

**(2011) 04 DEL CK 0308**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 10628 of 2009**

Samarth Shiksha Samiti

APPELLANT

Vs

Directorate of Education and Another

RESPONDENT

**Date of Decision : 26-04-2011**

**Acts Referred:**

Delhi School Education Act, 1973 — Section 8(3)

Delhi School Education Rules, 1973 — Rule 118, 120, 120(1)

**Citation :** (2012) 1 AD 434 : (2011) 180 DLT 93 : (2011) 124 DRJ 174 : (2011) 5 ILR Delhi 645

**Hon'ble Judges :** Rajiv Sahai Endlaw, J

**Bench :** Single Bench

**Advocate :** Rajesh Gupta and Sumit R. Sharma, for the Appellant; Hem Kumar, for Sanjeev Sabharwal, for R-1, S.K. Nirmal, DOE Zone-19 and K.P. Gupta, for R-2, for the Respondent

## **Judgement**

Rajiv Sahai Endlaw, J.—The petition impugns the judgment dated 30th April, 2009 of the Delhi School Tribunal allowing the appeal of the Respondent No. 2 Mr. A.A. Vetal and setting aside the order dated 27th February, 2001 of the Managing Committee of the Dayawati Shyam Sunder Gupta Saraswati Bal Mandir (School managed by the Petitioner Society) of removal of the Respondent No. 2 from the post of the Vice Principal and of dismissal from the services of the said School and reinstating the Respondent No. 2 to his post and directing the Managing Committee of the School to decide the question of payment of salary, allowance and consequential benefits for the intervening period within two months thereof.

2. Notice of the petition was issued and vide order dated 3rd August, 2009 which continues to be in force, the implementation of the order of the Tribunal was stayed. The pleadings have been completed and the counsels have been heard.

3. The Respondent No. 2 was appointed in the year 1972 as Head Master of the Primary section of the School of the Petitioner and was in the year 1976

promoted as a TGT and was appointed as a Vice Principal of the School in the year 1996. The Respondent No. 2 was placed under suspension on 7th December, 1998. It was the case of the Respondent No. 2 that he could not have been suspended without prior approval of the Respondent No. 1 Directorate of Education and he accordingly represented to the Directorate of Education in this regard. The Directorate of Education on 21st May, 1999 directed the School to revoke the suspension order. The School earlier filed Civil Writ No. 3745/1999 in this Court and by interim order wherein the order dated 21st May, 1999 of the Directorate of Education was stayed.

4. The Respondent No. 2 was served with a charge sheet dated 2nd April, 1999. He was charged with calling as many as 17 girl students of Class VII to class X of the School outside the classroom for one reason or the other and having touched their bodies and indulged in obscene acts with them. He was also charged with calling lady teachers for talks and embracing them and doing other obscene acts in their presence. The copies of the complaints against the Respondent No. 2 were attached to the charge sheet.

5. The charge sheet was signed by the Manager of the School on behalf of the Managing Committee of the School. The Respondent No. 2 in his reply dated 19th April, 1999 to the charge sheet took a preliminary objection that the charge sheet had not been issued by the Disciplinary Authority (constituted as per Rule 118), as required under Rule 120. Rule 118 of the Delhi School Education Rules, 1973 (School Education Rules) is as under:

118. Disciplinary authorities in respect of employees. - The disciplinary committee in respect of every recognized private school, whether aided or not, shall consist of -

(i) the Chairman of the managing committee of the school;

(ii) the manager of the school;

(iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;

(iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director;

(v) a teacher who is a member of the managing committee of the school, nominated by the Chairman of such managing committee.

6. Upon receipt of the reply aforesaid to the charge sheet, the School on 21st April, 1999 wrote to the Directorate of Education informing of the suspension and charge sheeting of the Respondent No. 2 and requesting nomination by the Directorate of Education to the five member Disciplinary Committee. The Directorate of Education vide order dated 25th August, 1999 appointed Smt. Maya Biswas, Education Officer, District South West and Smt. Usha Arora,

Principal SKV Moti Bagh-I respectively as his nominees on the Disciplinary Committee setup to initiate disciplinary proceedings against the Respondent No. 2.

7. The Disciplinary Authority so constituted and comprising inter alia of the nominees aforesaid of the Directorate of Education, on 17th January, 2000 appointed Shri Rajesh Mahindru, Advocate as the Inquiry Officer.

8. The Inquiry Officer so appointed submitted his report dated 30th May, 2000 in respect of the charge sheet dated 2nd April, 1999 (supra) served on the Respondent no. 2. The said report of the Inquiry Officer was considered by the Disciplinary Committee and the Respondent No. 2 given an opportunity to respond thereto. The Disciplinary Committee in its meeting held on 15th July, 2000, after considering the report of the Inquiry Officer and the reply of the Respondent No. 2 unanimously concluded that the charges aforesaid levelled against the Respondent No. 2 had been proved to be true; that the offence committed by the Respondent No. 2 being of continuing nature spread over a period of time and the inquiry having been conducted as per the provisions of the Delhi School Education Act, 1973 and Rules framed there under and in accordance with the principles of natural justice, the Respondent No. 2 had been rightly held guilty of indulging in misbehavior towards female students and teachers; the Disciplinary Committee accordingly proposed the penalty of removal of service on the Respondent No. 2 and forwarded the documents to the School Management.

9. The School Management vide order dated 27th February, 2001 imposed the penalty of removal from service with immediate effect on the Respondent No. 2 and against which order the Respondent No. 2 preferred the appeal aforesaid to the Tribunal.

10. The Tribunal in para 15 of its judgment has recorded that the challenge to the order dated 27th February, 2001 of the Managing Committee of the School was on three grounds, namely

- i. that the Disciplinary Committee was not constituted as per rules.
- ii. that the Respondent No. 2 was not allowed to have a lawyer/retired Government servant/an outsider as his defence assistance.
- iii. prior approval of the Directorate of Education was not taken before passing the order of removal against the Respondent No. 2.

11. The Tribunal decided the ground (ii) aforesaid in favour of the School/Petitioner and against the Respondent No. 2. It was held that even though the Inquiry Officer was an Advocate but the Presenting Officer was not a legally trained person and the charges against the Respondent No. 2 were simple, plain and understandable even to an average man and no complicated documents were to be proved or disproved and the Respondent No. 2 as the Vice Principal of the School was competent to defend his case and the Inquiry Officer was justified

in refusing to allow a lawyer or a Government servant or an outsider to be appointed as defence assistance for the Respondent No. 2. It was further held that it was not a case where the Respondent No. 2 had requested any of his colleagues in the same School to act as defence assistance and they had refused to do so.

12. However, on the other two grounds the Tribunal decided against the School. It was held that under Rule 118 r/w Rule 120 of School Education Rules, the charges have to be framed by the Disciplinary Committee constituted under Rule 118 and the charge sheet in the present case was issued not by the Disciplinary Committee but by the Manager of the School on behalf of the Managing Committee and who were not entitled or empowered to issue the charge sheet. It was further held that the Disciplinary Committee was constituted after the issuance of the charge sheet and no definite charges were framed by the Disciplinary Committee after its due constitution. The disciplinary proceedings against the Respondent No. 2 were thus held to be vitiated.

13. The Tribunal though noticed that the School being an unaided recognized school, as per the judgments in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and Kathuria Public School Vs. Director of Education and Another, did not require prior approval of Directorate of Education before passing the order of removal of the Respondent No. 2; however held that since the removal of the Respondent No. 2 on 27th February, 2001 was prior to the aforesaid judgments, and the judgments being not retrospective, the Respondent no. 2 would be governed by the law then prevalent and as per which the prior approval of the Directorate of Education was necessary. It was held that prior approval having not been obtained, the removal was illegal.

14. The counsel for the Petitioner has argued that the Disciplinary Committee admittedly constituted in terms of Rule 118 (supra) even though after the issuance of the charge sheet, by proceeding on the basis of the said charge sheet is deemed to have approved the same and the disciplinary proceedings could not have been held to be vitiated for the said reason. With respect to the question of prior approval of the Directorate of Education, attention is invited to letter dated 19th April, 2001 of the Directorate of Education according approval sought by the School on 12th December, 2000 for removal of the Respondent No. 2 from the service w.e.f. 7th February, 2001 "on account of the misconduct amounting to moral turpitude". It is contended that in the face of the said ex post facto approval, the Tribunal could not have interfered with the same.

15. Per contra, the counsel for the Respondent No. 2 has contended that the Respondent No. 2 in his long service from the year 1972 till 1996 in the School had an unblemished record and was during the time 1996 to 1998 when he is alleged to have miscondacted himself, was about 58-59 years of age and cannot be believed to have indulged in misconduct alleged, particularly with girls as young as in class VII and class X. It is yet further contended that all the complaints against the Respondent No. 2 are sudden and no complaints were

made during the time of two years when he is alleged to have misconducted himself. It is argued that the Respondent no. 2 had in the year 1998 asked the Management of the School for implementation of the report of the 5th Pay Commission and owing where to the Management became inimical towards him and vindictively charged him with the incidents aforesaid. It is yet further alleged that the Management of the School was interested in granting admission to failed students of other schools by taking donation and which was also objected to by the Respondent No. 2.

16. It is further contended that the complaints of the students and the teachers against the Respondent No. 2 have been fabricated and the charge against him cooked up. It is contended that the judgments in T.M.A. Pai Foundation and Kathuria Public School (supra) laying down that unaided recognized schools do not require prior approval of the Directorate of Education for imposing punishment on their employees are of a date subsequent to the date of the order of removal of the Respondent No. 2 and as per law prevalent on which date, prior approval was required and sought by the School. It is further argued that the Respondent No. 2 was wrongly denied assistance of an Advocate even though the Inquiry Officer himself was an Advocate.

17. I have inquired from the counsel for the Respondent No. 2 whether the Respondent No. 2 had made the demand for implementation of the recommendation of the 5th Pay Commission in writing. The answer is in the negative. I have similarly inquired whether there was any record of the Respondent No. 2 having refused to grant admission to any student in whose admission the Managing Committee of the School was interested. The answer is again in the negative. The counsel for the Respondent No. 2 has rather fairly stated that no such pleas were taken in writing, neither in reply to the charge sheet nor before the Inquiry Officer nor before the Disciplinary Committee nor before the Disciplinary Authority of the School which meted out the punishment to the Respondent No. 2 and were taken for the first time in the appeal before the Tribunal. The Tribunal also has not returned any findings thereon.

18. In view of the aforesaid I am unable to give any credence whatsoever to the argument of animosity and the proceedings being vindictive.

19. As far as the argument of the Respondent No. 2 of having been denied assistance of the Advocate by the Inquiry Officer is concerned, the Tribunal itself has found in favour of the School and against the Respondent No. 2. The Respondent no. 2 has not been able to make any dent on the findings of the Tribunal in this regard. Significantly the Respondent No. 2 also did not press the said plea and rather chose to absent himself from the inquiry proceedings and not participate in the same. No such ground was urged before the Disciplinary Committee or the Disciplinary Authority also. No efforts were made at that stage to come to the Court seeking permission of representation through lawyer. It is even otherwise a settled position in law that there can be no insistence on legal representation in such departmental proceedings. Reference in this regard may

also be made to State of Rajasthan, Jaipur Vs. S.K. Dutt Sharma, M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another, and Harinarayan Srivastav Vs. United Commercial Bank and another,

20. The argument of the Respondent No. 2 of the entire case/charge/evidence against him being fabricated is unbelievable. The charges meted out to the Respondent No. 2 were serious in nature. In our society, girls/women hesitate in making such charges against anyone for the fear of stigma which they themselves suffer owing thereto. As many as 9 girl students and several lady teachers of the School were examined by the Inquiry Officer and all of whom complained of the indecent behaviour of the Respondent No. 2. The School itself in proceeding on such ground against the Respondent No. 2 ran a risk of affecting its own reputation and parents especially of girls hesitating to admit them to the school. In view of all these, the said plea raised without any basis is but to be rejected.

21. As far as the finding of the Tribunal qua the charge sheet though required under Rule 120 to be issued by the Disciplinary Committee constituted under Rule 118, having not been so issued is concerned, Rule 120(1)(a) is as under:

120. Procedure for imposing major penalty. - (1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below:

(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defence and also to state whether he desires to be heard in person.

22. I have inquired from the counsel for the Respondent No. 2 as to what is the purport of the words "as far as may be" in the Rule aforesaid; the same appears to suggest that strict compliance of the Rules is not to be insisted upon and deviations as per necessity are permissible. Similarly it has been inquired from the counsel for the Respondent No. 2 as to whether the principle of ratification of the charge sheet by the Disciplinary Committee would not apply. No answers have been forthcoming.

23. I may notice that the School while writing to the Directorate of Education for appointing its nominees in the Disciplinary Committee had informed of the issuance of the charge sheet to the Respondent No. 2. The Directorate of Education while appointing its nominees was fully aware of the charge sheet issued. Similarly, the Disciplinary Committee constituted pursuant to the said nomination also proceeded on the basis of the charge sheet and appointed the Inquiry Officer to inquire into the said charge sheet and considered the report of the Inquiry Officer on the said charge sheet. All this is sufficient ratification of the

charge sheet issued by the Manager on behalf of the Managing Committee of the School. The Supreme Court in Maharashtra State Mining Corporation Vs. Sunil Pathak, held that though an act by a legally incompetent authority is invalid but can be subsequently rectified by ratification of the competent authority. It was held that ratification by definition means the making valid of an act already done; the principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*. It was thus held that ratification assumes an invalid act which is retrospectively validated. Even though the Apex Court in Marathwada University Vs. Seshrao Balwant Rao Chavan, has held the principle of ratification to be not applicable with regard to exercise of powers conferred under statutory provisions but in the light of the words "as far as may be" the principle, in the present case would apply. I also find the Supreme Court in Goa Shipyard Ltd. Vs. Babu Thomas, to have after considering both Marathwada University and Maharashtra State Mining Corpn. (supra) extended the principle of ratification to service law also.

24. Had the intent of the legislature been that the procedure prescribed in Rule 120 was to be strictly followed before imposition of any major penalty on an employee of the School, the legislature would not have used the words "as far as may be" in the said Rule. The Supreme Court recently in High Court of Judicature for The High Court of Judicature for Rajasthan Vs. Veena Verma and Another, interpreted the words "as far as possible" as meaning that there is no hard and fast rule and such words give a discretion to the authorities and the Court cannot interfere with this discretion unless it is palpably arbitrary. Similarly a Seven Judge Bench of the Apex Court in In Re: Presidential Poll, held the words "as far as practicable" to be indicative that in practice, there may be no uniformity owing to various other factors. A Division Bench of this Court also in Subhash Chander v. RehmatUllah ILR 1973 Del 181 held that the words "as far as may be" are distinct from the words "shall apply" and further held that such expressions are obviously designed to free the proceedings from technicalities and rigours of a strict application.

25. In the present case, the charges against the Respondent No. 2 are grave. Need must have been felt to immediately proceed against him. The charge sheet appears to have been issued without noticing Rules 118 and 120. However, immediately after the objection in this regard being taken by the Respondent No. 2, steps for constitution of the Disciplinary Committee in accordance with Rule 118 were taken and Disciplinary Committee constituted and which did not choose to frame a fresh charge sheet and decided to proceed on the basis of the charge sheet already issued. The same is found to be sufficient/contextual compliance of Rule 120(supra). The Tribunal does not appear to have considered the matter in the aforesaid context.

26. The Tribunal also appears to have confused the operation of a statute / Rule with the effect of a judgment. It is the settled proposition of law that a judgment interpreting a statute/provision thereof declares the meaning of the statute as it

should be construed since the date of its enactment; wherever the Courts feel the need to make the operation of the judgment prospective, they expressly so provide in the judgment. On the contrary, it is the statute or the rule which is presumed to be prospective unless expressly made retrospective. Reference in this regard can be made to Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, . The Supreme Court similarly in Sarwan Kumar and Another Vs. Madan Lal Aggarwal, reiterated that the interpretation by the Court of a provision relates back to the date of the law itself and cannot be prospective of the judgment. It was further held that when the Court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision and it will be deemed that the law was never otherwise. It was yet further held that under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved; invocation of doctrine of "prospective overruling" is left to the discretion of the Court, to mould with the justice of the cause or the matter before the Court. However, if the Court interpreting the law does not hold that the interpretation given would be prospective in operation, it is not for another Court to say that the law as interpreted would be prospective in operation.

27. A reading of the judgment of the Division Bench in Kathuria Public School does not show that the interpretation given by the Division Bench would be prospective in operation. It was thus not open to the Tribunal to declare so and the order of the Tribunal to the said extent is in the teeth of the dicta of the Apex Court in Sarwan Kumar (supra). The rationale behind the principle, as noted by the Apex Court in Lily Thomas, Vs. Union of India and Others, is that the Court does not legislate but only gives an interpretation to an existing law.

28. It may be apposite to, at this stage, notice the judgment dated 27th August, 2010 of the Full Bench of this Court in O. Ref.1/2010 titled Presiding Officer, Delhi School Tribunal v. GNCTD overruling Kathuria Public School in so far as it held appeals to the Delhi School Tribunal maintainable against all grievances of the teachers and not merely against the orders mentioned in Section 8(3) of the Delhi School Education Act. However, the part of the judgment of the Division Bench in Kathuria Public School with which we are concerned, was not the subject matter of the reference to the Full Bench and remains unaffected thereby.

29. T.M.A. Pai Foundation or Kathuria Public School have not amended the Delhi School Education Rules but merely ascribed the meaning which they bear. Once the said judgments had been pronounced, the Tribunal could not have ascribed any other meaning to the Rules than as ascribed in the said judgments.

30. Thus both the grounds on which the Tribunal has found in favour of the Respondent No. 2 cannot be sustained. Axiomatically the order of the Tribunal impugned in this petition is quashed/set aside. Resultantly, the appeal preferred by the Respondent No. 2 to the Tribunal would stand dismissed and the order of the Managing Committee of the School of the Petitioner removing the



Respondent No. 2 from services of the School upheld.

31. The petition is disposed of. No order as to costs.