

(1990) 09 DEL CK 0049

In the Delhi High Court

Case No : Civil Writ Petition No. 2483 of 1989

The Manager, Arya Samaj Girls Higher Secondary School and
Another

APPELLANT

Vs

Sunrita Thakur etc.

RESPONDENT

Date of Decision : 19-09-1990

Acts Referred:

Delhi School Education Act, 1973 — Section 8(3)

Citation : (1991) 43 DLT 139 : (1991) LabIC 1822

Hon'ble Judges : A.B. Saharya, J

Bench : Single Bench

Judgement

Arun B. Saharya, J.

(1) By this petition under Article 226 of the Constitution of India, the petitioners have prayed, inter alia, that a writ of certiorari maybe issued for quashing an order dated 26th of May, 1989 (hereinafter referred to as the impugned order) made by the Delhi School Tribunal.

(2) On 4th of September, 1976, respondent No. 1 was appointed as temporary Principal of the Arya Samaj Girls Higher Secondary School, hereinafter referred to as the School. Certain irregularities committed by her were noticed by the Managing Committee of the School. The Managing Committee constituted a Disciplinary Committee for taking disciplinary action against her under Rules 118 and 120 of the Delhi Education Rules, 1973 (hereinafter referred to as the Rules).

(3) TWENTY-FIVE charges were framed against respondent No. 1. She was called upon by a notice dated 24th of December, 1977 to submit a written state- ment of her defense. She was placed under suspension during enquiry. An Enquiry Officer was appointed. He submitted his report on 24th of May, 1979. The Disciplinary Committee accepted the report, and came to the conclusion that charges I to 17, 19 to 21 and 23 to 25 were proved against respondent No. 1. A copy of the report of the Enquiry Officer was furnished to her. A notice dated

16th of June, 1979 was given to her stating that it was proposed to impose on her major penalty of removal from service and calling upon her to submit her representation against the proposed action. On 2nd of July, 1979, respondent No. 1 submitted her representation.

(4) In early September, 1979, respondent No. 1 filed a writ petition, being C.W.P. No. 1260/79 and challenged the disciplinary proceedings held up to that stage on the ground, inter alia, of mala-fides against Shri Jyoti Pershad, Chairman of the School and S/Shri Dharam Chand, S.C. Khaidelwal and S. Chaturvedi, some of the other members of the Disciplinary Committee, and for a writ of prohibition against them from acting as members of the Disciplinary Committee and from holding any further proceedings. A notice was issued to the respondents in that case to show cause why Rule Nisi should not be issued. In the meanwhile, an order was made directing that no final orders will be passed by the Disciplinary Committee. Later, the stay order was made absolute.

(5) On 13th of December, 1979, when the writ petition was taken up, after some hearing, the parties settled their dispute and the same was resolved in accordance with the statements recorded that day. The order and the statements of the petitioner (Respondent No. 1-herein) and counsel for the parties recorded that day are reproduced below :

"Statement of Shri D.N. Vohra, Advocate and petitioner : As far as this petition is concerned, I will be satisfied if Shri Jyoti Prasad, Shri S.C. Khandelwal and Smt. S. Chaturvedi do not take part in any further deliberations of the Disciplinary Committee constituted under Rule 118 of the Delhi School Education Rules and the remaining members of the Disciplinary Committee proceed with hearing me and further proceedings are conducted from the stage of the proceedings as on 5th September, 1979. R.O. & A.C. 13.12.1979. sd/- Judge sd/- Judge Vo141
Statement of Shri H.N. Chaudhary, Advocate : In view of the objections raised by the petitioner to further participation in the deliberations of the Disciplinary Committee by Shri Jyoti Prasad, Shri S.C. Khandelwal and Smt. S. Chaturvedi, we agree that as far as this writ petition is concerned these three persons will not take part any further in the deliberations of the Disciplinary Committee and the petitioner will be given a hearing as from 5th September, 1979. R.O. & A.C. sd/- Judge 13.12.79 sd/- Judge Order In accordance with the statements of the parties direction is hereby issued that the Disciplinary Committee constituted under Rule 118 of the Delhi School Education Rules notified in letter dated 4th January, 1978 to the petitioner by Shri S.C. Khandelwal will act as from 5th September, 1979 only in accordance with the statements given by the parties/parties" counsel recorded by us today. In other words for the proceedings as from 5th September, 1979 and thereafter Shri Jyoti Prasad respondent No. 2, Shri Dharam Chand respondent No. 3, Shri S.C. Khandelwal respondent No. 4 and Smt. S. Chaturvedi respondent No. 5 will not take part in the deliberations of the Disciplinary Committee. The proceedings of the Disciplinary Committee will be concluded at the earliest by the remaining members of the Disciplinary

Committee. The above directions are given keeping in view the contentions raised by the parties in the present writ petition and are restricted to only what was raised in the present writ petition which is decided accordingly. Parties are left to bear their own costs.

sd/- Judge December 13, 1979. sd/- Judge

(6) In the meanwhile, in view of the interim order made by the Court, the Disciplinary Committee adjourned the proceedings sine-die. Later, in view of the statements of parties and the order of the Court made on 13th of December, 1979, the Disciplinary Committee directed that the persons named in the order of Court would not take part in the proceedings of the Disciplinary Committee and only the remaining members, namely, Shri R.D. Bhatnagar, the Government nominee, and Ms. Sushma Sil would continue to hold further proceedings.

(7) The proceedings of the Disciplinary Committee held earlier on 25th of March, 1980 were reviewed. It was noted that the charges mentioned earlier stood proved against respondent No. 1. The Disciplinary Committee, consisting of the two remaining members, felt that the proved charges were very serious and the same warranted her removal from service. But, keeping in view the length of service and old age of respondent No. 1, the Disciplinary Committee expressed the opinion that the ends of justice would be met if she was compulsorily retired from service and the amount proved to have been embezzled by her was also recovered from her. The Committee communicated its tentative decision to impose the said penalty to the Director of Education for bids prior approval.

(8) The approval of the Director for imposition of the major penalty proposed by the Disciplinary Committee to compulsorily retire respondent No. I from service was conveyed by a letter dated 3rd of December 1980 to the Manager of the School. Thereafter, according to the petitioners, by a memo dated 5th of December 1980 signed by Shri S.C. Khandelwal in his capacity as Acting Manager of the School, the decision of the Disciplinary Committee about her compulsory retirement with effect from 4th of December, 1980 was "conveyed" to respondent No. 1 (This memo would hereafter be referred to as the disputed order).

(9) On appeal, by the impugned order, the Tribunal quashed the disputed order. However, in view of superannuation of respondent No. 1 on 31st of March, 1983 at the age of 58 years, the Tribunal held that she would be deemed to have retired from service of the School with effect from 31st of March, 1983. Further, the Tribunal declared : "The appellant will be paid all her arrears of pay and attendant benefits, which are due to her, until 31.3.1983 along with costs of the appeal within four months from today". This is the order which has been challenged in the present petition.

(10) By the impugned order, the Tribunal quashed the order of punishment primarily on two grounds. Firstly, because Shri S.C. Khandelwal, who passed the disputed order, "was not competent to pass any order of penalty, much less of

major penalty as he did not constitute the Disciplinary Committee nor was he a part thereof". The plea of the petitioner that the disputed order was ratified by the Managing Committee was also rejected. The tribunal held that the order made by Shri S.C. Khandelwal was illegal, without jurisdiction, and void; and, Therefore, subsequent ratification of that order by the Managing Committee "which too was not communicated" to respondent No. 1 was of no avail. Secondly, because Shri S.C. Khandelwal had taken part in the enquiry proceedings although he was prohibited from doing so by the High Court.

(11) On fulfillment of various stages of enquiry envisaged under sub rule (1), and after the receipt of the approval of the Director, sub-rule (2) of Rule 120 envisages that the order with regard to the imposition of a major penalty shall be made by the Disciplinary authority. In view of the order made by this Court on 13th of December, 1979, Shri Khandelwal could not act even as a member of the Disciplinary Committee. Even otherwise, as the (Acting) Manager of the School, he was not competent to make an order under sub rule (2) of Rule 120.

(12) Apart from this, the disputed order signed by Shri Khandelwal recites the fact that disciplinary proceedings were started against respondent No. I and that the Director of Education had approved major penalty of her compulsory retirement from service and thereafter it states that respondent No. I "stands retired compulsorily with effect from 4.12.1980 from the service of the School". This purports to be a declaration of the fact other compulsory retirement rather than being an order made to impose that penalty. Counsel for the petitioner conceded that in fact, no order envisaged under sub-rule (2) of Rule 120 was ever passed.

(13) For these reasons, the disputed order made by Shri S.C. Khandelwal was not only without jurisdiction, but it was also inoperative. It was really ineffective as no order was ever made with regard to the actual imposition of penalty under sub-rule (2) of Rule 120 of the Rules.

(14) The question of participation of Shri Khandelwal in the enquiry proceedings has been discussed by the Tribunal in para 9 of the impugned order. It reads as follows :

"There is no manner of doubt that the High Court in Civil Writ No. 1260/79 filed by the appellant against the school authorities and which was decided on 13.12.1979, an order was passed by Justice Prakash Narain, the then Judge of the Delhi High Court and Justice B.N. Kirpal, Judge of Delhi High Court, restraining Shri S.C. Khandelwal and two others, namely Shri Jyoti Prasad and Smt. S. Chaturvedi, from taking part in the inquiry proceedings w.e.f. 5.9.79 onwards, and this order was passed on the basis of the statements of the parties, but in clear defiance of this order of the High Court, Shri S.C. Khandelwal took part in the inquiry proceedings. On page 120 of the School inquiry file, it has been written by Shri R.D. Bhatnagar, the Government nominee that the Manager, i.e. Shri S.C. Khandelwal, had stated that the statement of Smt. Thakur

is false and there are no such vouchers in the file. So, according to the report of Shri R.D. Bhatnagar, Government nominee, Shri S.C. Khandelwal, the Manager/acting Manager, has taken part in the inquiry proceedings, and so the inquiry proceedings are vitiated. The matter does not stop here. Shri Khandelwal thereafter issued an order compulsory retiring the appellant from the service and that order has been produced on record as Annexure "C". This also amounts to taking part in the inquiry proceedings by Shri S.C. Khandelwal, although he was prohibited from doing so by the High Court, because inquiry proceedings end only after an employee has been dismissed or compulsorily retired and not earlier. Issuing a show-cause notice or issuing an order retiring a person compulsorily as a part of the proceedings. Therefore, the first preliminary legal objection of the appellant prevails and the inquiry proceedings are vitiated because Shri S.C. Khandelwal, the acting Manager of the School had taken part in the inquiry proceedings although he was prohibited from doing so by the High Court."

(15) The observations made by the Tribunal bring out three parts of participation of Shri Khandelwal. First, issuing a show cause notice dated 16th of June, 1979; secondly, making, a statement to the effect "that the state- ment of Smt. Thakur was false and there are no such vouchers in the file"; and thirdly, issuing the disputed order compulsorily retiring respondent No. 1 from the service.

(16) The Tribunal has made a passing reference to the show cause notice merely to indicate it to be a stage of the enquiry proceedings; but the finding that Shri Khandelwal participated in the proceedings is not based upon this act of his. In any event, the said show cause notice had been issued prior to the crucial date i.e. 5th of September, 1979 which was specified in the order of this Court made on 13th of December, 1979 for the purposes of further proceedings in the enquiry. The validity of the enquiry proceedings could not be assailed on this ground.

(17) The second part is a statement made by the Manager during the enquiry proceedings. The minutes of the proceedings held on 25th of March, 1990 refer to the statement of respondent No. 1 regarding three vouchers and then record: "The Manager has stated that this statement of Smt. Thakur is false, and there are no such vouchers in the office". The minutes do not name Shri Khandelwal as the Manager. But, in the impugned order, this statement has been attributed to him. According to the petitioner, this statement was made by Shri Dharam Chand who was the Manager and not by Shri Khandelwal. A controversy was raised at the Bar with regard to the name of Shri Dharam Chand also appearing in the order dated 13th of December 1979 made by this Court. This controversy, in view of the following discussion regarding the nature and effect of the statement of the Manager, is irrelevant. Minutes of the said meeting show that the Manager made a statement about a fact in issue. Here, we are not concerned with the admissibility or the evidentiary value of this statement. Undoubtedly, on the day when the said statement was made, the Disciplinary Committee consisted of only

the two remaining members in accordance with the Court's order dated 13th of September, 1979. A person making a statement of fact in an enquiry cannot be said to be taking part in the enquiry proceedings or in the deliberations thereof. The word "deliberation" is defined in Webster's Dictionary (Third Edition) to mean the act of weighing and examining the reasons for and against a choice or measure; and careful consideration. Similarly, in Shorter Oxford Dictionary, it is defined as the action of deliberating; careful consideration with a view to decision. The Manager merely made a statement about a fact. He cannot be said to have taken part in the deliberations as a member of the Disciplinary Committee. The finding of the Tribunal on this aspect is unreasonable and perverse.

(18) So far as the making of an order imposing a penalty is concerned, there can be no doubt that it is an essential and a culminating part of enquiry proceedings. The disputed order was made by Shri Khandelwal. He was forbidden from doing anything of the sort by the High Court. The Tribunal's finding on this aspect is fully justified.

(19) The petitioner tried to sustain imposition of the penalty by pleading ratification of Shri Khandelwal's order by the Managing Committee. As discussed earlier, it was highly improper for Shri Khandelwal to make the disputed order despite the clear interdiction by this Court. Further, he had no jurisdiction by himself to pass a punishment order. In any event, there was no valid or operative order really made under sub-rule (2) of Rule 120. The alleged ratification by the Managing Committee could not cure these defects. The Tribunal rightly rejected this plea also.

(20) Confronted with this position, counsel for the petitioner contended that even if the order of punishment had to be quashed, since the proceedings were found to be vitiated only at the final stage of making the order under sub-rule (2) of Rule 120, In view of decision of the Supreme Court in *Municipal Corporation of Delhi v. Ram Pratap Singh* AIR 1976 S.C. 2301, the Tribunal ought to have remanded the disciplinary proceedings to that stage. Further, he contended that the Tribunal had no jurisdiction to make an order with regard to the salary, allowances and the other benefits to be paid to the employee reinstated as a result of the appeal.

(21) On the other hand, counsel for respondent No. 1 contended that in view of superannuation of respondent No. 1 in the meanwhile, it was unnecessary for the Tribunal to remand the case; and that the Tribunal has the power to make consequential orders with regard to payment of salary, allowances and other benefits. To support the later part of this plea, he relied upon the provisions made in sub-section (6) of Section 11 of the Act conferring upon the Tribunal "powers as are vested in a Court of Appeal by the Code of Civil Procedure, 1908".

(22) The Tribunal is constituted by virtue of sub-section (1) of Section 11 of the Act Sub-section (6) stipulates that the Tribunal shall for the purpose of disposal

of an appeal preferred under the Act have the same powers as are vested in a Court of appeal by the Code of Civil Procedure, 1908. Subsection (3) of Section 8 provides for an appeal to the Tribunal against an order of dismissal, removal or reduction in rank of any employee of a recognised private school. Sub-rule (3) of the Rule 121 provides for an appeal to the tribunal by any employee of a recognised private school who is aggrieved by an order imposing on him the penalty of compulsory retirement or any minor penalty.

(23) A perusal of these provisions reveals that the subject matter and scope of an appeal under the Act and the Rules is restricted to an order of punishment of the kind mentioned therein. For this limited purpose, the Tribunal has been given the same powers as are vested in a Court of Appeal by the Code of Civil Procedure.

(24) The matter with regard to payment of salary and allowances to be paid to an employee or reinstatement into service is regulated by Rule 121. It reads as follows :-

"Payment of pay and allowances on reinstatement. (1) When an employee who has been dismissed, removed or compulsorily retired from service is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, as the case may be, the managing committee shall consider and make a specific order-

(A)with regard to the salary and allowances to be paid to the employee for the period of his absence from duty; including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as the period spent on duty. 2) Where the managing committee is of opinion that the employee who had been dismissed, removed or compulsorily retired from service has been fully exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service or suspended prior to such dismissal, removal or compulsory retirement from service, as the case may be : Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representations and after considering the representation, if any, made by the employee, direct, for reasons to be recorded by it in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowances as it may determine. (3) The payment of allowances shall be subset to all other conditions under which such allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances."

Sub-rule (1) comes into play, among other circumstances, when an employee, while under suspension, has been compulsorily retired from service "is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation", as in the present case. In such a case, the matter regarding the salary and allowances to be paid to the employee for the period of his absence from duty has to be taken up for consideration when the employee is "reinstated as a result of the appeal", which would be only after decision of the appeal. The duty coupled with a power to consider and make a specific order in this regard, has been cast upon the Managing Committee. This power has not been conferred upon the Tribunal. The guidelines for and the extent of the deduction from the salary and allowances, the various circumstances in which this power is to be exercised, as also the elaborate procedure for the exercise of this power, have all been laid down in this rule. The exclusive jurisdiction of the Managing Committee distinctly emerges from the fact that any order made in this regard is not even appealable to the Tribunal.

(25) As such, it appears that the Tribunal has no jurisdiction to make any order with regard to the salary and allowances to be paid to the employee on her reinstatement as a result of the appeal. The power under sub-section (6) of Section 11 of the Act cannot be used by the Tribunal to encroach upon the power specifically conferred upon the employer with regard to payment of salary and allowances under Rule 121. Consequently, the plea advanced by counsel for respondent No. 1 that the impugned order made by the Tribunal in this regard would operate to supersede or to exclude the power conferred upon the employer under Rule 121, cannot be countenanced.

(26) Further, the Tribunal has directed the payment of "all the attendant benefits". The nature of such benefits, apart from the salary and allowances, is not clear from the impugned order. Counsel for the petitioner has expressed an apprehension that the use of this nebulous expression could relate to the payment- of pension as well.

(27) It was stated at the Bar by counsel for the petitioner that respondent No. 1 had opted for the Pension Rules contained in the Central Civil Services (Pension) Rules, 1972, as amended from time to time (hereinafter referred to as the Pension Rules). To support this statement, he produced at the time of hearing, the option to this effect signed by respondent No, 1 dated 10th of January 1976.

(28) SUB-RULE (1) of Rule 9 of the Pension Rules confers upon the employer "the right of withholding or withdrawing pension or part thereof whether permanently or for a specified period, and of ordering recovery of a pension of the whole or a part of any pecuniary loss" caused to the employee, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service". Sub-rule (2) provides that the departmental proceedings referred to in sub-rule (i), if instituted while the employee was in service, shall, after the final retirement of the employee. "b3 deemed to be proceeding under this rule and shall be continued and

concluded by the authority" in the same manner as if the employee had continued in service.

(29) This provision shows that the superannuation of respondent No. 1 did not preclude further departmental proceedings which could lawfully result in respondent No. 1 being found guilty of grave misconduct or negligence during the period of her service, and, in that eventuality, the petitioners would have been within their rights to withhold payment to respondent No. 1 of the whole or part of pension, whether permanently or for a specified period.

(30) For the same reasons, as earlier discussed, with regard to pay and allowances, the Tribunal has no jurisdiction to make any order in respect of admissibility or payment of pension to respondent No. 1 as a result of the punishment order being set aside. Therefore, the direction for payment of "all the attendant benefits", assuming that this expression includes pension, is also without jurisdiction.

(31) In view of the foregoing discussion, with regard to the jurisdiction of the Tribunal to make an order for the payment of salary, allowances and other benefits to respondent No. 1, it is unnecessary to go into the questions whether the disciplinary proceedings could be continued even after superannuation of respondent No. 1, or whether the Tribunal ought to have remanded the case as contended by counsel for the petitioner.

(32) The last part of the Tribunal's order regarding payment of pay, allowances and other benefits is severable from the rest of it. Since it is found that the Tribunal has no jurisdiction with regard to these matters, this part of the impugned order is quashed. In view of the reinstatement of respondent No. 1 as a result of the appeal, it is, however, clarified that it would be open to the employer to take up these matters for consideration and decision in accordance with the relevant Rules.

(33) As a result, the impugned order, quashing the order dated 5th of December, 1980 compulsorily retiring respondent No. 1 from service with effect from 4th of December, 1980, and declaring that she would be deemed to have retired from service of the School on her attaining the age of superannuation with effect from 31st of March, 1983, is upheld. The remaining part of the Tribunal's order, with regard to payment of salary, allowances and other benefits to respondent No. 1, is hereby quashed.

(34) The writ petition is, Therefore, partly allowed. No costs.