

(2019) 07 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Petition No. 11565 Of 2015

Reshmawati

APPELLANT

Vs

Managing Committee And Ors

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Delhi School Education Rules, 1973 — Rule 118
Delhi School Education Act, 1973 — Section 8(2), 11(6)
Code Of Civil Procedure, 1908 — Section 96(1)

Citation : (2019) 263 DLT 260

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Suryakant Singla, Kartik Venu, Rimjhim Naudiyal, Satyendra Kumar, R.V. Sinha, Naushad Ahmed Khan, Zahid Hanief, Manisha Chauhan

Final Decision : Allowed

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, the petitioner has challenged the order dated 27.08.2015 passed by Delhi School Tribunal in Appeal No.51/2013 whereby

the appeal filed by the petitioner has been dismissed by recording that technical rules of evidence have no application to the disciplinary proceedings.

The Tribunal has power to judicial review of the administrative action. The Tribunal has no power to trench on the jurisdiction to re-appreciate the

evidence and to arrive at its own conclusion.

2. The case of the petitioner before the Tribunal was that she was appointed as Sweeper vide appointment letter dated 01.07.1989 in Red Roses

Public School under Sh.R.R. Mehta Education Trust, New Delhi but the same is now known as Senior Secondary School affiliated with CBSE

managed by the aforementioned trust. She had been issued an identity card of the post of Aaya. She had worked as Aaya during the whole service period. Later on, the petitioner was transferred to Paryavaran Complex, New Delhi, the other branch of the school in the year 2011 and an identity card of sweeper was issued to the petitioner.

3. Further case of the petitioner is that in the year 2012, class IV employees including the petitioner filed a Civil Suit No.522/2011 for the payment of necessary benefits as per the 6th Pay Commission Report, titled Tej Ram & Ors. vs. Red Roses Public School. The said suit was decided in favour of class IV employees of the school by the Civil Judge, First Class, South District, Saket Courts Complex, New Delhi.

4. Counsel for the petitioner submits that this was the main reason of enmity and biasness between the petitioner and the school authorities. The school authorities considered the petitioner as the leader of Class IV employees of the school who filed the above referred suit. The above referred suit was settled with mutual consent of the parties through mediation cell. On the basis of the settlement, decree was passed by the court mentioned above. The petitioner played leading role in getting the benefits of class IV employees of the school.

5. Counsel for the petitioner further submitted that the petitioner was working with the school dedicatedly and regularly. The concerned school authorities issued a fresh letter of appointment for the post of Sweeper to the petitioner on 19.06.2012. The school authorities under conspiracy, because of the filing of the suit by class IV employees, illegally suspended the petitioner vide order dated 18.10.2012. The school authorities also issued a chargesheet to the petitioner without any proper cause of action and reason. The charges levelled against the petitioner were baseless and without supporting evidence.

6. Further submitted that the school authorities got conducted inquiry through disciplinary committee. All the members of the disciplinary committee were closely connected with the School. Hence the committee was not neutral. The defence given by the petitioner was not considered. Respondent no.1, Managing Committee blindly approved the report prepared by the disciplinary committee. The managing committee also approved of imposing of major penalty of dismissal from the service against the petitioner on 05.03.2013.

7. The case of the respondent nos.1 to 3 herein before the Tribunal was that the petitioner was appointed as temporary Sweeper w.e.f. 01.08.1989

and she continued to work as Sweeper in school. Over the period of time, the School authorities not only gave job to her but also to her husband, two

brothers and two other close relatives. Apart from this, she was also provided rent free accommodation in the school property for atleast 15 years

w.e.f. 1991 to 2006. Her children received free education. Her two grand children are still receiving free education in the school. In the year 2011, the

petitioner along with 8 other class IV employees of the school filed a civil suit and the same was settled in terms of Memorandum of Settlement dated

05.06.2012 executed by the parties. The respondent school immediately upon the disposal of the suit, complied with the provision of the settlement and

issued fresh appointment letter as per settlement deed and exâ?"gratia payment of ₹ 85,000/- was paid to the petitioner. The petitioner also agreed that

she will strictly abide by the school code of conduct and any negligence in duty would invite disciplinary action as applicable in law. In spite of the

specific terms in the settlement deed, the petitioner refused to accept verbal and written instructions issued to her by the respondent school from time

to time. The petitioner did not adhere to the agreed duty hour/timings. Therefore, due to the misconduct committed by the petitioner, show cause

notices dated 18.09.2012 and 24.09.2012 were issued to her by the respondent school on inter alia grounds as to why the action should not be taken

against her for disobedience. The school authorities had tried to hand over the said show cause notices while she was on duty but she had refused to

receive the same. Thereafter, the letter was sent to her residential address by registered post but the same was received back with the endorsement

incomplete address, even though, the letter was sent to the address given by the petitioner in her bio-data dated 07.06.2012. The petitioner was issued

another letter dated 01.10.2012 which was again returned. She was called by the Administrative Officer and handed over the photocopies of the

letters/show cause notices in person on 05.10.2012 which she had accepted but did not give the acknowledgement. She replied the show cause notices

vide letter dated 08.10.2012. School authorities also received various complaints against the petitioner from the school staff who were greatly

perturbed because of the petitionerâ??s defiant attitude. It was also disturbing the smooth operation of the school.

8. Further case of the respondent nos.1 to 3 is that with regard to her designation whether Sweeper or Aaya, she was working as Sweeper from the very beginning i.e. since 1989. But, wrongly issued the identity card of Aaya. On the basis of the repeated misconduct committed by the petitioner, the managing committee of respondent school decided to invoke the condition no.7 of the settlement whereby stated that all the employees in the suit shall unconditionally abide by all the written and verbal instructions given to them by the school and they will not refuse to sign/accept any circular/notice/order etc. issued by the school. Last condition of the settlement deed was that the duty timings will be from 7:00 am to 5:00 pm with lunch break of 1 hour and tea break of 30 minutes. Accordingly, the managing committee decided to hold an inquiry under the Delhi School Education Act and Rules framed thereunder. She was issued a chargesheet on 26.10.2012 which was replied by her on 05.11.2012 whereby submitted that the chargesheet was false.

9. Further case of the aforesaid respondents is that an independent inquiry officer was appointed who concluded on 02.02.2012 after 21 hearings. Full opportunity was given to the petitioner to cross examine the witnesses and to lead her defence. She was also provided defence assistant. Inquiry was conducted following the principles of natural justice. Article of charges were fully proved. The report of the inquiry was placed before the disciplinary committee, constituted as per Rule 118 of Delhi School Education Act & Rules 1973 in which the representative of the Directorate of Education was also a member. She was asked to submit a representation. Disciplinary committee considered the representation of the petitioner and finally decided to impose major penalty of dismissal from the services. Managing committee of the school passed the final orders of dismissal on 05.03.2013.

10. The case of the petitioner is that the petitioner has been dismissed illegally and malafidely because of biasness on account of filing of civil suit against the respondent school. There is no merit in the chargesheet and inquiry officer was also biased. Inquiry has not been properly conducted and inquiry officer has not properly appreciated the evidence. In fact there is no evidence against the petitioner to support the Article of Charges framed against her.

11. In reply to above, the case of the respondent nos.1 to 3 is that not only the

petitioner but her husband, her two brothers and two other close relatives are also working in the school. No action has been taken against them proves that there was no biasness and malafideness against the petitioner. Had there been any biasness against the petitioner, action would have also been initiated against her husband and other relatives. Civil suit filed by the petitioner was settled amicably in the mediation centre with the consent of the respondent. Hence, there can be no question of malice on account of filing of civil suit by the petitioner. Further she was provided a competent defence assistant. All the four witnesses have been cross examined at length on her behalf. She had appeared as her own witness in her defence. She was provided with the copy of inquiry report.

Representation was sought from her and was considered by the disciplinary committee having a member of Directorate of Education also. After considering the representation of the petitioner, decision of imposing of major penalty of dismissal from service was taken which was approved by the managing committee. Consequently, dismissal order dated 05.03.2013 was passed.

12. Learned counsel for the respondents has relied upon the case of State of Tamil Nadu & Anr. vs. S.Subramaniam: (1996) 7 SCC 509; Secretary to Government, Home Deptt. & Ors. vs. Srivaikundathan: (1998) 9 SCC 55;3 State of Haryana & Anr. vs. Rattan Singh: (1977) 2 SCC 491; Managing Committee Frank Anthony Public School & Anr. vs. C.S.Clarke & Ors.: 184 (2011) DLT 550; Raj Singh vs. Kendriya Vidyalaya Sangathan & Ors.: W.P.(C) 1961/2012; and Shri Shivaji Education Society, Amravati vs. Presiding Officer, Schools Tribunal, Aurangabad and Anr.: W.P.(C) 165/1990.

13. I have heard learned counsel for the parties and perused the material on record.

14. On the issue of power of the Tribunal is concerned, the Tribunal is the first appellate authority and as per section 96(1) of CPC, the first appeal is based upon the facts and law whereas second appeal is on question of law only. As per section 11(6) of the Delhi School Education Act, the Tribunal shall for the purpose of disposal of an appeal preferred under this Act have the same powers as are vested in a court of appeal by the Code of Civil Procedure, 1908 and shall also have the power to stay the operation of the order appealed against on such terms as it may think fit. Being first

appellate authority, the Tribunal has power to go through the evidence, recorded during the departmental proceedings and can interfere therewith. If

there is no evidence and still punishment is awarded, the Tribunal has power to set aside the punishment order. If there is any biasness or principles of

natural justice have not been followed then also the Tribunal has power to set aside the order challenged before it.

15. In the case in hand, though the petitioner was appointed as sweeper vide appointment letter dated 01.07.1989 but she had worked as Aaya during

the whole service period. Same is evident by issuing of the identity card to the petitioner by the school. It is not in dispute that after appointment of the

petitioner in 1989, till 2012, there was no complaint against the petitioner and admittedly no action ever taken by the respondent school. The petitioner

and other Class IV employees filed civil suit no.522/2011 for payment of necessary benefits as per 6th Pay Commission report and the same was

settled in settlement dated 05.06.2012 in the process of mediation. Only thereafter the show cause notices dated 18.09.2012 and 24.09.2012 were

issued by the respondent school.

16. Thereafter, chargesheet was issued against the petitioner qua 5 Articles of Charges namely:

i. Refusal to sign duty chart.

ii. Making false entries in the attendance register.

iii. Failure to return the old identity card.

iv. Refusal to receive official letters dated 18.09.2012 and 24.09.2012 and a show cause notice.

v. Failing to abide by verbal and written instructions.

17. Based upon the above charges, the inquiry has been conducted and all the articles are proved against the petitioner.

18. The two questions arise in the present petition are:

i. Whether the respondent school became bias after the suit filed by the Class IV employees including the petitioner?

ii. Whether there is prior approval of the Directorate of Education before awarding the punishment of dismissal from the service?

19. The case of the respondent is that in the disciplinary committee, nominee of the Directorate of Education was present, therefore, it is deemed

permission, which is not correct.

20. It is pertinent to mention here that in the impugned order, the learned Tribunal in para 22 recorded that counsel for the Directorate of Education

has argued that school is private, recognized, unaided school, therefore, it does not require permission of the Directorate of Education before

terminating the services of its employees.

21. The fact remains that Chapter IV of Delhi School Education Act, 1973 depicts the terms and conditions of service of employees of recognized

private schools.

22. As per section 8(2) of the said Act, is reproduced, as below:

8. Terms and conditions of service of employees of recognized private schools.

(1) xxxxxxxxx

(2) Subject to any rules 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.

23. The provision of the Act clearly mentioned that no employee of a recognized private school shall be dismissed, removed or reduced in rank except

without prior approval of the Directorate of Education. Admittedly, the respondent school is recognized and private.

24. Counsel appearing on behalf of respondent no.4 Directorate of Education has argued that approval of the Directorate is necessary but has not

taken in the present case and further clarified that the learned Tribunal has wrongly recorded the submission of advocate for the Directorate of

Education that no approval is required of the Directorate of Education.

25. Regarding the issue of biasness is concerned, she was appointed in the year 1989 and till 2012, there was no complaint against the petitioner. It

cannot be believed that after succeeding the petitioner and other employees in the said suit, biasness has not come in mind of the administration

because the school is private and unaided and has to pay salary to the employees as per 6th Pay commission in future, in addition to the amount paid

as per the settlement. Before the settlement, they were not paying such amount, therefore, on this ground, it cannot be ruled out that there was no

biasness against the petitioner. Therefore, the dismissal order dated 05.03.2013

deserves to be set aside on this count. Moreover, the allegations against the petitioner have not been proved by independent witnesses. The total case rests upon mere allegations based upon the documents generated by the respondent school. The petitioner has denied the allegations during enquiry.

26. In case of *Baikuntha Nath Das vs. Chief District Medical Officer*: (1992) 2 SCC 29, the Hon'ble Supreme Court has held that the court may interfere with the order of the punishment if the court is of the opinion that no reasonable person would form such opinion on the given material.

27. In the present case, all allegations are made against the petitioner only after the suit was decreed in favour of the class IV employees including the petitioner. Thus, the respondent school made such allegations and was determined to remove the petitioner from service. If it is accepted that the charges are proved, even then the charges are not so serious. The disciplinary authority would have given to the other punishment lesser than removal from service.

28. Be that as it may, the admitted fact is that approval of the termination has not been taken from the Directorate of Education as is mandatory under section 8(2) of Delhi School Education Act, 1973. Thus the punishment order mentioned above is set aside for violation of the procedures and rules of the Act.

29. In *Raj Kumar vs. Director of Education*: (2016) 6 SCC 541, where it is held that the approval under section 8(2) of the Delhi School Education Act is mandatory but has not been taken in the present case.

30. In *B.C. Chaturvedi vs. Union of India & Ors.*: (1995) 6 SCC 74 9 whereby it is held that the Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules. In the present case, the approval has not been taken from the Directorate of Education.

31. It is important to note that there were two options before this court;

(a) the present petition would have been remanded to the Tribunal who shall re-examine the case based upon the evidence on record;

(b) to be decided by this court. Since the petitioner was removed from service in the year 2013, therefore, it would be grave injustice with the

petitioner to again litigate before the Tribunal and may be thereafter before this court. Moreover, presently, the Presiding Officer of the Tribunal is not there, therefore, this court has decided the present petition.

32. In view of above discussion and settled provisions of law, justice would be met, if I hereby reinstate the petitioner in service with 50% back wages

from the date of dismissal. It is ordered, accordingly.

33. The order shall be complied with within six weeks, failing which the petitioner shall be entitled to interest @9% p.a. on the delayed payment. The

order dated 27.08.2015 passed by DST is hereby set aside.

34. The petition is, accordingly, allowed.