

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 24th November, 2011

+ LPA 586/2011

MANAGEMENT COMMITTEE OF SHIKSHA
BHARTI SENIOR SECONDARY PUBLIC SCHOOL ...Appellant
Through: Mr.A.K.Singla, Senior Advocate with
Mr.Samir Jha and Mr.J.K.Sharma,
Advocate

versus

DIRECTOR OF EDUCATION & ANR. ...Respondents
Through: Mr.Shashi Mohan, Advocate for
Mr.Sachin Chopra, Advocate for R-1.
Mr.Shekhar Kumar, Advocate for R-2.

LPA 660/2011

DEEPSHIKHA SAXENA ...Appellant
Through: Mr.Shekhar Kumar, Advocate.

versus

MANAGEMENT COMMITTEE OF SHIKSHA BHARTI
SENIOR SECONDARY PUBLIC SCHOOL & ANR.
...Respondents
Through: Mr.A.K.Singla, Senior Advocate with
Mr.Samir Jha and Mr.J.K.Sharma,
Advocate for R-1
Mr.Shashi Mohan, Advocate for
Mr.Sachin Chopra, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P.GARG

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?

PRADEEP NANDRAJOG, J. (Oral)

1. The chequered history of the past litigation between the parties commencing from WP(C) No.5264/1998 and the various other writ petitions filed by the parties ultimately culminating in the order dated 31st March 2009 passed by the Delhi School Tribunal allowing the appeal filed by Deepshikha Saxena, the respondent No.2 in LPA No.586/2011, and 'The Managing Committee of Shiksha Bharti Senior Secondary School' the appellant of LPA No.660/2011 has been noted in detail by the learned Single Judge in paras 1 to 12 of the impugned order dated 27th April 2011 and we do not note the same for the reason the grievance raised before us by the Management Committee of Shiksha Bharti Senior Secondary Public School is to the direction that 50% back-wages be paid to Deepshikha Saxena from 20th May 1998 till 31st March 2009 and in addition ₹40,000/- be paid to her as compensation in lieu of reinstatement. The grievance of Deepshikha Saxena is, and we note the prayer clause in the appeal filed by her:-

“(a) Call for the records of WP(C) No.11898/2009 and modify the impugned judgment and order dated 27/04/2011 passed by the Learned Single Judge in WP(C) No.11898/2009, enhancing the quantum of compensation granted in lieu of reinstatement as well as the rate of interest upon the back wages granted to the appellant herein, and/or

(b) pass such other further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Deepshikha Saxena joined Shiksha Bharti Senior Secondary Public School as an unconfirmed Primary Teacher on 30.6.1996 and was confirmed on 10.7.1997. A dispute arose when the Management of the school alleged that she submitted a resignation on 4.3.1998 which was accepted and she handed over charge to the Principal of the School on 2.5.1998 and Deepshikha Saxena denied the same alleging that either a blank paper signed by her was used to contrive the alleged letter of resignation dated 4.3.1998 or that her signatures thereon were forged.

3. Litigating in this Court by and under a writ petition and thereafter under Letter Patent Appeal, the issue of Deepshikha Saxena's resignation reached the lap of the Tribunal constituted under the Delhi School Education Act where the finding returned, vide order dated 31.3.2009, was that Deepshikha Saxena had not resigned. It was directed by the Tribunal that Deepshikha Saxena would be reinstated in service and would be paid 50% back-wages commencing from 02.05.1998 till she was reinstated in service.

4. The Management of the School i.e. the appellant of LPA No.586/2011, challenged the decision of the Tribunal by and under WP(C) No.11898/2009.

5. Relevant would it be to note that before the Tribunal, the Management of the School had filed documents to show, that if not earlier at least in the year 2002,

Deepshikha Saxena had found gainful employment in Kamal Model Senior Secondary School and this fact was not controverted by Deepshikha Saxena. We need to highlight that in the school magazine of Kamal Model Senior Secondary School pertaining to the year 2002 a poem penned by Deepshikha Saxena as teacher of the school has been published and in another magazine published in the year 2009, for the academic year 2007-2008, a group photograph of the class of which she was the class teacher has been published which shows Deepshikha Saxena sitting in the midst of the students.

6. In response to the writ petition filed by the appellant of LPA No.586/2011, where a categorical ground was urged that there was no question of directing reinstatement or granting back-wages inasmuch as Deepshikha Saxena was gainfully employed, if not earlier at least since the year 2002, Deepshikha Saxena skirted the issue by pleading in paragraph 7 of the counter affidavit filed by her by pleading:- *Even if it is assumed the deponent was working, the right of reinstatement cannot be denied.*

7. It is apparent that since, in the magazine of Kamal Model Senior Secondary School, published in the year 2002, Deepshikha Saxena had penned a poem listing herself as a teacher in the school, there is evidence that Deepshikha Saxena had found gainful employment, if not earlier, somewhere in the year 2002. The date and the month was a matter of fact in her special knowledge and Deepshikha

Saxena has to suffer the consequence of not disclosing truthfully.

8. We note that Deepshikha Saxena has not challenged the impugned decision to the extent the learned Single Judge has modified the direction issued by the Tribunal and in lieu of reinstatement has compensated her ₹40,000/-. In the appeal filed by her, as noted herein above, Deepshikha Saxena's grievance pertains to the quantum of compensation awarded to her.

9. Learned counsel for Deepshikha Saxena seeks to urge that the school in which Deepshikha Saxena found gainful employment in the year 2002 is not a recognized school and was not paying her full salary.

10. Now, the magazine of the school would reveal that Kamal Model Senior Secondary School, where Deepshikha Saxena found gainful employment, was a school where teaching was imparted up to class-XII. It is difficult to believe that the said school which was up to the Senior Secondary level was running without a recognition. That apart, if this is the fact, why did Deepshikha Saxena try to hide her gainful employment? She could have truthfully stated that Kamal Model Senior Secondary School, where she was employed, being an unrecognized school was not paying salary as per scales directed by the Director of Education under the provisions of the Delhi School Education Act. This argument is simply noted by us for sake of record, but since Deepshikha Saxena never so pleaded either before the Tribunal or the learned Single Judge, being a question of fact, we do not

permit Deepshikha Saxena to predicate said stand for the first time in appeal.

11. The position therefore would be that even if we maintain the finding of fact returned by the Tribunal that the resignation letter dated 4.3.1998 was contrived, we would have to note that somewhere in the year 2002 Deepshikha Saxena found gainful employment and keeping in view the chequered history of the battles fought between the two rival groups, we would agree with the finding returned by the learned Single Judge that under the circumstances Deepshikha Saxena should not be reinstated and in lieu some compensation should be paid to her.

12. Now, if Deepshikha Saxena was gainfully employed we see no scope to direct even 50% back-wages to be paid for the period she was gainfully employed.

13. Since the finding of fact recorded by the Tribunal; of Deepshikha Saxena's resignation being contrived, we are of the opinion that not in lieu of reinstatement, but for harassment caused to her evidenced by the fact that she fought two litigations before a learned Single Judge in the earlier writ petitions filed i.e. WP(C) No.1505/1998 and WP(C) No.5264/1998 and two litigations before the Division Bench when LPA No.604/2003 and LPA No.870/2004 were litigated; and finally she had to litigate before the Tribunal constituted under the Delhi School Education Act and the only evidence is of her being gainfully employed in the year 2002; thus on the assumption she joined Kamal Model Senior Secondary School when the academic session commenced on 1st April 2002,

which date we assume because Deepshikha Saxena, the person who knows the actual date when she joined said school has not disclosed the same, she should be compensated for loss of wages from 2.5.1998 till 31.3.2002 i.e. 3 years and 10 months, and for contriving a resignation by her.

14. We dispose of both appeals modifying the direction issued by the learned Single Judge as per impugned order dated 27.4.2011 directing that the Managing Committee of Shiksha Bharti Senior Secondary Public School shall, within a period of 30 days from today, pay ₹4,00,000/- (Rupees Four Lakhs only) to Deepshikha Saxena and if not paid within 30 days we direct that said sum would bear interest @10% per annum till the amount is paid.

15. On the sum of ₹4,00,000/- directed by us to be paid, we may highlight that the sum has been broadly arrived at keeping in view salary paid to primary school Teachers between the years 1998 till the year 2001 and also the harassment caused to Deepshikha Saxena who had to repeatedly litigate.

16. No costs.

PRADEEP NANDRAJOG, J.

S.P.GARG, J.

NOVEMBER 24, 2011
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