

(2013) 11 DEL CK 0219

In the Delhi High Court

Case No : Writ Petition (C) No. 7069 of 2013

Smt. Baljinder Kaur

APPELLANT

Vs

Guru Harkishan Public School and Others

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 3 AD 719 : (2013) 205 DLT 360 : (2014) 1 ESC 30

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Naresh Thanai, Ms. Anupriya Singh and Ms. Himanshu Pathak
Advocates, for the Appellant; Jasmeet Singh, Saurabh Tiwari, Advocates for R-1
and R-2, Ms. Purnima Maheshwari and Mr. Manoj Kumar, Advocates for R-3, for
the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioner by this writ petition seeks quashing and setting aside of the order dated 25.10.2013 passed by respondent no. 1-school whereby the suspension of the petitioner is continued. This order dated 25.10.2013 reads as under:-

Dated 25.10.2013

Ref. No. GHPS/HK/2013-14/7589

Mrs. Baljinder Kaur Gandhi

TGT(Under Suspension)CO

R-23, "Sai Niwas"

Khirki Extn.

Malviya Nagar

New Delhi-17

Subject: Review of Suspension Order no. 6489 dt. 12.10.2011

WHEREAS you had filed a Writ Petition in the Hon"ble High Court Delhi which was decided by the High Court with directions:

- That you will not question constitution of the Committee as being violation of DSEAR 1973 or contend any lack of jurisdiction in the same to decide the issue before it.
- That you have no objection and agreed that enquiry committee of three prominent members of the Sikh Community will conclude the enquiry proceedings.

Accordingly, you were served a order no. GHPS/HK/2013-14/7541 dt. 17.10.2013 (copy enclosed) in which a three members inquiry Committee consisting for the proceedings or inquiry from the stage from which it is pending before the present Inquiry Officer.

You are also informed that further proceedings would be taken before the Inquiry Committee.

In view of your inquiry is being pending and charges against you, you still remain under suspension till further orders, in continuation to earlier Suspension Order no. 6489 dt. 12.10.2011.

In the event of your failure to attend the proceedings such inference as may permissible under the law would be arrived at.

Sd/-

Manager

Petitioner is charged with having taken an employment when she was not duly qualified for being appointed as a teacher with the respondent no. 1-school. Accordingly, a show-cause notice dated 2.9.2011 was issued to the petitioner calling for her explanation. Before departmental proceedings could be initiated against the petitioner, petitioner approached this Court by filing W.P. (C) No. 8041/2011 challenging the proceedings emanating from the show cause notice dated 2.9.2011.

2. Suspension of an employee is in terms of Rule 115 of the Delhi School Education Rules, 1973. Sub-Rule 2 of Rule 115 provides an original period of suspension of six months. The period of suspension can be extended by the Managing Committee for a further period. The object of giving six month"s time validity to a suspension order is to complete the enquiry proceedings by the school against the charge-sheeted employee in this period. Extension of course is provided for by the Managing Committee and which extension will have to satisfy the requirement that there are valid reasons for extending the suspension period beyond the period of six months. Let us therefore examine the facts of the present case as to whether the suspension order is justified inasmuch as the

suspension order continues an earlier order of suspension passed way back on 12.10.2011.

3. At the outset I must state that for the reasons which I will record hereinafter, the petitioner is guilty not only of concealment of facts but also gross abuse of the process of law. The facts of this case will also show that in fact in terms of a consent order passed by this Court in W.P. (C) 6229/2013 only recently on 30.9.2013, enquiry proceedings were to be concluded within three months and which period will come to an end very soon by 31.12.2013 yet the petitioner has approached this Court. The petitioner approached this Court by contending that impugned suspension order dated 25.10.2013 is illegal inasmuch as the suspension order cannot be continued for such a long period from 12.10.2011.

4. I may also state that counsels for the parties must be careful when they make a statement in Court and which a Court believes. This I am observing because in the first call a specific query was put to the counsel for the petitioner that whether departmental proceedings in the present case were stayed or not stayed by any order of a Court. Counsel for the petitioner stated that there was no handicap or any obstacle in continuation of the departmental enquiry and there was no stay order. Matter was therefore passed over for the school to bring the original file for answering as to if there was no stay of the departmental proceedings then why the school did not hold departmental proceedings for a long period of two years from October, 2011 till today. The object of directing bringing of the file was that departmental authorities cannot unnecessarily continue a suspension without any fault of the charge-sheeted employee while at the same time not holding the departmental proceedings against a suspended employee upon whom there are ill effects of the suspension order including of a stigma as also lesser than the normal salary being paid to such employees. After the matter was passed over, counsel for the petitioner brought with him the departmental file of the petitioner. In this file, counsel for the petitioner has shown that there is an order dated 22.11.2011 passed by a learned Single Judge of this Court in W.P. (C) 8041/2011 staying the enquiry proceedings. The enquiry proceedings which were stayed till the next date of hearing and which, as per the admitted position before me, continued till the writ petition was dismissed in terms of the judgment of this Court dated 16.4.2013. This order dated 22.11.2011 passed in W.P. (C) 8041/2011 titled as Baljinder Kaur Vs. Guru Harkishan Public School & ors. reads as under:-

Issue notice to the Respondents to show cause why rule nisi be not issued. Counsel appears on behalf of Respondent No. 1 and 2 and 3 respectively and accept notice. They pray for time to file reply.

Let the counter affidavit be filed within a period of two weeks from today with an advance copy to counsel for the Petitioner who may file rejoinder thereto, if any, within one week thereafter.

List on 19th December, 2011.

CM 18110/2011 (stay)

Issue notice.

Counsel appears on behalf of Respondent No. 1 and 2 and 3 respectively and accept notice. They pray for time to file reply.

Let the counter affidavit be filed within a period of two weeks from today with an advance copy to counsel for the Petitioner who may file rejoinder thereto, if any, within one week thereafter.

Till the next date of hearing the enquiry proceedings shall remain stayed.

It is not disputed that pursuant to this interim order the departmental proceedings remained stayed till the dismissal of the writ petition as per the judgment dated 16.4.2013.

5. The writ petition as already stated above was dismissed by the judgment dated 16.4.2013, and which judgment has been filed as Annexure P-X to the writ petition. In view of the admitted fact of stay of the enquiry proceedings, I do not think that it is open to the petitioner to contend that there was no handicap in conducting the departmental proceedings. Once the departmental proceedings were stayed by the Court in terms of the order dated 22.11.2011 which has been reproduced above they therefore could not be continued. In fact, counsel who appears before me on behalf of the petitioner and argues the case was the same counsel who appeared on 22.11.2011 when interim order staying the enquiry proceeding was passed.

6. Counsel for the petitioner very vehemently and passionately argued that that what was stayed by the order dated 22.11.2011 was only the preliminary enquiry proceedings pursuant to the show cause notice dated 2.9.2011 whereby explanation was called from the petitioner, and therefore, it was argued that it cannot be said that the departmental proceedings were stayed. I have found this argument really to be not only totally unsubstantial argument but also a misleading argument because if surely preliminary enquiry proceedings itself have been stayed, then consequently, every proceedings thereupon including the actual departmental proceedings were also stayed. How therefore it was argued on behalf of the petitioner on the first call that there was no handicap in the school for conducting the departmental proceedings, I really have failed to understand. In fact, in the opinion of this Court, this statement that departmental proceedings could always have been conducted by the school ought not to have been made on behalf of the petitioner.

7. At this stage, let me reproduce the order dated 30.9.2013 passed in W.P. (C) 6229/2013 titled as Baljinder Kaur Vs. The Principal Guru Harkrishan Public School & Ors. and which order was passed after the writ petition of the petitioner challenging the continuation of the suspension proceedings pursuant to the show cause notice dated 2.9.2011 were dismissed. This order dated 30.9.2013 reads as under:-

1. Petitioners in these two writ petitions were two petitioners in the common judgment dated 16.4.2013 passed by this Court in a bunch of cases. The judgment dated 16.4.2013 was appealed from by two petitioners and a consent order was passed by the Division Bench in LPA No. 333/2013 on 23.8.2013 whereby the enquiry committee was to consist of three respectable citizens of the Sikh Community.

2. Petitioners are similarly placed though they have challenged the judgment dated 16.4.2013 inasmuch as they were two of the petitioners in the bunch of cases decided on 16.4.2013.

3. Counsel for the respondent No. 1/school with its usual fairness states that limited to only those petitioners who were petitioners in the cases decided as per judgment of this Court dated 16.4.2013, and petitioners are two of such persons, respondent No. 1-school has no objection to the committee constituted by the Division Bench's order dated 23.8.2013 to even accordingly conduct the enquiry proceedings so far as the present petitioners are concerned, however, the proceedings must be from the same stage from which it is pending before the present enquiry officer. To this counsel for the petitioner states that he has no objection. It is also agreed between the parties that enquiry committee of three prominent members of the Sikh Community will conclude the enquiry proceedings so far as the petitioners are concerned within a period of three months from today. This direction is given because counsel for the parties state that none of them will take unnecessary adjournments before the enquiry committee. It is also agreed on behalf of petitioners that though all the provisions of Delhi School Education Act and Rules, 1973 (DSEAR, 1973) will apply, however, petitioners will not question constitution of the committee as being violative of DSEAR, 1973 or contend any lack of jurisdiction in the same to decide the issue before it.

4. Writ petitions are accordingly disposed of in terms of aforesaid observations, leaving the parties to bear their own costs.

5. Dasti to counsel for the parties.

8. This order was passed in fact as a concession on behalf of the school to the petitioner because though the writ petition filed by the petitioner being W.P. (C) 8041/2011 was dismissed, and the petitioner did not challenge the judgment dated 16.4.2013 further, other petitioners whose writ petitions were dismissed pursuant to the judgment dated 16.4.2013 had approached the Division Bench of this Court by filing of LPAs being LPA Nos. 333/2013 and 426/2013, in which the following order dated 23.8.2013 was passed by the Division Bench:-

1. Reflecting upon the order dated August 22, 2013 passed in LPA 333/2013 learned counsel for the parties state that the two appeals could be disposed of upon consent terms requiring the following:-

(a) The orders under which appellants (three in number in two appeals) were

placed under suspension shall be withdrawn within two days and the appellants would report for duty to the Principal of the Guru Harkishan Public School, Hemkunt, New Delhi who shall assign work to them and that the appellants would be paid salary with effect from August 26, 2013.

(b) The respondents will set up a three member Committee comprising respectable citizens of the Sikh community, at least one of whom would be from the legal background, to look into the circumstances under which the appellants were given appointment and recommending necessary action. The appellants would be given a personal hearing by the Committee.

(c) For the period appellants have remained under suspension, whether apart from the subsistence allowance paid to them, any further amount would be required to be paid would depend upon the decision taken by the Committee to be constituted.

2. Needless to state the appellants shall strive to work for the welfare of the institution and its betterment whole heartedly; where they would be working.

3. Since the appeals have been disposed of on consent terms, we make it clear that we have not expressed any opinion on the merits of the law interpreted and declared by the learned Single Judge in the impugned orders.

4. No costs.

5. Dasti under the signatures of Court Master.

CM No. 8044-45/2013 in LPA 333/2013

CM. No. 9391/2013 in LPA 426/2013

Disposed of as infructuous.

9. In view of the aforesaid order of the Division Bench, in W.P. (C) No. 6229/2013 filed by the petitioner, by the order dated 30.9.2013 the same benefit was given to the petitioner (as given by Division Bench in the order dated 23.8.2013) of the petitioner's case for being considered by the committee as was done with respect to the other petitioners in terms of the Division Bench order dated 23.8.2013. Accordingly, the enquiry proceedings in terms of the order passed in W.P. (C) No. 6229/2013 were to be completed within three months from 30.9.2013 and which period will soon come to an end. Really it is only at that stage after December 2013 that whether suspension order should or should not be continued because of enquiry proceedings not being concluded without any fault of the petitioner would have to be examined in terms of the requirements of Rule 115.

10. It may also be stated that petitioner had filed another writ petition being W.P. (C) 6765/2013 which was withdrawn by the petitioner because whereas the case of the petitioner was that there was no continuation of suspension, the school filed the letter dated 25.10.2013 by which suspension against the petitioner was

continued.

11. Resume of the above facts show that suspension order really was continued because petitioner was successful in seeking interim orders from this Court and which was passed on 22.11.2011 staying the enquiry proceedings. No enquiry proceeding could be held from 22.11.2011 till W.P. (C) No. 8041/2011 was dismissed by the judgment dated 16.4.2013, therefore, it cannot be said that the school was delaying conduct of the departmental proceedings, and therefore, there is no ground for extension of the suspension order. In fact as already stated above petitioner concealed facts and made a wrong representation that there was no stay of the departmental proceedings/enquiry proceedings.

12. Learned counsel for the petitioner has placed reliance upon two judgments. One is the judgment of a learned Single Judge of this Court (Vikramajit Sen, J as he then was) in the case reported as Dr. K.K. Arora Vs. Union of India (UOI) and Another, and the second is the judgment of the Supreme Court in the case of State of Orissa Vs. Bimal Kumar Mohanty, . Actually reliance on both the decisions is really for placing reliance on para 13 of the judgment of Supreme Court in Bimal Kumar Mohanty's case (supra) and which was also reproduced in the judgment of this Court dated 16.4.2013 in W.P. (C)8041/2011. This para 13 reads as under:

It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation

and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

(underlining added)

13. It is contended on behalf of the petitioner that suspension order in this case in view of the judgments relied upon as stated above as also the long continuation of the suspension order from October 2011 should be held to be illegal and the suspension order hence should not be continued. The arguments urged on behalf of the petitioner in this regard are once again without any merit whatsoever because Supreme Court in fact in Bimal Kumar Mohanty's case (supra) has observed that object of suspension order is also to ensure that a charge-sheeted employee should not feel that he can get away misdemeanor during the pendency of the enquiry proceedings. In fact, this aspect has been adverted to in detail in the judgment of this Court dated 16.4.2013 whereby the earlier writ petition of the petitioners were dismissed. It is not disputed that the said judgment dated 16.4.2013 has become final because petitioner had not challenged the said judgment. The ratio of the said judgment therefore unequivocally operates against the petitioner with respect to the challenge of the suspension order as regards the entitlement of the petitioner to contend that the suspension order should not be continued in view of the ratio of the Supreme Court judgment in the case of Bimal Kumar Mohanty (supra). It is also required to be stated that we are concerned with standards of education of children in school and the charge against the petitioner is that she was not qualified to be employed as a teacher. On merits, I cannot observe in one way or the other, and which aspect of merit will be decided in the departmental proceedings, however, it cannot be said that suspension is not justified in the facts of the present case because staying of a suspension order may possibly amount to children being taught by teachers who are less than qualified, and which is therefore a serious matter. It also needs to be noted that in case charge against the petitioner is not proved, and the departmental proceedings culminate in favour of the petitioner, then, impugned suspension order passed will necessarily be revoked and the petitioner at that stage will get all consequential benefits as if the petitioner was not suspended.

14. No other issue is argued or urged before this Court except as already dealt with herein above.

15. In view of the above, the petitioner being not only guilty of concealment of facts, but also being guilty of misleading the Court, and herself not allowing the enquiry proceedings to continue, hence she cannot seek orders for quashing of the impugned order dated 25.10.2013, more so when the same in the first

instance only operates till 31.12.2013 by which date the departmental proceedings have to be concluded. The writ petition is therefore accordingly dismissed with costs of Rs. 25,000/-. Costs can be recovered by the respondent no. 1-School in accordance with law.