

(2017) 02 DEL CK 0262

In the Delhi High Court

Case No : 8532 of 2014

**V.S. AGRICULTURE SENIOR SECONDARY SCHOOL?THROUGH ITS
MANAGER Vs DIRECTOR OF EDUCATION AND ANR**

Date of Decision : 07-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Delhi School Education Act, 1973, Section
8(2) - Terms and conditions of service of emplo

Citation : (2017) 02 DEL CK 0262

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Parvinder Chauhan, Nitin Jain, Gautam Narayan, Heena Dua, ?Vibha Mahajan

Judgement

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner/V.S. Agriculture Senior Secondary School, impugns the order of the respondent no. 1/Director of Education dated 21.11.2014 whereby the respondent no. 1/Directorate of Education has refused to grant approval to the order of the disciplinary authority as approved by the Managing Committee of the petitioner/school dated 13.6.2014 dismissing the respondent no. 2/Sh. Sompal from the services of the petitioner/school. I may note that after the school completes an inquiry report and the disciplinary authority passes an order for imposition of punishment, approval has to be sought of the Director of Education under Section 8(2) of the Delhi School Education Act, 1973. This is all the more so in the case of the petitioner/school which is an aided school i.e 95% of the finances of the petitioner/school are provided by the Director of Education which has passed the impugned order dated 21.11.2014. Requirement exists for approval of the Director of Education as clarified in the recent judgment of the Supreme Court in the case of Raj Kumar Vs. Director of Education and Others, (2016) 6 SCC 541.

2. This matter was argued for quite some time on the last date of hearing i.e

20.1.2017. Petitioner/school instead of inviting judgment from this Court took time for looking into the issue as to whether or not they should accept the order of the respondent no. 1/Directorate of Education. Accordingly, on 20.1.2017, the following order was passed:- "1. Learned counsel for the petitioner states that in the peculiar facts of this case he will take instructions from the petitioner as to what should be the punishment to be imposed upon the respondent no.2, even taking that all the allegations against the respondent no.2 are correct. Counsel for the petitioner states that he will bring the legal position to the knowledge of the management of the petitioner, and which petitioner only pays 5% of the monetary emoluments of an employee because petitioner is an aided institution receiving 95% of aid from the respondent no.1/Director of Education. 2. List on 7th February, 2017."

3. Today, counsel for the petitioner/school, and which is an aided school, states that the petitioner/school has given him instructions to argue the case on merits and invite a judgment from this Court.

4. Since the order which is challenged of the respondent no. 1/Directorate of Education dated 21.11.2014 is relevant, the same is reproduced as under:-
"GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

DIRECTORATE OF EDUCATION

OLD SECRETARIAT, DELHI - 110054

No DNWA/PB/243/2014/4239 DATED:- 21/11/2014

ORDER

Whereas, Sh. Sompal, Lab, Asstt, working in V.S. Agri. Sr. Sec. School, Khera Garhi, Delhi (Govt. aided school) was placed under suspension vide order No.F.VSA.481/2013 dated 31.08.2013d by the school authorities. A charge sheet was issued to him vide memorandum No. VSA 575/2013 dated 25.11.2013 by the above school. AND WHEREAS, as per minutes of the meeting of the DAC Sh. S.P. Maleyvar (Retd. Dy. Education officer), Dte. of Education was appointed as Inquiry Officer for conducting the inquiry. As per Inquiry Report dated 12.05.2014 submitted by the Inquiry Officer, the charges stand proved against the charged official Sh. Sompal.

AND WHEREAS, as per minutes of the meeting of Disciplinary Committee it recommended as under:

"After having carefully considered the nature of charges, the disciplinary authority is of the opinion that the end of justice would be met if the charged official is removed from service which shall not be disqualification for future employment in any other aided school."

AND WHEREAS, the manager, V.S. Agri. Sr.Sec. School vide his note dated 19.06.2014 submitted the file for requisite approval for the decision of the Disciplinary Authority regarding removal from Service in respect of Sh. Sompal,

Lab. Asstt.

AND WHEREAS, Sh. Sompal, Lab. Asstt. (under suspension) filed representations in the National Commission for Scheduled Castes regarding harassment from the above schools, non-payment of subsistence allowance, using caste related words against him, nonpayment of other financial benefits etc. Hearings were made in the Hon"ble Commission from time to time.

AND WHEREAS, during the course of hearing on 19.08.2014 the Commission has directed to finalize the inquiry case of Sh. Sompal within 15 days and send the Action Taken report to the Commission. The Commission also directed that before taking any decision in the case by the Competent Authority, a proper opportunity for personal hearing should be given to Sh. Sompal.

AND WHEREAS, Sh. Sompal was given opportunity for personal hearing by the competent authority on 11.09.2014 which he availed to submit his point of view.

AND WHEREAS, while forwarding the Inquiry Report in the matter of Sompal, Lab. Asstt., the DDE (NW-A) submitted her observation on the Inquiry Report in the matte, as under:

- i. The Inquiry Report in respect of Sh. Sompal dated 12.05.201 and proceedings are there, but supporting documents are not available on record/in file.
- ii. As per the Procedure for withdrawal of PF Loan from the Bank, submitted by AAO(DNWA), the GPF of the staff of the school were maintained by the bank in the separate bank account in the name of the Manager of the school and the concerned staff/employee and for any withdrawal from the said account, signatures of the manager and concerned employee is required.
- iii. The relevant file was given to Sh. Sompal, Lab. Asstt, and he directly approached to the Bank.
- iv. Whether Sh. Sompal was alone or someone (staff from the school) was with him to withdraw the money form bank.
- v. Loan was approved by the school management, the file was taken by hand, personally by Sh. Sompal, and loan money was directly taken from bank by Sh. Sompal, but the school authorities have not taken action against the Bank, neither any proper FIR has been lodged in this case.
- vi. There figures no embezzlement in money, but the procedure manipulation on the part of Sh. Sompal.

"In view of the above, the punishment proposed by the Disciplinary authority to remove the charged official from service, cannot be recommended. Instead of that the Competent Authority may consider from any less punishment or withholding increment(s), or as considered for, against Sh. Sompal, Lab. Asstt. (under suspension)."

AND WHEREAS, from the foregoing observations, it is observed that there is

administrative lapse on the part of the Management of the V.S. Agriculture School, Khera Garhi, Delhi in handing over the concerned files and cheque to Sh. Sompal, Lab. Asstt. Even proper FIR has neither been lodged by the school authorities nor by the concerned bank against Sh. Sompal, Lab. Asstt. for any kind of embezzlement of Government money. As regards other charges no supportive documents are available on record.

Now, therefore, I Oadmini Singla, Director (Education), is of the opinion that the penalty of removal from service upon Sh. Sompal, Lab.

Assistant, is not commensurate with the charges and recommend that the Managing Committee of V.S. Agri. Sr. Sec. School, Khera Garhi, Delhi may consider imposing minor penalty as defined under rule 117(a) of

DSEAR, 1973.

(PADMINI SINGLA)

DIRECTOR (EDUCATION)"

(underlining added)

5. The relevant proceedings of the minutes of meeting of the Managing Committee dated 13.6.2014 approving the order of the disciplinary authority reads as under:- "Minutes of the meeting held on 13/06/2014 dated 10.30 A.M. of the Disciplinary Authority Committee in respect of Sh. Sompal, Lab Asstt. (Under Suspension), V.S. Agriculture Sr. Sec. School, Khera Garhi, Delhi. The following member attending the same.

1. Sh. Krishan Rana (Chairman)
2. Sh. K.K.A. Sorte D.E's. Nominee, (Member)
3. Sh. Manish Kumar Member (Manager)
4. Sh. Omvir Shokeen (Principal), Member
5. Sh. Satish Kumar (Teachers Representative), Member

The report of Inquiry along with the notice of proposed penalty was sent to 2014. In response to the same, Sh. Sompal alleged that "the above referred letter do not contain the dispatch no. and name of signature with seal of the institution vide his letter dated 02.06.2014". On the other hand he is writing to the Manager of the school with the intension to stick at anything to serve his purpose. Even then one more opportunity was given to Sh. Sompal vide this office latter dated 04.06.2014 through which it was directed to make representation, if any within seven days of the receipt of the same when this matter has been hanging on file for a long time. He again tried to sullied the solid worth by slander vide his letter dated 09.06.2014, he only wants to make mountain of mole hill and has not replied any of the letter till now. When it has already been communicated to him vide this office letter dated 04.06.2014 that no further opportunity will be given

to him at action deemed fit will be taken. All these are delaying tactics of the C.O. and cannot be adhered to being having no weight and base at this stage.

Even after the expiry of more than 15 days from the receipt of the copy of Inquiry report, Sh. Sompal has failed to make any representation against the proposed penalty. Thus the Disciplinary Authority has come to the considered the gravity of charges. After discussion the Disciplinary Authority has come to the considered conclusion that in view of the said proved charges the end of justice would be met, if as proposed, penalty of "Removal from services which shall not be disqualification for further employment in any Aided School." Is imposed upon Sh. Sompal. It is also decided that the said decision of the Disciplinary Authority be communicated after getting the approval of the Director of Education, Govt. Of N.C.T. of Delhi to the all concerned including the Managing Committee of the School, Sh. Sompal and the concerned officials/officers of the Directorate of Education, Govt. of NCT, Delhi. It is further decided that the necessary communication on behalf of the Disciplinary Authority, be issued by Sh. Manish Kumar, Manger of the school as well as member of the Disciplinary Authority Committee.

Sh. Krishan Rana Sh. K.K. Sorte Sh. Manish Kumar

(Chairman) (D.E's. Nominee) (Manager)

Sh. Omvir Shokeen Sh. Satish Kumar

(Principal/H.O.S.) (Teacher Representative)"

6. The petitioner/school in view of the Managing Committee decision dated 13.6.04 accordingly sought approval from the respondent no. 1/Directorate of Education in terms of its representation dated 19.6.2014 and which representation reads as under:- "Subject:-Approval of imposing major penalty of (Dismissal form service) in r/o Sh. Som Pal Lab Asstt. (Under suspension) Sh. Som Pal, Lab-Assistant, conducted himself inappropriately from the time he joined service at this school:

- 1) He forged his police verification report by not disclosing the facts about criminal case against him pending in court of law.
- 2) Failed to obey instructions of higher authorities issued time to time
- 3) Forged document in order to misappropriate PF advance amount.

Sh. Sompal was placed under suspension on 31.08.2013 and subsequently was chargesheeted under rule 120 of the Delhi School Education Rules, 1973, on 25.11.2013. Sh. S.P. Maleyvar was appointed as Inquiry Officer to inquire into the charges so leveled. The charged official did not co-operate by absenting himself at the hearings continuously (25.3.2014 onwards) after attending a few initially. Nevertheless, he was given sufficient opportunities to place before the Inquiry Officer his side of the proceedings by either himself or through his Defence Assistant, but he did neither. The Inquiry Officer was, thus, left with no

choice but to proceed ex-parte.

As required under Rule 120 of the Delhi School Education Rules, 1973, an inquiry was held in the charges against Sh. Som Pal, Lab. Asstt. The Inquiry Officer, after providing adequate opportunities, found all the charges leveled as true and held him guilty on all counts.

Incompliance of the provisions of rule 120 (1)(D)(i,ii) a show cause notice dated 19/05/2014 was given to Sh. Som Pal along with the copy of Inquiry Report dated 12/05/2014, through which he was asked to submit his representation as he may wish to make against the proposed action within specified time, but he failed to make his such representation for more than 21 days where he was asked to represent within 15 days on the receipt of the said notice.

This, therefore, stands proved beyond doubt that Sh. Som Pal, Lab. Asstt. Committed the offences knowing full well that all his acts were against norms and rules and may attract severest punishment.

The DAC has thus, after astute deliberations, decided that Sh. Som Pal, Lab. Asstt. be dismissed from service with immediate effect, as retaining him shall prove detrimental to the interests of not only the School, but of the other staff members and the students as well.

The facts and the decision of the Disciplinary Authority duly concurred by the Managing Committee of the school are, hereby, submitted for requisite approval please.

Please find enclosed herewith the case file of Disciplinary Proceedings against Sh. Sompal for obtaining the approval of Director of Education Delhi the enclosures are as under.

1. Suspension order of the Managing Committee at page No. 72/c- 73/c
2. Approval of suspension by worthy Director of Education page No. 71/c
3. Approval of extension of suspension by worthy Director of Education at page No. 70/c.
4. Charge Sheet At Page No. 60/c to 69/c
5. Reply of charge sheet At page No. 56/C to 59/c
6. Daily Order Sheet of Inquiry Officer along with Inquiry Report, At page No. 24/c to 55/c
7. Minutes of DAC at page no 11/c to 23/c
8. Copy of Show cause notice At page no. 5/c to 10/c
9. Copy of Minutes, dated 16/06/2014 of Managing Committee of the school. At page No. 1/c to 4/c

Sd/- 19.06.2014"

7. A reading of the impugned order of the respondent no. 1/Director of Education dated 21.11.2014 shows that the respondent no. 1/Director of Education has accepted the findings of the Inquiry Officer and by the impugned order has only asked the petitioner/school to revisit the extreme punishment of dismissal of services imposed upon the respondent no. 2 in the facts of the present case.

8. Before turning to the facts of the present case it needs to be observed that surely the respondent no. 1/Director of Education, and which finances the petitioner/school to the extent of 95%, would have a very natural say, of course a legal say, in the working of the petitioner/school which only provides 5% of the entire finances for running of the petitioner/school. The respondent no. 1/Director of Education has not asked for exonerating the respondent no.2, but it has asked the petitioner/school to impose a lesser punishment such as withholding of increment, etc, i.e a minor penalty and not a major penalty under the Delhi School Education Act.

9. In order to decide whether the respondent no. 1/Directorate of Education was justified in passing the impugned order for the petitioner/school only to impose a minor penalty, and not major penalty for removal of services, it is seen that there were no charges of embezzlement of money against the respondent no. 2. All that happened in the present case was that respondent no. 2 as an employee of the petitioner/school was entitled to take loan against his provident fund and the respondent no. 2 by a formal application, sought loan against his provident fund account. To this approval was given by the lower authority but the petitioner/school claimed that this aspect was tampered with and without obtaining final approval, the respondent no. 2 directly took the file to the bank and obtained the loan. Therefore, it is not a case of any embezzlement of funds by respondent no. 2 of the moneys either of the petitioner/school or of the public or of the students, etc etc. Some of the other charges against the petitioner were also mostly minor of not giving his residential address or not giving the details of his family members. The height of malice of the petitioner/school becomes clear from the fact that one of the charges against the respondent no. 2 was that the respondent no. 2 at the time of joining his services, way back in 1993, did not give the character certificate from the competent authority. There is also a charge against the petitioner with respect to some personal disputes between him and one Ms. Geeta, who claims to be his wife.

10. Therefore, it is seen that out of the four charges against the respondent no. 2, two of the charges were extremely minor of not supplying of residential address or details of his family members and another charge pertained to a personal relationship which was in no manner within the realm of consideration of the petitioner/school. The only charge, therefore, was of the respondent no. 2 getting a loan from his provident fund account, which was of course with initial approval, but not with final approval as claimed by the petitioner/school. Surely, in my opinion, even if all the charges against the respondent no. 2 are

established in the inquiry proceedings, and which report of the Inquiry Officer has been accepted by the respondent no. 1/Directorate of Education in his impugned order dated 21.11.2014, yet, to impose the most drastic penalty and harshest of penalties of dismissal of respondent no. 2 from services was completely unjustified in the facts of the present case and which penalty shocks the judicial conscious of this Court. Obviously, if this penalty shocks the judicial conscious of this Court it also has found unacceptability to the judicial conscience of the respondent no. 1/Director of Education which has passed the impugned order dated 21.11.2014 declining the request to grant approval to the penalty order of dismissal of respondent no. 2 from his services with the petitioner/school. I have already noted above that respondent no. 1/Director of Education gives as much as 95% of finances for the petitioner/school.

11. Learned counsel for the petitioner finally contended that once this Court sets aside the order of the disciplinary authority imposing the penalty of removal from services, then the petitioner/school must be given the entitlement to impose appropriate punishment, but really this argument is indeed a very shallow argument because this Court is looking at the challenge made by the petitioner/school to the order of the respondent no. 1/Director of Education dated 21.11.2014, and which order itself does not impose any punishment but only remands the matter to the petitioner/school to pass appropriate orders of punishment as a minor penalty. I, therefore, fail to understand as to how this totally insubstantial argument has been raised on behalf of the petitioner/school because the only scope of this writ petition is examining the validity of the order dated 21.11.2014 passed by the respondent no. 1/Directorate of Education challenged by the petitioner/school before this Court by the present writ petition.

12. To complete narration of the arguments urged on behalf of the petitioner/school, I note that the petitioner/school urged that the respondent no. 1/Director of Education wrongly records in the impugned order that documents are not filed by the petitioner, and which is a wrong observation as the documents were attached by the petitioner to its letter dated 19.6.2014, and even taking this argument as correct, the same will not result in negating the other discussion above which stands for sustaining the impugned order of the respondent no. 1/ Director of Education.

13. In view of the above, this writ petition, being a complete abuse of process of law, and thereby unnecessarily enmeshing the respondent no. 1/Directorate of Education as also the respondent no. 2/employee in this litigation, the same is accordingly dismissed with costs of Rs.50,000/-, out of which Rs.25,000/- costs shall be paid by the petitioner/school to respondent no. 1/ Director of Education out of the 5% funding which is given by the school itself and remaining costs of Rs.25,000/- will be paid by the petitioner/school to respondent no. 2 and which again will be given from the 5% finances of the petitioner/school itself.

14. The writ petition is accordingly dismissed in terms of the aforesaid observations.