

* IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No.1135/2011

Date of Decision: February 22, 2011

NATIONAL VICTOR PUBLIC SCHOOL & ANR Petitioners
through Mr. R.M.Sinha, Advocate

versus

SMT. NIRANJAN SHARMA & ORS Respondents
through None

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

REKHA SHARMA, J.

The petitioners, namely, National Victor Public School and its Managing Committee have assailed the order of the Delhi School Tribunal (hereinafter called the "Tribunal") dated November 29, 2010 setting-aside the termination of respondent No.1 from service and consequently, directing them to reinstate her with full back-wages from the date of her termination.

Before I proceed further, I deem it proper to reproduce the order of termination of respondent No.1, dated January 05, 2000. The same runs as under:-

"National Victor Public School
I.P. Extn., Delhi 110 092
Ph: 2206982, 2466982

Ref. No. NVPS/2000/3

Dated: 5.1.2000

O R D E R

Whereas Ms. Niranjana Sharma was appointed for the post of Asst. Tr. On 15.7.92 following the recruitment rules. As per service agreement she was asked to submit medical-fitness from Hospital established by the Govt. or by Local authority, however, she failed to produce the Medical Certificate at the time of her joining and later in spite of repeated requests in the light of rule 106 of DSER 1973.

Whereas on account of her illness she proceeded on leave w.e.f. 31.8.99 for treatment at Guru Teg Bahadur Hospital, Shahadra wherein after proper investigation suffering from some unconfirmed disease, she was referred for treatment at MCD (Health Dept.) T.B., a communicable disease on 6.11.1999 by T.B. Control Section, Shahadra. She was advised for regular treatment & rest on account of T.B. disease for one month. The same treatment was restored by T.B. Control section of MCD on 6.12.1999 for further period. Since Ms/ Niranjana Sharma is regularly suffering from T.B., a communicable disease it is not advisable to allow her to teach young children in the school because the communicable disease of T.B. may be transmitted by one person on contact to others mainly to young kids.

The Managing Committee on dated 22.12.1999 considering the case on health ground resolved to terminate her services with immediate effect allowing the payment upto date. Her services are hereby terminated w.e.f. 22.12.1999.

Mrs. Niranjana Sharma.
1/4650/12, New Modern
Shahadra, Delhi-110 032.

Sd/- Illegible
Manager.
5.1.2000.

Copy forwarded to
1. DDE (E) for information."

Since it is Rule 106 of the Delhi School Education Rules, 1973 (hereinafter called the "Education Rules") on which reliance was placed by the petitioner to support its order of termination, let me also reproduce the said Rule. It is as under:-

"Rule 106. Medical certificate and character certificate. – (1) Every appointment in a recognized private school, whether aided or not, shall be subject to the physical fitness and good character of the appointee.

(2) A candidate selected for appointment shall be required to produce a medical certificate of fitness from a hospital established or maintained by Government or any local authority or from a registered medical practitioner approved for the purpose by the director and two certificates from two different members of Parliament or members of Metropolitan Council of Delhi or Gazetted Officers or member of a local authority, not related to the candidate, certifying the character of the appointee.

(3) In the case of an aided school, a copy of the medical certificate and a copy each of the certificates of character shall be enclosed with the grand-in-aid papers claiming for the first time, the salary grant of the appointee."

The Tribunal notices the fact that Rule 106 of the Education Rules requires a selected candidate to furnish a medical certificate of his/her fitness and further notices that neither this Rule nor any other Rule under the Education Rules provides for punitive action in the event of non-production of such a certificate. Accordingly, it has held that the services of the petitioner could not be terminated by invoking Rule 106. The Tribunal has also held that the removal from service is one of the major penalties that can be inflicted upon an employee under Rule 117 of the Education Rules but no

employee can be visited by any one of such penalties except after inquiry as laid down in Rule 120 of the said Rules. Lastly, it has held that even after the inquiry, a School is not empowered to terminate the services of an employee unless it has obtained prior approval of the Director of Education under Section 8(2) of the Delhi School Education Act, 1973.

The learned counsel for the petitioner with all the vehemence at his command contended before me that respondent No.1 consciously, deliberately and with a malafide intention did not produce the medical certificate required under Rule 106 of the Education Rules and further contended that since her appointment was subject to her furnishing the said certificate, her services were rightly terminated under the said Rule. However, when confronted with the finding of the Tribunal that Rule 106 or any other Rule provides for no punitive action in the event of an employee not furnishing such a certificate, the counsel had no answer.

The petitioners have filed Annexure 'A' to the writ-petition which is a letter dated October 18, 1997. This letter goes to show that respondent No.1 along with many others was confirmed in the post of Assistant Teacher on October 18, 1997. Hence, as on the date of termination, she was a confirmed employee who could only be removed from service by resorting to Rule 117 of the Education Rules, 1973 which provides for major penalties including removal from service; Rule 120 which lays down the procedure for imposing a major penalty and Section 8(2) of the Delhi School Education Act, 1973 which

contemplates prior approval of the Director of Education before an employee is removed from service.

Admittedly, neither Rule 117, nor Rule 120 of the Education Rules or Section 8(2) of the Delhi School Education Act, 1973 were invoked by the petitioners and as already noticed above, reliance was only placed upon Rule 106 which provides for no punitive consequence in the event of the employee not furnishing a medical certificate. In this view of the matter, the order of termination cannot be sustained.

In any case, the petitioners cannot hold respondent No.1 alone responsible for not furnishing the medical certificate. If the medical certificate was so important for the retention of respondent No.1 in service as was sought to be contended by learned counsel for the petitioners, why was respondent No.1 confirmed in the post. It was open to the petitioners to withhold the confirmation of respondent No.1 till such time she had furnished physical fitness certificate but it chose to exercise no such option.

And lastly, there is no justification or basis on the part of the petitioners to allege that respondent No.1 at the time she joined the service, was suffering from a communicable disease such as T.B. As per the termination letter, it was on August 31, 1999 that she proceeded on leave for treatment at Guru Teg Bahadur Hospital. Thus, it was seven years after she joined the service that she came to be afflicted by T.B. What is more, the petitioners have along with the writ-petition filed Annexure 'C' which document is the fitness certificate of respondent No.1 dated January 06, 2000. It reads as under:-

“Municipal Corporation of Delhi
Health Department (T.B. Control Section)

FITNESS CERTIFICATE

No. 1466

Dated: 06.01.2000

This is certify that Smt. Niranjana w/o Sri Deepak Sharma Reg. No.1764/99 has been attending the T.B. Clinic Shahadra since 29.9.99. He is suffering from Abdominal Kochi. Now her sputum is negative and she is not likely to infect others. She is fit for work w.e.f. 6.1.2000. She should continue regular treatment at the T.B. Clinic Shahadra in future.

Signature of the Patient

Sd/- & Seal
Dr. S.K.Arora
S.M.O. Incharge
Mpl. Chest Clinic, Shahadra
Delhi. 110 032.”

As per this certificate, respondent No.1 was not likely to infect others and she was fit for work with effect from January 06, 2000. There was, thus, no justification for terminating the services of respondent No.1 on the ground that she was suffering from a communicable disease.

For the fore-going reasons, I am of the view that the termination of the services of respondent No.1 is nothing but executive despotism. The writ-petition has no merit. The same is dismissed.

REKHA SHARMA, J.

FEBRUARY 22, 2011
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