
(2013) 05 DEL CK 0459

In the Delhi High Court

Case No : Writ Petition (C) 8060 of 2007, Cont. CAS (C) 264 of 2011, W.P. (C) 4655 of 2012 and W.P. (C) 1104 of 2011

Satbir Singh and Another

APPELLANT

Vs

Delhi Sikh Gurudwara Management Committee and Another

 Satbir Singh Vs Ajmer Singh and Another
 T.P.
Singh Vs School Management of GHPS, Fateh Nagar and
Others
 Sushil Sharma Vs GHPS India Gate and Others

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

General Clauses Act, 1897 — Section 10, 11, 2(h), 2(n), 2(u)

Citation : (2013) 05 DEL CK 0459

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Akash Tyagi, in W.P.C 8060/2007 and Cont. CASC 264/2011 and Mr. Rajkumar Sherawat, in W.P.C 4655/2012 and W.P.C 1104/2011, for the Appellant; Arjun Pant, Mr. Bhagwant Singh, Ms. Manpreet Kaur and Mr. Mansimran Singh, in W.P.(C) 8060/2007 and Cont. CAS(C) 264/2011 and Ms. Vatsala Singh for Ms. Jasmeet Singh in W.P.(C) 4655/2012, for the Respondent

Judgement

Valmiki J Mehta, J.

W.P.(C) No. 8060/2007

1. This writ petition is filed by two petitioners namely Sh. Satbir Singh and Sh. Ram Baran. The prayer made in the writ petition is for quashing of the office order dated 10.10.2007 issued by respondent No. 2-school whereby the petitioners have been transferred out of respondent No. 2-School and have been asked to join the respondent No. 1-Society. Another prayer is for quashing of the office order dated 11.10.2007 whereby the petitioners have been relieved of their duties. Learned counsel for the petitioner contends that the petitioners were appointed by the School which is a separate legal entity than the respondent No. 1-Society, and therefore, transfer of the petitioners to the respondent No. 1-Society will amount to termination of the petitioners from the employment of the

respondent No. 2-School. Counsel for petitioners relied upon various provisions of Delhi School Education Act and Rules, 1973 read with the judgment of the Supreme Court in the case of Management Committee of Montfort Senior Secondary School Vs. Shri Vijay Kumar and Others, that the employees of a school governed by the Delhi School Education Act, 1973 (hereinafter "the Act") including employees of an unaided minority school can only be removed from employment by following the provisions and procedures contained in Delhi School Education Act and Rules, 1973 and more particularly Rules 118 to 120. It is argued that transfer to another school amounts to terminating employment of the petitioner from the school where appointment was made, and since it is being done without following of Delhi School Education Act and Rules, 1973; more particularly Rules 118 to 120; the transfer is illegal.

2. Reliance has also been placed upon the provisions of Section 3(42) of the General Clauses Act, 1897 to argue that a person need not be a legal entity and, therefore, even if a school is not a legal entity yet school will have an independent existence/entity in view of the provisions of the Act.

3. In my opinion, the arguments urged on behalf of the petitioners merit acceptance that an employee who is employed by the school is an employee of the school and not of the society which runs the school.

4. The effect of a transfer order is that the employment of a person with the school will stand terminated and he will be asked to report to a new employer viz. the society, the respondent No. 1 in the present case. The Supreme Court in its judgment in the case of Montfort (supra) has held that an employee of a school has statutory protection and he can only be removed on application of provisions of the Act and the Rules. Para 10 of the said judgment reads as under:-

In St. Xaviers" case (supra) the following observation was made, which was noted in Frank Anthony"s case (supra):

A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajibhai Sabhai (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test

the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it.

The effect of the decision in Frank Anthony's case (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, "the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in Frank Anthony's case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV." The Tribunal constituted u/s 11 is the forum provided for enforcing some of these rights. In The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, it has been observed that if a statute confers a right and in the same breath provides for a remedy for enforcement of such right, the remedy provided by the statute is an exclusive one. If an employee seeks to enforce rights and obligations created under Chapter IV, a remedy is available to him to get an adjudication in the manner provided in Chapter IV by the prescribed forum i.e. the Tribunal. That being so, the Tribunal cannot and in fact has no power and jurisdiction to hear the appeal on merits and only way is to ask the parties to go for arbitration.

5. A reading of the aforesaid para leaves no manner of doubt that the services of employees of all schools including minority unaided schools (respondent No. 2 being a minority unaided school) are no longer contractual in nature but are statutory and the removal of an employee of all such schools including of a minority unaided school can only be in terms of the statutory regime provided under the Delhi School Education Act and Rules, 1973.

6. We also have to note that in the different provisions of the Delhi School Education Act and Rules, 1973, the expression "school" is taken with reference to the school as a separate legal entity and wherever there was a need to refer to the society or trust separately, the provisions refer to the society or trust independently such as in Rule 59(1)(b)(vi), Rule 59(2)(q) and Rule 172(1) as distinguished from Rule 172(2). Some of the relevant provisions of the Delhi School Education Act and Rules, 1973 in this regard treating the school as a separate legal entity are: Section 2(h) defining an "employee" as a person working in a recognized school, Section 2(n) which defines a "Managing Committee" of a school as a body of individuals who manage the school, Section 2(u) which defines a "school" to include an institution which imparts education below the degree level, Section 4 which talks of recognition of a school as distinguished from the society which runs the same, Section 5 which requires the "school" to have a scheme of management with prior approval by the

appropriate authority with no provision for the society or trust to have a scheme of management. Further provisions of the Act which refer to the school and not the society are Section 6 providing for aid to recognized schools, Section 7 dealing with school property (i.e. a school is capable as an entity to own property), Section 8, Section 9 and Section 10 etc all of which contains provisions for the schools and not a society or trust which controls the school. Also, when we refer to the Delhi School Education Act and Rules, 1973, we find that corresponding rules have been made with respect to the sections under the Act on various aspects, and all of which require the same to be followed by a school as distinguished from the society or trust which established or controls the school. As per Section 27 on violation of orders passed by the Delhi School Tribunal the liability falls on the manager of the school and not on any members of the society or trust which established/controls the school. In sum and substance, school is treated as a totally independent entity. The school as a separate entity is run by its own Management Committee in accordance with the scheme of management approved by the Director of Education and also in accordance with the provisions of the Delhi School Education Act and Rules, 1973.

As already stated above, and rightly argued on behalf of the petitioner, a person is defined under the General Clauses Act to include a body of individuals which is not incorporated i.e. the school need not be an entity such as a Company under the Companies Act, 1956 or a society under the Society Registration Act, 1860 or of any other legal entity.

7. I am also of the categorical opinion that an employee of a school is to be distinguished than an employee of a society although counsel for respondents sought to argue that a common seniority list is maintained with respect to the employees of all the schools run by the society, inasmuch as, counsel for respondents could not effectively rebut the submissions made on behalf of the petitioner that the alleged common seniority list of various schools which are run by respondent No. 1-society is not used as a basis for promotions in different schools or for any other aspects related and concerned with the alleged seniority list. Also, I must state that it would be impractical for the society to implement a common seniority list because this would also involve regular and frequent transfers of all types of employees, including teachers, from one school to another by following of an alleged common seniority list and which not only practically is not taking place but also cannot take place because an employee as stated above is an employee of the school and not of the society.

8. At this stage, I must mention that I am aware of certain observations which have been made by the Supreme Court in the case of Municipal Corporation of Delhi Vs. Children Book Trust, that a school is not a separate entity than the society (see para 32), however, observations in the judgment have to be read in the context of the issue where property tax was sought to be imposed and which was sought to be avoided by contending that the society running the school was a no profit no loss society for charitable purposes. In this regard it is relevant

that it has been held by the Constitution Bench of the Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, that ratio of a case has to be read in the context of the facts of a case and difference of even a single fact can make a difference to the ratio of a case. In the present case, we have to read the provisions of the Act and the Rules with respect to the issue as to whether it is permissible to transfer an employee from one school to another or from the school to the society and also the related issue as to whether the employee is the employee of the school in which he was employed or of another school run by the society or of the society itself. On this issue, in view of the discussion above, the conclusion which is reached is that a school is taken as an independent entity by the Act and Rules. I would also refer to an important para 90 of the Children Book Trust (supra) judgment and which specifically talks of the school being a separate entity and, therefore, premises occupied by the school will belong to the school (as per Section 7 of the Act which talks of school property) and not to the society.

9. So far as the facts of this particular case is concerned, counsel for respondents sought to argue that the petitioners are not entitled to the reliefs claimed as they have not joined the services of the respondent No. 1-society from April, 2009, however, I have already held above that petitioners could only have been asked to join duties with the school and not with the society. In any case, it is upon the respondent No. 2- school to take action in accordance with the provisions of Delhi School Education Act and Rules, 1973 if assuming there is any violation by the employee of his obligations to his employer.

10. I further clarify that if the petitioners have not performed duties, then it will be open to the respondent No. 2 (of course in accordance with the Delhi School Education Act and Rules, 1973) to apply the principle of "no work no pay" provided that the principle is found to apply to the facts of the present case as per applicable law with respect to the principle of "no work no pay". I must hasten to clarify that I am not observing one way or the other for the petitioners or against the petitioners on the aspect of the entitlement of the petitioners for complete pay or the entitlement of the respondent No. 2- school to claim that the petitioners will not be paid at all. If any such dispute arises then the petitioners will be entitled to approach an appropriate court in accordance with law with respect to such issue of denial of arrears of salary including of obligation of school to pay as per the Sixth Pay Commission Report.

11. Petitioner No. 1 is now directed to positively report to the respondent No. 2- school within a period of one week from today, and in case the petitioner No. 1 fails to do so, respondent No. 2-school will be entitled to take such action as is permissible in law under the Delhi School Education Act and Rules, 1973.

12. The writ petition is allowed and disposed of, subject to the aforesaid observations.

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13. Counsel for petitioner does not press the contempt petition as the main writ petition is decided in favour of the petitioner.

14. Dismissed as not pressed.

W.P.(C) 4655/2012 & W.P.(C) 1104/2011

15. The aforesaid writ petitions are allowed in view of the detailed reasons given while disposing of the W.P.(C) 8060/2007. The petitioners are directed to report to respondent No. 1-school within a period of one week from today failing which the respondent No. 1-school will be entitled to take action against the petitioner in accordance with the Delhi School Education Act and Rules, 1973.

16. In view of the decision in W.P.(C) 8060/2007, the issue of "no work and pay" will in these cases stand similarly decided in terms of the observations made while disposing of the W.P.(C) 8060/2007. The writ petitions are, accordingly, disposed of.