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HIGH COURT OF DELHI : NEW DELHI

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WP (C) No. 1184/2010

Hem Singh

....Petitioner

Through: Mr. K.C.Dubey, Adv.

Versus

Army Public School

.....Respondent

Through: Ms. Asha Jain Madan, Adv.

% Judgment pronounced on : 01.11.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. Petitioner was appointed as Estate Supervisor by the Respondent on 15-03-2007. The Respondent school is a unit of Army Welfare Education Organization under the Adjutant General's Branch. The Army Headquarters has full control over Army Welfare Education Organization. The maximum period of probation the petitioner can be subjected to is 2yrs as per Regulation 125 of the concerned rules.
2. As per letter dated 30-05-2008 given to the petitioner, the respondent again appointed the petitioner on the probation period of one year for the post of Estate Supervisor w.e.f. 01-04-2008 and period was subject to extension as per the discretion of Managing Committee.
3. The probation period of the petitioner was extended for one year vide letter dated 31-03-2009. The petitioner being working since 15-03-2007 for more than two years is deemed to be a regular employee as per the rules and regulations

concerned to him as per the case of the petitioner. According to him, he has been given all the benefits as of a post of regular employee as regular salary as per recommendations of the VI pay commission of the Central Government, the arrears of the adoption of the VI Pay Commission, a staff quarter since 01-01-2008 (deductions of House Rent Allowance from monthly salary for quarter) and other legal benefits.

4. The petitioner states that instead of giving recognition as a regular permanent employee to the petitioner, the respondent threatened to remove him from services on his asking for letter of regular post.
5. The Directorate of Education, Government Of Delhi, during inspection for recognition of the school issued letter dated 28-01-2008 pointing out irregularities committed by the respondent while appointing staff on consolidated salary in violation of the provisions of the Delhi Education Act. Assistant Director of The Directorate of Education also issued letter dated 06-05-2008 to the Respondent for the said violation. Respondent gave an undertaking stating that they will not appoint staff in violation to the said act.
6. On 16-02-2010, petitioner filed a Writ petition bearing No. 1076/2010 against the respondent for regularization of his services and quashing of letter dated 31-03-2009 extending the probationary period of his services.
7. On 19-02-2010, the respondent terminated the services of the petitioner through letter bearing no. 1105/APS.SV. On 22-

02-2010, the court granted him liberty to file a writ petition challenging his termination letter.

8. Thus this Writ Petition is filed by the petitioner in front of this court to direct the respondent to grant him permanent status to the post of Estate Supervisor, to quash letter dated 31-03-2009 relating to extension of his probation period and to quash the letter dated 19-02-2010 relating to his termination.
9. **Respondent in the counter affidavit** contended that petitioner is not competent to file this petition as respondent is not a state within the meaning of Article 12 of the Constitution Of India.
10. Respondent contended that as per provisions of Rule 129 of the rules and regulations of the school, petitioner being an administrative staff was appointed as a term based employee for one year period from 15-03-2007 to 14-03-2008, after which his employment will automatically cease. Also the respondent was not a recognized school when petitioner was appointed and so operated as per its own rules and regulation. Respondent was granted a provisional recognition on 03-07-2008 for academic session till 31-03-2009 and permanent recognition for 2009/10 academic session vide letter dated 26-02-2010/03-03-2010 subject to abide by provisions of Delhi School Education Act & Rules, 1973.
11. The petitioner w.e.f. 01-04-2008 was appointed on probation period under Regulation 125 of the School Regulation. The probation period of the petitioner was extended as his performance was not found satisfactory. The petitioner was

terminated during his probationary period and so has no rights on the post.

12. During the course of hearing of the writ petition, the learned counsel for the respondent has also raised the objection about jurisdiction of this Court in view of the prescribed remedy available with the petitioner to challenge the order of termination before the Appellate Tribunal under Section 8(3) of the Delhi School Act. It is evident that in terms of the above mentioned provision read with Delhi School Education Act and Rules, 1973, there is a remedy for appeal against the order of termination. The petitioner admittedly was terminated by the impugned letter dated 19.2.2010. This Court is of view that the petitioner ought to have filed the appeal against the order of termination and raised his grievance before the Appellate Tribunal.
13. It is the admitted position that at the time of appointment, the petitioner was also allotted a staff quarter. The present writ petition was first time listed on 25.2.2010 when in CM No.2473/2010, an interim order was passed against the respondent restraining him from vacating the petitioner from staff quarter till the next date of hearing.
14. The said interim order is continuing as of today. The petitioner submits that in-case the present writ petition is dismissed being not maintainable, the petitioner has to vacate the staff quarter immediately and great prejudice would be caused to him.
15. As observed already that in term of specific provision of Delhi School Act, in normal course an order of termination is to be

challenged by the petitioner before the Appellate Tribunal under Section 8(3) of the Act which reads as under:

“8. Terms and conditions of service of employees of recognised private schools-

(1) ...

(2)

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.

As specific remedy is available with the petitioner, it would be appropriate for the petitioner to approach the Appellate Tribunal by filing appeal against the order of termination dated 19.2.2010. The petitioner is granted time of two months from today to challenge the order along with interim application, if so advised.

16. However, in the interests of justice and equity this court is of the view that since interim order granted on 25.2.2010 has continued for the last eight months, therefore, the same shall continue for further period of three months from today. The interim application, if so filed, along with an appeal shall be disposed of by the Appellate Tribunal on or before 31.1.2011 as per its own merit.
17. The present writ petition is, therefore, disposed of with the above mentioned directions.

MANMOHAN SINGH, J.

NOVEMBER 01, 2010

jk/dp