

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

Date of decision: 27th April, 2011

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W.P.(C) No. 11898/2009

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**MANAGEMENT COMMITTEE OF
SHIKSHA BHARATI SENIOR SECONDARY
PUBLIC SCHOOL**

..... Petitioner

Through: Mr. Pankaj Vivek, Advocate.

Versus

DIRECTOR OF EDUCATION & ANR.

..... Respondents

Through: Mr. Sachin Chopra with Mr. Shashi
Mohan, Advocates for R-1.
Mr. Shekhar Kumar, Advocate for
R-2.

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 petitioner School impugns the order dated 31st March, 2009 of the Delhi School Tribunal, allowing the appeal of the respondent no.2 Ms. Deepshikha Saxena, declaring that she continues to be in the service of

the petitioner School without any break and directing the petitioner School to also pay to her 50% salary, allowances and benefits for the period from 2nd May, 1998 onwards within two months failing which the petitioner School was also directed to pay interest thereon @12% per annum. Notice of the petition was issued on 6th October, 2009. Noticing that the respondent no.2 had been working with one Kamal Model Senior Secondary School, Mohan Garden, New Delhi, the operation of the order was stayed. Pleadings have been completed and the counsels have been heard.

2. The matter has a chequered and long history. The respondent no.2 was vide appointment letter dated 30th June, 1996 appointed as a Primary Teacher in the petitioner School and on successful completion of the probation was confirmed w.e.f. 10th July, 1997. It is the case of the petitioner that the respondent no.2 on 4th March, 1998 submitted her resignation with one month's notice to the Principal of the petitioner School and which was accepted vide letter dated 13th 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 13th April, 1998 also under the signatures of Mrs. N.M. Williams, Manager sought formal approval of the respondent no.1 Director 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. It is also the case of the petitioner School that the respondent no.2 on 2nd May, 1998 handed over charge to Mrs. Goel, Principal of the petitioner School.

3. The respondent no.2 vide her letter dated 1st May, 1998 to the DOE complained that she was being asked to give resignation for no fault of hers. The DOE vide letter dated 25th May, 1998 sought report from the petitioner School in this regard.

4. The 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.

5. The respondent no.2 preferred W.P.(C) No.5264/1998 impugning the order dated 5th August, 1998 (supra) of the DOE *inter alia* on the ground that no direction was made with respect to back wages.

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

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

8. 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.5264/1998 was also dismissed as infructuous.

9. An intra court appeal being LPA No.604/2003 was preferred by the respondent no.2 (against dismissal of her W.P.(C) No.5264/1998) 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 seek before the Writ Court to amend the writ petition to challenge the fresh order dated 17th June, 2003 of the DOE granting approval for acceptance of her resignation. The respondent no.2 thereafter applied for amendment of W.P.(C) No.5264/1998 which application was dismissed vide order dated 16th August, 2004 for the reason that the said order dated 17th June, 2003 (supra) of the 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 count 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.5264/1998 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.

10. 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.

11. 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 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 DOE granting approval for acceptance of resignation is not appealable before the Tribunal. During the hearing, the said contention of the counsel for the petitioner was rejected for two reasons. Firstly that the jurisdiction of the Tribunal could 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.5264/1998 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. I may however record that the Full Bench of this Court in judgment dated 27th August, 2010 in O. Ref. 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***.

12. However notwithstanding the aforesaid position in law, I am still of the opinion 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 is 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 during the hearing also it was admitted that the respondent no.2 has since been employed in another school, the question now really is of the back wages and of the compensation in lieu of the relief of reinstatement.

13. The counsel for the petitioner School has next contended that the plea of the respondent no.2 before the Tribunal being that her signatures had been forged (even though it is shown that the respondent no.2 had earlier been taking the plea of having been made to sign in blank thereby admitting her signatures), it was beyond the powers of the Tribunal to return a finding of forgery. It is contended that such questions of fact i.e. whether the resignation letter had been forged or not or whether the respondent no.2 had been made to sign in blank or not can only be gone into in a suit and decided after examination and cross examination of witnesses and findings thereon could not have been returned in the manner done by the Tribunal.

14. It was enquired whether any evidence was taken by the Tribunal. The answer is in the affirmative. It was next enquired whether the petitioner School had applied to the Tribunal for an opportunity for cross examination. The answer is in the negative. The counsel for the petitioner School has however sought to contend that the examination and cross examination was not possible before the Tribunal. I am unable to agree.

Section 11(5) of the DSE Act enables the Tribunal to regulate its own procedure in all matters arising out of the discharge of its functions and had the petitioner School applied for cross examination, the Tribunal would have adjudicated whether the decision of the lis raised required such cross examination or not. Such plea cannot be taken for the first time in the judicial review sought under Article 226 of the Constitution of India.

15. Else the finding of the Tribunal of the respondent no.2 having not resigned is a finding of fact and not capable of being interfered with. Nevertheless the records have been examined to satisfy whether there is any perversity. The Tribunal has relied on the endorsement on a letter dated 11th March, 1998 of the respondent no.2 to the petitioner School asking the petitioner School to issue to her an experience Certificate “for the services rendered till date” and which letter was forwarded by the Principal of the petitioner School to the Manager Mrs. Williams who had made the following endorsement thereon:

“Experience certificate is given when a staff member leaves the services Mrs. Deepshikha has not resigned and we have given her till 30/4. If she wants to leave earlier let

her give her resignation and we will release her experience certificate.”

16. The Tribunal has concluded that the aforesaid endorsement negated the case of the petitioner School of the respondent no.2 having resigned on 5th March, 1998.

17. The counsel for the petitioner School has sought to argue that the said letter is in consonance with the resignation in as much as the resignation was also to come into effect only on 30th April, 1998 and by further contending that the requirement for experience certificate arose only because of the respondent no.2 having resigned.

18. I am unable to agree. The view taken by the Tribunal is a plausible view from the language of the endorsement aforesaid and the power under Article 226 is not meant for this Court to exercise appellate jurisdiction or to substitute its own view for the view of the Tribunal which has been constituted as the final arbiter in the matter. In fact it was also enquired whether the petitioner School had filed any affidavit or examined the said Ms. William as its witness before the Tribunal in as much as it is felt that it

is she alone who was concerned with each of the aforesaid letters and who would have been in a position to explain the same. The counsel for the petitioner School has contended that it was for the respondent no.2 to have examined Mrs. Williams. However Mrs. Williams having been the Manager of the petitioner School and the position of Manager being generally vested in a confidante of the Managing Committee, the said reply is not found satisfactory. The counsel for the petitioner School then sought to contend that Mrs. Williams had by then left the school. However without any basis for such arguments having been laid before the Tribunal, the same cannot be permitted to be taken now.

19. Yet another reason given by the Tribunal is of the procedure of Rule 114A having not been followed. Upon it being contended that the petitioner School being unaided recognized school was not as per the judgment in ***Kathuria Public School*** required to follow Rule 114A, the Tribunal held that the judgment in ***Kathuria Public School*** having been pronounced in the year 2005 and the transaction being of the year 1998

was not applicable. It was also held that ***Kathuria Public School*** did not deal with Rule 114A.

20. I may notice that the Full Bench in ***Presiding Officer*** (supra) has not disturbed the finding of the Division Bench in ***Kathuria Public School*** to the extent laying down that the Rules 115(2) & (5), 120(1)(d)(iii) & (iv) & 120 (2) do not apply to unaided recognized schools. Though it is felt that a judgment interpreting a statute is deemed to be the law since enactment of the statute and is not prospective alone and further that what has been held in ***Kathuria Public School*** in respect of Sections 8(2)&(4)&(5) of the DSE Act and Rules 115 (2) & (5), Rule 120 (1) (d) (iii) & (iv) and Rule 120 (2) of the DSE Rules would equally apply to Rule 114A also but need is not felt to adjudicate upon the said aspects in the present matter. As aforesaid, the petitioner School is bound by the order dated 4th October, 2005 in earlier W.P.(C) No.5264/1998 which has attained finality inter parties.

21. Though the counsel for the petitioner School in rejoinder has also invited attention to the postal certificate under which the acceptance of the letter of resignation is stated to have been sent but the counsel for the

respondent no.2 pointed out that the same was produced for the first time in the Tribunal and was not produced earlier when the writ petitions were pending before this Court. The counsel for the petitioner School had also sought to rely upon the document of handing over of the charge which is also disputed by the respondent no.2. It was enquired whether Mrs. Goel who had under the said document purportedly taken charge was examined. The answer is in the negative but with the explanation that she is no more. Again, there is no basis for such pleas.

22. I am therefore unable to find any reason for interference with the order of the Tribunal. However considering the fact that the respondent no.2 has been re-employed in another school and further considering the animosity as found from the long litigation between the petitioner School and the respondent no.2, while maintaining the relief of grant by the Tribunal of award of 50% of the back wages to the respondent no.2 from 2nd May, 1998 onwards, the relief so far as of reinstatement is modified. It was enquired from the counsels whether there was any prohibition to the grant of compensation in lieu of reinstatement. No reply was forthcoming.

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

- a. 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. 2nd 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.
- b. 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 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.
- c. 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.

**RAJIV SAHAI ENDLAW
(JUDGE)**

APRIL 27th, 2011

PP

(corrected & released on 12th May, 2011).