
(1986) 08 DEL CK 0032

In the Delhi High Court

Case No : Civil Writ Petition No. 1164 of 1978

S.P. Jain

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 14-08-1986

Acts Referred:

Citation : (1986) ILR Delhi 577

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : B.S.Charya, Hema Kohli and K.P. Kapoor, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) The petitioner who possess a Masters Degree in Commerce from Agra University and B.Ed. from Darbhanga University appended for a post of T.G.T. in Ramjas Higher Secondary School at Hauz, Kazi, New Delhi in response to an advertisement. The Ramjas Higher Secondary School which is ran by the Ramjas Foundation is recognised and aided by Delhi Administration. The petitioner was appointed to this post after being selected by a Selection Committee in an interview on 11th October 1968. Subsequent to his appointment. the Directorate of Education took a view that the petitioner could not continue his services as a T.G.T. in the respondent's School because his B.Ed. degree from Darbhanga University was not recognised and, Therefore, the Director of Education issued a direction to respondent no. 3 to terminate his services, however, an extention was sought for by respondent no. 3 Ramjas Foundation which was granted by the Directorate of Education. While the petitioner was still serving in the extended period one more post of P.G.T. was advertised in June 1969. The requisite qualifications for this post were M.Com. or M.A. with either :--

(A) Training Degree or a recognised Diploma in Education; or

(B) Three years teaching experience of Intermediate of higher classes.

(2) Since the petitioner had a degree in M.Com. and also three years teaching experience of Intermediate classes in the Marwar Inter College, Pilakhua, Meerut, he applied for the said post. His application was duly recommended by the then Principal of the respondent's School. The petitioner was appointed to this post after having been selected w.e.f. 10th July 1969. After an expiry of one year's probation period the petitioner was confirmed as P.G.T. (Commerce) on 10th July 1970. The appointment of the petitioner as a P.G.T. was also approved by the Director of Education. On 26th March 1973 the then Principal of the School informed the petitioner that the Principal of Marwar Inter College, Pilakhua, Meerut had vide his letter dated 20th February 1973 informed that the petitioner did not serve the institution as Commerce Lecturer from 1st August 1965 to 15th August 1968 as claimed by the petitioner. Correspondence ensued between the petitioner and the Principal of the respondent's School and also the Marwar Inter College, Pilakhua, Meerut which ultimately resulted in the impugned order dated 6th April 1974 whereby the petitioner was informed that since the petitioner did not possess the requisite qualifications the Management had decided to replace the petitioner by a qualified teacher as provided under Rule 117(b) of the Delhi School Education Rules, 1973 (hereinafter referred to as the Rules). By another letter dated 15th April 1974 the petitioner was asked to deposit a sum of Rs. 29,109.55 by way of refund of payment made to the petitioner for the period from 10th July 1969 to 28th February 1973. The petitioner has challenged these orders dated 6th April 1974 and 15th April 1974 in this writ petition under Article 226 of the Constitution of India.

(3) When the petition came up for hearing on 2nd August 1984. Talwar, J. referred the matter to Full Bench on the question of maintainability of the writ petition. On 30th October 1984 since the parties agreed to a particular course of action, the Full Bench forbid it unnecessary to answer the reference. The terms as recorded by the Full Bench read thus :-

""respondent No. 3 agrees that it will hold an enquiry into the alleged charges made against the petitioner namely he had given false certificate regarding his experience in the Marwar Inter College. Pilakhua (Meerut) as Lecturer in Commerce from 1-8-1965 to 15-4-1968 and that the enquiry will be held as provided by Rules by the Disciplinary authority in accordance with the procedure as laid down for the same in Rules 117 to 121 of the above mentioned Rules. The said enquiry will be completed and decision given within a period of six months from today. As we have directed that the enquiry will be completed within six months the Directorate of Education necessarily will appoint his nominee as required under Rule IIS(iii) of the Rules within three weeks from today. If either of the parties is aggrieved by the decision by the Enquiry Committee it will be open to it to take any step as advised by law."

THEREAFTER pursuant to the above agreement on 27th March 1985 a charge-sheet was issued to the petitioner by respondent No. 3. The petitioner filed his

reply against the charge-sheet and an inquiry was held and the disciplinary authority by its report dated 23rd-28th August 1985 recommended that major penalty of removal from service be imposed upon the petitioner under Rule 117(b)(iii) of the Rules and the services of the petitioner be treated as terminated w.e.f. 6th April 1974: Respondent No. 3 wrote to the Director of Education seeking approval as required under Rule 120 of the Rules but this approval was rejected by the Directorate of Education on 13th January 1986.

(4) Since the Full Bench had on 30th October 1984 given liberty to the parties to move this Court again if necessary an application was filed by respondent No. 3 and the petitioner also sought amendment of the writ petition which was allowed. By then the question of maintainability of a writ petition against an aided school was also decided by the Supreme Court in" another case and thus the case was directed to be heard and decided by a Single Judge on merits.

(5) It was contended by the learned counsel for the petitioner that since it was conceded by respondent Nos. 3 and 4 before the Full Bench that no opportunity was given to the petitioner and no enquiry was held as required under the Rules before passing the impugned order dated 6th April 1974 the said order stood extinguished and set aside by necessary implication. It was further submitted that pursuant to the enquiry a report was submitted by the Inquiry Committee that the petitioner had misrepresented that he had the requisite qualifications for being appointed to the post of P.G.T. It was, Therefore, contended that the termination of services of the petitioner was in fact a dismissal for misconduct and not of termination or replacement under Explanation (c) to Rule 117(b) of the Rules. It was further submitted that under the Delhi Education Act, 1973 respondent No. 3 being a recognised and aided institution had to obtain a prior approval of the Director of Education before giving effect to the termination order. Since the Directorate of Education had refused to grant approval the petitioner was deemed to be in service. It was further submitted that since admittedly no enquiry was held before passing the order dated 6th April 1974 respondent No. 3 could not make the subsequent order effective from a back date.

(6) On behalf of respondents 3 and 4 it was contended by the learned counsel that the consent terms agreed to before the Full Bench were not binding on respondent No. 3. It was submitted that since the original order itself was under Rule 117(b) (iii) which gave power to respondent No. 3 to place a person by appointing a person qualified to that post, it was not necessary to seek approval from the Directorate of Education under Rule 120. Since the order of termination of services under Rule 117(b)(iii) did not amount to termination of services on ground of misconduct or removal from service the procedure as provided under Rule 120 had not to be followed and since it was an order of termination implicate it was not necessary to field an enquiry. It was thus contended that the initial order dated 6th April 1974 itself was valid. The order dated 23/28th August 1985 was only reiteration of its earlier decision. it was submitted that in fact an inquiry

was not required but since it was agreed to in this Court the inquiry was held and this fact should not be held against the respondent.

(7) It is not disputed that since respondent No. 3 is a recognised aided institution the recruitment and terms of conditions of service of employees of this institution are governed by Chapter VIII of the Rules. Rule 117 provides for penalties and disciplinary authority. Rule 117(a) provides for minor penalties and Rule 117(b) provides for major penalties. Under Explanation (c) of Rule 117(b) replacement of a teacher who was not qualified at the date of his appointment by a qualified one does not amount to a penalty within the meaning of Rule

117. Under Rule 120 of the Rules the procedure for imposing major penalties has been specified. This rule provides that no order imposing any major penalty shall be made except after an inquiry in the manner specified in this rule. Sub-rule (2) of Rule 120 provides that no order with regard to the imposition of major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director. The relevant portion of the order dated 6th April 1974 whereby the petitioner was informed that his services were no more required read thus:

"I am to inform you that the Management has decided to replace you with a qualified teacher under Rule 117(b) of Chapter VIII drawn under Education Act 1973 and published in Delhi Gazette Extraordinary on 31st December 1973, since by the Inspection Team of the Central Board of Secondary Education being one of the conditions for school recognition. Hence, your services are no more required. Please hand over the charge to the Principal of the School "

(8) From the order it appears that the order of termination was passed under Rule 117(b) of Chapter VIII of the Rules and it nowhere indicates that the respondent was invoking the power under Explanation (c) to Rule 117(h) of the Rules. However, in the affidavit of respondent No. 3 in reply to the show cause it is stated that the order of termination was made under Explanation (c) to Rule 117(b). It is further stated in the affidavit that the order was passed because it was found that the petitioner had misrepresented that he had experience as a Lecturer in Commerce and had served in such in Marwar Inter College, Pilakhua (Meerut) from 1st August 1965 to 15th August 1968 when in fact he had no such experience. The relevant extract of the affidavit in reply reads thus :

"It is further submitted that the petitioner had played a fraud on the Foundation and the school by having submitted false certificate and information and his confirmation on the post of a teacher was based on fraud and misrepresentation and, Therefore, the Foundation had every right and power to replace him as and when the real facts as to his correct qualification and experience came to light. It is further submitted that the selection and confirmation of the petitioner was based on false particulars supplied by the petitioner, and, Therefore, the Foundation had every right to replace him as and when it was known that he had no experience or no necessary qualification since the time the same was also

recommended by the inspection committee of the board. The petitioner had full opportunity to deny the allegations of his not being qualified teacher by having replied the notice dated 6-4-74 served by the school to the petitioner. But the petitioner, apprehending criminal action against him, quietly, handed over the charge to the Foundation and joined St. Thomas Girls Higher Secondary School, Reading Road, Delhi."

(9) For purposes of the present petition I do not think it is necessary for me to decide whether respondent no. 3 has the power to replace a teacher not qualified on the date of the appointment by a qualified one without affording an opportunity to the teacher who is being replaced because from the facts of the present case I find that the petitioner was replaced because he had misrepresented that he possess the requisite qualifications on the date of the appointment when actually he did not. From the affidavit of respondent no. 3 filed in this Court there is also ample evidence on record to indicate that this is a case where serious charges of misrepresentation are leveled against the employee not one where: admittedly the employee did not have the requisites qualifications on the date of his appointment. Moreover, it appears that an Explanation was called from the petitioner in this regard and at some stage even an inquiry and criminal action was contemplated. In my opinion, in such a case the principles of audi alteram partem would come into play because when services are terminated on the ground that an employee has concealed certain facts or made misrepresentations such an order on the face of it casts a stigma. Thus assuming the order dated 6th April, 1974 was as stated by respondent No. 3 one passed by exercising powers under Explanation (c) to Rule 117(b) from the facts of the present case I find that the same was not an innocuous order but was an order by way of punishment which cast a stigma and was in fact an order of termination on the charges of misrepresentation. This being the position the procedure as provided under Rule 120 of the Rules had to be followed by respondent no. 3 which it did not do. In fact this lacuna in the order was realised by respondent no. 3 and, Therefore, on 30th October, 1984 when the matter came up before the Full Bench it was agreed to hold an enquiry and in fact an enquiry was held in the manner specified in Rule 120 of the Rules and after the report was ready approval as provided under sub-rule (2) of Rule 12C was asked for from. the Director of Education. It appears that since the approval was refused respondent no. 3 is now having second thought and it is pleaded that no enquiry need have been held at all.

(10) In my opinion, since the order dated 6th April, 1974 was passed by respondent no. 3 without holding an enquiry and without following the procedure as provided under Rule 120 of the Rules the same cannot be sustained as being clearly against the rules of natural justice, As far as the second order dated 23rd/28th August, 1986 is concerned since the Director of Education has refused to grant approval there can be no doubt that it cannot be given effect to by respondent no. 3 and, Therefore, it is not necessary for me to consider in this petition whether this order could be made effective retrospectively from 6th

April, 1974. No doubt respondent No. 3 if aggrieved by the order of Director of Education refusing to grant approval can take such legal redress as provided under the law but till the refusal by the Director of Education stands the petitioner has to continue in service.

Since have held the order dated 6th April, 1974 to be bad the subsequent order dated 15th April, 1974 which was the consequential order cannot also be sustained.

(11) In the result the petition is allowed. The orders dated 6th April. 1974 and 15th April 1974 are set aside. The petitioner is deemed to be in service all throughout and is entitled to reinstatement with all other consequential benefits. The petitioner who is a teacher is also entitled to costs quantified at Rs. .1,000, .