

(2011) 10 DEL CK 0011

In the Delhi High Court

Case No : Writ Petition (C) 3771 of 2001

Sudesh Kumar Shukla

APPELLANT

Vs

Guru Harkrishan Public School and Others

RESPONDENT

Date of Decision : 05-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 8(3)

Citation : (2011) 183 DLT 608 : (2011) 126 DRJ 629

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : O.P. Saxena and Vaibhav Sethi, for the Appellant; Saurabh Tiwari, for R-1 and R-2, for the Respondent

Judgement

S. Muralidhar, J.—Whether Reporters of local papers may be allowed to see the judgment? No. 2. To be referred to the Reporter or not? Yes 3. Whether the judgment should be reported in Digest? Yes JUDGMENT 5.10.2011 1. The Petitioner who was working as a trained graduate teacher ("TGT") in Music in the Guru Harkrishan Public School at Nanak Piao, Delhi ("the School"), Respondent No. 1, has in this writ petition questioned the termination of his services by the School and sought reinstatement and full back wages.

2. The Petitioner was appointed as a TGT in Music in the School initially on probation for a period of one year by Memorandum dated 31st October 1994. By a Memorandum dated 3rd November 1995 he was confirmed as TGT (Music) with effect from 1st November 1995. By another Memorandum dated 9th January 1997, the Petitioner was promoted to the post of Post Graduate Teacher ("PGT") (Music) with effect from 1st January 1997.

3. In January 2000, the Petitioner and another teacher Mrs. Sunita Kainth were deputed by the School to accompany some of the girl students participating in a national group folk song competition held in Ahmedabad on 15th January 2000. Acting on complaints received from some of the girl students about the

harrowing experience they underwent on the return train journey from Ahmedabad to Delhi during the intervening night of 19th and 20th January 2000, the Principal of the School issued a Memorandum on 21st January 2000 to the Petitioner in which it was stated that at the time of the "ugly incident during the return journey from Ahmedabad" he was found intoxicated. The Petitioner gave a reply on 21st January 2000 itself denying that he had indulged in any misbehavior. According to him, on the intervening night of 19th/20th January 2000 a complaint was made to him about two other coordinators, one Mr. V.P. Singh and one Mr. Ramesh Lohan, Deputy Coordinator who were in a government school in Delhi and were accompanying students from that school. Mr. V.P. Singh was alleged to have been under intoxication and of having teased one of the girl students from Respondent No. 1 School. The Petitioner claimed that Mr. V.P. Singh had been handed over to the Railway Police at Bandi Kuin in Rajasthan with the help of other passengers. A complaint to the same effect was given to the School jointly by the Petitioner and Mrs. Sunitha Kainth on 20th January 2000. This was signed by the girl students who had travelled to Ahmedabad and included the girl who had been teased by Mr. Singh.

4. On 24th January 2000, the Principal issued a Memorandum to the Petitioner stating that his explanation dated 21st January 2000 was not tenable. He was warned to avoid suppressing of facts and help the Principal to sort out the matter. The Petitioner replied to this Memorandum on the same day reiterating that at around 10.30 pm on the night of 19th January 2000 he had gone to sleep. Inter alia, he pointed out that the journey had become difficult because of the tickets having been purchased on false names and the non-availability of the adequate seats for all the students. He reiterated that he had handed over Mr. V.P. Singh to the Rajasthan Police and that throughout the return journey he had been suffering from fever. On 25th January 2000 the Chairman and the Principal jointly issued a Memorandum placing the Petitioner under suspension. It was stated therein that some of the charges against the Petitioner were already indicated in the two Memoranda dated 21st January and 24th January 2000. In addition, two other charges were listed out in the Memorandum dated 25th January, 2000 as under:

- i) he also indulged in loose talks with the girl students.
- ii) Being under the spells of alcohol, he failed to come out of the train when accused co-passenger was being taken out. In the process he ignored the repeated appeal from the students too;

5. It was stated that the charges would be reviewed by an Inquiry Committee ("IC") constituted by the Chairman of the School Governing Body. On 9th May 2000 an order was passed by the Chairman of Respondent No. 1 School terminating the services of the Petitioner. The said order read as under:

Termination of the services of

Mr. Sudesh Kumar Shukla, TGT (Music)

This is in continuation of memos dated Jan. 21, 2000, Jan. 24, 2000 and Jan. 25, 2000, an Inquiry Committee was constituted with the clearance of the President of Delhi Sikh Gurdwara Management Committee to look into the matter.

The Inquiry Committee in its report dated 01/05/2000 has found that:

1. There has been serious dereliction of duty on the part Mr. Shukla;
2. His submission before the Enquiry Committee does not fit the facts;
3. Having been entrusted with the job of doing the home work, Mr. Shukla misquoted the facts, regarding the students;
4. Mr. Shukla not only neglected the students on tour but also become part of the miscreants;
5. His submission which seem to be drafted by the some legal experts speak about his mind.

The Committee holds the view his presence in the school with girls around is harmful. As such stand terminated.

6. Apprehending that he would be placed under suspension, the Petitioner filed CWP No. 512 of 2000 in this Court praying for two reliefs. The first in prayer (a) was that the School should not give effect to the contemplated action of placing him under suspension. Prayer (b) was that the School be directed to pay emoluments in the scale of PGT with effect from 1st January 1997. By an order dated 31st January 2000 the said writ petition was disposed of by this Court. Prayer (a) was held to be premature. As far as prayer (b) was concerned, it was stated that the Petitioner should pursue his remedy with the school and if aggrieved by the outcome, he could seek redressal in accordance with law. The Petitioner claims not to have received the suspension order. He also claims not to have put him on notice about the actual constitution of the IC. Apprehending that the relative of the ex-Principal, Respondent No. 3 herein, would be appointed as a member, the Petitioner made a representation on 2nd February 2000 requesting for a neutral person to be appointed to the IC. In a letter to the Director of Education ("DoE"), Respondent No. 4 herein, dated 3rd February 2000, the Petitioner pointed out that the School management was biased and that there should be an impartial inquiry. According to the Petitioner, the other colleague who accompanied him, Mrs. Sunita Kainth, also sent a registered letter to the Principal denying the charges against the Petitioner as well as herself and stated that her earlier replies to the Memoranda dated 21st and 24th January 2000 were under duress and coercion of the Principal.

7. The Petitioner appeared before the IC on 4th January 2000 and submitted documents including the statements of co-passengers, Mr. Zaffar Hussain, N. Hussain, Shakeel Ahmed and Rizwan Hussain and M. Farhan. He also relied on a Press Note published in the Hindustan Times on 5th February 2000 in which the School denied that the Petitioner or any other passenger had admitted to

harassing the girl students. The Petitioner claims not to have been aware of the enquiry proceedings thereafter. On 3rd May, 2000 he wrote a letter to the School demanding that he be paid his salary for the month of January 2000 and suspension allowance from the date of the suspension till then. He states that he wrote another letter dated 26/30th May 2000 to the President of the Delhi Sikh Gurudwara Prabandhak Committee, Respondent No. 2 herein, seeking reinstatement and for the release of his salary. After his efforts failed, he had a legal notice served on 8th November 2000 to which the School replied on 13th November 2000. The Petitioner states that it was only through this reply that he learnt for the first time that his services had been terminated by an order dated 9th May 2000 but the copy of the same was still not served on him. By a further legal notice dated 23rd April 2001 the Petitioner sought a copy of the termination order. After not having received any response thereto, the present petition was filed on 25th May, 2001.

8. Pursuant to the notice issued to the Respondents on 12th July, 2001, the School filed a counter affidavit in which, inter alia, it is stated that the promotion granted to the Petitioner stood cancelled on 26th February, 2000 and therefore, he was not be entitled to PGT grade. Defending the termination of the Petitioner's services, the School stated that he had been found guilty of misconduct "of the highest order". It was further stated that "the Petitioner has not only indulged in loose talks with girl students but had consumed alcohol while on duty and has failed to help the girl students of the School in times of crises." The School contended that the enquiry was held in an impartial and fair manner. The IC comprised Mr. Bhajan Singh Walia, one Mr. H.S. Chandhok and Mrs. Manmohan Kaur. It was claimed that the IC went into each and every allegation and after giving the Petitioner an opportunity of being heard, found him guilty of the charges. Mrs. Sunita Kainth, the other teacher who accompanied the students, was also found guilty and administered a "severe" reprimand. The School stated that the findings of the IC were communicated to the DoE and that the removal of the Petitioner from services had the approval of the DoE. It was claimed that a copy of the IC Report was furnished to the Petitioner and that all his dues had been paid. It was also claimed that the termination order was furnished to the Petitioner. The counter affidavit of Respondent No. 2 was more or less a reiteration of the counter affidavit filed by Respondent No. 1.

9. The DoE, Respondent No. 4, in its counter affidavit denied having received any representation dated 3rd February 2000 from the Petitioner. It pointed out that the School is an unaided minority school and the terms and conditions of the employees were governed by contract. After the receipt of notice in the writ petition enquiries were made from the School. The School replied to the DoE by letter dated 7th February 2000. As regards the promotion of the Petitioner as PGT, the stand of the School was that no approval has been granted by Respondent No. 2. Therefore, all the promotions including that of the Petitioner as PGT were cancelled. As regards non-payment of subsistence allowance to the

Petitioner, the School claimed that the Petitioner had not submitted a non-employment certificate. When asked whether there was any evidence of the Petitioner having been under the influence of alcohol, the School had stated that "this was the report given by the participants as per the statements." It was claimed that a copy of the enquiry report was given to the Petitioner but he had failed to give a receipt. Respondent No. 4 stated in its counter affidavit that it was satisfied with the reply given by the School and since in any event the School was an unaided minority school, the DoE had only a limited role to play. It was specifically urged in the counter affidavits of Respondent Nos. 1, 2 and 4 that the Petitioner should have first approached the Delhi School Tribunal ("Tribunal") u/s 8(3) of the Delhi School Education Act, 1973 ("DSEA") to challenge the termination order.

10. In his rejoinder, the Petitioner pointed out that the coordinators of the other government school who had been on the train had also been placed under suspension. The Petitioner placed on record an order dated 2nd February 2000 issued by the Vigilance Branch of the DoE placing Mr. V.P. Singh, Yoga Teacher under suspension pending enquiry. The Petitioner enclosed with the rejoinder a copy of the enquiry report of the IC which had held him guilty of misconduct. The Petitioner stated that he received the report after applying for it under the Delhi Right to Information Act, 2004 ("DRIA"). The Petitioner also enclosed with his rejoinder a copy of the report of the inquiry instituted by the DoE that examined the role of Mr. V.P. Singh and Mr. Ramesh Lohan, Deputy Coordinators who were also in the train when the incident occurred. The Petitioner pointed out that both of them had been absolved of the charges and reinstated in service as had Mrs. Sunitha Kainth. The Petitioner contended that the action of the School in terminating his services was malafide, illegal and discriminatory. There was no resolution passed either by the Managing Committee ("MC") of the School or by Respondent No. 2 in regard to the termination of his services. No approval had also obtained from the DoE.

11. The Court heard at length, on 23rd August 2011, the submissions of Mr. O.P. Saxena, Learned Counsel for the Petitioner, Mr. Saurabh Tiwari, Learned Counsel for Respondents No. 1 and 2 and Mr. Jasmeet Singh, Learned Counsel for the DoE. The records of the enquiry were also examined.

12. This Court proposes to first deal with the preliminary objection concerning maintainability of this writ petition. Although the Petitioner may have had an alternative remedy before the Tribunal u/s 8(3) of the DSEA to challenge the termination of his services, the present petition challenging the termination of his services by the impugned order dated 9th May 2000, was filed way back on 25th May 2001 and has been pending in this Court for over ten years. Rule was issued by this Court on 16th November, 2004. Relegating the Petitioner to the Tribunal at this stage would further delay the resolution of a dispute which is over ten years old. In any event, it is not as if the jurisdiction of this Court under Article 226 of the Constitution is ousted only because an alternative remedy exists,

particularly when such alternative remedy would not be efficacious due to long passage of time. The preliminary objection as to maintainability of the writ petition is accordingly rejected.

13. Mr. Saxena, Learned Counsel for the Petitioner, submitted on merits that the Petitioner's services were terminated without any proper enquiry. Secondly, it was submitted that the enquiry held by the DoE against the other coordinators against whom the girl students of Respondent No. 1 School had complained had resulted in their exoneration and their subsequent reinstatement in service. The Petitioner's colleague Mrs. Sunita Kainth and the father of the girl who had been alleged to have been teased by Mr. Singh were also examined and they did not support their own earlier versions. Accordingly, it was submitted that the findings of the IC against the Petitioner were perverse and based on no evidence. In any event, the Petitioner was also entitled to the benefit of doubt. Mr. Saurabh Tiwari, Learned Counsel for the School on the other hand, sought to support the findings of the IC by referring to its proceedings.

14. From the documents of the School placed on record along with its counter affidavit, it appears that seven girl students were nominated for participation at the national youth festival to be held at Ahmedabad. The Petitioner and the other teacher, Mrs. Sunita Kainth, accompanied the students. The tour was organized by the School on the request of one Mrs. Bindra, a representative of the DoE. There appears to have been some confusion about the correct names and ages of the students. Also, there was total lack of coordination as a result the students had to travel ticketless and a hefty fine had to be paid to the Railway authorities. These facts emerged during the inquiry conducted by the DoE against Mr. V.P. Singh, Mr. Ramesh Lohan and Mrs. Bindra. However, as far as the IC comprising Mr. S.B.S. Walia, Mr. S.H.S. Chandhok and Mrs. Manmohan Kaur was concerned, it did not examine the said aspects but focused on the conduct of the Petitioner and Mrs. Sunita Kainth. The IC gave a two-page report on 4th May 2000 in which it was observed as under:

Mr. Shukla being the only male member accompanying the tour was dedicated with a great responsibility towards the students which he not only neglected but became also a part of the miscreants. His statement which seems to be drafted by some legal experts also reflects about his mind. As such it is felt that his very presence in the school may be harmful to the girl students. As such it is recommended that his services should be terminated. After going through all the records and statements, the following facts were considered:

a) The tour was organised by the school on the request of Mrs. Bindra representative of Education Depatt. (Report of the Principal enclosed). The basic home work was done by Mr. Shukla including the preparation of the birth certificate for the students (Enclosed herewith) as per records available with the school.

b) All the happenings at Ahmedabad as per the statement of the girl students

like keeping the girl students away downstairs even after midnight with the male students and the conversation which took place among them reflects to be dereliction of duty of Mrs. Kainth and Shukla.

Reg. Mrs. Kainth although she also failed to discharge her duty honestly but her being a female she should not be allowed to accompany any tour and should be issued strict warning to be extremely careful for discharge of her duties.

Reg. the Principal she should be advised to be more vigilant in the working of the school.

15. It appears that acting on the above recommendations of the IC, Mrs. Sunita Kainth was reinstated in service with effect from 19th July, 2000 after being warned "to be extremely careful." The Petitioner was removed from service by order dated 9th May, 2000 which has been extracted hereinbefore. Although the School claims that the Petitioner refused to receive a copy of the Report, no copy of such contemporaneous recording to this effect by the School in its records has been shown to the Court. It does appear however that the Petitioner was able to obtain a copy by way of the DRIA.

16. The report of the enquiry proceedings held by one Mr. Goyal, appointed by the DoE, against Mrs. Bindra, Mr. V.P. Singh and Mr. Ramesh Lohan, in the months of February and March, 2000 shows that out of the eight statements produced in support of the charges, three persons did not appear and this included the girl who was alleged to have been teased by Mr. V.P. Singh. The girl's father was examined as a witness and categorically denied the incident. Mrs. Sunita Kainth who appeared as a witness also denied the incident. The Inquiry Officer noted that the only witnesses actually present in the train, Mrs. Sunita Kainth and Mr. M.A. Khan, the TTE, did not themselves notice Mr. V.P. Singh taking liquor or teasing the girl student. Likewise, the TTE stated that he had also not seen anyone taking liquor. He, however, confirmed that Mr. V.P. Singh was handed over to the Railway Police at Bandi Kuin Railway Station not for consuming alcohol but for eve teasing a fellow female passenger. The Medical Officer who examined Mr. V.P. Singh at the Bandi Kuin Railway Station gave a report to the effect that "no alcohol intoxication found". Consequently the inquiry officer held the charge that Mr. V.P. Singh was found drunk on the train while returning from Ahmedabad to Delhi on the intervening night of 19th/20th January 2000 to be not proved. The second charge that while under the influence of liquor he misbehaved with a girl student was held only to be partly proved. As regards Mr. Ramesh Lohan the charge that he was under the influence of liquor was held not proved. Both the said officials appear to have been reinstated in service.

17. The report of Mr. Goyal, which is fairly elaborate and which examined the very same incident, throws considerable doubt on what exactly transpired in the intervening night of 19th/20th January 2000 on the train from Ahmedabad to Delhi. While it is understandable that the girl students who may have complained

soon after the incident may not have been willing to appear in the subsequent enquiry held more than two years thereafter, the said report of enquiry cannot be ignored as not being relevant to the case on hand as far as the Petitioner is concerned. The report of Mr. Goyal renders entirely without basis the charge of the Petitioner having "become part of the miscreants."

18. Turning to the two-page report of the IC, it is seen that its findings are not consistent with what the Petitioner was charged with. Although this Court is not expected to sit as a court of appeal over the findings of the IC, it can certainly examine whether any of the findings of the IC are perverse or based on no evidence. The Memoranda dated 21st and 24th January 2000 issued by the Principal charged the Petitioner with dereliction of duty and of being intoxicated while on duty. The finding of the IC that the Petitioner was guilty of having neglected his duties as a teacher accompanying girl students appears to be based on the statement of Mrs. Sunita Kainth and the statement of one other girl student that the Petitioner did not wake up even when he was told that one of the girl students had been teased. However, the finding of the IC that the Petitioner "also became a part of the miscreants" appears to be based on no evidence and is plainly perverse. The IC also did not find him to be intoxicated or that he failed to help the students in time of crises. The finding of the IC that "his very presence in the school may be harmful to the girl students" is also based on no evidence and is perverse. The statements made in the counter affidavit of the School that the Petitioner "indulged in loose talks with girl students" is not a finding of the IC. Viewed from any angle the only finding of the IC which is consistent with what the Petitioner was charged with is that he neglected to discharge his duties as a teacher entrusted with the care of students. This is precisely what the other teacher Mrs. Sunita Kainth was also charged with and found guilty for. Consequently, there was no basis for the IC to recommend that the Petitioner be removed and Mrs. Kainth retained with a severe warning. This Court accordingly holds that there is no justification for the Petitioner's removal from service and that he should also have been reinstated by the School with a "severe" warning.

19. At one stage, this Court had required Respondent No. 1 School to file an affidavit stating whether a post of TGT Music was available in the School. An affidavit has been filed by the present Principal of the School stating that one Mrs. Sunita Rani was working as TGT (Music) in the School since 1st July, 1981. However, the Learned Counsel for the School clarified that this was a typographical error and the date of joining of Mrs. Sunita Rani should be read as 1st July, 1991. The Petitioner on his part filed an application pointing out that posts of TGT (Music) had been advertised in other schools under the management of Respondent No. 2 where the Petitioner could easily be accommodated.

20. On the issue of the Petitioner's promotion as PGT (Music), the explanation given by the School for cancelling such promotion is not satisfactory. It is not in

dispute that by Memorandum dated 9th January 1997 the Petitioner was promoted as PGT (Music) with effect from 1st January 1997. The document dated 26th February 1997, a copy of which has been enclosed with the affidavit of the School is a letter by Respondent No. 2 to the School referring to an earlier letter dated 4th November 1996 regarding promotions of teaching and non-teaching staff of all the schools under the control of Respondent No. 2 with effect from 1st January, 1996 asking the School to ensure that such "promotions have been cancelled from 1.11.1996". No reasons have been given for such cancellation. Secondly, it appears that the School never wrote to the Petitioner informing him of this development. The explanation given by the School to the DoE by the School by letter dated 7th February 2004 about the cancellation of the promotion is also not satisfactory. It merely states that no approval was granted by Respondent No. 2 whereas there appears to be no such requirement under the DSEA. The only requirement is that the MC of the School should grant its approval. In any event, all this could not have happened behind the back of the Petitioner. The cancellation of a promotion is doubtless prejudicial to the person promoted and cannot be done unilaterally, that too without giving any reasons whatsoever. In the circumstances, this Court is persuaded to hold that the cancellation of the Petitioner's promotion as PGT (Music) is invalid.

21. As regards the payment of the salary for the month of January 2000, the School in a letter dated 7th May 2004 to the Education Officer in response to the application filed by the Petitioner under DRJA stated that the said arrears would be paid to the Petitioner. As regards the subsistence allowance, the School in its letter dated 7th February 2004 to the DoE stated that he was not paid subsistence allowance only because he had not furnished the non-employment certificate and that if had done so, the management was ready to make the payment. It also appears that the School had no proof of having communicated to the DoE the findings of the IC. A copy of the report was furnished only with its letter dated 7th February 2004 after the DoE wrote to it after receiving the notice in the present writ petition. As regards the resolution relating to the suspension of the Petitioner and termination of his services, the School merely stated that it should be available with Respondent No. 2 which deals with such matters at the headquarters. These are additional factors that point to the arbitrary and unfair manner of dealing with the case of the Petitioner by the School.

22. The position that emerges from the above discussion is as under:

(i) The report of the IC which held the Petitioner to be guilty of the dereliction of the duty in the matter of ensuring the safety of the students entrusted to his charge during the trip from Ahmedabad to Delhi does not call for interference. However, the other findings of the IC that he became part of the miscreants or that his very presence was dangerous to the girl students is not based on any evidence whatsoever and is perverse. In other words, his case was no different from that of his colleague, Mrs. Sunita Kainth, who was also one of the teachers in-charge of the girl students and who was also found guilty of dereliction of duty

by the same IC.

(ii) Consequently, there was no occasion for the IC to recommend a different punishment as far as the Petitioner is concerned. He too should have been awarded the same punishment as Mrs. Sunita Kainth, i.e., a severe warning.

(iii) The demotion of the Petitioner from PGT to TGT was done behind his back in a wholly arbitrary manner and for no valid reason. The cancellation of the Petitioner's promotion as PGT Music is illegal.

(iv) The Petitioner is therefore entitled to reinstatement as PGT Music with a severe warning but in the circumstances of the case, not with full back wages but 25% thereof.

23. Consequently, it is directed as under:

(i) The impugned order dated 9th May 2000 issued by the School removing the Petitioner from service is hereby set aside.

(ii) The Petitioner is directed to be given a "severe" warning for dereliction of duty in connection with the incident in question and he will be reinstated in services as PGT (Music), if not in Respondent No. 1 School then in any of the other 16 schools under the administrative control of Respondent No. 2 where there is a vacant post of PGT (Music) within a period of four weeks from today.

(iii) The Petitioner will, within a period of four weeks from today, be paid the arrears of salary for the month of January 2000, the subsistence allowance for the period during which he was under suspension subject to his completing the formalities and 25% back wages for the period from the date he was placed under suspension till the date of his reinstatement.

(iv) The Petitioner will be paid by the School, within four weeks, costs of Rs. 5,000/-.

24. The writ petition and pending applications are disposed of in the above terms.