

(2017) 01 DEL CK 0118

In the Delhi High Court

Case No : W.P.(C) Nos. 117, 119, 121, 137, 190 of 2017 and C.M. Appl. Nos. 593, 597, 599, 693, 812 of 2017

School Management of Ring Midways Senior Secondary Public School

APPELLANT

Vs

Ms. Shashi Rawat

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Delhi School Education Act, 1973 — Section 8(3)
Delhi School Education Rules, 1973 — Rule 114A, Rule 118, Rule 120

Citation : (2017) 236 DLT 557

Hon'ble Judges : Mr. Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : None, for the Respondent in W.P.(C) Nos. 117, 119, 121, 137, 190 of 2017 and C.M. Appl. Nos. 593, 597, 599, 693, 812 of 2017; Mr. Rajesh Kumar and Mr. Avinash Kumar, Advocates, for the Petitioner in W.P.(C) Nos. 117, 119, 121, 137, 190 of 2017 and C.M. Appl. Nos. 593, 597, 599, 693, 812 of 2017; Mr. Udit Gupta and Mr. Sumit Kr. Mishra, Advocates, for the Respondent No. 2 in W.P.(C) 119 of 2017 and C.M. Appl. No. 597 of 2017; Ms. Prachi V. Sharma for Ms. S.S. Malik, Advocates, for the Respondent No. 2 in W.P.(C) Nos. 137 of 2017 and C.M. Appl. No. 693 of 2017

Final Decision : Dismissed

Judgement

Mr. Valmiki J. Mehta, J.(Oral) - These five writ petitions filed under Article 226 and Article 227 of the Constitution of India, being W.P. (C) Nos. 117/2017, 119/2017, 121/2017, 137/2017 and 190/2017, impugns the order of the Delhi School Tribunal dated 7.12.2016 by which the Delhi School Tribunal allowed the appeal which was filed by the respondent no. 1 herein, appellant before the Delhi School Tribunal, and thereby the Delhi School Tribunal has directed reinstatement in service of the respondent no. 1 with the petitioner/school. For the sake of convenience reference is made to the facts of W.P. (C) 117/2017.

2. Before this Court, as also before the Tribunal, three completely mutually destructive cases were pleaded and which are as under:-

(i) The services of the respondent no. 1 came to an end with the petitioner/school on account of the letter dated 29.3.2016 issued by the petitioner/school, and really which was an acceptance of resignation of respondent no. 1, and which resignation had taken place earlier on 1.4.2014, and therefore since the respondent no. 1's services came to an end on 1.4.2014, consequently the appeal filed before the Delhi School Tribunal on around 28.4.2016 was barred by limitation as the limitation period provided for an appeal under Section 8(3) of the Delhi School Education Act, 1973 is three months. It is hence argued that the appeal filed before the Delhi School Tribunal being time barred was liable to be dismissed as such.

(ii) In fact, the letter dated 29.3.2016 which mentioned the factum of resignation of respondent no. 1 from the petitioner/school contained a typing mistake because the word "resignation" was used instead of "termination", and in reality the respondent no. 1 in fact stood terminated from the services of the petitioner/school in terms of the letter dated 1.4.2014 of the petitioner/school, and once again therefore the appeal filed before the Delhi School Tribunal on 28.4.2016 was barred by time. These letters of the petitioner/school to respondent no. 1 dated 1.4.2014 and 29.3.2016 read as under:-

Letter dated 1.4.2014

"Mr./Mrs./Ms.

Shashi Rawat

T.G.T. ? History

M.A. B. ed.

Your services are no more required w.e.f. 01.04.2014 due to the closure of school as per the approval granted by the Directorate of Education. The time up to 31.03.2014 should be taken as notice period.

Shashi

Sd/-

31.3.2015

Sandeep Solanki (Manager)"

Letter dated 29.03.2016

"Ref. No. RMPS/CHM/2016

Dated: 29.03.2016

To

Shashi Rawat (TGT)

Subject:- Resignation from Service and permission to free from duty.

I am in receipt of you Resignation from service through Right to Information Act. So you are hereby inform that you will be free from service from 07.04.2016

Sd/-

Ramesh Solanki Chairman (SMC)"

(iii) Services of respondent no. 1 stood terminated from the petitioner/school in terms of the letter dated 1.4.2014 which is reproduced above, and even if the termination was illegal and invalid being in violation of the provisions of the Delhi School Education Act, 1973, an appeal yet had to be filed within three months from 31.3.2015 from when the respondent no. 1 received the letter dated 1.4.2014, and since the appeal has been filed beyond three months from 31.3.2015, i.e. on 28.4.2016, the appeal before the Delhi School Tribunal should have been dismissed as barred by limitation.

3. It is seen that all the three aforesaid grounds are inter-related, however, consequence of all of them is said to be the same viz. of appeals before the Delhi School Tribunal filed by respondent no. 1 being barred by limitation.

4. I have already reproduced above the letters dated 1.4.2014 and 29.3.2016 issued by the petitioner/school to the respondent no. 1. Let us examine the contents of these letters along with the relevant provisions of the Delhi School Education Act and Rules, so as to determine whether appeal filed by respondent no. 1 before the Delhi School Tribunal was barred by time. The sole point which is argued before this Court is that the appeal filed before the Delhi School Tribunal by respondent no. 1 is barred by time because services of the respondent no. 1 had come to an end/stood terminated as on 1.4.2014 and knowledge of the said termination was given to the respondent no. 1 when the respondent no.1 accepted the letter dated 1.4.2014 on 31.3.2015.

5. All the arguments urged by the petitioner/school lack complete substance whatsoever. The reasons for rejecting the arguments of the petitioner/school are given hereinafter:-

(i) The first issue is that whether respondent no. 1 stood terminated from the petitioner/school with effect from 1.4.2014. An employee/teacher of a school in Delhi can only be terminated from the services with the school in terms of Rules 118 and 120 of the Delhi School Education Rules, and which Rules require constituting of a disciplinary committee, holding of inquiry proceedings ending with the inquiry officer's report, inquiry officer's report being accepted by the disciplinary authority and which imposes the punishment of termination of services. Counsel for the petitioner/school concedes that no such proceedings as envisaged under Rules 118 and 120 have taken place and therefore once the services of respondent no. 1 have been terminated without following the

provisions of the Delhi School Education Act and Rules, it cannot be held that the services of respondent no. 1 stood legally terminated with effect from 1.4.2014. In addition to the above facts, in view of the recent judgment of the Supreme Court in the case of Raj Kumar v. Director of Education and Others, (2016) 6 SCC 541, since no prior permission, or even permission till date, has been obtained from the Directorate of Education for termination of services of respondent no. 1, the respondent no. 1's services with the petitioner/school cannot be said to have legally come to an end.

(ii) The second argument urged on behalf of the petitioner/school is that the letter dated 1.4.2014 talks of closure of the school and hence termination of services of respondent no. 1, and which letter was issued because of the report of a committee appointed by Directorate of Education. However it is noted that, even if a report of a committee is given as to invalidate the appointment of a teacher/employee in a school, yet, an employee/teacher of a school can only be removed in accordance with the provisions of Rules 118 and 120 of the Delhi School Education Rules, read with the ratio of the recent judgment of the Supreme Court in Raj Kumar's case (*supra*), and therefore termination of services of respondent no. 1 hence cannot be said to be valid or be said to automatically flow on account of the letter dated 1.4.2014 issued by the petitioner/school to the respondent no. 1.

A connected issue as regards the second aspect is whether the services of respondent no. 1 stood terminated on account of closure of school with effect from 1.4.2014, and in this regard it is noted that till date the petitioner/school is running, the respondent no. 1 in fact continued in services of the petitioner/school after 1.4.2014 till March, 2016 i.e for two years, regular salaries were paid to the respondent no. 1 from 1.4.2014 till the services were said to have been dispensed with in terms of the letter dated 29.3.2016, i.e the salaries were paid to the respondent no. 1 for as many as two years after alleged coming to an end of the services of respondent no. 1 with the petitioner/school, and therefore this Court refuses to accept the ground of closure of the school as a reason for termination of services of respondent no. 1. Of course in this regard it is to be further added and noted that if the school is closed by the orders of the Directorate of Education then at that stage an issue may arise with respect to what happens to the services of respondent no. 1 with the petitioner/school, but till today the school is running, the reason given in the letter dated 1.4.2014 of closure of school cannot be made the basis and reason for termination of services of the respondent no. 1. Of course I additionally note that under the Delhi School Education Act and Rules if a school is closed then at the first instance efforts are made by the Directorate of Education to transfer the services of employee/teacher of a closed school to another aided school of Directorate of Education in view of Rule 47 of the Delhi School Education Rules, and hence it is not as if that by closure of a school the services of an employee/teacher in a school automatically comes to an end.

6. I, therefore, reject the argument that the services of respondent no. 1 were terminated with effect from 1.4.2014 and which came to the knowledge of respondent no. 1 on 31.3.2015, and therefore, the appeal filed by respondent no. 1 before the Delhi School Tribunal on 28.4.2016 cannot be held to be barred by limitation.

7. The last argument urged on behalf of the petitioner/school is that the letter dated 29.3.2016 wrongly contains the word "resignation" whereas the word "resignation" should stand substituted with the word "termination", however, I cannot agree with the same, inasmuch as, in the letter dated 29.3.2016 the expression "resignation" has been used not once but twice and therefore the Delhi School Tribunal has rightly relied upon Rule 114A of the Delhi School Education Rules which requires that resignation is not complete unless accepted by the school, and the petitioner/school has failed to file on record whatsoever of compliance of Rule 114A as regards how, when and in what manner the resignation of the respondent no. 1 from the petitioner/school was accepted by the petitioner/school. The relevant and correct observations of the Delhi School Tribunal in this regard, and the right reasoning, are contained in paras 26-27 of the impugned judgment dated 7.12.2016 and the same read as under:-

"26. Rule 114 A of the Act deals with the acceptance of resignation. The same is as under:

"114A Resignation.- The resignation submitted by an employee of a recognised private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director:

Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period."

27. From a bare reading of the above quoted rule, it is clear that the resignation of an employee, working in a private recognised school in Delhi is to be accepted within a period of 30 days from the date of the receipt of the resignation by the Managing Committee. In the case in hand Appellant is relieved from the service by R-1 vide letter dated 29.03.2016, on the basis of alleged resignation. Respondent no. 1 has not placed the copy of the alleged resignation on the file. Respondent No. 1 has not disclosed the date when the alleged resignation was tendered by the Appellant. R-1 has not disclosed to whom the alleged resignation was tendered. R-1 has not also disclosed when the alleged resignation was accepted and by whom. R-1 has not disclosed any reason as to why the Appellant was allowed to continue to work till 29.03.2016 after the acceptance of alleged resignation of the Appellant. According to Appellant, she had never tendered her resignation. In these peculiar circumstances production of the alleged resignation of Appellant by the Respondent is must. No minutes of meeting has been placed on the file by R-1 of the alleged meeting of the Managing Committee when the alleged resignation of Appellant was accepted."

8. Even for the sake of arguments if the expression "termination" has to be substituted for "resignation" in the letter dated 29.3.2012, once again however the termination will fall foul of the provisions of Rules 118 and 120 of the Delhi School Education Rules, and which aspect is already dealt with and rejected in the first aspect/argument urged on behalf of the petitioner/school.

9. In view of the above, it is seen that neither there is a legal and valid termination of services of respondent no. 1 with the petitioner/school, respondent no. 1 cannot be said to have resigned from the petitioner/school, and nor was the petitioner/school closed for terminating the services of respondent no. 1, and therefore it cannot be held that the appeal filed by the respondent no. 1 before the Delhi School Tribunal was barred by time because in each of these cases the respondent no. 1 was paid salary till March, 2016 and therefore the appeals filed on 28.4.2016 cannot be said to be beyond three months as provided in Section 8(3) of the Delhi School Education Act.

10. For the reasons given aforesaid the other connected writ petitions, being W.P. (C) Nos. 119/2017, 121/2017, 137/2017 and 190/2017 are also liable to be dismissed and are accordingly dismissed along with the present writ petition being W.P. (C) No. 117/2017.

11. All the writ petitions are accordingly dismissed for the aforesaid reasons and with further observations that the reasons given while deciding W.P. (C) 117/2017 will apply mutatis mutandis, as per the facts of the other writ petitions, being W.P.(C) Nos. 119/2017, 121/2017, 137/2017 and 190/2017.