

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.1853/2008**

% **Date of Decision : 15.05.2008**

S.M. Arya Public School & Another Petitioners
Through: Mr.Anshul Tyagi, Advocate.

Versus

Rita Saklani & Another Respondents
Through : Mrs.Rita Saklani, respondent No.1
in person.
Mr.Neeraj Yadav, Advocate for the
respondent No.2

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner has challenged the order dated 29th October, 2007 of Delhi School Tribunal setting aside the order of termination dated 6th April, 1998 of the respondent No.1 and directing the petitioners to reinstate her with all consequential benefits and holding that the respondent No.1 shall be entitled 50% of the arrears of salary from 6th April, 1998 till 29th October, 2007 and full salary and other benefits from 29th October, 2007, the date of the order of Delhi School Tribunal.

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2. The respondent No.1 was appointed as a Post Graduate Teacher with effect from 15th July, 1991 and was confirmed on 16th July, 1992, however, she was terminated vide letter dated 6th April, 1998. While terminating the services of the respondent No.1, the petitioners relied on a term of the contract stipulating that after confirmation of the services of the respondent No.1 she could be terminated by giving her a three months' notice.

3. Aggrieved by her termination, respondent No.1 made a representation dated 7th April, 1998 and the petitioners in response sent a letter dated 13th April, 1998 informing the respondent No.1 that a cheque had been deposited in her account. Respondent No.1 accepted payment of bonus only and did not accept the arrears of increment as only part payment was made and challenged her termination on the ground that the termination clause in the appointment letter was void under Section 23 of the Contract Act, 1872 and the petitioners could not resort to the same in contravention of the provisions of the Delhi School Education Act and that a confirmed teacher of a public school is not a contract employee only and prior approval of the Director of Education was required and the termination clause of giving only a notice even if it was valid could be invoked only in very exceptional circumstances. The respondent no.1 also contended that her termination is not simple termination as various allegations have been made against her.

4. The respondent No.1 challenged the order before Delhi School Tribunal under Section 8(3) read with Section 11 of Delhi School Education Act, 1973. The petitioners before the Tribunal contended that the respondent No.1 has not come to the Tribunal with clean hands as her record shows her conduct while in service as she had been frequently defying the code of conduct meant for teachers and she was responsible for spoiling the discipline and work atmosphere amongst other teachers in school and she was in the habit of writing letters and submitting representations on one pretext or the other and her letters/representations were never considered by the Managing Committee because they were all against the rules for the working teachers. It was also alleged that the respondent No.1 was in the habit of clashing with the Principal, sending representations and replies in a language not known to the discipline of the school and because of her misconduct and filthy language used by her, it was decided to terminate her services vide letter dated 6th April, 1998. It was also alleged against the respondent No.1 that she was keeping the entire staff at ransom by her misconduct and for her removal all the formalities were followed and thereafter valid decision for her termination was taken and a cheque for three months' salary was also enclosed with the letter of her termination which was returned by the respondent No.1 without any reason so the cheque was deposited in her bank account.

5. After considering the respective contentions of the parties, the Tribunal has held that major penalty of removal of service could not be awarded by the petitioners/school without following the procedure prescribed in Rule 120 of Delhi School Education Rule, 1973. It was also held that the Rule 120 of DSER, 1973 is applicable to the case of the respondent no.1 and, therefore, set aside the order of termination and reinstated the respondent No.1.

6. Learned counsel for the petitioner has contended relying on Kathuria Public School and Others v. Director of Education & Another, 2005 VI AD (Delhi) 893 that the termination of the respondent No.1 was termination simplicitor as no allegations have been made against the respondent No.1 in the letter of termination dated 6th April, 1998 and there is no need for private unaided non-minority educational institutions to seek approval of any government authority before taking such action. Consequently in accordance with terms, a domestic inquiry was not taken up under the provisions of Delhi School Education Act, 1973 and Delhi School Education Rules, 1973 and the petitioners had right to terminate the services of respondent No.1 by giving three months' notice.

7. The Tribunal has relied on the decisions of this Court in case of Ms.Leela Ajwani, another teacher of the petitioners' school whose services were terminated after she had worked for 15 years. The school in her case also had invoked terms and conditions of the appointment

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letter. In the appeal filed by the said teacher, her termination was held to be invalid and she was reinstated with consequential benefits. Against the order of the Tribunal in case of Ms.Leela Ajwani, another writ petition being W.P.C. No.1/1999 titled The Management of S.M. Arya Public School v. Government of NCT of Delhi & Others was filed. The writ petition was, however, dismissed holding that termination of the teacher by the petitioner school was contrary to the decision of Supreme Court in Central Inland Water Transport Corporation Limited v. Brojo Natha Ganguly, AIR 1986 SC 1571 and Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others, AIR 1991 SC 101. The writ petition filed by the petitioners in the case of Smt. Leela Ajwani was dismissed holding that the orders passed by the Tribunal in the case of Smt.Leela Ajwani did not require any interference. Similar grounds as raised by the petitioners in the present petition were declined and their earlier writ petition was dismissed.

8. The learned counsel for the petitioner relying on the Kathuria Public School (supra) has contended that no permission from the Director of Education was required and the services of the respondent no.1 could be terminated merely by giving notice, though there had been allegation of the misconduct which were not referred to while terminating her services.

9. In Kathuria Public School (supra), a division bench of this Court had rather held that though in case of a private institution the

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relationship between the management and the employee is contractual in nature, however, any action which is to be taken should be in pursuance to a fair disciplinary inquiry. Regarding the question as to who would judge as to whether inquiry is fair or not, it was held that aggrieved teachers could file an appeal against the decision of the management concerning the disciplinary action or termination of service. Regarding the restriction of the jurisdiction of the Tribunal, it was held that “no restriction has been placed on the scope and ambit of the consideration of the grievance of the teachers or employees of the Tribunal”. The Division Bench on page 907 had held as under:

33. It has been emphasised that in case of a private institution, the relationship between the management and employees is contractual in nature. **The action has to take place in pursuance to a fair disciplinary enquiry. The question, however, remains as to who would judge as to whether the enquiry is fair or not.** For this purpose, it has been observed that the State Government shall determine in consultation with the High Court, the judicial forum, in which the aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of services. Thus, to facilitate the redressal of grievances of teachers and employees, a special forum is required to be provided not leaving such a person to the recourse of normal civil proceedings. In the enactment in question, such a Tribunal is already provided though the power is restricted as aforesaid only to dismissal, removal or reduction in rank. However, it is in these cases only that sub-section (2) of Section 8 provides for prior approval of the Director. This is, of course, apart from the issue of suspension where also such prior approval or ex-post facto approval within the stipulated time is required. Thus, the remedy has been provided through a judicial forum and it is not the State Authorities which have to act as an intervening confirming authority. In fact, the Supreme Court has gone as far as to state that where there are no such Tribunals in existence, the judicial forum shall be

provided and till such a specialised Tribunal is set up, the right of filing the appeal would lie before the District Judge or the Additional District Judge as notified by the Government. Thus, the judgment itself ensures the creation of a judicial forum.

10. The Tribunal has considered the pleas and contentions and has rejected the plea of the petitioners that the termination of the respondent No.1 is a termination simplicitor. As per the order of the Tribunal, it is apparent that the petitioner school made the allegations against the respondent No.1 that she had been defying the code of conduct meant for teachers and she was in the habit of writing letters and submitting representations and she was clashing with the Principal and the language used by her was filthy and because of her misconduct the termination letter dated 6th April, 1998 was issued. In view of the petitioners' specific allegations about the respondent No.1's misconduct the plea now raised before this Court that the petitioner's termination was simplicitor in terms of the contract cannot be accepted nor the termination can be justified that this is termination simplicitor.

11. The petitioners have made the allegations of misconduct and major penalty of removal from service could not be awarded by petitioners/ school without following the procedure prescribed in Rule 120 of Delhi School Education Rules, 1973 or without conducting a fair inquiry. In the circumstances, the plea of the petitioner of alleged simplicitor termination is contrary to their own stand and cannot be accepted.

12. Learned counsel for the petitioner is unable to show any manifest error or perversity in the order of Delhi School Tribunal dated 29th October, 2007 so as to entail interference by this Court under Article 226 of the Constitution of India. The writ petition is, therefore, without any merit and it is dismissed.

CM No.5529/2008

In view of the orders passed in the writ petition, the application for interim direction is, therefore, also dismissed.

May 15, 2008.
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ANIL KUMAR, J.