(2005) 07 DEL CK 0028

In the Delhi High Court

Case No : Writ Petition (C) 5381 of 2002

Smt. Meera Mishra APPELLANT

Vs

Directorate of Education and Another RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:

Citation : (2005) 121 DLT 416 : (2005) 84 DRJ 547

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Sugriv Dubey, for the Appellant; Aditya Madan and Kumkum Jain, for the Respondent

Judgement

Vikramajit Sen, J.—The Petitioner herein had earlier approached the Delhi School Tribunal in terms of Appeal No. 47/1994 which was disposed of by Judgment dated 16.7.2002. Respondent No. 2 herein was the first Respondent in those proceedings, and the principle of res judicata would squarely militate against it. The operative part of the Judgment reads as follows:

The next relevant objection, raised by the Respondent No. 1, is in para 3 of the written statement wherein they have stated that at no stage services of the Appellant had been terminated ever by the Respondent No.1 and by the Managing Committee of the Jain Shishu Niketan Primary School. The Appellant was still working as a Teacher in the same School. They have filed photostat copies of the documents like the Attendance Register and the Leave Applications given by the Appellant on 7.9.95.

In the rejoinder, the Appellant has stated that after she filed the appeal before this Tribunal, the Respondent No.1 agreed to withdraw the suspension and termination order, but up to date, the order has not been withdrawn. The Appellant has not been getting proper salary and she has not been given a rejoining letter. This reply of the Appellant shows that she has not specifically denied the fact that she is working in the School even at this time. There is nothing on record to show that her services were terminated by the School at any time. Under the circumstances, I find that the Appellant has no cause of action to file this appeal. The appeal is accordingly dismissed.

2. In view of the previous round of litigation, it is no longer possible for the Respondent School to contend that the Petitioner had not been employed by Jain Shiksha Samiti, Respondent No.2, which is recognized as well as financially aided by the Directorate of Education. Assuming that the Petitioner had been deputed to the Jain Shishu Niketan Primary School, a wing of Respondent No.2 running in its precincts, and stated to be a ''voluntary'' effort, this factor alone would not defeat the claim of the Petitioner. Ms. Jain had attempted to convince me that the writ petition is not maintainable against Jain Shishu Niketan Primary School where the Petitioner was employed, but since this stance had not been adopted before the Delhi School Tribunal this contention stands foreclosed. Raising it at this belated stage leads me to view the Respondent School''s defense as a chicanery, especially since it is now sought to be argued that the Petitioner has failed to report for duty at the Primary School.

3. Learned counsel for the Respondent School has belaboured the point that the Jain Shiksha Samiti is engaged in social service; that the Primary School does not receive aid from the State and Teachers render voluntary service. Assuming this to be true it is indeed a contradiction in terms to compel a person to be a volunteer. What is distressing is that the Jain Shishu Niketan, run by the Jain Shiksha Samiti, is an aided School and yet it charges tuition fees from its students. In a retort to the lie any and self-appreciation put forward on behalf of the Respondent School that it represents a philanthropic or charitable or social endeavor, a School Fees receipt had been handed over by learned counsel for the Petitioner in the course of arguments. It genuineness has not been disputed and the only issue that has been pointed out by learned counsel for the Respondent School is that the receipt pertains to the Jain Shishu Niketan. The Samiti is expected to contribute five per cent of the total expenditure of the aided School but prima facie it appears that the Samiti may instead be making secret profits. This is impermissible, and the Directorate is directed to conduct a special audit into the affairs of the Jain Shishu Niketan as well as the so-called primary section and submit a Report to the Registrar General of this Court within ninety days from today.

4. As has already been observed, it is too late in the day for the Respondents School to make a distinction between the Jain Shishu Niketan and Jain Shishu Niketan Primary School. Since the Primary School is being run within the precincts of the aided school the distinction, if any, becomes blurred and indistinguishable. It has become commonplace for Societies, which are, receiving State aid, to conduct other financially remunerative activities the use of the proceeds of which are not known. In the present case assuming that school fees are being charged even though State aid is being received by the Samiti in respect of the Jain Shishu Niketan the overflow could easily be used for the

unsupported endeavor of the primary school. This has obviously not happened.

5. The stand adopted by the Respondent before the Delhi School Tribunal was that the services of the Petitioner had not been terminated and it was on this ground that the Appeal was dismissed. If there is any truth in its present stance that the Petitioner has not reported for duty it ought to have instituted an enquiry. Admittedly this has not been done. In the hearing held on 21.4.2005 the Petitioner had offered to forgo all previous wages if she is given regular employment. The proceedings were adjourned to enable the Respondent School to consider the extremely fair and genuine offer. All that has been done is to delay further proceedings and re-argue the matter yet again.

6. The writ petition is allowed. The Respondent School is directed to release arrears of salary to the Petitioner with effect from 1.10.1995 within four weeks from today and thereafter pay her salaries by the 10th day of each calendar month. If the arrears of salary are not paid within four weeks from today the Respondent School shall be liable to pay interest thereon at the rate of 5 per cent per annum. The Petitioner has also prayed for a direction for assigning duties to her as a regular teacher. But if the Respondent chooses to waste its money by paying salaries to the Petitioner and yet not giving her any duties it is the Respondent School''s concern. This Court need not pass any orders in that context. Since none of the contentions put forward on behalf of the Respondent School have any merit the Petitioner shall be entitled to costs of Rs.5,000/- which shall be paid to the Petitioner within four weeks from today.

7. The writ petition stands disposed of in the above terms.