

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

Decided on: 18.04.2013

+ **LPA 337/2005**

SH. B.P. VAISH Appellant

Through: Nemo.

versus

GOVT. OF NCT OF DELHI AND OTHERS Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. When this appeal was called-up, there was no appearance on behalf of either of the parties. The appeal was listed as No. 1 in the Regular Hearing List. The Court has considered the records and proposes to dispose of the appeal on the basis of its consideration of the rival contentions of the parties as appear on the record.

2. The appellant challenges the judgment and order of the learned Single Judge dated 28.01.2004 whereby the first respondent (in the present case), i.e. the Govt. of NCT of Delhi's Writ Petition – CW No.7206/2000, challenging the reinstatement directed by the Delhi School Tribunal (hereafter referred to as “the Tribunal”) was allowed. The appellant had responded to an advertisement issued by the Sanatan Dharam Higher Secondary School (the contesting

respondent) (hereafter referred to as “the school”), issued some time in 1973, to fill up the post of Principal. His application was accepted and he along with other candidates were interviewed on 20.08.1973. It appears from the narration of facts and events appearing in the order of the Tribunal and the impugned judgment that the interview panel, which comprised of representatives of the school management as well as the Govt. of NCT of Delhi, were not unanimous in their recommendations. The school was an aided institution and, therefore, bound by the provisions of the Education Code, 1965. On account of difference of opinion – the majority of the selection panel recommending the case of one B.L. Singhal, who, according to them was assigned first position in the merit list, and the Chairman of the Selection Board, in whose opinion the respondent, B.P. Vaish was to be selected - the matter was referred to the Govt. of NCT of Delhi in terms of Rules 184 and 187 of the Code. Govt. of NCT of Delhi wrote a letter to the school management on 08.10.1973, directing it to appoint B.L. Singhal – the candidate recommended by the majority of the Selection Committee - to the post of Principal. However, the school management did not comply with the direction and it issued an appointment letter on 10.12.1973 to B.P. Vaish. He apparently took charge of the post. The impugned order indicates that the Directorate held its position and did not approve the appointment of the respondent/B.P. Vaish and eventually the school management relented and agreed that fresh interview ought to be held to select a candidate. These were pursuant to the letter of Directorate of Education dated 14.12.1973.

3. In the meanwhile, apparently Sh. B.L. Singhal, the Directorate's nominee and choice for the post had not been offered the appointment. In any event, even according to the Directorate's guidelines and decision, if Sh. B.L. Singhal were to decline the appointment, the first respondent could not have secured the appointment because his name did not figure at S. Nos. 2 or 3 in the panel. Sh. J.P. Gupta and Sh. B.S. Gupta were indicated at S. Nos. 2 and 3 in the select panel recommended by the Directorate in its letter to the management. The school continued to defy the orders of the Directorate of Education. In the meanwhile, The Delhi School Education Act, 1973 came into force. In terms of its provisions, The Delhi School Education Rules, 1973 were framed and came into force on 31.12.1973. Rule 98 of the said Rules mandated that approval of the Director of Education (hereafter referred to as "the Director") had to be obtained for appointments made by the Managing Committee of the aided school and sub-rule (4) of Rule 98 provided that in the event a reference for approval to the Directorate was not indicated within 15 days, the Director's approval was to be deemed. The Director was deemed to have approved the appointment. Apparently, at this stage, the school management took a different position and by its letter dated 30.03.1974 started insisting that since it did not receive grant-in-aid, Rule 98 did not apply and that it was under no obligation to seek prior approval for the post of Principal. The impasse continued and the Directorate insisted that its previous order declining the approval for appointment to the first respondent be followed. Eventually, the school relented and agreed to hold fresh interviews. It apparently

issued an order dated 21.12.1974 calling B.P. Vaish for interview. Later, after a fresh round of selection, one Suraj Bhan Gupta was empanelled and the school management sought approval for the appointment by Directorate by letter dated 09.1.1975. In these circumstances, the first respondent, B.P. Vaish was relieved from the services of the school by letter dated 19.02.1975. He approached the Tribunal, which by order dated 11.08.1976 dismissed the appeal. The first respondent's writ petition challenging the order of the Tribunal (C.W. No.42/1977) was pending on the file of this Court for a long time. Eventually, on 19.04.1990, learned Single Judge of this Court remitted the matter for reconsideration to the Tribunal. After remission, the matter remained pending for yet another 10 years and on 08.08.2000, the respondent's appeal was finally allowed. The Tribunal was of the opinion that with the coming into force of The Delhi School Education Act, 1973 and The Delhi School Education Rules, 1973, [DSEAR, 1973], the combined effect of Rules 98(4) and 105 had the effect of crystallizing the first respondent's right to the post of Principal in the school. It was held that by virtue of Rule 98(4), the Director's approval was deemed to have been granted and the operation of Rule 105 assured that the appointment could not have been terminated without notice during the period of probation. The Tribunal also concluded that the termination order was made in an arbitrary manner by advertising the post of Principal which according to it, the first respondent held illegally.

4. Aggrieved by the order of the Tribunal, the Govt. of NCT of Delhi approached this Court. By the impugned judgment and order,

the Writ Petition was allowed. Learned Single Judge reasoned that the right of the first respondent to hold the post itself was under a cloud since the appointment letter dated 10.12.1973 relied upon by him was of questionable legality. Tracing the events which led to the issuance of that letter, learned Single Judge held that the Directorate's approval for such appointment was essentially in terms of Rules 184 and 187 of the Delhi Education Code, which was applicable before the DSEAR, 1973 came into force. He further held that since the vacancy arose before the enactment came into force, and the school had made a reference to the Director, who had indicated his decision by agreeing with the majority of the co-members of the selection panel, there was no question of the first respondent's acquiring any right to the post and that the appointment order relied upon by him did not have any sanctity in law. Learned Single Judge thereafter held as follows:

“34. As noted by me in para 11 above, no right can be created by and under an illegal Act. If law requires an act to be done in a particular manner, it must be done in the manner prescribed failing which the Act would be illegal and void ab initio. Admitted position is that at the time when the interviews were held on 20.8.73, Delhi Education Code was applicable. No appointment to the post of Principal could be made without the approval of the Director and further appointment had to be made by a selection committee constituted under Rule 184. If there was a difference of opinion in the recommendations of the selection committee under Rule 184 of the Code, matter had to be referred to the Director of Education whose decision was final. Indeed, before 10.12.1973 when the school management issued the letter of appointment to the respondent No.1, matter was referred to the Director of Education, who gave his decision on

8.10.1973. The said decision was final as per the law then applicable. Matter ought to have been closed. With malafide intention, the school gave appointment to respondent No.1 on 10.12.1973 and mischievously added a clause that appointment was subject to approval of the Director of Education. Where was the question of the appointment being subject to approval of the Director when the Director had already rejected the recommendation of the school management that respondent No.1 be appointed as Principal of the school. Issue, in law stood closed. The school may have tried to keep the issue alive but that is neither here nor there. Rule 98(4) of the Delhi School Education Rules, 1973 would, therefore, not be attracted. Had it been a case where reference was pending before the Director of Education when the rules came into force and the Director took no decision within 15 days, one could have argued that it was a case of deemed approval. This is not the position here. Besides, by appearing before the fresh selection committee and participating in the fresh selection process, respondent No.1 is even otherwise stopped from raising the old issue.”

5. In the present appeal, the appellant had approached the learned Single Judge in review proceedings, urging that errors were apparent on the face of the record in the impugned order. However, that review petition was eventually dismissed after a hearing. In the grounds urged in support of the present appeal, the appellant argues that the Education Code, especially the Rules 184 and 187 were inapplicable since the school was an unaided one. It is also urged that with the advent of the DSEAR, 1973, Rule 98(4) applied and since the petition for approval of the respondent's appointment had not been dealt with, the deemed provision under Rule 98(4) kicked in regularizing his

appointment. It is also urged that once the appointment stood approved, in terms of Rule 98(4), it was deemed lawful and the termination of the respondent's tenure of probation became untenable in law.

6. This Court notices that in the pleadings before the learned Single Judge in the writ proceedings, the Govt. of NCT of Delhi had urged that Rules 84 and 187 of the Delhi Education Code, 1965 were applicable. This is evident from a reading of para 27(E) and (F) of the Writ Petition. Significantly, in the reply, there is a bland denial and the respondents nowhere stated that the school was unaided. Besides, the Court also notices that the school never took the position that the Code did not apply to it. In fact, its action in proceeding to make a reference to the Directorate for approval in terms of Rule 184 since there was a deviation of opinion as to which candidate had to be appointed in the year 1973 – implicitly barred it (the school management) from arguing to the contrary. The Court also notices that even the letter dated 10.12.1973 relied upon by the respondents itself stated that the appellant was subject to the approval of the Department of Education, Delhi Administration. In these circumstances, the Court has no doubt that the findings of the learned Single Judge on the applicability of the Code and the need to obtain approval are sound and do not call for interference.

7. This Court has also seen the letter of 08.10.1973 of the Directorate of Education which answered the reference made it through a letter dated 24.09.1973 by the management of the school, intimating the difference of opinion between the Chairman of the

Interview Board and the members vis-à-vis the candidate to be selected. The Directorate of Education categorically stated that –

“.....The Director of Education has decided that Sh. B.L. Singal may be appointed Principal.”

8. Rule 184 is unambiguous on this score and states pertinently that:

“184.....If there is any difference of opinion amongst members of the selection committee in regard to the suitability of any particular candidate, the matter shall be referred to the Director whose decision shall be final.”

9. The above facts are in themselves sufficient to dispose of this appeal in as much as the school's action in referring the deviation of opinion, by letter dated 24.09.1973 and the Directorate's intimation of its decision by letter dated 08.10.1973 seal the whole matter. The school could not thereafter argue that the Delhi Education Code did not apply. Yet, it proceeded to issue a letter of appointment to the first respondent on 10.12.1973, contrary to the mandate of the Directorate. That the DSEAR, 1973 came into force subsequently did not alter the fact that the school was and continued to be subject to the supervision of Directorate with regard to appointment of the Principal. Since the vacancy had arisen before the DSEAR, 1973 came into force, this Court is of the opinion that fresh life could not be injected into what clearly was a nullity, i.e. so-called appointment of first respondent. The subsequent act of the management relieving him from the services cannot, therefore, be termed as a termination which at best was an ingenious argument which found favor with the tribunal, in the

second instance, on 08.08.2000.

10. For the above observations and reasons, this Court is of the opinion that the appeal lacks in merit. It is accordingly dismissed without any order as to costs.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

APRIL 18, 2013
‘ajk’