

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20th May, 2011.

+ **W.P.(C) 11614/2009 & CM No.11452/2009 (for stay)**

**MANAGING COMMITTEE OF SHIKSHA BHARATI
SENIOR SECONDARY PUBLIC SCHOOL Petitioner**
Through: Mr. Gyanendra Mishra & Mr. Samir
Jha, Advocates.

Versus

DIRECTOR OF EDUCATION & ANR. Respondents
Through: Mr. A.K. Singh, Adv. for Ms. Sujata
Kashyap, Adv. for R-1.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether 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 |

RAJIV SAHAI ENDLAW, J.

1. The writ petition impugns the order dated 31st March, 2009 of the Delhi School Tribunal allowing the appeal of the respondent no.2 Ms. Shikha Bhattacharya, declaring that she continues to be in the service of

the petitioner School without any break and directing the petitioner to also pay to her 50% salary, allowance and other benefits from the period from 16th May, 1998 onwards, failing which the petitioner School was also directed to pay interest thereon at the rate of 12% per annum. Notice of the writ petition was issued on 15th September, 2009 and it was also informed that the petitioner, without prejudice to its rights and contentions had offered reinstatement to the respondent no.2 and the respondent no.2 had accepted reinstatement and was working in the petitioner School with effect from 4th September, 2009. The effect and operation of the order dated 31st March, 2009 with respect to the back wages and other consequential reliefs was stayed. The said interim order continues till date. The counsel for the respondent no.2 has informed that though the petitioner School had reinstated the respondent no.2 with effect from 4th September, 2009 but the said action was *mala fide* and the petitioner School has again, after a short time only terminated the services of the respondent no.2 and the appeal of the respondent no.2 with respect to the said termination is pending consideration with the School Tribunal.

2. It is also the contention of the counsel for the respondent no.2 that the present case is identical to W.P.(C) No.11898/2009 titled ***Management Committee of Shiksha Bharati Senior Secondary Public School Vs. Director of Education & Deepshikha Saxena***, dismissed on 27th April, 2011.

3. The counsel for the petitioner has however contended that W.P.(C) No.11898/2009 was decided on its own facts and the facts of the present case are different and thus this writ petition cannot be disposed of on the basis of the judgment in the said other writ petition. Finding that the parties have been embroiled in litigation since May, 1998 and a fresh round of litigation is still pending before the School Tribunal, attempts for amicable settlement were made but could not succeed. The counsels have been heard.

4. The respondent no.2 was appointed as a Primary Teacher in the petitioner School vide appointment letter dated 29th June, 1995 and on successful completion of probation was confirmed vide order dated 9th June, 1997. It is the case of the petitioner School that the respondent no.2 on 7th March, 1998 submitted her resignation “with 1/3 months notice” and

which was accepted vide letter dated 30th April, 1998 signed on behalf of Mrs. N.M. Williams, Manager of the petitioner School and sent to the respondent no.2 under postal certificate. The petitioner School further claims to have vide another letter dated 30th April, 1998, also under the signatures of Mrs. N.M. Williams, Manager sought a formal approval of the respondent no.1 Directorate of Education (DOE) under Rule 114A of the Delhi School Education Rules, 1973 (DSE Rules) for accepting the said resignation of the respondent no.2.

5. On the contrary, it is the case of the respondent no.2 that she was not allowed to resume her duties after the summer vacations and she sent representation dated 9th July, 1998 to the DOE and a representation dated 14th July, 1998 to the Principal of the petitioner School. It is further the case of the respondent no.2 that on 23rd July, 1998 she came to know that the petitioner School had fabricated her resignation letter and that she made another representation dated 23rd July, 1998 to respondent no.1 DOE in this regard.

6. The respondent no.1 DOE vide its letter dated 5th August, 1998 informed the petitioner School that the proposal for acceptance of

resignation of the respondent no.2 had not been approved and directed the petitioner School to reinstate the respondent no.2 for the reason that she had denied having submitted the resignation.

7. The respondent no.2 preferred W.P.(C) No.5667/1998 impugning the order dated 5th August, 1998 (supra) of the respondent no.1 DOE *inter alia* on the ground that no direction was made with respect to back wages.

8. The petitioner School also filed Writ Petition No.1505/2000 impugning the order dated 5th August, 1998 (supra) of the respondent no.1 DOE. This Court being of the view that the petitioner School had not been heard, vide order dated 23rd April, 2003 directed the respondent no.1 DOE to pass an order after hearing all the parties.

9. In pursuance to the aforesaid, the respondent no.1 DOE vide order dated 17th June, 2003 granted approval to the petitioner School for acceptance of the resignation of the respondent no.2.

10. Resultantly, the writ petition No.1505/2000 aforesaid preferred by the petitioner School was on 7th August, 2003 dismissed as infructuous. Similarly, the writ petition preferred by the respondent no.2 i.e. W.P.(C) No.5667/1998 was also dismissed as infructuous.

11. An intra court appeal being LPA No.619/2003 was preferred by the respondent no.2 (against dismissal of her W.P.(C) No.5667/1998) which was disposed of vide order dated 16th December, 2003. It was held that since respondent no.2's prayer for grant of back wages had remained untouched, the same was required to be considered. Accordingly, the matter was remanded and liberty was also granted to the respondent no.2 to before the Writ Court seek to amend the writ petition to challenge the fresh order dated 17th June, 2003 of the respondent no.1 DOE granting approval for acceptance of her resignation. The respondent no.2 thereafter applied for amendment of W.P.(C) No.5667/1998 which application was dismissed vide order dated 16th August, 2004 for the reason that the said order dated 17th June, 2003 (supra) of the respondent no.1 DOE granting approval for acceptance of resignation of the respondent no.2 was appealable before the Delhi School Tribunal. The respondent no.2 preferred intra court appeal being LPA No.870/2004 against the said order but withdrew the same on 12th September, 2005 with liberty to approach the Delhi School Tribunal, particularly in light of the Division Bench judgment of this Court in ***Kathuria Public School v. Director of Education*** 2005 VI AD (Delhi)

893. Similarly, vide order dated 4th October, 2005 the writ petition W.P.(C) No.5667/1998 was also disposed of with liberty to the respondent no.2 to approach the Delhi School Tribunal and it was further ordered that the appeal to be so preferred shall not be rejected on the ground of delay in preferring the same and with a further direction to the Tribunal to also adjudicate on the issue of back wages.

12. It was thereafter that the appeal to the Delhi School Tribunal was filed by the respondent no.2 and against order wherein the present writ petition has been filed.

13. The counsel for the petitioner School has at the outset contended that the appeal to the Delhi School Tribunal under Section 8 of the Delhi School Education Act, 1973 (DSE Act) does not lie against the order of the respondent no.1 DOE granting approval for acceptance of resignation and the order of the Tribunal is bad and liable to be set aside for this reason alone. It is contended that under Section 8(3) of the DSE Act, any employee of a recognized private school who is dismissed, removed or reduced in rank is entitled to appeal against such order to the Tribunal. It is contended that the order appealed against to the Tribunal i.e. of the

respondent no.1 DOE granting approval for acceptance of resignation is not appealable before the Tribunal.

14. The same argument of the counsel for the petitioner School in W.P.(C) No.11898/2009 (supra) was rejected for two reasons. Firstly, that the jurisdiction of the Tribunal could not be ousted merely by the School taking a stand that the employee had not been dismissed or removed but had resigned. Secondly it was felt that the petitioner School, at the time of disposal of W.P.(C) No.5667/1998 having not objected to the respondent no.2 being relegated to the appeal before the Tribunal and the said order having attained finality could not now be permitted to contend that the Tribunal has no jurisdiction. It was also however recorded that the Full Bench of this Court in judgment dated 27th August, 2010 in O.Ref. No.1/2010 titled ***Presiding Officer, Delhi School Tribunal v. GNCTD*** has set aside the judgment of the Division Bench of this Court in ***Kathuria Public School*** (supra) (to the extent it laid down that appeal against all grievances lies to the Tribunal) acting whereon the respondent no.2 was relegated to the remedy of appeal before the Tribunal. The Full Bench has held that the appeal to the Tribunal lies only against dismissal, removal or

reduction in rank and not against all grievances of the employee against the school as held by the Division Bench in ***Kathuria Public School***.

15. However notwithstanding the aforesaid position in law, it was held in judgment dated 27th April, 2011 in W.P.(C) No.11898/2009 (supra) that the petitioner School is now estopped from contending that the appeal did not lie to the Tribunal or that the order of the Tribunal is liable to be set aside on this ground alone. The parties have been litigating already for the last 13 years. It was not found equitable to now, owing to the aforesaid changed interpretation of law direct the respondent no.2 to pursue a different remedy. This Court in exercise of powers under Article 226 of the Constitution of India can always refuse to exercise jurisdiction even when finding a point of law to have been made out (See ***Chandra Singh v. State of Rajasthan*** (2003) 6 SCC 545 and ***ONGC Ltd. v. Sendhabhai Vastram Patel*** (2005) 6 SCC 454). This is felt to be more so in the present case since another subsequent dispute is also pending before the Delhi School Tribunal.

16. Having considered the matter, I agree with the counsel for the respondent no.2 that the present controversy is fully covered by the

judgment dated 27th April, 2011 in W.P.(C) No. 11898/2009 and a slight/minor difference in facts is immaterial. The counsel for the petitioner is not right in re-arguing.

17. The counsel for the petitioner has argued that the respondent no.2 in the present case has not set up any case of her signatures on the resignation letter being forged. I am unable to agree. Neither has any such ground been taken in the writ petition nor is the said plea borne out from the memorandum of appeal preferred by the respondent no.2 to the Tribunal. In fact the respondent no.2 had therein made a specific prayer for declaration that the resignation letter had been forged.

18. The other arguments urged by the counsel for the petitioner have already been dealt with in the judgment dated 27th April, 2011 in W.P.(C) No.11898/2009 and need is not felt to reiterate the same and all that has been observed in paras 13 to 22 of the said judgment equally applies to the facts of the present case. The only difference is qua the “Experience Certificate” which was subject matter of W.P.(C) No.11898/2009 and with which we are not concerned in the present case. It was enquired from the

counsel for the petitioner whether Mrs. N.M. Williams was examined in the present case. The answer is again in the negative.

19. The School Tribunal in the present case has returned a finding of the resignation letter in the present case being fabricated, from the use of three typewriters in making thereof and from the placement of the signatures of the respondent no.2 thereon. As observed in the judgment dated 27th April, 2011 *supra*, the said view taken by the Tribunal, is a plausible view from the documents perused by this Court also and not interfereable in exercise of powers under Article 226 of the Constitution of India.

20. The counsel for the respondent no.2 has also referred to *State of A.P. Vs. P.V. Hanumantha Rao* (2003) 10 SCC 121 and *State of U.P. Vs. Johri Mal* (2004) 4 SCC 714 on the scope of interference in writ jurisdiction.

21. The present writ petition is thus liable to be dismissed. However, need is felt to culminate also the dispute now pending between the parties before the Tribunal. I am of the opinion that this Court in these proceedings would have jurisdiction to put an end to the same also since the termination now under challenge is pursuant to reinstatement which

was made without prejudice to the rights and contentions in the present writ petition. The effect of dismissal of the present writ petition would be of revival of the order of the Tribunal impugned in this writ petition of reinstatement. It is felt that no purpose will be served in thrusting the respondent no.2 upon an unwilling employer i.e. the petitioner School. It is therefore deemed expedient to award compensation to the respondent no.2 in lieu of reinstatement. Compensation of ₹40,000/- has been awarded in judgment dated 27th April, 2011 (supra). The said compensation was awarded in the light of the fact that the teacher therein had been re-employed in another School. There is no evidence of the respondent no.2 herein having been employed in any other School. On the said premise, the compensation to which the respondent no.2 herein would be entitled, would be more than ₹40,000/-. However, since during the attempts for amicable settlement, the counsel for the respondent no.2 even though without prejudice to the rights and contentions, had agreed to the same relief as in the judgment dated 27th April, 2011 (supra), it is not deemed expedient to vary the compensation.

22. In the circumstances, the writ petition is disposed of with the following directions:

(i) the petitioner School is directed to in accordance with the order of the Tribunal, within four weeks of today pay to the respondent no.2, 50% of the back wages w.e.f. 16th May, 1998 till 31st March, 2009 (being the date of the order of the Tribunal) together with interest @10% per annum from 1st June, 2009 till the date of payment.

(ii) in lieu of the relief of reinstatement, the respondent no.2 is awarded compensation of Rs.40,000/-. The compensation has been computed taking into consideration the pay scale of the respondent no.2 of ₹1200-2040 and the long span of 13 years after which it is being awarded. If the said compensation is not paid within four weeks, the same shall also incur interest @10% per annum till the date of payment.

(iii) the petitioner to also pay to the respondent no.2 litigation costs of Rs.10,000/-, also within four weeks as aforesaid failing which the same shall also incur interest @10% per annum.

(iv) upon receipt of aforesaid amounts, the respondent no.2 would be left with no claims whatsoever under the other proceedings stated to be pending before the Delhi School Tribunal and the same shall stand withdrawn in terms hereof.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 20, 2011

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