

(2013) 10 DEL CK 0046

In the Delhi High Court

Case No : Writ Petition (C) No. 7168 of 2012

Vishwa Bharti Public School and Others

APPELLANT

Vs

Inder Jeet Singh and Another

RESPONDENT

Date of Decision : 24-10-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : (2014) 206 DLT 790 : (2014) 140 DRJ 32

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rahul Gupta, Mr. Shekhar Dasi and Mr. Shekhar Gupta, for the Appellant; Pankaj Kr. Sinha, Ranjan Kumar, Ratan Shukla, Ashutesh Kr. Mishra and Mr. Pankaj Tiwari, Advocates for R-1, Mr. Kushal Yadav, for Ms. Sonia Arora, for R-2/DOE, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The facts of these cases are almost identical and therefore for the sake of convenience reference will be made to the facts of W.P. (C) No. 7173/2012. Petitioner no. 1-school along with its General Secretary and Principal by this writ petition impugns the judgment of the Delhi School Tribunal dated 25.4.2012. By the impugned judgment, the Tribunal set aside the communication dated 11.5.2011 issued by the petitioner no. 1-school to the respondent no. 1 informing that the probationary period has not been extended and the respondent no. 1 stands relieved w.e.f. 12.5.2011. Two main reasons weighed with the Tribunal for passing of the impugned judgment. The first was that in the opinion of the Tribunal the Minutes of Meeting of the Managing Committee dated 26.3.2011 were fabricated and the second was that the probationary period as per Rule 105 of the Delhi School Education Rules, 1973 should have been extended by one year, but it was only extended for about 50 days. The termination of services of the respondent no. 1 were hence held to be illegal.

2. The facts of the case are that respondent no. 1 was appointed as

PGT(Mathematics) by the petitioner no. 1-school on a probation period of one year w.e.f. 1.4.2010. The appointment letter appointing respondent no. 1 on probation for one year is dated 31.3.2010. Paras 2 and 3 of the appointment letter dated 31.3.2010 make it clear that confirmation will be effected only from a date of written communication to the fact that confirmation has taken place and that the services can be terminated by one month's notice or salary in lieu thereof even before expiry of the probation period. The case set up by respondent no. 1 before the Delhi School Tribunal was that without any requisite backing of allegation of existence of non-satisfactory services having been rendered respondent no. 1's services were terminated by the impugned communication dated 11.5.2011, besides the fact that termination is illegal because probation period could not have been less than one year and termination in such lesser period is hence automatically illegal.

3. Petitioner no. 1-school before the Tribunal has placed reliance for non-satisfactory services of respondent no. 1 upon the resolution of the Managing Committee of the petitioner-school dated 26.3.2011. It was contended that respondent no. 1 being a probationer could always be terminated during the probationary period inasmuch as, services of respondent no. 1 were not found to be satisfactory and as recorded in the Minutes of Managing Committee Meeting dated 26.3.2011. It was also argued that probation period need not be of one year and it can be of a lesser period inasmuch as Rule 105 of the Delhi School Education Rules, 1973 does not provide that the extended period of probation has to be specifically/necessarily be only of one year.

4. Let me at this stage reproduce the relevant findings and observations of the Delhi School Tribunal, and which are contained in its paras 4 to 7, 9 and 10 of the impugned judgment, and the same read as under:-

4. Assuming the contention of the Respondent School that a meeting of the Management took place on 26.03.2011, true, a question arises as to why the Respondent School did not terminate their services after finding them unfit for the job. The decision (i) referred to above in the meeting on 26.03.2011 was to the effect that the Appellants were not to be confirmed. Decision (ii) was to the effect that their probation shall be extended till the commencement of the summer vacation so that the classes did not go unattended. Vide decision (iii) the Management had fixed the date of termination of services as 12.05.2011. Was it a just legal and justifiable order/decision? The purpose of extension of probation under Rule 105 of Delhi School Education Act & Rules-1973 is for giving an opportunity to the employee to improve his/her performance. Probation is normally extended by one year. In the present case it was admittedly increased for a period of 50 days. What it open to the Respondent School to keep the Appellants in dark after finding them unfit for the job? Could the Respondent School avail of their services after finding them "unfit" on the pretext that their probation stood extended? Respondent School wanted to avail of the services of the Appellants for a period of 50 days under the garb of extended probation.

Since the legislature never provided for extending the probation for such dubious purposes, the Respondent School acted dishonestly, illegally and unjustifiably. Once the Appellants were found unfit to be retained, the career of the students was also put in peril by utilizing the services of the teachers who were unfit for continuation. At the same time the career of the Appellants was also at stake. Once found unfit for the job they ought have been told to leave the job so as to enable them to search for other service/career elsewhere.

5. The next question that arises is as to whether any meeting of the Management took place on 26.03.2011 or not? Admittedly an inspection of the Respondent School had taken place on 26.05.2011 by the team of the officers of Directorate of Education. The inspection report does not make any mention of any vacancy in the cadre of PGT. The Principal of the Respondent School also gave an undertaking dated 06.05.2011 to the same effect. The Managing Committee once having decided on 26.03.2011 to terminate the services of the Appellants, there was no occasion of stating on 06.05.2011 that there existed no vacancy in PGT cadre. It clearly goes to show that the minutes of the meeting dated 26.03.2011 are false and fabricated.

6. Impugned orders dated 05.04.2011 were never delivered to any of the Appellants before 06.05.2011. It was only after the inspection by the officers of Directorate of Education was completed on 06.05.2011 that there was handed over to the Appellants. This further shows a malafide on the part of the Respondent School in terminating the services of the Appellants.

7. The Hon"ble High Court of Delhi in a case of terminating the services of the employees under Delhi School Education Act & Rules-1973 in Writ Petition No. 5774/2010 disposed of on 17.09.2010 directed the Respondent School therein to produce the ACRs of the employees before this Tribunal. The Hon"ble High Court passed the directions to find out if the services were terminated malafide and in the absence of any adverse material against the petitioners therein. It may however be mentioned here that the said matter was finally disposed of by this Tribunal vide orders dated 28.02.2011 (in appeal No. 61-64/2010 Manphool Singh & Others vs. Army Welfare Education Society (AWES) & Others. It was held by this Tribunal that the Respondent School therein had acted malafide. Take a cue from that case, this Tribunal Directed the Respondent School herein to produce the ACRs of the present Appellants. The Respondent School herein did not file the ACRs and placed on record an affidavit stating that the ACRs were not written for the reason that it was decided to terminate the services. The period of probation in the present case comes to an end on 31.03.2011. The work and conduct of an employee is to be assessed after completion of one year period of probation. It is unbelievable that the Respondent School did not record anything relating to the work and conduct of any of the Appellant in this period. Was the Respondent School making a mental note of the work and conduct of all these five Appellants in a span of one year? The plea does not stand to reason.

...

9. As discussed above, the impugned orders dated 11.05.2011 terminating the services of the Appellants herein are clearly a gross misuse of the provisions of Rule 105 of Delhi School Education Act & Rules-1973. The Respondent School ought have offered the appointments to the Appellants in the very beginning on contract basis, if it chose so. Once the Appellants were appointed on regular basis their services could not have been terminated with a motive of replacing them with teachers on contract basis under the garb of rule 105 of Delhi School Education Act & Rules-1973 governing "Probation".

10. In view of the reasons given above, I am of the considered opinion that the impugned orders dated 11.05.2011 are wholly illegal, arbitrary and unjust, passed with malafide intentions. The same are hence set aside. All the Appellants i.e. Ms. Ritu Kumari (PGT English), Ms. Indu Negi (PGT Biology), Sh. Virendra Tiwari (PGT Mathematics), Sh. Inderjeet (PGT Physics) and Ms. Deepti Popli (PGT Business Studies and Accounts) are reinstated in services with all consequential benefits and back-wages @ 50%. They shall be paid full salary and other allowances w.e.f. the date of these orders. In case the Respondent School does not comply with these orders within a period of one month, the Appellants shall be entitled to a simple interest @ 12% per annum on their claims of arrears of back-wages. Appeals are accordingly disposed of. Files be consigned to record room.

5. Before me, counsel for the parties have made their submissions under the same two heads which were argued before the Tribunal. The first is as to whether or not extension of probation period has or has not to be at least of one year, and secondly whether respondent no. 1's services were or were not satisfactory and especially as regards the validity and existence of the Minutes of Meeting dated 26.3.2011.

6(i) So far as the first head of argument is concerned as to whether the extension of the period of probation can only be of one year and not less than that, it would be necessary to refer to Rule 105 of the Delhi School Education Act, 1973 at this stage, and the same reads as under:-

105. Probation.- (1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:

[Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year, shall not apply in the case of an employee of a minority school:

Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.]

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation, as the case may be, confirmed with effect from the date of expiry of the said period.

(3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.

(ii) When we refer to not only sub-Rule 1 but also the proviso of sub-Rule 1 of Rule 105, the period of probation which is mentioned is of one year and extension also by "another year". No doubt, the proviso to sub-Rule 1 of Rule 105 states that prior approval of the Director of Education is not required with respect to an employee of a minority school for extending the period of probation by another year, however, there is a clear pointer by virtue of this first proviso to sub-Rule 1 of Rule 105 that extension of period of probation has to be by one year. The reason for extension to be of one year probably is that since the issue of confirmation of services of an employee of a school is with respect to satisfactory nature of services, such satisfactory nature of services or otherwise requires a reasonable period of one year for judging the same. It is at the end of the period of one year that really the capability as a whole and satisfactory services as a whole of an employee of a school are decided. What I mean to say is that there may be periods of satisfactory services and non-satisfactory services in the probation period, however, it is the final opinion formed at the end of the probationary period of the totality of the services rendered in the entire probationary period which determines the satisfactory nature of services or otherwise by the management for grant of extension or the non-grant of extension of the probationary period and termination of services. I have therefore no hesitation in holding that extension of period of probation is ordinarily to be of one year, and which period is to be ordinarily taken for determining the nature of services of an employee of the school as to whether they are satisfactory or not.

7. At this stage, it is also necessary to put on record that it was the common case of both the parties before me that though extended period of probation has to be of one year, however, there is no bar within the period of extension of one year, on necessary circumstances existing, the services of a probationer can be terminated within the probationary period. I may observe that it is logical that unless there is a statutory bar in terminating the services of a probationer in the probationary period, there is no reason why on circumstances existing which require the termination of services of a probationer, then the services of a probationer cannot be terminated even before the expiry of the probationary period. What would be those facts and circumstances justifying the immediate termination of services, will depend on the facts of each case, and I need not elaborate on this aspect further except giving two stark examples, one of grave corporal punishment being meted out to a student which causes injuries to the student or second of harassment of a girl student by a male probationary

teacher. The object of giving the two examples is only to show that there may exist necessary circumstances, as per the facts which emerge, which necessitate the immediate termination of services of a probationary employee. I need not dilate further on the aspect of other factual circumstances required in terminating the services of a probationer in the probationary period as they would be individual case dependent.

8(i) In the facts of the present case, it is not disputed that the probationary period was not extended by one year. The question is what follows. Also, the related issue in the facts of this case is that whether actually at all the services of respondent no. 1 were extended as a probationary employee for a limited period of about 50 days or is it that really the period of extension was only fixing a future date for termination of services and not a probationary period for determining the satisfactory nature of services in the probationary period. This aspect is relevant because petitioner no. 1-school contends that in the facts of this case, if the Minutes of Meeting of the Managing Committee dated 26.3.2011 are correct, then, really language of the extension letters stating that probationary period is extended is of no effect because really the service period in this case with respect to respondent no. 1 which was extended from 1.4.2011 till 12.5.2011 only because of summer vacations were starting from 12.5.2011 till when studies of students should not be adversely affected, and the fact of the matter is that decision had already been taken to terminate the services of respondent no. 1 on account of unsatisfactory services for the reasons contained in Minutes of the Managing Committee Meeting dated 26.3.2011.

(ii) Therefore, the issue which requires determination thus is as to whether the Minutes of the Meeting of the Managing Committee dated 26.3.2011 relied upon by the petitioner no. 1-school is or is not fabricated, and whether the Tribunal was justified in arriving at a finding that no meeting of the Managing Committee took place on 26.3.2011.

9(i) I have already reproduced the relevant paragraphs of the judgment of the Delhi School Tribunal and with regard to the subject head of arguments, the Tribunal has dealt with the same in para 5 of the impugned judgment. The Tribunal arrives at a finding of the Minutes of Managing Committee Meeting dated 26.3.2011 being fabricated because the Tribunal notes that an inspection was conducted on 6.5.2011 by a team of officers of the Director of Education and that inspection report does not make any mention of vacancy in the cadre of PGT buttressed by the fact that the principal of the petitioner no. 1-school gave an undertaking on 6.5.2011 that there is no vacancy in the cadre of PGT, and therefore, Tribunal concludes that if the Managing Committee had decided on 26.3.2011 to terminate the services of the respondent no. 1 then there was no occasion to state on 6.5.2011 by the Principal that there was no vacancy in the cadre of PGT on 6.5.2011.

(ii) In my opinion, the findings given by the Tribunal do not inspire confidence. This I say so because admittedly as on 6.5.2011, there was no vacancy in PGT

cadre, because services of the respondent no. 1 were to come to an end only subsequently on 12.5.2011. As on 6.5.2011 therefore, the Principal of the petitioner no. 1-school was justified in giving an undertaking that there was no vacancy in the PGT cadre. Also, necessary weightage will have to be given to the petitioner no. 1-school with respect to its entitlement to judge the non-satisfactory nature of services of an employee with respect to each of the employees in these bunch of cases. The Managing Committee in its meeting dated 26.3.2011 has made the following observations qua each of the employees whose probationary periods were not to be extended:-

a) PGT Bio-Mrs. Indu Negi

? Frequent complaints from students and parents that the teachers cannot explain the concepts.

? Lack of class control

? Many memos issued.

? Teachers in a habit of arguing and counter questioning.

She would never accept her mistake, apologize and make an effort to improve.

b) PGT Maths-Mr. Virender Tiwari

? Teacher cannot teach in English

? Due to bilingual teaching, students are left confused.

? Incapability of teacher of ensuring that students do adequate practice.

c) PGT Commerce-Ms. Deepti Popli

? Teacher is aggressive and often gives into bouts of flare-ups and corporal punishment.

? Students have complained that the teachers often give in to partial favoritism.

d) PGT Physics-Mr. Inderjeet

? Teachers hasn't ensured that students do enough practice

? Complaints from parents that all aspects of Physics teaching not given due stress and practice.

e) PGT English-Mrs. Ritu Kumari

? Language fluency and accuracy not upto the mark

? Grammatical errors spelling errors, lexical errors, faulty sentence construction.

10. I may note that it is settled law that principles of natural justice do not have to be followed while terminating the services of a probationer employee. This is held by the Supreme Court in a catena of judgments and these judgments are:-

Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, and Rajesh Kumar Srivastava Vs. State of Jharkhand and Others, .

In the case of Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, Supreme Court has observed that even if the termination order states that services of a probationer has been terminated on account of the work being not satisfactory, the order cannot be said to be stigmatic and that principles of natural justice need not be followed for termination of services of the probationer. Para 45 of the said judgment is relevant and the same reads as under:-

45. This Court's decision in the case of P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences can be referred to in this context, where it was held by this Court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in State of Madhya Pradesh v. Virendera Kumar Chourasiya also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable.

In the case of Rajesh Kumar Srivastava Vs. State of Jharkhand and Others, Supreme Court has held that while taking a decision to terminate the services of the probationer, no notice is required to be given to the probationer nor is the probationer required to be given any opportunity of hearing. Para 10 of the said judgment reads as under:-

10. The aforesaid decision to release him from service was taken by the Respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the Appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the Appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.

11. Of course, I must hasten to add that the decision of the school has to be a bonafide decision and has to be justified in the facts, however, I do not find that respondent no. 1 in the pleadings made before the Tribunal (respondent no. 1 rejoinder-affidavit in the appeal) has specifically denied the charge against him that he could not teach only in English and due to this bilingual teaching students were left confused. Further respondent no. 1 was found by the school to be lacking with respect to his capability of ensuring that students do adequate practice. Courts do not substitute their opinions with the opinions of the managements of the schools with respect to the satisfactory nature of services, because Courts are ill-equipped to do so. May be in particular cases of

established malafides, Courts can interfere, however, I do not find that decision of the school in this case is actuated by such malafides or lack of bonafides for me to hold that inadequacies pointed against the respondent no. 1 (and the other employees) cannot be said to be existing. That being so, I would not like to substitute my decision for that of the petitioner-school with respect to non-satisfactory services of the respondent no. 1 in the probationary period.

12. That takes us to the aspect as to what happens consequent to the aspect that petitioner no. 1-school has violated Rule 105 by not giving an extension of one year of probation period and has given extension only of about 50 days. I think, in this regard violation with respect to the probationary period not being extended by one year and its consequence upon termination of services of a school-employee will have to depend upon the facts of each case. This is for the reason that whereas the probationary period has to be extended by tranche of one year, however, the undisputed legal position is that within that one year at any point of time on circumstances existing services of a probationary employee can be terminated. In this case, once I have accepted the Minutes of Meeting of the Managing Committee dated 26.3.2011 as not being fabricated, the consequence would only be that the extension of period has to be taken as one year and not 50 days, but the issue still is whether the facts exist in the present case for terminating the services of the probationer employees/respondent no. 1 even prior to the period of one year. Actually, in this regard the facts of the present case are peculiar because really though the letter of the petitioner no. 1-school dated 5.4.2011 refers to extension of the probation period, however, really when this letter is read with the Minutes of the Meeting dated 26.3.2011, it is shown that extension of services was till 12.5.2011 because from that date summer vacations of the school would begin and consequentially extension was only till 12.5.2011 so that classes of students do not get affected. The following portion of the Minutes of the Meeting of the Managing Committee dated 26.3.2011 in this regard is relevant and the same reads as under:-

The following decisions were taken:-

- i) PGTs not to be confirmed
- ii) Probation of PGTs to be extended till the commencement of summer vacations so that classes don't go unattended.
- iii) The services of these teachers to be dispensed w.e.f. 12/5/11
- iv) Post to be advertised and recruitment process to be completed before the re-opening of the school on 27th June" 11.
- v) Withdrawal of confidential letters and memos was done to give a chance to the teachers to improve upon their performance. But the result of class XI is a disappointment as there is a steep downward curve in the performance of the students. Therefore, the withdrawal of confidential letters and memos is not approved.

The meeting came to an end with vote of thanks to all present in the meeting

Sd/-

(A.K. Bhat)

Secretary

13. In the peculiar facts of the present case therefore really it is not as if that the probationary period was extended but really it was decided within the first year of probation itself that the services would not be extended, however, a limited extension of continuation of services was granted till the summer vacations for the classes not to be affected. Accordingly, taking a holistic view of the situation, and more particularly that services of a probationer even if had to be extended by a period of one year could have been terminated within one year no purpose will be served for setting aside the termination letters merely on the ground that probation period was not extended specifically by one year. I am persuaded to do this also because employees in these cases have taken the benefit of a specific lesser period of extension without any cavil, and possibly (and this I am not saying finally) that specifically the limited period of extension hence should not be challenged in the facts of this case. I am however leaving this issue specifically open because it is possible there may not be estoppel against law i.e. if the statute requires one year period of extension, merely because an employee has accepted a lesser period of probation than one year, the same should necessarily go against the employee.

14. That the termination letter is non-stigmatic is not an issue before me inasmuch as there is no dispute that termination letter dated 11.5.2011 terminates the services by a non-stigmatic order.

15. I would like to put on record that there are cases where actions of the school of termination of services of probationary employees can be construed as malafide because of the facts that in the past certain teachers were employed on probation basis by the school, they were terminated, again new teachers were employed on probation and who also were thereafter terminated by the school, and all these machinations are repeatedly resorted to in order to avoid giving statutory protection to teachers in terms of the Delhi School Education Act & Rules, 1973. Such facts however are not pleaded to exist in the present case and therefore that is not an issue in the present case which is called upon for decision. The aforesaid observations are made by me because sometimes issue with respect to satisfactory or non-satisfactory services of an employee have also to be looked into alongwith the aspect of allegations of non-satisfactory services of an employee also with the conduct of a school.

16. I may state that the issue with respect to entitlement of a school to terminate the services of a probationer in a probationary period has already been dealt by me in the case of Hamdard Public School Vs. Directorate of Education & Anr. in W.P. (C) 8652/2011 decided on 25.7.2013, and as per which judgment

the school has a right in terms of the appointment letter to terminate the services of an employee within the probationary period which ordinarily should not extend beyond 3 years. In the present case, termination has taken place well within the three years period i.e. effectively one year and 50 days after the appointment of the respondent no. 1 and hence there is no violation of Rule 105 of the Delhi School Education Act and Rules, 1973.

17. Before concluding I record that counsel for the employees did seek to contend that prior permission was required of the Director of Education before terminating the services of the probationary employee, however, in my opinion, since this issue was not argued before the Tribunal, I cannot allow it before this Court. Even assuming I allow the same, the issue is covered against the employees by 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, which hold that unaided private schools do not require permission of the Director of Education before terminating the services of its employees.

18. In view of the above, the writ petition is allowed. The impugned judgment of the Delhi School Tribunal dated 25.4.2012 is set aside and the termination letters issued by the petitioner no. 1-school with respect to the subject employees including the respondent no. 1 in each of the cases are affirmed. Parties are left to bear their own costs. Pursuant to the impugned judgment of the Delhi School Tribunal, certain amounts have been paid to the employees. Petitioner no. 1-school is given liberty to recover the same in accordance with law on the principle of restitution similar to Section 144 CPC including by filing appropriate proceedings before the Delhi School Tribunal.