
(2013) 04 DEL CK 0041
In the Delhi High Court
Case No : W.P. (C) 3368/2012

Shalu Mahendroo

APPELLANT

Vs

Delhi Public School and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 204 DLT 687

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition has been filed by the petitioner who was appointed as UDC by respondent No. 1/School. The following prayers have been made in the writ petition:-

(a) an appropriate writ of Mandamus or any other writ, order or direction, quashing the memo bearing No. DPSR/N-T/SM/37/2012-2013/17 dated 4th April, 2012 issued by respondent No. 3 to the petitioner;

(b) an appropriate writ, order or direction the respondent Nos. 1 and 2 to regularize the leave of the petitioner for the period from 03.04.2012 to 17.05.2012 and issue confirmation to that effect.

(c) an appropriate writ, order or direction directing the respondent Nos. 1 and 2 & 5 to take appropriate action against respondent No. 3 & 4 in accordance with the provisions of Delhi School Education Act & Rules, 1973 for the illegal acts of harassment, torture, humiliation and misbehavior with the petitioner under the grab of false, frivolous and baseless ground by misusing their authority.

(d) An appropriate writ, order or direction restraining the respondent Nos. 3 & 4, their representatives, agents and office bearers or any other person acting under or on their behalf, from misbehaving, torturing, harassing or humiliating the petitioner in any manner, and in that behalf;

(e) An appropriate writ, order or direction, directing the respondents to revert the petitioner back to the post of the PA or such other post suited to her qualification; and in that behalf

(f) Pass such other or further order(s) as this Hon''ble court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

So far as the prayer of quashing of memo dated 04.04.2012 issued by respondent No. 3 is concerned, the memo dated 04.04.2012 is only asking the petitioner to return back for duty. The petitioner had returned back for duty and in fact the petitioner had been suspended by respondent No. 1/School and disciplinary proceedings are pending, accordingly, nothing survives so far as this prayer is concerned.

2. So far as prayer (b) for regularization of the leaves of the petitioner for the period from 03.04.2012 to 17.05.2012 is concerned, learned counsel for respondent No. 1/school states that order has been passed and the leaves for the above mentioned period of the petitioner has already been regularized. This prayer also therefore does not survive.

3. So far as prayers (c) and (d) are concerned, these prayers are not only extremely wide in nature but the same also involve disputed questions of fact which cannot be the subject matter of the writ petition. Accordingly, these prayers are mis-conceived and are dismissed, with liberty to the petitioner to file appropriate independent civil proceedings in accordance with law.

4. The only other prayer which now remains is the prayer (e) whereby the petitioner seeks re-appointment to the post of P.A., to which she claims to have been appointed.

5. Learned counsel for the petitioner claims that in the appointment letter, though the petitioner was appointed as UDC, there was a requirement vide para No. 30 of the appointment letter of the petitioner having to clear Secretarial Practice Programme conducted by YWCA. It is accordingly, contended that the petitioner was therefore appointed as PA and could not, be removed as PA to respondent No. 3/Principal.

6. On a query being put as to whether the petitioner has suffered any loss of pay as per the emoluments stated in para 24 of the Appointment Letter, learned counsel for the petitioner could not dispute that there is no reduction in the scale of pay as stated in para 24 of the appointment letter. Similarly there is no reduction of rank of the petitioner.

7. In my opinion, the petitioner was not appointed as PA inasmuch as the appointment is only as a UDC. Merely because a certain qualification is required of a Programme of Secretarial Practice of YWCA will not mean that the petitioner will only be doing the job as PA to the Principal inasmuch as the appointment of the petitioner was not as PA but only as a UDC.

8. It is the privilege of the employer to take whatever services which are permissible as per law and rules from a UDC, the post to which the petitioner was appointed.

9. I may further state that the Hon''ble Supreme Court in a case of K. Gopaul Vs. Union of India (UOI) and Others, has held that if removal from the post does not involve any loss of salary or rank, the same is not actionable and also that merely because there are lesser or different duties to be performed in the new post will not mean reduction in the rank or status.

10. In view of the above, it is quite clear that neither the petitioner was specifically appointed as PA (she having been appointed as UDC) and since there is no loss of payment or rank, the prayer made by the petitioner, to be re-appointed as PA cannot be granted. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.