

14

% 21.01.2010

Present:- Mr. Tiger Singh for the petitioners.

+ C.M. No. 16365/2009 (for exemption) in W.P.(C.) No. 14186/2009

*

Exemption as prayed for is granted subject to all just exceptions.

W.P.(C.) No. 14186/2009

The management of New Jain Happy School in this writ petition seeks to challenge the judgment dated 16.03.2009 passed by the Delhi School Tribunal directing reinstatement of respondent No. 1 with 50% back wages.

Heard on admission.

Respondent No. 1 was employed as an Assistant Teacher with petitioners school w.e.f. 01.08.1989. She was promoted to the post of Trained Graduate Teacher (TGT) in the year 1991-1992, After she had worked for more than 11 years in the petitioners school, her services were terminated by the petitioners school w.e.f. 17.09.1999. She aggrieved by her termination filed an appeal on 17.12.1999 before Delhi School Education Tribunal seeking setting aside of termination order and for directions to the petitioners school to reinstate her in service with all consequential benefits.

The School Tribunal upon consideration of rival contentions of both the parties, vide its impugned judgment, has directed

Signature Not Verified

Digitally Signed By: AJULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

3

reinstatement of respondent No. 1 with 50% back wages. I have carefully gone through the impugned judgment of the School Tribunal and I find that the Tribunal has given cogent reasons for holding that the services of the petitioner were illegally terminated by the management of the petitioners school w.e.f. 17.09.1999. Para 6 of the impugned judgment is relevant and is extracted below:-

"6 Both the parties have filed written submissions. Oral arguments have been also heard on behalf of the appellant. I have gone through the file and my considered view is as under:-

i As per the appellant she had worked with the respondent school from 01.08.1989 to 17.09.1999 when she written statement orally removed from service. On the other hand, contention of the respondent school is that the appellant had worked only till 17.08.1998 and on the said date, she left her bod due to some personal problems and family disturbances and settled her account there and then. Appellant has filed on record true copies of the progress report of the students for the year 1998-99 in which the appellant's signatures had even appeared after the annual result meaning thereby that she has signed the said report card at the end of the annual examination in 1999. Appellant has also filed copies of attendance sheets showing that she had attended the school till September, 1999. Certain photocopies of the note books of the students showing the work done by the students and checked by the appellant in 1998-99 were also filed.

ii The contention of the appellant that she has worked till 17.09.1999 has been supported by a duly sworn affidavit of the appellant. On the other hand, the reply filed by the respondent school is not even signed by the

4

Manager/Office bearer of the School. There is no affidavit filed on record in support of the contents of the said reply. It appears that the said reply was signed by one Sh. V.K. Malhotra, Advocate. Even no date is mentioned on the reply as to when the same written statement signed. There is not even a vaqualatnama in favour of Sh. V.K. Malhotra on record of the file. No authorization letter on behalf of the school was filed authorizing Sh. V.K. Malhotra for filing rely on behalf of the respondent school.

iii The respondent school has also filed copies of the applications for post of Assistant Teacher, joining report and an experience certificate dated 11.01.1999 certifying that the appellant had worked in the said school from 01.08.1989 to 17.08.1998. A copy of the extract of the register for the month of August, 1998 and the school pay roll for the salary paid for August, 1998 in the month of September, 1998 have been also filed on record in support of the allegation that the appellant had worked only till 17.08.1998 and thereafter she settled her account.

iv There is neither any resignation on record nor any other written communication from the side of the appellant informing the school management that appellant was residing due to some personal problems/family disturbances.

v It is the common case of both the parties that the appellant was a regular teacher of the respondent school. Management of the respondent school ought to know that if a permanent employee of the school wanted to leave the school, the only way available to him/her was to submit a resignation which was to be put before the appointing authority i.e. Managing Committee and after due deliberations a decision written statement to be taken on the said resignation. Here in this case bald assertion of the school management is that suddenly on 17.08.1998

5

appellant left her services voluntarily and her account was immediately settled. This stand of the school does not inspire any confidence and it appears to be only an afterthought with a view to defeat the claim of the appellant made in the present appeal.

U

7

vi This written statement not even made up as a case of abandonment of service by the appellant because the contention of the school management is that the account of the appellant was settled in full and final on 17.08.1998 itself, meaning thereby that the appellant had resigned orally, the management had considered and accepted her resignation orally there and then and had also settled her account immediately on the basis of the desire shown by the appellant to leave the job. No prudent person would believe this version of the management. Even otherwise, the procedure adopted by the management is contrary to the law of the land. It is only up to the appointing authority i.e. the managing committee which should have considered any written request of the appellant to resign from service and the minutes of the meeting were to be drawn regarding the deliberations and the decision taken by the managing committee was to be forwarded to the Director of Education for approval. Nothing written statement done in this case.

vi Under these circumstances, the version of the respondent cannot be believed. On the other hand, the version of the appellant is reliable. The management had no right to terminate the services of the appellant without any rhyme and reason vide an oral order of the Principal on 17.09.1999."

Mr. Tiger Singh learned counsel appearing on behalf of the petitioners has argued that the School Tribunal in its impugned judgment has relied upon certain documents which could not have

6

been in possession of respondent No. 1. It is submitted by him that the Tribunal has not even bothered to verify the documents produced by respondent No. 1 to show that she had worked in the petitioners school till 17.09.1999 or that her services were illegally terminated by the management of the petitioners school. I do not agree with this argument advanced on behalf of the petitioners. It may be noted that respondent No. 1 prior to her termination had worked in the petitioners school for a period of 11 years. The Tribunal has taken note of the fact that after serving for 11 years, a teacher would not resign of her own and that too by a word of mouth. In this case, the petitioners did not produce any material before the Tribunal to show that the desire expressed by respondent No. 1, to resign from the petitioners school, was even considered by the Managing Committee of the school. Rather it is astonishing to note that as per the petitioners, respondent No. 1 had resigned from the school on 17.08.1998 and was paid full and final payment there on the same day i.e. 17.08.1998 without there being any documentary evidence before the Tribunal to show that she was paid in full and final on that day. I am in complete agreement with the reasoning given by the Tribunal in the Judgment for holding that respondent No. 1 has been illegally terminated by the management of the petitioners school and for that reason, she has been rightly ordered to be reinstated in service. The Tribunal has already reduced the back wages admissible to respondent No. 1 by 50%.

2

In view of the foregoing and having regard to the peculiar facts and circumstances of the case, I do not find any perversity or illegality in the impugned judgment that may call for an interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. This writ petition therefore fails and is hereby dismissed in limine.

JANUARY 21, 2010
'a'

S.N. Aggarwal
S.N.AGGARWAL, J