

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 12004/2006 & CM APPL 1521/2007

DALJIT KAUR

..... Petitioner

Through: Mr. Vipin Gogia, Advocate.

versus

GOVERNING BODY

GURU HARKISHAN PUBLIC SCHOOL & ORS

..... Respondents

Through: Mr. Jagjit Singh Chabbra with Ms. Raj Kamal and Mr. Gaurang Vardhan, Advocates for R-1 to 4 with Mr. Hardeep Singh Bindra, Office Superintendent, GHPS, Vasant Vihar and Mr. Shamsheer Singh, Superintendent, DSGMC.
Ms. Sujata Kashyap, Advocate for R-5 with Mr. Desh Ram Yadav, Officer.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the order? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the order should be reported in Digest? | Yes |

ORDER
21.09.2011

1. The challenge in this petition is to an order dated 21st July 2006 of the Delhi Sikh Gurdwara Management Committee, Respondent No. 3 [‘the Committee’] issued by its Chief Administrator, Respondent No. 4, informing the Petitioner that her services were no more required and were terminated with immediate effect.

2. The Petitioner stated that she was, by an order dated 11th January 1990, issued by the Officiating Principal of Guru Harkrishan Public School, Respondent No. 1 [‘the School’] appointed as a Trained Graduate Teacher (Punjabi) [‘TGT (Punjabi)’] on ad hoc basis for a period of 45 days. She also stated that on the same date a separate memorandum was issued by the Chairman of the School in which it was stated as under:

“The services of Ms. Daljit Kaur, TGT (Punjabi) may be used for teaching of Divinity (religious studies, as she has specialization in M.A. religious studies. However, she may be given classes to teach Punjabi if required. Possession of B.Ed. degree may not be insisted on.

She is also allowed to take examination of A.A. (Part-II), Punjabi.”

3. On 13th May 1990 the Petitioner was appointed as TGT (Punjabi) in the School for a further period of 45 days up to 26th April 1990. This continued till 28th March 1995 when she was placed on probation with effect from 1st January 1995. Thereafter on 19th December 1997, the Principal of the School issued a memorandum stating that on completion of her period of probation the Petitioner has been confirmed as TGT (Punjabi) with effect from that date. It is not in dispute that the Petitioner was, accordingly, regularly appointed as a TGT in the School with effect from that date.

4. The Petitioner stated that in order to utilize her services for the purposes of propagating the religion and in view of her special qualification, Respondent No. 3 Committee deputed the Petitioner as Officer on Special Duty (‘OSD’) for Gurmat Parchar at the Gurmat College being run by Respondent No. 3 at Gurdwara Mata Sundri, New Delhi. This was done by a letter dated 15th January 1998 addressed by Respondent No. 3 to the Petitioner in which it was, *inter alia*, stated that the Petitioner’s salary and other perks would be released from the School and her status would be maintained for other facilities being availed of by her. By a separate letter of that date addressed to the School, Respondent No. 3 Committee stated that “vacancy thus caused may not be filled and her lien should remain intact in that institution”. In other words, it was made clear that the Petitioner’s lien in the School would continue notwithstanding her having been appointed as OSD at the Gurmat College being run by Respondent No. 3. Thereafter, the Petitioner continued at the College. The Chairman of the School on 19th May 2005 informed the Petitioner that her cadre has been changed from PGT (Punjabi) to Divinity Teacher on the same pay and allowances given to her earlier. She states that on account of a personal grudge of the former president of Respondent No. 3, her salary and other perks was withheld from May 2005 onwards. The Petitioner represented to the School and thereafter in December 2005 the salary for the months of May to November 2005 were released to her. Thereafter, when she did not again receive her salary, she made several representations. In response thereto, on 21st July 2006 she received the following letter from Respondent No. 4:

“Bibi Daljit Kaur,
Member,
Delhi Sikh Gurdwara Management Committee

Madam,

You had been appointed as OSD for the Gurmat College at Gurdwara Mata Sundari, New Delhi vide this Office letter No. 321/11-13 dated 15th January 1998.

As per directions of the Hon'ble President, DSGMC, you have abandoned your services since a very long time. The Committee have decided that your services are no more required hence, hereby terminated with immediate effect.

Thanking you,

Yours sincerely,

Sd/-

(Ajmer Singh)

Chief Administrator”

5. At the first hearing in this petition on 28th July 2006 this Court passed the following order:

“Learned counsel for the Petitioner argues that the Petitioner is a confirmed employee and is working in Guru Har Kishan Public School for the last 22 years. She got the salary up till November 2005. He has also drawn my attention to the Annexure – 9 which shows that salary up to November 2005 was paid to her. He further prays that her services have not been terminated by her employer who appointed her. It is prayed that the salary of the Petitioner should be ordered to be paid till further orders.

At this stage, I see no ground in this request because the main allegation against her as per show cause notice submitted by learned counsel for the Respondent issued by Deputy Director of Education dated 28th June 2004 reveals that the Petitioner obtained fake B.Ed. degree. Earlier letter dated 4th January 2003 written by Mr. V.K. Sharma, Deputy Director of Education addressed to the Manager, Guru Harkishan Public School, Vasant Vihar, New Delhi mentioned.

‘In continuation to the correspondence on the matter cited on the subject above, you are hereby directed to take following action under information to this office:

- (1) To file an FIR against Mrs. Daljit Kaur who got appointed in the School on the basis of fake degree.
- (2) To claim the whole amount refunded from DSGMC where the teacher was placed on deputation and salary was paid from a recognized school.

(3) to instruct the Principal to file an affidavit to the Directorate of Education that no other such cases exist in the School and salary is paid of such staff on deputation from school fund.

This issues with the approval of Director of Education.’

This matter requires investigation and evidence and it cannot be decided out of hand as the learned counsel for the Petitioner is disputing the same and points out that no notice had been given to her about all these allegations.

After hearing learned counsel for the parties, learned counsel for the Petitioner wants to move an application for an amendment wherein he wants to join the Director of Education as party to the present writ petition. Learned counsel for the Petitioner to move amendment application till the next date of hearing.
Renotify on 8th September 2006.”

6. Thereafter, the Director of Education (‘DOE’) and Deputy Director of Education (‘DDE’) were impleaded as Respondent Nos. 5 and 6 by an order dated 8th September 2006.

7. The counter affidavit filed on 20th February 2007 on behalf of Respondent No. 3 a preliminary objection has been raised as to the suppression of material facts by the Petitioner. It was mentioned that on the charge of having obtained employment on the basis of a fake B. Ed. Degree, FIR No. 367 of 2002 under Sections 420/468/471 IPC had been registered with Police Station Vasant Vihar, New Delhi against the Petitioner. It was accordingly contended that the Petitioner’s appointment was void and she could not claim any right in terms thereof. A reference was made to a show cause notice dated 28th June 2004 issued by the DDE stating that it has been detected on 31st July 1996 that B. Ed. degree obtained by her was a fake document. The show cause notice addressed to the School required it to explain why the recognition of the School should not be withdrawn under Section 4 of the Delhi School Education Act, 1973 (‘DSEA’) read with Rule 56 of the Delhi School Education Rules, 1973 (‘DSER’). A reference was also made to the further letter dated 4th January 2003 of the DDE to the School asking for registration of an FIR against the Petitioner. It is then stated that the Petitioner was not regular in attending to her duties and deliberately abandoned her services without any prior intimation to the management as is evident from the impugned order issued by Respondent No. 3 Committee.

8. In the counter affidavit filed on behalf of the DOE it is stated that the School is a minority school and that the other averments in the writ petition are admitted only insofar as they are a matter of record.

9. The submissions of Mr. Vipin Gogia, learned counsel for the Petitioner and Mr. Jagjit Singh Chhabra, learned counsel for Respondents 1 to 4 have been heard.

10. Mr. Vipin Gogia, learned counsel first pointed out that the Petitioner was a permanent employee of the School. Consequently, the Respondent No. 3 Committee had no authority to issue the impugned order dated 21st July 2006 terminating her services. It was made clear that she was placed on deputation by the Committee as an OSD and her lien in the School would be retained. It is submitted that the Petitioner continued as a permanent employee of the School. Her employment in the School could not be brought to an end by the Respondent No. 3 Committee. Secondly, it is submitted that although at the time of her appointment, the requirement of having to obtain a B. Ed. degree was waived, the Petitioner completed her M.A., her B. Ed. and also a Ph. D. As regards FIR No. 367 of 2002, Mr. Gogia produced a copy of an order dated 7th May 2010 passed by the learned Metropolitan Magistrate [‘MM’], South discharging the Petitioner of the alleged offences. The learned MM analysed the documents produced by the prosecution and concluded that there was no proof that the Petitioner had forged the documents in question. It is accordingly submitted that the ground urged by the Respondents 1 to 4 in the counter affidavit for justifying the order of dismissal no longer survives as a justification for terminating the Petitioner’s services. Thirdly, he submitted that, in any event, the only ground cited in the impugned order dated 21st July 2006 was that the Petitioner had abandoned her services “since a very long time”. While denying such allegation it is pointed out that nothing has been brought on record to substantiate the charge that the Petitioner had abandoned her services. Even with the counter affidavit there is no material placed on record. It is asserted that the Petitioner had never abandoned her services. Mr. Gogia submitted that the criminal case was got registered against her by the Respondents in connivance with her political rivals to malign and tarnish the image of the Petitioner. Moreover, the FIR itself was not lodged by the School, but by some other person. It is submitted that till date no show cause notice has been issued to the Petitioner about her alleged abandonment, and no enquiry has also been held. It is submitted that the impugned order is in violation of principles

of natural justice.

11. On behalf of Respondents 1 to 4, Mr. Jagjit Singh Chabbra, learned counsel submitted that the Petitioner has an efficacious alternative remedy before the Delhi School Tribunal ('Tribunal') in terms of Section 8 (3) DSEA. He referred to the order dated 4th August 2009 passed by this Court in ***Harvinder Singh v. Principal, Guru Harkishan Public School*** [W.P. (C) No. 1944 of 1998] where, in similar circumstances, this Court had given liberty to the Petitioner to move the Tribunal. It is next submitted that although the learned MM passed an order dated 7th May 2010 discharging the Petitioner of the offences in FIR No. 367 of 2002, the complainant has filed a revision petition challenging that order. Although learned counsel is unable to show any material in support of the contention that the Petitioner had abandoned her services, he submitted that even now the School is prepared to issue a show cause notice to the Petitioner and hold a proper enquiry if so directed by this Court. He denied that Respondents acted *mala fide* in terminating the services of the Petitioner.

12. As regards the objection raised by the Respondents that the Petitioner has an efficacious remedy before the Tribunal, this Court would like to observe that this petition has been pending in this Court since 2006. In the counter affidavit filed by the Respondents, the only substantive ground urged is about the registration of FIR No. 367 of 2002 against the Petitioner. The other ground that the Petitioner had abandoned her services has not been even *prima facie* substantiated by any material whatsoever. As already noticed hereinbefore, the Petitioner has been discharged in the criminal case. Interestingly, neither the School nor Respondent No. 3 Committee had got registered any FIR against the Petitioner for producing a fake degree. Even the revision petition against the order of discharge passed by the MM does not appear to have been filed by the School or Respondent No. 3 Committee.

13. As rightly pointed out by learned counsel for the Petitioner, if the School or Respondent No. 3 was serious about such charge on the basis of which it claims to have dismissed the Petitioner, at least a prior show cause notice should have been issued to her. Even the purported ground of termination, i.e., abandonment of her services, is not substantiated by the Respondents. In the circumstances, the impugned order of

termination of the Petitioner's services is clearly in violation of the principles of natural justice. This Court therefore finds that no purpose will be served in relegating the Petitioner to the School Tribunal.

14. There is also no defence to the contention of the Petitioner that she continued as a permanent employee of the School while she was placed on deputation by Respondent No. 3 Committee as an OSD. Consequently, the impugned order dated 21st July 2006 could not be passed by Respondent No. 3 Committee. In view of the fact that the Respondents have till date not explained the basis for concluding that the Petitioner abandoned her services, this Court is not inclined to permit the Respondents to hold an enquiry at this stage by issuing a show cause notice for that purpose. However, it is clarified that if any finding is rendered against the Petitioner in the criminal case, the Respondents can proceed against her in accordance with law by issuing her a show cause notice.

15. For all the aforementioned reasons, this Court sets aside the impugned order dated 21st July 2006 issued by Respondent No. 3 Committee terminating the services of the Petitioner. The Petitioner will be reinstated as PGT (Punjabi) in the School with all consequential benefits including continuity in service. The Petitioner will be paid the arrears of salary within a period of eight weeks from today.

16. The writ petition is disposed of in the above terms, with costs of Rs. 5,000/- which will be paid to the Petitioner by the Respondents within a period of four weeks. The pending application also stands disposed of.

S. MURALIDHAR, J.

SEPTEMBER 21, 2011

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