

(2000) 07 SC CK 0063

In the Supreme Court Of India

Case No : Civil Appeal No. 4121 of 2000 (Arising out of SLP (C) No. 1302 of 2000)

Shashi Gaur

APPELLANT

Vs

NCT of Delhi and Others

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 87 FLR 561 : (2000) 10 JT 481 : (2001) 10 SCC 445

Hon'ble Judges : U. C. Banerjee, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The short question that arises for consideration in this appeal is, whether a teacher of a private school whose services stood terminated not as a measure of penalty but on account of the fact that he allegedly did not have the requisite qualification, could move the Delhi School Tribunal (hereinafter referred to as "the Tribunal") against the order of termination, constituted u/s 11 of the Delhi School Education Act, 1973 (hereinafter referred to as "the Act") or not?

3. The appellant being of the view that the impugned order would not come within the expression "dismissal, removal or reduction in rank" used in Sub-section (3) of Section 8 of the Act, directly approached the High Court in a petition under Article 226 of the Constitution of India.

4. A learned Single Judge of the High Court came to the conclusion that availability of an alternative remedy oust the jurisdiction of the Court and, therefore, refused to interfere. The appellant approached the Division Bench in L.P.A. and the order of the learned Single Judge having been confirmed, the appellant has approached this Court.

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 Sub-section (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 u/s 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.* 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 Sub-sections (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 u/s 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 oust the jurisdiction of the Court under Article 226 of the Constitution.

9. We are told that the appellant has already approached the Tribunal aforesaid and we hope the Tribunal would do well in disposing of the matter at an early date.

10. This appeal stands disposed of with the above observations.