

(2020) 12 DEL CK 0169

In the Delhi High Court

Case No : Civil Writ Petition No. 8594 Of 2020, Civil Miscellaneous Application
No. 31025 Of 2020

Samiksha Narahari

APPELLANT

Vs

SsIt Gujarat Senior Secondary School & Anr

RESPONDENT

Date of Decision : 21-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Delhi School Education Rules, 1973 — Rule 117, 117(b)(ii), 120(2)
Delhi School Education Act, 1973 — Section 8(2), 8(3), 11

Citation : (2020) 12 DEL CK 0169

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Dinesh Sabharwal, Pranay Trivedi, Avnish Ahlawat, N.K. Singh, Palak Rohmetra

Judgement

Jyoti Singh, J

Hearing has been conducted through Video Conferencing.

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:

1. Issue a Writ in the nature of Mandamus and/or any other appropriate Writ/ Order/Direction of like nature thereby directing the

respondent no.-1 School to reinstate the Petitioner with honour and respect as per Order dated 18/08/2020, having ref. no.â?

DDE(N)/PB/2020/214, of the Respondent no.2, wherein the Director of Education Special Director (ASB) has disapproved all the charges

against the Petitioner as per Rule 120(2) of DSEAR 1973,

2. To pay all the arrears as applicable as per rule with immediate effect.

3. Issue or pass any writ, direction or order, which this Honâ??ble court may deem fit and proper in the facts and circumstances of the case.â??

2. Petitioner was appointed as a PGT (English) in 2003 in Respondent No.1/ School. Petitioner was placed under suspension vide order dated

5.09.2018 followed by a Disciplinary Enquiry. On the basis of the Inquiry Report dated 26.04.2019 finding the charges to be proved, a major penalty of

removal from service was proposed by the School on 29.04.2019. Later as learnt by the Petitioner the penalty was changed to that of Compulsory

Retirement.

3. It is the case of the Petitioner that when the proposed penalty and the Inquiry Report was forwarded to Respondent No.2 / Directorate of

Education as per Rule 120(2) of Delhi School Education Act and Rules, 1973 (hereinafter referred to as â??DSEARâ??) it was disapproved on the

ground that the penalty was harsh and the same required reconsideration. It was on this premise that the present petition was filed for reinstatement of

the Petitioner.

4. During the pendency of the petition the Directorate of Education has passed an order dated 19.11.2020 approving the major penalty of compulsory

retirement against the Petitioner. The order has been brought on record by the Petitioner by moving an application for cancellation of the order.

5. Learned counsel for the Petitioner submits that on an earlier occasion, Directorate of Education had remanded the matter back to the Disciplinary

Authority to reconsider the proposed penalty of compulsory retirement on the ground that it was harsh and should be reconsidered. It is argued that

once the Director of Education took a decision to disapprove the penalty it was not open to approve the penalty of compulsory retirement by reviewing

its decision.

6. Ms. Avnish Ahlawat learned counsel appearing for Respondent No. 2, on the other hand, draws the attention of the Court to an order dated

30.07.2019 as well as order dated 18.08.2020. Relevant part of the orders are as under:

â??OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,

DISTRICT NORTH,

LUCKNOW ROAD TIMARPUR, DELHI-110054

Ref.No.: DDE(N)/PB/2019/364 Dated:30/07/2019

To

The Hony. Manager

SSLT Gujrat Sr. Sec. School,

Raj Niwas Marg, Delhi-110054

Subject: Proposal of Disciplinary authority of the school for imposing the penalty of compulsory retirement under Rule 117 (b)(ii) of

DSEAR, 1973 on Ms. Samiksha Narhari PGT (English) of SSLT Gujrat Sr. Sec. School, Raj Niwas Marg, Delhi. Sir,

The Competent Authority Director of Education NCT of Delhi has considered the proposal of DAC with regard to Ms. Samiksha Narhari

under Rule 117 of DSEAR, 1973.

Whereas, competent authority has noted that penalty purpose seems to be harsh, DAC may be asked to reconsider the penalty in light of

charges.

School Manager is hereby directed to get the proposal of compulsory retirement re-considered in the view of observations made by the

Director of Education.

Sd/-

DDE (North)â??

â??OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,

DISTRICT NORTH,

LUCKNOW ROAD TIMARPUR, DELHI-110054

Ref.No.: DDE(N)/PB/2020/214 Dated:18/08/2020

To

The Manager,

SSLT Gujrat Sr. Sec. School,

Raj Niwas Marg New Delhi

Subject: Seeking Status report in respect of Smt. Samiksha Narhari PGT (English), SSLT Gujrat Sr. Sec. School, Rajniwas Marg New Delhi.

Please refer letter dated 13/01/2020 vide which this office had communicated re-consider penalty imposed by DAC in the case of Smt.

Samiksha Narhari. In this regard it is further added as given below:

The DAC in the present case had imposed the penalty of compulsory retirement under rule 117(b)(ii) of DSEAR 1973 and submitted the

proposal for approval by worthy DE as per rule 120(2) which provided as under:

“No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except the after receipt of the

approval of the Director.”

xxx xxx xxx

Further worthy DE has directed to seek clarification regarding the present status in respect of Smt. Samikha Narhari.

In view of the above stated facts and circumstances, the school Manager is hereby directed to provide the above desired status within 07

days so that the same may be conveyed to the Competent Authority for further necessary action.

Any lapse in this regard shall be viewed seriously.

Sd/-

DDE (North)”

7. She submits that the penalty proposed was never disapproved and the matter was only remanded for reconsideration. On a reconsideration, the

School had again proposed the penalty of compulsory retirement, which has now been approved. She submits that since the penalty of compulsory

retirement has now been imposed, it is not open to this Court to entertain the present writ petition in view of the judgement of the Supreme Court in

Shashi Gaur vs. NCT of Delhi, (2001) 10 SCC 44 5including a judgment of the Coordinate Bench of this Court in G.D. Goenka Public School & Ors.

vs. Vinod Handa & Ors. 262 (2019) DLT 154.

8. Mr. Pranay Trivedi learned counsel appearing for Respondent No. 1 supports the arguments made by Ms. Ahlawat.

9. I have heard the learned counsels for the parties.

10. The present petition was filed on the premise that the Directorate of Education had not approved the penalty proposed by the Disciplinary

Committee of the School and thus a relief of reinstatement was sought. During

the pendency of the petition, however, the Directorate of Education has by order dated 19.11.2020 granted approval to the School for imposing the penalty of compulsory retirement.

11. There is force in the contention of the counsels for the Respondents that the penalty imposed can only be challenged by the Petitioner by way of

an appeal before the Delhi School Education Tribunal constituted under Section 11 of the DSEAR. The Supreme Court in *Shashi Gaur* (supra), has

clearly held as under :-

â??5. Mr. Das, the learned senior Counsel appearing for the appellant, contends that Section 8(3) provides for an appeal against an order

of dismissal, removal or reduction in rank and not against any order of termination as is apparent from the provisions contained in Sub-

section (2) of Section 8, which provides for obtaining prior approval of the Director before dismissal, removal or reduction in rank or

otherwise terminating the services of an employee of a recognised private school. The very fact of absence of the expression ""otherwise

termination"" available in Subsection (2) from the provisions of Sub-section (3) clearly demonstrates that against an order of termination

which does not come within the expression ""dismissal, removal or reduction in rank"", the Legislature has not provided for an appeal to the

Tribunal constituted under Section 11 of the Act.

6. In support of this contention, the Counsel also placed reliance on Rule 117 Explanation, which indicates that replacement of a teacher

who was not qualified on the date of his appointment by a qualified one, will not amount to a penalty within the meaning of the said Rule

[see Explanation (c)]. The learned Counsel also placed before us the observations made by this Court in the case of *The Principal and Ors.*

v. The Presiding Officer and Ors. MANU/SC/0046/1978 : [1978] 2 SCR 507 wherein this Court had observed that for applicability of the

provisions of Section 11 two conditions must co-exist, namely, (i) that the employee should be an employee of a recognised private school

and (ii) that he should be visited with either of the three major penalties, i.e., dismissal, removal or reduction in rank.

7. This judgment and the interpretation put to the provisions of Subsections (2) and (3) of Section 8 undoubtedly, is of sufficient force. But,

the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section

8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of

the purview of the Tribunal constituted under Section 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the

teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Governmental

authorities having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to

such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The

remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand

terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, an appeal is provided

against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but

also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially

appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its

discretion, though we do not agree with the conclusion that availability of an alternative remedy ousts the jurisdiction of the Court under

Article 226 of the Constitution.â??

12. A Coordinate Bench of this Court in *G.D. Goenka Public School & Ors.*(supra) relying upon the judgment in *Shashi Gaur* (supra) held as under :-

â??26. Section 8(3) of the DSE Act enables, any employee, of a recognised private school, who is dismissed, removed or reduced in rank,

to appeal, against the order, to the learned Tribunal. The burden of the petitioner's case, before the learned Tribunal as well as before this

Court, is that the respondent was not dismissed, or removed, or reduced in rank and that, therefore, his appeal, before the learned

Tribunal, was not maintainable.

27. This argument, is, in my view, completely devoid of substance. The expression "removed" is wide and comprehensive in its scope

and ambit, and in the absence of any restrictive definition, attributed to the said expression in the DSE Act or the DSE Rules, has to be

accorded in its widest possible meaning. One may also be informed, in doing so, by the principle, well settled in law, that the law is always

required to be so interpreted as to confer, rather than exclude, jurisdiction, on a judicial or quasi-judicial authority.

x x x

31. The above decision was followed, by a learned Single Judge of this Court in *Daya Nand Adarsh Vidyalaya v. Deepa Chibber*, 2013

SCC OnLine Del 3754, in which the court was specifically confronted with the question of whether a case of severance of employment by

reason of resignation, by the teacher concerned, would also be amenable to appeal, to the learned Tribunal, under Section 8(3) of the DSE

Act. This Court, first referred to the above extracted passages from the judgment of the Supreme Court in *Shashi Gaur* (supra), and

proceeded, thereafter, to opine thus:

"4. In view of the aforesaid judgment of the Supreme Court in the case of *Shashi Gaur* (supra), in my opinion, there can be no doubt that

once a teacher/employee of a school takes up a case that she has been illegally removed, this aspect very much falls within the jurisdiction

of the Tribunal. The mere fact that in determining this issue the Tribunal has also to consider that whether or not the teacher or employee

has resigned or not cannot mean that Tribunal will have no jurisdiction because it is only on arriving at a conclusion that there is no valid

resignation, would thereafter the Tribunal arrive at a decision of illegal removal of a teacher/employee of a school."

(Emphasis supplied)

32. This Court, therefore, held that the appeal preferred by the respondent before it, in the above judgment, i.e. *Deepa Chibber* (supra), to

the learned Tribunal, was maintainable.

33. I express my complete, and respectful, concurrence, with the said decision.

34. The objection of the petitioner, to the entertainment of the respondent's appeal, by the learned Tribunal, on the ground that the said appeal was not maintainable, therefore, merits rejection.â??

13. A similar view has been taken by this Court recently in Ritu Hooda vs. Directorate of Education and Ors., WP(C) 4951/2020, decided on

9.09.2020 and Sandhya Bindal vs. State of NCT of Delhi & Ors., W.P.(C) 6975/2020, decided on 24.11.2020 relying on the above two judgments.

Thus the present petition cannot be entertained and the remedy available to the Petitioner is to approach the Delhi School Education Tribunal by filing

an appeal.

14. Petition along with the accompanying application is accordingly disposed of granting liberty to the Petitioner to take recourse to the appropriate

remedy available to her in law.

15. Needless to state that the Petitioner is at liberty to raise all contentions raised in the present petition to assail the action of the Respondents

including the grant of approval vide order dated 19.11.2020 by the Directorate of Education, before the Tribunal.

16. It is made clear that this Court has expressed no opinion on the merits of the case.