

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

+ **W.P(C) No.4314/2008**

% Date of Decision: 30.05.2008

Apeejay School

..... Petitioner
Through: Mr.H.L.Tiku, Sr.Advocate with
Mr.Thakur Sumit, Advocate.

Versus

Suresh Chander Kalra

..... Respondent
Through : Nemo.

CORAM :-

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

- | | |
|--|-----|
| 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.

1. The petitioner has impugned the order dated 17th December, 2007 of Delhi School Tribunal directing the petitioner school to allow the respondent to join his services and directing the petitioner to pay his arrears of salary along with other consequential benefits.

2. The respondent had contended that he was employed with petitioner school with effect from 1st July, 1998 as an Internal Auditor and he was granted pay scale of Rs.5500-175-9000 on 1st January,

2000 with other allowances and he was confirmed in service on 1st January, 2001.

3. The assertion of the respondent was that later on the management of the school started harassing him and appointed another Accounts Officer junior to the respondent in designation and even asked the respondent to report to him and the entire work was withdrawn from the respondent and given to the newly appointed Accounts officer. It was contended by the respondent that on 9th October, 2004 he was called by the Chairman of the petitioner school and he was asked to accept the transfer from school to Apeejay Education Society, which was, however, denied by the respondent and thereafter his services were terminated. According to the petitioner the respondent had abandoned his work.

4. The plea of the petitioner was that the respondent absented from work from the office of Society with effect from 11th October, 2004 without any information and he even failed to collect his salary for September, 2004 despite various calls to him to this effect. It is contended by the petitioner that the respondent was an employee of the Society and he was sent on deputation to school at Sheikh Sarai with effect from 18th June, 1998. It is further asserted that prior thereto the respondent was deputed to the school at Saket by the Society from October, 1997 to October, 1998. It was also denied by the petitioner

that the services of the respondent were confirmed as Internal Auditor with effect from 1st January, 2001.

5. The respondent had filed an appeal against his termination which was allowed by the Tribunal. The Tribunal considered the respective contentions and relied on the copy of the service book on record which showed that the respondent was appointed on 1st January, 2000 and was confirmed on 1st January, 2001 as Internal Auditor at Apeejay School, Sheikh Sarai, New Delhi. Reliance was also placed by the Tribunal on Form No.16 which showed that the respondent was an employee of Apeejay School for the year 2001-2002, 2002-2003 and 2003-2004 as well as for 2004-2005.

6. The staff statement of Apeejay Sheikh Sarai, New Delhi, also revealed the name of respondent as one of the employees of the School as Internal Auditor and the date of appointment was shown as 1st January, 2000. The Tribunal also noticed the recommendation of the Principal of the School addressed to the Chairman recommending that the respondent be appointed as an Internal Auditor-cum-Accountant in the School subsequent to relieving of Mr. Kapil. Another document annexure P-11 had also been relied on which showed that the respondent was appointed as Internal Auditor with effect from 1st July, 1998 and his consolidated salary was Rs.9,000/- per month and with effect from the year 2000 he was put on probation in the scale of 5500-

175-9000. The documents relied on by the Tribunal were not disputed before the Tribunal and cannot be disputed by the petitioner even now in the facts and circumstances.

7. Learned counsel for the petitioner has contended that the respondent was an employee of the Society and he was sent on deputation to the School run by the Society. If the respondent was sent on deputation on the premise that the Society is a different entity than the School which is being run by them, there should have been an order sending him on deputation. However, no such evidence has been produced to show that the respondent was an employee of the Society and not of the School. In the circumstances, it is difficult to infer that the order dated 17th December, 2007 has any manifest error or perversity so as to entail interference by this Court. The High Court while exercising the power of judicial review, can not normally substitute its own conclusions on the facts with the conclusions drawn by the Tribunal. The objective of judicial review is to ascertain that a person received a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The court should not interfere with the Tribunal's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the Court, in the same that it is in defiance of logic or moral standards. The Tribunal has inferred that the respondent is in an employee of the school and not of the society on the basis of the documents produced

by the parties which are admitted by the petitioner. In the circumstances it cannot be inferred that the Tribunal has arrived at the finding of facts without evidence or ignoring any material document.

8. Learned counsel for the petitioner next has contended that the Tribunal does not have jurisdiction to award the arrears of salary along with other consequential benefits and could not direct the release of the same and has relied on 43 (1991) DLT 139, The Manager, Arya Samaj Girls Higher Secondary School and Another v. Sunrita Thakur holding that the perusal of Section 8(3), Section 11(1)(6) of Delhi School Education Act and Rule 118, 120 and 121 (3) reveals that the Tribunal has no jurisdiction to make any order with regard to the salary and allowance to be paid to the employee on reinstatement as a result of the appeal.

9. A Division Bench of this Court in Kathuria Public School and Ors Vs. Director of Education and Anr, 2005 VI AD (Delhi) 893 relying on T.M.A.Pai Foundation Vs. State of Karnataka, AIR 2003 SC 345 had held that it is advisable that the specialized Tribunal constituted should look after the **legal matters relating to hearing of grievances of teachers and employees**. The Division Bench relying on T.M.A.Pai Foundation (Supra) had held that specialized Tribunal should hear **any** grievance of the teacher. It was further held that no restriction has been placed on the scope and ambit of the consideration of the grievances of

W.P(C) No.4314/2008 Page **5** of **8**

the teacher or employee by the Tribunal and consequently the Tribunal should be able to hear all the grievances including in respect of suspension of a teacher or an employee and, therefore, the Tribunal constituted under the Delhi School Education Act should be able to hear all the grievances of the staff and teachers and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act. The Division Bench in para 42 at page 910 had held as under:-

“42. No restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal. Under the said Act in question, the Tribunal is already constituted. Thus, all that is to be done is that the Tribunal should be able to hear all grievances including in respect of suspension by a teacher or an employee. Taking into consideration the observations made by the Apex Court in T.M.A.Pai Foundation case (supra), we are of the considered view that pending necessary legislative action by the State, **the Tribunal constituted should be able to hear all grievances of the staff and teacher and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act.** The result would be that if a teacher is aggrieved by a suspension order or its prolongation, the grievance can be made before the Tribunal depending upon the fact and circumstances of the case.”

10. This is not disputed that pursuant to the ratio of Kathuria Public School (supra), it is accepted that the Tribunal has power to adjudicate all the disputes pertaining to the employees of the school. The respondent is also an employee of the School and since the order of his dismissal has been set aside by the Tribunal, in the facts and circumstances, the Tribunal shall be entitled to award arrears of salary along with consequential benefits. On the basis of the ratio of The Manager, Arya Samaj Girls Higher Secondary School and another (supra), it cannot be held that the Tribunal cannot award the arrears of salary and other consequential benefits on reinstatement. Rule 120, 121 will not be applicable in the facts of the present case also as the respondent had not been under suspension and thereafter had not been compulsory retired from service. The case of the petitioner has been that the respondent had been absenting from work from the office of Apeejay Education Society with effect from 11th October, 2004 without any information or prior permission with some oblique motive so it was taken that the respondent has abandoned the job. The petitioner has denied that the respondent was an employee with the school and rather contended that he was the employee of the Society. In the circumstances, it is not the managing committee to decide about the salary and other benefits on reinstatement of the respondent. Consequently it will not be appropriate to set aside the order of the Delhi School Tribunal on this ground.

11. The writ petition in the facts and circumstances is without any merit. The writ petition is therefore, dismissed.

May 30, 2008
'Dev'

ANIL KUMAR, J.