

(2013) 03 DEL CK 0139

In the Delhi High Court

Case No : LPA 165 of 2013 and CM No. 4627 of 2012

Tabita Chand

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0139

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Romy Chacko, for the Appellant; Feroze Khan, for Respondents 2 and 3, Mr. Robin Ratnakar David and Mr. Azeem Samuel, Advocates, for the Respondent

Judgement

V.K. Jain, J.—The appellant/writ petitioner was working as a PGT in B.M. Gange Girls Senior Secondary School, which is under the management and control of respondents No. 2 and 3. The case of the appellant is that in a meeting of the Departmental Promotion Committee, held on 1st July, 2008, a recommendation was made to the Managing Committee of the school to promote her to the post of Principal and the Managing Committee, in its meeting held on 3rd July, 2008, taking into consideration the recommendation made by the DPC, resolved to accept the aforesaid recommendation and appoint her as the Principal of the said school with effect from 1st July, 2008. The appellant joined as Principal of the school with effect from 1st July, 2008. A communication was sent by the Manager of the school to the Directorate of Education, seeking approval of the said Directorate, to the promotion of the appellant to the post of Principal. Vide communication dated 15th July, 2008, Directorate of Education informed the Manager of the school that the decision of the Managing Committee to promote the appellant to the post of Principal in the DPC held on 1st July, 2008, had been disapproved by the Competent Authority. WP(C) No. 7585/2008 was then filed by the appellant seeking quashing of the aforesaid communication dated 15th July, 2008. She also sought a direction fixing her new pay scale as the Principal of the school. Yet another direction sought by her was to restrain the respondents in

the writ petition from removing her from the post of Principal. Respondents No. 2 and 3 filed reply contesting the writ petition. They, inter alia, alleged that the appellant had misrepresented to the Managing Committee that the other senior teachers had given their No Objections, which subsequently turned out to be incorrect, since the No Objections were obtained under duress and were subsequently withdrawn by those teachers and therefore the Managing Committee appointed respondent No. 4 Mrs. M.M. Philip as the Officiating Principal and she continues to officiate as the Principal of the school. This was also the case of respondents No. 2 and 3 that the earlier Resolution was withdrawn by them by way of a subsequent Resolution dated 27th August, 2009 and therefore the process of recommending the name of the appellant stood annulled.

2. The learned Single Judge, vide impugned order dated 26th February, 2013 took the view that the dispute was, in fact, between the appellant and the school, in which Directorate of Education had no role to play and therefore the appropriate remedy for the appellant was to file an appeal before the Delhi School Tribunal constituted under Delhi School Education Rules 1973. Being aggrieved, the appellant/writ petitioner is before us by way of this appeal.

3. Rule 98 of Delhi School Education Rules 1973 does mandate prior approval of Directorate of Education to every appointment made by the Managing Committee of an unaided school, but the second proviso to the said Rule expressly excludes from its ambit, a minority aided school. It is not in dispute that the school in which the appellant was working as a minority aided school, therefore, no approval of the Directorate of Education was required for appointment of the appellant as Principal of the said school. Consequently, the communication seeking such an approval as well as rejection of approval by the Directorate, both being misconceived in law are liable to be excluded from consideration.

4. It would be seen from a perusal of the reply to the writ petition filed by respondents No. 2 and 3 that they did not dispute either the Minutes of the meeting of the DPC held on 1st July, 2008 or the Minutes of the meeting of the Managing Committee held on 3rd July, 2008. The respondents No. 2 and 3 also did not dispute that they had sent a communication to the Directorate of Education seeking approval for appointment of the appellant as the Principal of the school.

5. A perusal of the Joining Report submitted by the appellant would show that in accordance with the recommendations made by the DPC and the resolution passed by the Managing Committee of the school, she took charge as the Principal of the school with effect from 01.07.08. The said Joining Report is counter-signed by the Chairman and the Manager of the school. The facts that (i) the name of the appellant was recommended by the DPC for promotion as Principal of the school (ii) the recommendation was accepted by the Managing Committee of the school with effect from 01.07.2008 (iii) a letter was sent by the school to the Directorate of Education, seeking permission for appointment of the

appellant as the Principal of the school and (iv) the appellant took charge vide Joining Report, counter-signed by the Chairman and Manager of the school, clearly show that the appellant was appointed as the Principal of the school with effect from 01.07.2008. During the course of arguments, it was contended by the learned counsel for respondents 2 to 4 that in fact the appellant was appointed on officiating basis and not on regular basis. However, the aforesaid contention being contrary to the record, comprising the recommendations made by the DPC, the resolution passed by the Managing Committee, the communication sent to the Directorate of Education and the Joining Report counter-signed by the Chairman and Manager of the school, is absolutely without any factual basis and is liable to be rejected. We have no hesitation in holding that the appellant was regularly appointed as Principal of the school by a resolution passed by the Managing Committee on the basis of the recommendations made by the DPC.

6. It was pointed out by the learned counsel for the respondents 2 to 4 from the Minutes of the DPC meeting held on 01.07.2008 that three members, whose names appear at Serial No. 3 to 5, had observed that the senior most should have been considered for promotion to the post of Principal, whereupon, the school authorities informed the DPC that teachers at serial No. 1 and 2 had refused the promotion in writing, whereas the teachers at serial No. 3 did not sign. A perusal of the aforesaid minutes would show that DPC comprised as many as seven members. Even if it is presumed that three members of the DPC wanted senior most teachers to be promoted as the Principal, the remaining four members, who constituted majority of the DPC, had unequivocally recommended the name of the appellant for appointment to the post of Principal.

7. It was contended by the learned counsel for the respondents 2 to 4 that the appellant/petitioner having been already been removed from the post of Principal and respondent No. 4 having appointed as the Officiating Principal, the only remedy available to the appellant/petitioner was to approach Delhi School Tribunal. In support of their contention that the appellant was removed from the post of Principal, the learned counsel for these respondents relied upon a resolution stated to have been passed in the meeting of the Managing Committee held on 27.08.2009. Admittedly, no order was issued by the respondents 2 and 3, removing the appellant from the post of the Principal of the school. Mere passing a Resolution in the meeting of the Managing Committee did not constitute an order removing the appellant from the post of the Principal unless a communication, informing the appellant of the aforesaid Resolution removing her from the post of the Principal, was actually issued and served upon the appellant. Had respondents 2 and 3 issued and served an order upon the appellant, removing her from the post of Principal of the school, only then, she could have a cause of action to approach the Delhi School Tribunal. Therefore, in our opinion, the view taken by the learned Single Judge that the appellant/writ petitioner was required to approach the said Tribunal is not correct in law.

8. It was lastly submitted by the learned counsel for the appellant that since respondent No. 4 is already officiating as the Principal of the school, the said post is not available. We, however, cannot accept the contention. In the absence of an order removing the appellant from the post of Principal to which she was duly appointed on regular basis, the appointment of respondent No. 4 to the said post even on officiating basis was null and void and non est. in the eyes of law and liable to be altogether ignored. The appellant/writ petitioner, in our view, has all along continued to hold the post of the Principal in law, even if she actually did not perform the functions of the Principal of the school after a certain date. For the reasons stated hereinabove, we are of the view that the impugned order dated 26.02.2013 cannot be sustained. The said order is accordingly set aside. The order dated 15.07.2008, issued by the Directorate of Education, being contrary to the provisions of Rule 98 of Delhi School Education Rules is hereby quashed. We hereby direct that the appellant/writ petitioner being the duly appointed Principal of the school shall be entitled to discharge all the functions and duties and exercise all the powers applicable to the post of Principal of the school. She would also be entitled to draw salary in the pay scale applicable to the post of the Principal. We, however, make it clear that the order passed by us shall not come in the way of respondents 2 and 3, initiating any action for removing the appellant from the post of the Principal of the school in accordance with the law and on such grounds as are, in law, available to them in this regard.

The pending application also stands disposed of.

There shall be no order as to costs.

Darmar Murugesan, C.J., March 21, 2013

The Tribunal noted that the Presenting Officer has not even pressed this charge and hence, there could be no reason or even justification to examine the evidence and hold the charge to be proved or partly proved. It was further observed that the allegations on which the charge was held to be proved, were not the subject matter of the charge and, therefore, no finding of guilt could have been recorded on the basis of such allegations. The Tribunal, while taking this view referred to the decision of Supreme Court in *M.V. Bijlani Vs. Union of India (UOI) and Others*, , where the Apex Court, inter alia, observed as under:-

....He cannot enquire into the allegations with which the delinquent officer has not been charged with....