

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

+ **W.P.(C) No.3264/2012**

% **19th July, 2013**

MANAGING COMMITTEE & ANR. Petitioners

Through: Mr. Rajiv Bajaj, Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through: Ms. Ferida Satarwala, Advocate for
respondent Nos.1 and 2.

Mr. Puneet Goel, Advocate for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the school challenging the order of the Delhi School Tribunal dated 16.12.2011 whereby the Tribunal while continuing with the termination of services of the respondent No.3 herein (appellant before the Delhi School Tribunal) imposed costs of ₹10 lacs of which ₹5 lacs was to be paid to the respondent No.3 herein and the balance ₹5 lacs was to be deposited with the Legal Aid Committee of the High Court of Delhi. This challenge is laid by the school to the order of the Delhi School Tribunal limited to the aspect of imposition of costs of ₹10 lacs as

damages. Though there are two petitioners, I am for the sake of convenience referring to them as petitioner-school.

2. The facts of the case are that respondent No.3 was appointed as TGT (Mathematics) in the petitioner-school firstly in the year 1999. Respondent No.3 after joining acquired B.Ed. qualification. At the time of joining as TGT (Mathematics), respondent No.3 only had done a diploma in Civil Engineering in the year 1987. He had thereafter cleared an examination of AMEIE. B.Ed. examination was cleared by him in the year 2001. After getting B.Ed. qualification, petitioner was given a fresh appointment letter dated 31.5.2002.

3. Director of Education issued a circular in the year 2004 in order to verify the proper qualifications of the Teachers who were appointed in schools. Director of Education vide order dated 12.8.2004 directed the schools to ensure that no unqualified teachers would work in a school. For the post of TGT (Mathematics) the requirement for appointment as per the Delhi School Education Act and Rules, 1973 was a Bachelor Degree (pass/hons.) from a recognized University or equivalent having secured at least 45% marks in the aggregate in two school subjects of which Mathematics had been at the elective level. The candidate was also required

to have studied Mathematics subject of 100 marks in all the years of Graduation.

4. It is an undisputed position which emerges from the record that the respondent No.3 did not have a bachelor's degree in Mathematics and he had only a diploma in Civil Engineering. The examination of AMEIE also did not have Mathematics because the subject in that course was Engineering Mathematics which is different from the Mathematics required to be taught in school.

The finding of the Tribunal holding that respondent No.3 did not have qualifications for being appointed as TGT (Mathematics) is not challenged by respondent No.3 as no appeal has been filed by him.

5. The Tribunal, in view of the aforesaid finding that the respondent No.3 was unqualified for the post, but yet was appointed, framed the following three issues for consideration:-

- “13. With the aforesaid factual matrix, I am confronted with the following questions
- a. Whether the Respondent School advertised the post of TGT (Mathematics) and constituted a Selection Committee as per Rule 96 of the Rules?
 - b. Whether no candidate with minimum requisite qualifications applied for the said post?
 - c. What made the Respondent School recruit the Appellant as TGT (Mathematics) while he did not possess the minimum qualifications prescribed?”

6. With respect to issue (a), Tribunal arrived at a finding that there was no duly constituted Selection Committee as per Rule 96 of the Rules. With respect to issue (b), the Tribunal has held that it could not be that there could be no other qualified candidate for the post. With respect to issue (c) having arrived at a finding that the respondent No.3 was illegally appointed, Tribunal did not grant relief to respondent No.3 of reinstatement, but, the Tribunal awarded total costs of ₹10 lacs as damages as stated above i.e ₹5 lacs to the respondent No.3 herein and ₹5 lacs to be deposited with the Delhi Legal Aid Committee of this Court.

7. In my opinion, the impugned order of Tribunal awarding damages of ₹5 lacs to the respondent No.3 is illegal and is bound to be quashed for the following reasons:-

(i) Firstly, no one can claim ignorance of law. Respondent No.3 cannot claim ignorance of law of the requirement for being appointed as TGT (Mathematics) in a school. Respondent No.3 knew he was not qualified, still he took appointment as TGT (Mathematics). Respondent No.3 is himself guilty of doing a wrong. No sympathy or equity can lie in favour of such a person. Respondent No.3 therefore cannot claim that he

has been prejudiced because he was wrongly appointed by the school because it is settled law that *ignorantia juris non excusat* i.e ignorance of law is no excuse. Having therefore taken employment in violation of the applicable rules, respondent No.3 cannot claim that he should be paid any damages for his termination.

(ii) Secondly, damages could only have been awarded if the respondent No.3 would have pleaded before the Delhi School Tribunal that after his termination with the petitioner-school he for a reasonable period was not able to obtain alternative employment in accordance with his qualifications. In law, damages are awarded for loss which is caused to a person on account of an illegal act of a third person. Even if we do not apply the doctrine of *ignorantia juris non excusat*, and we hold the petitioner-school guilty in wrongly employing the respondent No.3, yet, loss does not automatically arise because of termination of appointment, inasmuch as, loss has to be specifically asserted to have been caused, such loss should be quantified, and the reasons why the loss occurred and why it is accordingly quantified must be stated in the appeal before the Delhi School Tribunal. Not only none of this has been done, but also respondent No.3 did not seek any permission to lead any evidence before the Delhi

School Tribunal for proving any loss caused to him. In any case, at best in the circumstances like the present, the only damages which can be awarded to a person such as the respondent No.3 is salary for a reasonable period so as to enable him to obtain alternative employment. The Supreme Court in the case of *S.S. Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12* has held that even if there is breach of contract and the services of an employee are terminated illegally the damages which are awarded thereafter would have to be reasonable damages. Supreme Court has stated in that judgment that if services of an employee can be terminated by giving a particular period of notice, even if the termination is illegal, the maximum damages which can be awarded would be the salary for the notice period.

8. The issue in the present case boils down to what would be the damages which respondent No.3 should be granted. The reason for awarding damages is that even the petitioner-school knew of the wrongful employment, and therefore termination can only be after giving sufficient notice period to enable the petitioner to obtain alternative employment. Thus the issue is what should be taken as a reasonable period for respondent No.3 to obtain alternative employment. While calculating the amount of damages to the respondent No.3, the doctrine of *pari delicto* will have to

come in because this is a case where respondent No.3 is guilty of illegally getting employment i.e in spite of being unqualified he took appointment, of course in collusion with the petitioner-school. Therefore having taken all factors into consideration, in my opinion, in a case such as the present instead of awarding lumpsum damages of ₹5 lacs to the respondent No.3, three months' salary should be paid to respondent No.3 by the petitioners for damages. Ordinarily, I would have taken six months' salary period for giving of damages but since in this case I have to apply the doctrine of *pari delicto* I am giving only three months' salary as damages to respondent No.3. The three months' salary will be calculated on the basis of last drawn monthly salary of the respondent No.3 in the petitioner-school.

9. Learned counsel for the respondent No.3 sought to argue before me that once the respondent No.3 was employed by the petitioner-school, his services could only have been terminated after conducting of necessary enquiry in terms of Rules 118 to 120 of the Delhi School Education Rules, 1973. I am unable to agree to this argument because the provisions with respect to conducting of enquiry apply to a regular employee who is duly and properly appointed, and the provisions relied upon cannot apply to a person who is appointed illegally and that too an unqualified person. To

such a person the benefit of provisions of enquiry under Rules 118 to 120 of the Delhi School Education Rules, 1973 cannot be given because the appointment itself is illegal.

10. That leaves me only with the aspect of damages of ₹5 lacs which have been paid by the petitioner-school to the Delhi Legal Aid Committee. I have thought long and hard on this. The issue is if the impugned order is to be set aside for damages, should this part of the order awarding ₹5 lacs to the Delhi Legal Aid Committee be interfered with or not. I have after pondering over the matter come to the conclusion that this part of the order need not to be interfered with because this is a school which with open eyes appointed unqualified person to teach students in school. The students who were to be taught also are not elementary class students but students who learnt Mathematics of class X. This is not expected of any responsible school. It is the conduct of the petitioners which has brought about and caused litigation in the facts of the present case. I do not think that in such circumstances I would like to interfere with the order of the Tribunal in exercise of my extraordinary powers under Article 226 of the Constitution of India.

11. Writ petition is accordingly partially allowed. Salary of three

months be paid to the respondent No.3 by the petitioners within six weeks from today. Respondent No.3 will also be entitled to interest @ 9% per annum simple from the date of termination of his services till the date when the petitioners make payment of the amount to the respondent No.3. In case the amount is not paid within six weeks from today, then, respondent No.3 will be entitled to interest @ 12% per annum simple from the date of termination of his services till payment. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

JULY19, 2013
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