
(2013) 04 DEL CK 0461

In the Delhi High Court

Case No : Writ Petition (C) No. 8040 of 2011

Tajinder Kaur

APPELLANT

Vs

Guru Harkishan Public School and Others

RESPONDENT

Date of Decision : 16-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0461

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Naresh Thanai with Mr. J.P. Singh, in W.P. C No. 8040, 7342, 8041, 8053, 8054, 8055 and 8189/2011 and Ms. Minal Sehgal, in Cont. Cas C No. 868/2011, for the Appellant; Prabhsahay Kaur, for R-1 and 2 and Ms. Ferida Satarawala, for R-3 in W.P. (C) No. 8040, 8041, 8053, 8054, 8055 and 8189/2011 and Cont. Cas (C) No. 868/2011, Mr. Jasmeet Singh, for R-1 and Ms. Sonia Sharma for Mr. V.C. Jha, for R-2 in W.P. (C) No. 7342/2011, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

W.P. (C) No. 8040/2011

1. There are two reliefs which are claimed in the writ petition. The first relief is for quashing the suspension of the petitioner as no prior or post facto approval of the Director of Education has been taken. The second relief is the challenge to a letter dated 18.10.2011 issued by the respondent No. 1/school initiating a fact finding enquiry. Both these aspects have been dealt by me in the judgment dated 10.4.2013 passed in three connected writ petitions, being WP(C) Nos. 8412/2011, 8413/2011 and 8421/2011 titled as Jatinder Kaur Saini vs. School Management Of G.H.P.S., Fateh Nagar & Ors.; Gurmeet Kaur vs. School Management Of G.H.P.S., Fateh Nagar & Ors. and Swaranjit Kaur vs. School Management Of G.H.P.S., Fateh Nagar & Ors. respectively.

2. In the aforesaid judgment dated 10.4.2013 I have relied upon two Division Bench judgments of this Court in the cases of Kathuria Public School Vs. Director of Education and Another, and Delhi Public School and Another Vs. Shalu Mahendroo and Others, and which judgments hold that with respect to private unaided schools, neither prior nor post facto approval of the Director of Education is required before suspending an employee/teacher. Adopting the ratio contained in the judgment dated 10.4.2013 in WP(C) No. 8412/2011 and connected matters, the argument in the present case is rejected that prior or post facto approval is required of the Director of Education.

3. Counsel for the petitioner urges that the issue is of a minority or a non-minority institution but I fail to understand how this argument at all is in any manner relevant because it is not disputed that the respondent No. 1/school is an unaided private school. Once respondent No. 1 is an unaided private school, whether minority or non-minority, no prior or post facto approval would be required with respect to suspension orders from the Director of Education.

4. The second issue which is argued is (again the same issue which has been dealt by me in the judgment dated 10.4.2013) that the enquiry initiated in terms of the letter dated 18.10.2011 is violative of the Delhi School Education Act and Rules, 1973. To this aspect, counsel appearing for the respondent No. 1/school states that the letter dated 18.10.2011 was only a preliminary fact finding enquiry and if disciplinary proceedings are held by the respondent No. 1/School the same will be held in accordance with Delhi School Education Act, 1973 and its Rules and especially Rules 118 to 120. Thus the second issue urged on behalf of the petitioner also accordingly does not survive.

5. An additional issue which has been urged on behalf of the petitioner on merits is that the petitioner was duly qualified, and therefore, suspension order should be set aside. I may state that the issue with regard to merits will be an issue in the Departmental Proceedings, and the case of the respondent-school is that petitioner was not qualified when she was appointed, and therefore, the petitioner was suspended. I may note that the petitioner has filed an application which is coming up before me first time today being CM No. 4595/2013 which refers to the fact that the petitioner has during the pendency of the present proceedings completed her Master of Arts, and therefore, this fact is sought to be brought to the attention of this Court. In fact, this aspect in my opinion shows that at the relevant time when the petitioner was employed the petitioner was not qualified as per rules and therefore, the suspension order is valid. I must hasten to add that I express no final opinion one way or the other on the qualification of the petitioner. I note that the Supreme Court in the judgment in the case of State of Orissa Vs. Bimal Kumar Mohanty, has observed as under:-

It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of

suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

(Underlining added)

6. In accordance with the ratio laid down in aforesaid para 13 of the judgment of the Supreme Court, there are various grounds for suspension, and suspension orders are not interfered with ordinarily by the Courts. In the present case, I am of the opinion that there are no grounds for interfering with the suspension orders because of the ratio of the judgment of the Supreme Court stated in para 13 above which states that there are various reasons for suspending an employee including to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment. The Supreme Court has said that each case has to be considered depending on the nature of allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. In the present case, teaching of students by an unqualified teacher is surely a grave aspect entitling the respondent No. 1/ school to suspend the petitioner.

7. For the sake of record I must note that the counsel for the petitioner has filed written submissions today before me in Court alongwith various judgments but in view of the judgments of Division Benches of this Court in Kathuria Public School (supra) and Delhi Public School (supra), the judgments relied upon have no application.

8. In view of the above, the writ petition is accordingly dismissed.

WP(C) No. 7342/2011

9. It could not be disputed on behalf of counsel for the petitioner that this case will also stand covered by the judgment passed by me today in WP(C) No. 8040/2011. This writ petition is also accordingly dismissed by adopting the reasoning contained in WP(C) No. 8040/2011 and WP(C) No. 8412/2011 decided on 10.4.2013.

WP(C) No. 8041/2011, WP(C) No. 8053/2011, WP(C) No. 8054/2011, WP (C) No. 8055/2011, WP(C) No. 8189/2011

10. In view of the observations in WP(C) No. 8040/2011 and adopting the same, these writ petitions are also dismissed.

Cont. Cas(C) No. 868/2011

In view of the fact that Contempt jurisdiction is a discretionary jurisdiction and the main writ petition itself stands dismissed by me by today's judgment in WP(C) No. 8040/2011, I am not inclined to exercise the Contempt jurisdiction in the facts of the present case. Contempt petition is accordingly dismissed.