

(2009) 02 SC CK 0156

In the Supreme Court Of India

Case No : Civil Appeal No. 598 of 2009 (Arising out of S.L.P. (C) No. 3027 of 2008)

Samarth Shiksha Samiti and Another

APPELLANT

Vs

Bir Bahadur Singh Rathour and Others

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Delhi School Education Rules, 1973 — Rule 123, 50, 96, 96(2)

Citation : AIR 2009 SC 1990 : (2009) AIRSCW 1638 : (2009) 122 FLR 115 : (2009) 2 JT 219 : (2009) 3 LLJ 225 : (2009) 3 SCC 194 : (2009) 1 SCC(L&S) 616 : (2009) 1 SCR 735 : (2009) 3 SLJ 51

Hon'ble Judges : Cyriac Joseph, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Puneet Taneja and Balraj Dewan, for the Appellant; B. Dutta, A.S.G., Indra Sawhney, Gargi Khanna, Anil Katiyar, D.S. Mahra, Sarvesh Bisaria and Anil Nag, for the Respondent

Final Decision : Disposed Of

Judgement

Altamas Kabir, J.—Leave granted.

2. The Appellant No. 1, Samarth Shiksha Samiti, is a Society registered under the Societies Registration Act, 1860 and was established with the object of catering to the educational needs of society. In fulfillment of its object, the Appellant-Society established and began running several recognized schools all over Delhi in the name of Bal Mandirs. One such school is Mahashya Chunni Lal Saraswati Bal Mandir situated at Hari Nagar, Delhi, the Appellant No. 2 herein.

3. On 9th May, 1992, the Society (hereinafter referred to as 'the Samiti') appointed the Respondent No. 1, Shri Bir Bahadur Singh Rathour, as a Lower Division Clerk and posted him in the Appellant No. 2 School. From the appointment letter issued to the Respondent No. 2 by way of an Office Memorandum dated 9th May, 1992, it will be apparent that he was appointed by the Samiti and was an employee of the Samiti. Condition No. 4 of the terms and

conditions of his appointment also indicates that during his service period, the respondent could be transferred to the Samiti or to any of the Bal Mandirs managed by the Samiti. Condition No. 6 provides that during his period of service, the Respondent No. 1 would have to abide by the discipline of the Samiti. Condition No. 8 enjoins the Respondent No. 1, while reposing trust in the aims and objects of the Samiti, to participate in all activities organized by the Samiti with devotion. Condition No. 11 prescribes that the Respondent No. 1 would have to obey all the rules as mentioned in Chapter-9 of the Delhi School Education Rules, 1973. However, what is of consequence is Condition No. 15 which provides as follows:

15. In case he failed to comply with the aforesaid conditions and the rules as mentioned in 123 of Delhi Education Act the Samiti will have full right to remove him from service according to the law.

4. As will be evident from the aforesaid conditions, the Respondent No. 1 was an employee, not of the School, but of the Samiti, though he was posted in the School as a Lower Division Clerk.

5. On 9th August, 1999, the Respondent No. 1 was promoted as Upper Division Clerk and was posted at the same School at Hari Nagar. Such promotion being ad-hoc in nature, the same was regularized on 18th September, 2000 with effect from 1st August, 2000.

6. It appears that in September, 2003, interviews were held for the post of Superintendent Grade II and a list of selected candidates was drawn up by the Selection Committee and out of the said selected candidates, only the name of one Shri Arun Kumar was recommended for the said post. According to the Respondent No. 1, he too submitted a representation for promotion to the said post and, although, his case was recommended by the Manager of the School to the General Secretary of the Appellant No. 1-Samiti, not only was he not granted such promotion, but by an order dated 16th July, 2005, he was transferred from the School to the office of the Appellant No. 1- Samiti. Subsequently, on 9th September, 2005, in an incident involving the Respondent No. 1 and one Shri Shiv Nath Pandey, an order of suspension was issued against the Respondent No. 1 by the Appellant No. 1 on 21st September, 2005. While the disciplinary inquiry was pending, the Respondent No. 1 filed a writ petition challenging the transfer order dated 16th July, 2005; the suspension order dated 21st September, 2005; the charge-sheet dated 29th September, 2005 and the letter dated 26th October, 2005, initiating the departmental enquiry against him.

7. The writ petition filed by the Respondent No. 1 was dismissed by the learned Single Judge of the High Court on 3rd November, 2006. On an appeal preferred by the Respondent No. 1, notice was issued to the appellants in the month of January, 2007. In the appeal, it was contended on behalf of Respondent No. 1 that his services were governed not by the rules and regulations of the Samiti but by the Delhi School Education Act, 1973, and the Rules framed thereunder.

8. Accepting the submissions made on behalf of the Respondent No. 1, the Division Bench of the High Court reversed the judgment of the learned Single Judge dismissing the writ petition and held that since the said respondent was working in the School as a Lower Division Clerk on permanent appointment with effect from 1st April, 1992 and was given promotion in the said School, which was also regularized, for all practical intents and purposes he must be considered as an employee in the school and, therefore, the provisions of the Delhi School Education Act and the Rules framed there under would apply to his services. The Division Bench also directed that if the Samiti and the School wished to take any disciplinary action against the Respondent No. 1, they would have to follow the procedure laid down in the aforesaid Act and the Rules.

9. This appeal has been filed by the Samiti and the School against the said decision of the High Court in the Letters Patent Appeal filed by the Respondent No. 1 herein.

10. From the facts as disclosed herein above, it would be more or less clear that primarily three questions arise for decision in this appeal, namely,

i) Is the Respondent No. 1 an employee of the Samiti or of the School?

ii) If the Respondent No. 1 is found to be an employee of the Samiti, could it be said that the Respondent's service would be governed by the Delhi School Education Act, 1973 and the Rules framed there under or under the rules of the Samiti?

iii) If it is held that the provisions of the Delhi School Education Act and the Rules framed there under would govern the services of the Respondent No. 1, would such a condition of service stand altered on the Respondent No. 1 being transferred to the office of the Samiti?

11. Referring to the Office Order dated 16th July, 2005, whereby the Respondent No. 1 was appointed, Mr. Puneet Taneja, learned Advocate appearing for the Appellant-Samiti, emphasized the fact that the Respondent No. 1 had been appointed by the Samiti and was, therefore, an employee of the Samiti and not of the School. He pointed out the different conditions in the said Office Order, which indicated that the service of the Respondent No. 1 was transferable between the different schools managed and run by the Samiti and also to the Samiti itself, as was done in the instant case. He also referred to the various other documents, including the Experience Certificate and the Office Order dated 9th August, 1999, whereby the Respondent No. 1 had been promoted to the post of Upper Division Clerk by the Samiti and his subsequent confirmation therein and the fact that his salary was being paid by the Samiti.

12. Mr. Taneja denied the claim of the Respondent No. 1 that inspite of being an employee of the Samiti and being governed by the rules and regulations of the Samiti, his services were governed by the provisions of the Delhi School Education Act, 1973 and the Rules framed thereunder. Mr. Taneja made special

reference to the letter dated 3rd October, 2005 addressed by the Respondent No. 1 to the General Secretary of the Samiti acknowledging the fact that his services were under the control and disposal of the Samiti.

13. Mr. Sarvesh Bisaria, learned Advocate appearing for the Respondent No. 1, reiterated the stand taken on behalf of the said respondent before the High Court that even though the said respondent had been appointed by the Samiti, once his services were placed at the disposal of the School in question, his services came to be governed by the provisions of the Delhi School Education Act and the Rules framed there under. Mr. Bisaria referred to and relied on Condition No. 11 of the Appointment Order, which provides that during the period of his service with the Samiti, the Respondent No. 1 would have to obey all the rules as mentioned in Chapter 9 of the Delhi School Education Rules, 1973. He also referred to Condition No. 15 extracted hereinabove, which stipulates that in case the Respondent No. 1 failed to comply with the various conditions and the rules as mentioned in Rule 123 of the Delhi School Education Rules, the Samiti would have full right to remove him from service according to the law.

14. Mr. Bisaria urged that not having taken recourse to the provisions of the Delhi School Education Rules, the Samiti had erroneously issued the order of transfer dated 16th July, 2005, whereby the Respondent No. 1 had been transferred from the school to the office of the Samiti. Mr. Bisaria submitted that the order of suspension passed by the Samiti on 21st September, 2005 and the subsequent order dated 29th September, 2005, initiating disciplinary proceedings against the Respondent No. 1, were liable to be set aside.

15. Mr. B. Dutta, learned Additional Solicitor General appearing for the Director of Education, Government of NCT of Delhi, supported the stand taken on behalf of the Respondent No. 1 to the effect that the Samiti could not have proceeded against the Respondent No. 1 under its own rules while initiating disciplinary proceedings, but should have taken recourse to the provisions of the Delhi School Education Act and the Rules framed there under. In this regard, the learned Additional Solicitor General referred to Rule 50 of the 1973 Rules and in particular, Clauses (i) and (vi) thereof which read as follows:

50. Conditions for recognition.- No private school shall be recognized, or continue to be recognized, by the appropriate authority unless the school fulfils the following conditions, namely:

(i) the school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force and is managed in accordance with a scheme of management made under these rules;

(ii) ...

(iii) ...

(iv) ...

(v) ...

(vi) the managing committee observes the provisions of the Act and the rules made there under;

16. The learned Additional Solicitor General submitted that not having followed the said procedure, the Samiti had acted illegally in proceeding against the Respondent No. 1 under the rules and regulations of the Samiti on the ground that having appointed him the Samiti had control over his services.

17. The learned Additional Solicitor General submitted that having regard to the above, no interference was called for with the decision of the High Court in L.P.A. No. 52/2007.

18. It is in the context of the aforesaid submissions made on behalf of the respective parties that we will have to consider the questions set out hereinbefore in paragraph 8.

19. Regarding the first question, as to whether the Respondent No. 1 is an employee of the Samiti or of the School, there can be no doubt that the Respondent No. 1 is an employee of the Samiti whose services were placed at the disposal of the School, where he was functioning as a Lower Division Clerk and thereafter as Upper Division Clerk. There is no dispute that his appointment was made by the Samiti and that his salary is also paid by the Samiti. There is also no dispute that he was promoted to the post of Upper Division Clerk by the Samiti and not by the School.

20. At this juncture, it may be fruitful to consider the procedure adopted for appointment of the Respondent No. 1 to the post of Lower Division Clerk in the School. The Office Memorandum dated 9th May, 1992 by which the Respondent No. 1 was appointed, indicates at the outset that pursuant to a decision taken by the Selection Committee, the respondent was appointed as Lower Division Clerk on Government pay scale and admissible usual allowances payable to Bal Mandirs, on a regular basis in the School in question. The said appointment was to take place with effect from 1st April, 1992, but he would remain posted in the central office of the Samiti till further orders of the Samiti. In other words, though the Respondent No. 1 was appointed by the Samiti as a L.D.C. in the School in question with effect from 1st April, 1992, he was to remain posted in the central office of the Samiti till further orders were passed by the Samiti. Since a reference has been made to the Selection Committee in the Office Memorandum, it will be necessary to consider the effect of Rule 96 vis-à-vis the Respondent No. 1's appointment by the Samiti.

21. Rule 96 of the 1973 Rules falls under Chapter VIII of the said Rules, which deals with recruitment and terms and conditions of service of employees of the private schools other than unaided minority schools. Rule 96(2) provides that recruitment of employees in each recognized private school shall be made on the recommendations of the Selection Committee, which, in the case of appointment

of any employee other than the Head of the School or a teacher other than the Head of the School, not being an employee belonging to Group 'D', was to consist of:

- (i) the Chairman of the managing committee or a member of the managing committee, to be nominated by the Chairman;
- (ii) head of the school;
- (iii) a nominee of the Director;
- (iv) in the case an aided school, two officers having experience of the administration of the school, to be nominated by the Director.

In the instant case, the procedure under Rule 96(2) appears to have been duly followed and the appointment of the Respondent No. 1 was made by the Samiti on the conditions set out in the Office Memorandum which leave no room for doubt that the Respondent No. 1 was an employee of the Samiti and not of the School, though it has been held otherwise by the Division Bench of the High Court. Of course, the High Court has couched its observations by using the expression "for all practical intents and purposes", but that, in our view, would not make him an employee of the school. Furthermore, Condition No. 3 of the conditions of service provides in clear and unambiguous terms that the Respondent No. 1 could be relieved from his services in the initial probation period or extended period of probation after one month's notice or one month's pay. The said condition also provides that after his services were made permanent, if the Samiti wanted to relieve him from his services, he would be given three months' prior notice or be given three months' salary in lieu thereof. Condition No. 4, which allows the Samiti to transfer the respondent from one Bal Mandir to another run by the Samiti or to the Samiti itself, read with Condition No. 3, indicates that the service of the Respondent No. 1 was under the Samiti and under its control. Conditions 11 and 15, on which a good deal of reliance has been placed on behalf of the Respondent No. 1, read as follows:

11. During the period of service he will have to obey all the rules as mentioned in Chape-9 of Delhi Education Act.

xxx xxx xxxx 15. In case he failed to comply with the aforesaid conditions and the rules as mentined 123 of Delhi Education Act, the Samiti will have full right to remove him from service according to law.

(Emphasis added)

22. This brings us to the next question as to whether despite being an employee of the Samiti, the Respondent No. 1's services would be governed by the Delhi School Education Act and the Rules framed there under or under the Rules of the Samiti.

23. Condition No. 11, which has been reproduced hereinabove, only indicates that during his period of service, the Respondent No. 1 would have to obey all

the rules as mentioned in Chapter 9 of the Delhi School Education Rules. The said provision supports the stand taken on behalf of the Samiti that Chapter 9 of the said Rules relating to the Code of conduct for teachers and other employees was adopted by the Samiti to govern the code of conduct of its employees as well. Except for indicating that the Respondent No. 1 would have to obey the rules in question, Condition No. 11 does not provide that the Act and Rules would directly govern the services of the said respondent. Furthermore, condition No. 15 gives the Samiti the right to remove the Respondent No. 1 from service according to law.

24. In answer to the second question, it must, therefore, be held that the services of the Respondent No. 1 would continue to be governed by the rules of the Samiti and not by the Delhi School Education Act, 1973 and the Rules framed there under, though the provisions of the rules may have been adopted by the Samiti for its employees.

25. Consequently, in answer to the third question posed in paragraph 8 hereinbefore, it must be held that the Respondent No. 1 continued to be governed by the rules of the Samiti whether his services were placed at the disposal of the school or retained by the Samiti in its central office.

26. In our view, the reasoning of the Division Bench of the High Court was erroneous as it proceeded on the premise that for all practical intents and purposes the Respondent No. 1 was an employee of the school and that the provisions of the Delhi School Education Act, 1973 would, therefore, apply to him. The judgment and order of the Division Bench cannot, therefore, be sustained and is set aside and the judgment of the learned Single Judge is restored.

27. The appeal is, therefore, allowed and the writ petition filed by the Respondent No. 1 is dismissed. There will, however, be no order as to costs.