

(2019) 11 DEL CK 0485

In the Delhi High Court

Case No : Letters Patent Appeal No. 35 Of 2018

Sukhdev Jain

APPELLANT

Vs

Modern School & Anr

RESPONDENT

Date of Decision : 26-11-2019

Acts Referred:

Delhi School Education Rules, 1973 — Rule 118, 120

Delhi School Education Act, 1973 — Section 117(b)(iii), 117(b)(iv)

Citation : (2019) 11 DEL CK 0485

Hon'ble Judges : Vipin Sanghi, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : M. Atyab Siddiqui, Raavi Birbal, Avnish Ahlawat, N.K. Singh

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

1. The present Letters Patent Appeal is directed against the judgment dated 13.10.2017 rendered by the learned Single Judge in the writ petition preferred by the appellant, i.e. W.P.(C.) No. 5629/2017, wherein the appellant had assailed the order dated 02.11.2016 passed by the Delhi School Tribunal in Appeal No.28/2013. The Tribunal dismissed the appeal preferred by the appellant against his removal from service by the respondent school.

2. The appellant was charge-sheeted on the basis of two complaints dated 17.12.2004 and 29.12.2004 made by the uncle and the mother of a student of the respondent school. The Articles of Charge contained in the charge-sheet dated 15.04.2005 were as follows:

"(i) Indulging in and encouraging malpractice connected with the examination and other school activities;

(ii) Giving private tuition to a student without either disclosing the same to the school or obtaining prior permission for the same;

(iii) Entering into monetary transactions with the student and exploiting his influence for personal ends;

(iv) Accepting gifts from students and

(v) Being guilty of conduct involving moral turpitude."

3. The Disciplinary Authority appointed Mr. Justice S.K. Agarwal, Retired Judge of this Court, as the Inquiry Officer - who conducted inquiry and found the appellant guilty of all the charges in his detailed inquiry report dated 04.05.2012. The appellant was given a show-cause notice proposing the punishment of removal from service on 13.07.2012, to which he responded on 30.07.2012. The Disciplinary Committee recommended imposition of the penalty of removal from service after consideration of the appellant's representation in its meeting held on 19.09.2012. The said recommendation was placed before the Managing Committee on 14.03.2013, which approved the recommendations made by the Disciplinary Committee. Consequently, the appellant was communicated his removal from service on 25.03.2013. As noticed above, the Delhi School Tribunal rejected the appellant's appeal, finding no merit therein.

4. A perusal of the impugned order shows that the only aspect urged by the appellant before the learned Single Judge was that the communication dated 25.03.2013 did not give any reasons, and it proceeded only on the basis that the Disciplinary Authority Committee had recommended appellant's removal from service, which had been accepted by the Managing Committee. The communication dated 25.03.2013 issued by the Principal of the respondent school to the appellant reads as follows:

" 25th March 2013

Mr.Sukhdev Jain

2064, Rani Bagh

New Delhi-110 034.

Sub: Removal from Service

Mr.Sukhdev Jain,

This is to inform you that in the Managing Committee Meeting held on Thursday, the 14th March 2013 at 5.00 p.m. in our school, the recommendation made by the duly constituted Disciplinary Authority Committee was accepted with immediate effect.

The recommendation is stated below:

"Although, the severity of some of the charges could warrant a major penalty under Section 117 (b) (iv) of the Delhi School Education Act & Rules 1973, but the Disciplinary Authority Committee had recommended imposing a major penalty under section 117 (b) (iii) of the said rules", which means "Removal of

service which shall not be a disqualification for future employment in any other recognized private school".

Yours sincerely,

Sd/-

LATA VAIDYANATHAN

PRINCIPAL"

5. The learned Single Judge rejected this submission of the appellant by observing that the obligation to pass a reasoned order lay upon the Appellate Authority and where the Inquiry Officer has found the delinquent employee guilty of the charges framed against him, and the Disciplinary Authority agrees with the said finding, he is not obliged to pass a detailed and reasoned order.

6. The two decisions Chairman, Life Insurance Corporation of India & Others Vs. A. Masilamani, (2013) 6 SCC 530; and Director (Marketing), Indian Oil Corporation Limited & Another Vs. Santosh Kumar, (2006) 11 SCC 147, relied upon by the appellant, related to the obligation of the Appellate Authority to pass a reasoned order, and on that basis, reliance placed by the appellant on these decisions, was rejected.

7. The submission of Mr. Siddiqui, learned counsel for the appellant is that the Disciplinary Authority was obliged to consider the representation made by the appellant in response to the inquiry report and on the aspect of the quantum of punishment to which the appellant should be subjected. He submits that there is absolutely no reason to be found in the communication dated 25.03.2013.

8. He further submits that even the Disciplinary Authority Committee did not record any reasons as to why the representation made by the appellant raising several issues was rejected. He submits that the appellant had raised issues with regard to the constitution of the Disciplinary Authority under Rule 118 read with Rule 120 of the Delhi School Education Rules. None of the issues raised by the appellant were considered and answered by the respondents. He submits that the appointment of the Inquiry Officer itself was erroneous, since the same was not made by the Disciplinary Authority Committee in terms of Rule 120, and was made by the Chairman on his own. He placed reliance on the aforesaid two decisions to submit that the obligation of the respondents was to consider the representation threadbare and exhaustively, which has not been done.

9. On the other hand, learned counsel for the respondent No.1 submits that the submission of the appellant that the Disciplinary Authority was obliged to pass a detailed speaking order has no merit in view of the decisions of the Supreme Court in Ram Kumar Vs. State of Haryana, 1987 (Supp) SCC 582, and the decision in G.M. (Personnel Wing), Canara Bank and Others Vs. M. Raja Rao, (2001) II LLJ 819 SC : 2003 (5) Scale 66. Ms. Birbal submits that where the Disciplinary Authority agrees with the findings of the Inquiry Officer, it is not

obliged to independently record its reasons and pass a speaking order. In Ram Kumar (supra), the Supreme Court observed in paragraph 8 as follows:

"8. In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the Enquiry officer which means that he has not only agreed with the findings of the Enquiry officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the Enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the Enquiry officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order." (emphasis supplied)

10. Similarly, in M. Raja Rao (supra), the Supreme Court, inter alia, observed:

"4. Having regard to the contentions raised by the counsel for both sides and having examined the impugned judgment of the Division Bench of Karnataka High Court, we have no hesitation to come to the conclusion that the High Court committed serious error in interfering with an order of punishment inflicted on a delinquent-employee on dereliction of duties and grave charges against him. The order of the Disciplinary Authority unequivocally indicates that he has gone into the findings of the Enquiring Authority and agreed with the same. When a Disciplinary Authority agrees with the findings and conclusions of the Enquiring Authority, it is not necessary in law to give any detailed reasons as to why he intends to agree with the findings of the Enquiring Authority. It is of course true that in the matter of award of punishing if Disciplinary. Authority considers materials other than the materials which had been produced before the EO then the delinquent must be given a notice thereof or else the conclusions of the Disciplinary Authority would get vitiated. But, for mere expression used in "other relevant factors" in the order of the Disciplinary Authority, we are unable to persuade ourselves to agree with the submissions of Mr. Rama Jois that the Disciplinary Authority did consider any extraneous materials which had not been produced before Enquiring Authority. In that view of the matter, we see no infirmity with the impugned order of the Disciplinary Authority inflicting the punishment of the termination of service." (emphasis supplied)

11. Ms. Birbal submits that the issue raised by the appellant with regard to constitution of the Disciplinary Authority was duly considered by the Tribunal, and the Tribunal did not find any merit therein. The submission of the appellant in this regard was that in the meeting of the Disciplinary Committee held on

20.09.2011, the Education Officer Mr. O.P. Singh was present as the nominee of the Director of Education without any authority. In fact, the respondent had sent a letter subsequently on 04.06.2012 to the Director of Education to nominate his nominee on the Disciplinary Committee. This itself shows that Mr. O.P. Singh was not duly authorised or nominated by the Director of Education to be a part of the Disciplinary Committee when it held its meeting on 20.09.2011. Ms. Birbal points out that the Tribunal has rejected this submission, since there was a circular which had been issued by the Directorate of Education to the effect that the Education Officer of the concerned Zone, wherein the school is situated, has to act as the nominee of the Director of Education to participate in the meeting of the Managing Committee/ Disciplinary Authorities.

12. Ms. Birbal has also drawn our attention to the minutes of the meeting of the Disciplinary Authority Committee held on 19.09.2012 and the minutes of the meeting of the Managing Committee held on 14.03.2013, wherein it considered the Inquiry Officer's report and accepted the recommendations of the Disciplinary Authority to impose major penalty under Section 117(b)(iii) of the Delhi School Education Act, i.e. removing him from service which would not be a disqualification for appointment in any other private school. Ms. Birbal points out that in the said Meeting of the Managing Committee, representatives of the teachers, parents, Directorate of Education and others were all present.

13. Having heard learned counsels and considered their respective submissions, we are of the view that there is no merit in the present appeal.

14. So far as the constitution of Disciplinary Authority Committee is concerned, the appellant has not disputed the fact that the Education Officer was the nominee of the Director of Education in the light of the circular issued by the Director of Education to the effect that the Education Officer of the concerned zone, wherein the school is situated shall act as the nominee of the Director of Education to participate in the meetings of the Managing Committee/ Disciplinary Authority. Thus, in our view, there is no merit in the aforesaid submission of the appellant. The appointment of the Inquiry Officer by the Chairman cannot be assailed, since, firstly, a wholly independent and unconnected person, who is a retired Judge of the High Court, was appointed as the Inquiry Officer. It is not the appellant's case that the Inquiry Officer had any reason to act with bias against the appellant. The Inquiry Officer held a fair Inquiry in compliance with the Rules and Principles of Natural Justice and by his detailed Inquiry Report dated 04.05.2012 found the appellant guilty of the charges leveled against him after recording evidence. No prejudice has been shown to have been caused to the appellant due to the appointment of Mr. Justice S.K. Agarwal, retired Judge of this Court as the Inquiry Officer.

15. Moreover, the said Report of the learned Inquiry Officer came back to the Disciplinary Authority Committee as well as the Managing Committee and the fact that both these Committees accepted the said Report, also shows that the appointment of the Inquiry Officer stood ratified by these Committees.

16. The submission of the appellant that the communication issued by the Principal on 25.03.2013, whereby the punishment of removal from service, which shall not be a disqualification for future employment in any other recognized private school, was communicated, does not contain any reasons, also has no merit.

17. As noticed in Ram Kumar (supra) and M. Raja Rao, (supra), where the Disciplinary Authority agrees with the findings returned by the inquiring authority, it is not expected of the Disciplinary Authority to record detailed reasons. In the present case, the Disciplinary Committee held its meeting on 19.09.2012. The said committee was chaired by the President, Board of Trustees of the respondent school. The other members who participated were the Principal, Manager, Teacher's Representative - Mrs. B. Nag and the nominee of the Director of Education - Mr. R.P. Yadav. The minutes of the said meeting read as follows:

"The Disciplinary Committee met to consider letter dated 30th July, 2012 of Mr.Sukhdev Jain, received by the school in reply to their letter dated 13th July, 2012.

After very careful consideration, it was directed that although the severity of some of the charges could warrant a major penalty under section 117 (b) iv of the Delhi School Education Act & Rules 1973. The recommendation of the Disciplinary Committee was to impose a major Penalty under section 117 (b) iii of the said rules.

It was decided by the Disciplinary Committee to recommend the above decision to the Managing Committee."

(emphasis supplied)

18. This was followed by the consideration of the appellant's case by the Managing Committee of the respondent school. Apart from the Chairman, other Members, the two teacher's representatives, one parent representative, one nominee of the Director of Education, two Advisory Board Nominees and the Secretary were present. The recommendations of the Disciplinary Authority Committee were placed before the Managing Committee. The relevant minutes recorded qua the appellant's case reads:

"ii) With respect to the ongoing disciplinary case regarding Mr. Sukhdev Jain, the recommendation of the Disciplinary Authority Committee i.e. imposing major penalty under section 117 (b)(iii) of the Delhi School Education Act & Rules 1973 which means 'Removal of service which shall not be a disqualification for future employment in any other recognized private school', was accepted and the Principal was authorized to communicate the same to the charged official." (emphasis supplied)

19. Thus, we find that before proceeding to take the action of removal from service, which would not be a disqualification for re-employment in any other

private school, the respondents have fully complied with the prescribed rules as well as the Principles of Natural Justice. No prejudice has been shown to have been caused to the appellant.

20. We, therefore, find no merit in this appeal and reject the same leaving the parties to bear their respective costs.

21. Dismissed.