

REPORTABLE

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

+ **LETTERS PATENT APPEAL No. 29/2007**

Date of decision: March 20, 2009

THE MGT. HINDU EDUCATIONAL SOCIETY
SHRI KURUKESHETRA (REGD) AND ANOTHER Appellants
Through, Mr. Rakesh Gogna, Mr.Sanjay Sharma
and Mr.Sunil Ojha, Advocates.

versus

GOVT. OF N.C.T. OF DELHI AND ORS. Respondents
Through Mr. Rohit Madan, Advocate for
Directorate of Education.
Mr.V.K.Tandon, advocate for private respondent.

CORAM:

HON'BLE MR. JUSTICE AJIT PRAKASH SHAH, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

- | | |
|--|------|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | |
| 2. To be referred to the Reporter or not ? | Yes. |
| 3. Whether the judgment should be reported in the Digest ? | Yes. |

SANJIV KHANNA, J:

1. The Management Hindu Educational Society Shri Kurukeshetra, the appellant is a society registered under the Societies Registration Act and is managing and running a co-educational school.
2. Ms. Prabha Tyagi, respondent No. 3 herein in 1994 was appointed as a teacher in the said school. Respondent No. 3's services were terminated on 15th October, 1997.
3. Aggrieved, respondent No. 3 filed a petition before the Delhi School Education Tribunal. Relying upon Rule 105 of the Delhi School Education Rules, 1973 (hereinafter referred to as the Rules, for short), Ld. Tribunal

held that the appellant herein had wrongly terminated the services of the respondent No. 3 without prior approval of the Director as stipulated in the said Rule. The Tribunal also held that the appointment of respondent No. 3 was not ad hoc/temporary. It was observed that at best the appointment was on probation and even if the appointment was on probation, prior approval under Rule 105(1) of the Director was required.

4. Learned Single Judge has dismissed the writ petition filed by the appellant by the judgment under appeal dated 28th August, 2006 holding that the appointment of the respondent No. 3 was on probation but on regular basis and governed by Rule 105 of the Rules. It was also held that the respondent No. 3 stood confirmed after completing one year of probation and the termination letter was, therefore, illegal.

5. The reasoning of the Tribunal and the learned single Judge relying upon Rule 105 of the Rules cannot be accepted in view of the Division Bench decision of this Court in ***Kathuria Public School Vs. Director of Education and Another***, reported in 123 (2005) DLT 89 (DB). This Court has struck down provisions of Sections 8(2) and 8(4) of the Delhi School Education Act, 1973 (herein after referred to as the Act, for short) and Rules 115(2) and (5), 120(1)(d)(iii) and (iv), 120(2) of the Rules requiring prior and ex post facto approval from the Directorate of Education holding that the same would not be applicable to private unaided schools. It has also been held that Section 8(5) of the Act would not be applicable to unaided schools. While doing so, the Division Bench of this Court has relied upon the decision of the Supreme Court in the case of ***T.M.A. Pai Foundation and Others Vs. State of Karnataka and***

Others, reported in (2002) 8 SCC 481. Judgment of the Supreme court in ***P.A. Inamdar Vs. State of Maharashtra***, reported in (2005) 6 SCC 537, supports the above view taken in ***Kathuria Public School*** (supra). In these circumstances, in normal course the appeal is to be allowed and the matter has to be remanded back to the School Tribunal to be decided in the light of the observations made by this Court in the case of ***Kathuria Public School*** (supra). We may notice here observations made by the Division Bench in ***Kathuria Public School*** (supra) with regard to power and scope of the School Tribunal, which read as under:-

"39. It has been observed in T.M.A. Pai Foundation's case (supra) that there has to be freedom for disciplinary action. It cannot, thus, be said that a disciplinary authority cannot proceed till such time as the Director nominates its representative. Further, in case of an action against the Head of school, the Director has a further right to nominate the Head of any other school making the nomination of two Members out of five Members Committee. It may be noticed that on the Managing Committee as it is there are representatives of the Director of Education. The object of Rule 118 of the said Rules seems to broad base the disciplinary authority. We see nothing wrong or unconstitutional with this provision inasmuch as it facilitates an impartial inquiry. However, it is clarified that in case of inordinate delay and failure of the Directorate of Education to nominate the Member of disciplinary authority, the whole matter is not required to be kept in abeyance and the disciplinary authority should be able to proceed with the matter in issue. We may observe that a period of two weeks from the date of intimation should be sufficient time for the Directorate of Education to nominate its Member. Not only this, the ultimate power really vests with the Managing Committee and, thus, the constitution of disciplinary authority does not in any manner take away the powers of the Managing Committee to take necessary action in matters of discipline relating to teachers and

employees. Thus, the provision though not unconstitutional or in conflict with T.M.A. Pai Foundation's case (supra) had to be read in the manner provided aforesaid.

40. xxxxxx

41. xxxxxx

42. 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's 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 facts and circumstances of the case." (Emphasis supplied)

6. However, learned counsel for the parties, have drawn our attention to the letter dated 15th October, 1997 passed by the appellant to terminate the services of the respondent No. 3. The said letter reads as under:-

"Keeping in view your work and conduct in the recent past the management is fully satisfied that your continuation as teacher in the school is hazardous for the welfare of the school and its children so it has been decided to terminate your services with immediate effect. In order to avoid any black spot affecting your future prospect it has been decided to avoid giving any details of the wrong committed by you, warranting this disciplinary action. Even otherwise in the case of an adhoc teacher, no other formality is due. Take notice that you will paid wages only upto 14th October, 1997 because on 15th October, 1997 you made illegal and immoral interference above your entry of leave by writing the time of your arrival and signatures falsely you may collect

your dues within seven days from the time of service of this notice of termination." (Emphasis supplied)

7. The said letter, in our opinion, is clearly stigmatic and the respondent No. 3 has been punished by terminating her services. It is not the case of termination of a probationer *simpliciter*. The punitive nature of the said letter and the stigma attached is clear. In ***Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences***, reported in (1999) 3 SCC 60, the Supreme Court had held that whenever a probationer challenges his termination, the first task is to apply the test of stigma or the "form test". If the order survives this examination, the "substance" of the termination has to be found out. Referring to the question of stigma the Supreme Court in ***Abhijit Gupta Vs. S.N.B. National Centre Basic Sciences***, reported in (2006) 4 SCC 469, has held that the stigma cast should be relating to personal character of the probationer and not his capacity to work and it was observed:

"14. The real test to be applied in a situation where an employee is removed by an innocuous order of termination is: Is he discharged as unsuitable or is he punished for his misconduct? In *Allahabad Bank Officers' Assn. v. Allahabad Bank* this Court was considering a challenge to a compulsory retirement and formulated a practical test to answer the question posed above. This Court (*vide* para 17) observed that if the order of compulsory retirement from the service casts a stigma in the sense that it contains a statement casting aspersion on his conduct or his character, then it can be treated as an order of punishment but not if it merely amounts to highlighting the unsuitability of the employee. As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service."

8. Applying the said test to the averments made in the termination letter it is apparent that it makes reference to personal character of the respondent and alleged misconduct on her part. The termination letter is stigmatic and punitive. Admittedly in the present case no disciplinary enquiry was held and no disciplinary proceedings were initiated. No charge sheet was given. Thus the termination order is difficult to sustain.

9. On the question of appointment of the respondent No. 3, learned Tribunal after considering evidence on record has held that she was appointed on regular basis. The appellant has not placed on record the advertisement issued in 1994 pursuant to which the respondent No. 3 was appointed or the so-called appointment letter/terms of appointment given to her in 1997 pursuant to the alleged fresh application. There is no appointment letter on record. The respondent No. 3 has placed before us photocopy of advertisement of the appellant published on 26th June, 1994. The said advertisement does not refer to any casual or temporary vacancies. The two receipts placed on record by the appellant are somewhat contradictory. In the first receipt, the words ad hoc/part time/daily wagers have not been struck off but in the second receipt the words part time/daily wagers have been struck off and it is stated that the respondent No. 3 was appointed on ad hoc basis. The appellant has also placed on record letter dated 3rd July, 1997 written by the respondent No. 3 that teachers of her batch have been regularized and her period on ad hoc basis should also be regularized to meet the ends of justice. This letter and the two contradictory receipts do not conclusively show and establish that the respondent No. 3 was appointed on ad hoc basis or for a

fixed term. The respondent No. 3 may have written a letter for regularization as she was being paid a fixed remuneration as a teacher. Further, the termination of the respondent No. 3 vide letter dated 15th October, 1997 has been held above is by way of punishment and therefore the question whether appointment of the appellant was adhoc is meaningless.

10. In these circumstances, we feel ends of justice would be met in case the appellant are asked to pay compensation to respondent No. 3 and we refrain from remanding the matter back to the School Tribunal after period of more than ten years. The termination relates to year 1997. The respondent No. 3 had worked for about three years from 1994 till 1997. She is M.A. and M.Ed. and is, therefore, capable of finding employment in a suitable school. During the last ten years, the appellant and the respondent No. 3 have been involved in this bitter litigation. The Supreme Court in the case of ***Talwara Cooperative Credit and Service Society Limited Vs. Sushil Kumar***, reported in 2008 (13) Scale 24 has examined the question whether and in which case relief of reinstatement and back wages should be granted. It has been held that grant of back wages and relief of reinstatement is not automatic. Length of service rendered by the employee is one of the relevant consideration and qualifications, age etc., and whether or not the employee can get another employment are the other relevant considerations.

11. Keeping all these aspects in mind, we feel that the appellant should pay compensation of Rs.4,00,000/- to the respondent No. 3 instead of relief of reinstatement and back wages. While doing so, we have taken

into consideration the statement made by the learned counsel for the appellant that the appellant school is located in a resettlement colony at Sultanpuri and the students studying in the school are being charged nominal fee compared to public schools keeping in view the strata of society the students belong to. The appellants will also withdraw their letter dated 15th October, 1997 and issue a fresh letter certifying that the respondent no 3 has worked as teacher in the said school for the relevant period.

12. In view of the above, we partially allow the present appeal and it is held that the respondent No. 3 will be entitled to compensation of Rs.4,00,000/- instead of reinstatement with back wages. Compensation amount to be paid within 6 weeks.

The appeal is accordingly disposed of.

(SANJIV KHANNA)
JUDGE

(AJIT PRAKASH SHAH)
CHIEF JUSTICE

MARCH 20, 2009
VKR/P