abuse of power where it is being exercised either mala fide or in an arbitrary manner. The question of natural justice at this stage does not arise. Even so, to a certain extent respondent No. 4 had been heard inasmuch as his Explanation to the proposed charges had been received and considered by the Managing Committee and forwarded to the Director of Education. The object of the "statute is no doubt to ensure a stable tenure to teachers, but subject of course to the other provisions of disciplinary action and observance of the Code of Conduct. Reasonable opportunity if at all was to be given at this stage was reasonably already given. The Director was not entitled to sit in appeal over the decision of the Managing Committee. But that is precisely what Mrs. Ahluwalia seems to have done. We do not also find any force in the technical objection raised by Mr. Bhatia that there was no proper resolution or that the Committee was not properly constituted. We do not find anything vague in the letter of the Managing Committee dated September 3, 1984. The letter of September 3, 1984 made adequate grounds for suspension and withholding of permission for approval must be held to be arbitrary.

(7) The question of giving formal charge sheet does not arise at the stage of suspension pending enquiry. Formal charge sheet is always to be given later on.

When the Management speaks of "continuing enquiry" it really means to carry on further investigation in order to finalise the charges to be preferred against a delinquent employee.

(8) The communication of the Director dated 11. 84 is also not understandable. If the allegations as made were not germane to suspension ,we do not know what else could be.

(9) A catena of authorities was cited from both sides, but it is not necessary to deal with them. In our view, the law is quite clear. The control in respect of aided schools or Government run schools has to be somewhat different. In the case of unaided private school duly recognised by the provisions of the Act the principle of internal management is to be followed and we hold that the Director is entitled to interfere only where on cogent material he comes to the conclusion that the proposed action is either arbitrary or mala fide. In no other case can the Director withhold the approval.

(10) As we noticed earlier, the dispute has happily been resolved. No directions are, Therefore, necessary but the communication dated September 11, 1984 issued by the Director of education has to be quashed and it is ordered accordingly.