
(1999) 04 DEL CK 0034
In the Delhi High Court
Case No : CW. No. 5280 of 1998

Shiv Narain Sharma

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 AD 764 : (1999) 79 DLT 634

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. V. Shekhar, for the Appellant; Mr. Ashok Saini, Mr. R.K. Saini and Mr. Ram Mohan Gambhir, An Officer, for the Respondent

Judgement

K. Ramamoorthy, J.—The short facts necessary for the disposal of the writ petition are: The petitioner joined the second respondent, Dau Dayal Arya Vedic Senior Secondary School, Naya Bans, Delhi, as Assistant Teacher. He was promoted to the post of T.G.T. (Social Studies) on the 13th of January, 1983. Eleven years thereafter on the 29th of March, 1994, the second respondent declared the petitioner surplus. This had happened more than once and ultimately, the petitioner approached this Court for relief.

2. On the 14th of September, 1995, this Court passed the following order in CW. 2902/94:-

"Counter affidavit has been filed by respondent No.1 today in Court. The same be taken on record. On the request of counsel for the parties the main writ petition has been heard.

The relief sought by the petitioner in the main petition are the implementation of the order dated 3rd June, 1994 issued by respondent No.1. Direction to respondent No. 2 to release the salary of the petitioner with effect from April, 1994 till date. Further directions to respondents not to shift the petitioner from his parent school and allow the petitioner to join the parent school. Moreover, he

should be given attendance for the period from 5.1.93 to 26.3.93 and from 29.3.94 to till date. It is in this background, that the notice was issued. Ms. Bharti Patni appearing for respondent No.1 states that order of 3rd June, 1994 has already been implemented. Petitioner has been directed to report to his parent school i.e. Dau Dayal Arya Vedic Senior Secondary School, Khari Baori, Delhi. The order of transfer from parent school to Ramjas Foundation School No. 2, Darya Ganj, Delhi passed on 29.3.94 has been cancelled vide the order dated 3.6.94. The said order has been implemented when the respondent No. 2 paid the arrears of the salary. The parent school i.e. Dau Dayal Arya Vedic Sr. Sec. School in fact has been paying monthly salary to the petitioner. Petitioner is now reporting for duty to respondent No. 2 hence the order of 3.6.1994 stood implemented. Therefore, so far as prayer No.1 and connected prayers of the petitioner are concerned, these stood full satisfied. Respondent No. 2 has paid arrears of salary from April, 1994 till date and has also undertaken to pay the salary month by month to the petitioner. By paying the arrears of salary w.e.f. April, 1994 the period from 5th January, 1993 to 26th March, 1994 the period from 5th January, 1993 to 26th March, 1993 and from 29th March, 1994 till April, 1994, the attendance for this period deemed to have been issued. Hence, the prayers in the petition having been granted and satisfied. To my mind, nothing survives in this petition any more. The same has become infructuous and hence disposed of accordingly with no order as to costs."

3. A contempt petition was filed. On the 6th of August, 1996, this Court passed the following order:-

"CCP. 36/96

Representative from the office of the Director of Education who is present in Court states that petitioner had been asked to join in Rawal Pindi Sr. Secondary School, Subzi Mandi, so that his services can be utilised in any school wherever there is a vacancy. He further states that if a vacancy within five years, as per Rule 47, is created in the parent school then the petitioner can be transferred to the same school and he will have the same seniority.

In view of this statement counsel for the petitioner states that he may be permitted to withdraw this petition. Request allowed. Petition is accordingly dismissed as withdrawn."

4. On the 27th of August, 1998, the Additional Director of Education(Act), Delhi passed the following order:-

"Shri S.N. Sharma, TGT (S.St) who was declared surplus in Dau Dayal Ayurvedic Sr. Sec. School and was posted in Rawal Pindi S.D. Sr. Sec. School against a vacant post of TGT (S.St) vide order dated 18.12.96 is now hereby posted back in DAU DAYAL Ayurvedic Sr. Sec. School against a newly created post of TGT (S.St) in the post fixation for the year 1997-98 in Dau Dayal Ayurvedic Sr. Sec. School with immediate effect.

This issues with the prior approval of the Competent Authority.

On the strength of this, the fourth respondent Rawal Pindi Senior Secondary School, relieved the petitioner from duty where he was working.

5. On the 28th of August, 1998, the petitioner wrote to the second respondent Dau Dayal Arya Vedic Senior Secondary School, in the following terms:-

"It is submitted as under:

1. I have come to you to join duty as per the order of the Directorate of Education vide order No.2209/VII dt. 27.8.1998 from Rawalpindi Sanatan Dharam Sr. Sec. School, Malkaganj, Subzi Mandi, Delhi and relieving order No.P/98/295 which was received by me at 12.30 p.m.

2. You are requested to allow me to join duty. Note: Order No. 2209/Vii received at 1.00 P.M."

6. There was no response from the second respondent Dau Dayal Arya Vedic Senior Secondary School. The order passed by the Additional Director of Education on the 27th of August, 1998 admittedly has not been complied with by the second respondent school. The petitioner has filed this writ petition praying for the following reliefs:-

"It is, Therefore, most respectfully prayed that this Hon"ble Court may be pleased to:-

(a) Direct the respondents by a writ/order or direction to give effect to the office order dated 27.8.1998 bearing No. 2209 issued by the Directorate of Education, District North, Zone VII, Lucknow Road, Timarpur under the signature and seal of Additional Director of Education, Delhi.

(b) Direct the second respondent that they should not surrender the post as there is no teacher available to teach Social Studies and the petitioner is alone qualified in their school to teach Social Studies for the middle school.

(c) Direct the respondents that the post which has been created or to which the petitioner is posted be regularised and the petitioner be given all the attended benefits including seniority, promotion, increment, allowances, etc."

7. Mr. R. K. Saini, the learned counsel for the second respondent submitted that after the order was passed by the Additional Director of Education on the 27th of August, 1998, the second respondent had made a representation to the Director of Education and a show-cause notice was given by the Director of Education as to why the order dated 27.8.1998 had not been complied with, and a reply thereto also had been given by the second respondent explaining that there was no scope for any additional post for the petitioner and the circumstance under which the order was passed by he Additional Director of Education could explained to the second respondent school.

8. The main plea taken before the Director of School by the second respondent

was that the second respondent did not require any TGT as the period of Social Studies in different classes is dealt by PGTs. The learned counsel for the second respondent Mr. R.K. Saini, submitted that the representation made by the second respondent is being considered by the Director of Education and until final orders are passed by the Director of Education on the representation made by the second respondent the petitioner cannot seek any relief, and it is for the petitioner to seek appropriate remedies to work with the fourth respondent school.

9. I do not find any substance in the submissions made by Mr. R.K. Saini, the learned counsel for the second respondent. Once the public authority like the Additional Director of Education had passed an order, it is for the second respondent to comply with the same. If the second respondent felt aggrieved at the order passed by the public authority, that order could have been challenged in accordance with law. Giving a reply to the show-cause notice for non-compliance of the order dated 27.8.1998 would not amount to challenging the order. Under the circumstances when the order dated 27.8.1998 has become conclusive against the second respondent the second respondent is bound to implement the same.

10. The second respondent is directed to take the petitioner in service immediately and the Director of Education shall pass appropriate orders relating to the disbursement of arrear of salary of the petitioner from August, 1998 till date and pay the same to the petitioner. It shall be open to the Director of Education to adjust what ever is payable to the second respondent by way of aid.

11. The writ petition stands allowed.

12. There shall be no order as to costs.