

(2010) 04 DEL CK 0037

In the Delhi High Court

Case No : C.M. (Main) No. 43 of 2009 and C.M. Application No. 787 of 2009

Sardar Patel Vidyalaya

APPELLANT

Vs

G.P. Srivastava

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Delhi School Education Act, 1973 — Section 10, 11, 8, 8(2), 8(3)

Delhi School Education Rules, 1973 — Rule 115(2), 115(5), 120(1), 120(2)

Citation : (2010) 5 ILR Delhi 235

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Kshitij Sharda, for the Appellant; Pranav Kanti, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—The respondent was a caretaker appointed by the petitioner school. Because of the misdeeds of respondent, he was suspended from service on 10th May, 2006 in accordance with the rules under Delhi School Education Act, 1973 (hereinafter referred to as the Act). An inquiry was conducted as per rules and after completion of the inquiry and charges of delegation of duty being proved, the respondent was terminated from service under the Act and rules on 9th June, 2008.

2. The respondent filed an application before the Labour Court claiming to be a workman and praying for reinstatement with full back wages and continuity of service. The petitioner raised a preliminary objection against the jurisdiction of the Labour Court to hear the matter on the ground that the remedy available to the respondent was to approach Delhi School Tribunal under Delhi School Education Act. The Labour Court vide impugned order dismissed this objection observing that whether claimant was a workman or not, would be decided by it, after giving both the parties an opportunity to lead evidence. It was not appropriate to assume at initial stage that claimant was a workman and management was an industry and, therefore, the Labour Court would have

jurisdiction.

3. It is settled law that if there is a special law governing matter, the general law would have no application and the special law only will apply. A special law excludes the application of the general law. The Act was framed with an objective of regulating the relationship between the management, teachers and staff of recognized schools in Delhi and the Act provided specific machinery for raising of disputes and settlement of disputes. Section 8 of the Act specifically provided that if any employee of a recognized private school is dismissed, removed or reduced in rank, he may, within three months from the date of communication of the order to him of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted u/s 11 of the Act. Section 8 Sub-section 4 of the Act provides a procedure for suspension of employees and provides that if the management intends to suspend an employee, the same shall be communicated to the Director and no suspension shall be made except with prior approval of the Director unless the case is covered by proviso. Sub-section 5 of the Act provides for approval to be given by Director for such suspension.

4. It is not disputed that the respondent was suspended by the management in accordance with the rules laid down by Legislature under the Act. The petitioner school is a recognized school governed by the provisions of the Act. The respondent being an employee is also covered by the Act. The provisions of this Act squarely cover the case of the respondent.

5. A Division Bench of this Court in *Sonica Jaggi v. Lt. Governor and Ors.* L.P.A. No. 196 of 2008 decided on 14th August, 2008 had considered the scope of Section 8 of the Act. In *Sonica Jaggi's* case (*supra*), *Sonica Jaggi* had raised an issue of re-fixation of salary in proper pay scale of physical education teacher. A Single Judge of this Court had in view of the judgment of *Kathuria Public School and Ors. v. Director of Education and Anr.* (2005) VI AD (Delhi) 893 and judgment of Supreme Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, had held that even such a dispute could be raised by the teacher before the Tribunal and Tribunal was empowered to hear all grievances including fixation of salary.

6. The Division Bench in *Sonica Jaggi's* case (*supra*) set aside the order of the Tribunal and after considering the scope of Section 8 of the Act observed as under:

5. In our opinion, the order of the learned single Judge is clearly unsustainable. Section 8 of the Act specifies the terms and conditions of service of employees of recognised private schools and Sub-section (3) thereof provides that any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication of such order of dismissal to him, appeal against the same to the Tribunal constituted u/s 11, namely, the Delhi School Tribunal. In the present case, the appellant has not sought redressal in respect of any grievance pertaining to her dismissal, removal

or reduction in the rank. Her plea in the writ petition is for re-fixation of her salary in accordance with the Recruitment Rules and Section 10 of the Act. The provisions of the Act do not provide for any machinery for seeking the said relief.

6. The reliance of the learned single Judge on the observations of the Supreme Court in T.M.A. Pai Foundation is totally misconceived. In T.M.A. Pai Foundation the grievance of the unaided institutions was that whenever disciplinary action is sought to be taken in relation to the misconduct by the employees, the rules that are normally framed by the government or the university are clearly loaded against the Management. In some cases, the rules require the prior permission of the governmental authorities before the initiation of the disciplinary proceeding, while in other cases, subsequent permission is required before the imposition of penalties in the case of proven misconduct. While emphasizing the need for an independent authority to adjudicate upon the grievance of the employee or the Management in the event of some punishment being imposed, it was submitted that there should be no role for the government or the university to play in relation to the imposition of any penalty on the employee. The Court dealing with this submission, observed in paragraph 64 as follows:

...Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the Management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a Court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a Civil Court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State - the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would

lie before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service?

7. In TMA Pai Foundation the Court emphasized the need for establishing a tribunal to deal with the grievances of the teachers aggrieved by such disciplinary action. The Court further directed that till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government. It was nowhere suggested by the Supreme Court for formation of a tribunal to deal with each and every grievance of the employees. In a subsequent judgment in *Modern School Vs. Union of India (UOI) and Others*, the Supreme Court has clarified that the principles for fixing fee structure of particular institutions have been illustrated in *T.M.A. Pai Foundation (supra)* and *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, but it must be borne in mind that those principles were laid down in absence of any statute operating in the field. Where, however, a statute operates in the field, regulation of education would be governed thereby. Where the regulation of education is governed by a legislative Act, the Court cannot impose any other or further restrictions by travelling beyond the scope, object and purport thereof.

8. We may mention that way back in 1978, the Supreme Court in the case of *The Principal and Ors. v. The Presiding Officer and Ors.* 1978 SCC (Lands) 70 held that u/s 8(3) of the Act it is only an employee of a recognized private school against whom an order of dismissal, removal or reduction in rank is passed who is entitled to file an appeal against such an order to the Tribunal. It was held that as the school in that case was not a recognized private school on the relevant date and the impugned order was not one of dismissal, removal or reduction in rank but an order simpliciter of termination of service, the appeal to the Tribunal was manifestly incompetent. In a subsequent decision in the case of *Shashi Gaur Vs. NCT of Delhi and Others*, , it has been held that Section 8(3) of the Act provides for an appeal not only against the order of dismissal, removal or reduction in rank, which is a major penalty in a disciplinary proceeding, but also against termination, otherwise except, where the service itself comes to an end by efflux of time for which employee was appointed.

9. In *Kathuria Public School and Ors. v. Director of Education and Anr.* (supra) the challenge made in the writ petitions was to various provisions of the Act, which require prior approval for any disciplinary action including in respect of even suspension. A further challenge was made to the provisions requiring the presence of a nominee of the Director of Education on the disciplinary authority. The challenge was based on the judgment in *T.M.A. Pai Foundation* case which

had held that there was no reason for the management of a private unaided educational institution to seek consent or approval of any governmental authority before taking any disciplinary action and it is in the ordinary relationship of master and servant to be governed by the terms of contract of the employment, which would hold the field. The Division Bench held that the provisions of Sections 8(2) and (4) and (5), Rule 115(2) and (5), 120(1)(d)(iii) and (iv), 120(2) requiring prior and ex-post facto approval for disciplinary proceedings would have no application to private unaided schools. The Bench incidentally took note of the apprehension expressed by the teachers that if the power of approval, prior or ex-post facto, as contained in Sub-section (4) of Section 8 is held as not applicable to the unaided schools, it may be possible to keep a teacher in suspension for long period of time without proper disciplinary proceedings, which is not desirable. The Bench observed that this aspect has been taken care of by the Supreme Court ruling in *Shashi Gaur v. NCT of Delhi and Ors.* (supra) wherein the Court held that Section 8(3) of the Act provides for an appeal not only against the order of dismissal, removal or reduction in rank, but also against any order of termination, excepting where the service itself comes to an end by efflux of time for which employee was appointed. In this context the Bench made an observation that no restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal and pending necessary legislative action by the State, the Tribunal should be able to hear all grievances of the staff and teacher and not necessarily as restricted to in Sub-section (2) of Section 8 of the Act. Therefore if a teacher is aggrieved by a suspension order or its prolongation, the grievance can be made before the Tribunal depending upon the facts and circumstances of the case. It is nowhere suggested in *Kathuria Public School* case that the grievances like fixation of salary can be subject-matter of an appeal before the Tribunal.

7. In view of the decision of Division Bench of this Court in *Sonica Jaggi's* case it is evident that since the dispute herein was covered u/s 8 of the Act it being a case of dismissal/termination of service, the remedy available to the employee was to approach Delhi School Tribunal and file an appeal. The Labour Court would have no jurisdiction.

8. I, therefore, allow this petition. No order as to cost.