

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: October 16, 2017
Judgment delivered on: November 14, 2017

+ W.P.(C) 3996/2017, CM No. 17584/2017

HILLWOODS ACADEMY AND ORS

..... Petitioners

Through: Mr. Rana S. Biswas, Adv. with
Mr. Sunil Kr. Sharma & Mr. Paul
Paske, Advs.

versus

ARCHNA PETER AND ANR

..... Respondents

Through: Mr. Nikilesh R., Adv. with Mr.
Niraj Jha, Mr. Navdeep Jain,
Ms. Pratima Singh, Advs, for R-1
Mr. Satyakam, ASC with
Mr. K.P. Singh, LA, Zone-II for
R-2

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to the order dated March 2, 2017 of the Delhi School Tribunal in Appeal No. 31/2015 whereby the appeal filed by the respondent no.1 herein under Section 8(3) of the Delhi School Education Act, 1973 has been allowed and the termination of the services of the

respondent no.1 w.e.f October 14, 2014 was held to be illegal and arbitrary and the letter dated January 16, 2015 received by the respondent no.1 on February 14, 2015 was set aside.

2. Some of the facts relevant for the proper adjudication of the case are, petitioner no.1 herein is a recognized Private unaided School and the respondent no.1 has been working as a primary teacher in the petitioner School w.e.f July 28, 1997. It is the case of the petitioner herein that on October 14, 2014, parents of two students of KG-D namely Pranav Sharma and Uday Gupta met the Head-Mistress of the School, i.e., petitioner no. 2 in her office and complained against the respondent no.1 stating, she as a class teacher had confined their wards in the toilet. It was also the allegation of the parents that she had assaulted, i.e., slapped, pinched and pulled the ears of the students on October 10, 2014. The complaints of the parents were filed in writing. It was also stated by the parents in their complaints that it was not for the first time, that such an incident had taken place, but earlier also similar kind of assaults were being administered by the respondent no.1 to their wards. Petitioner no.2 enquired into the matter and the school children were called and heard after the parents had left. It is the case of the petitioners that the children bitterly started crying and repeatedly stating that they were

dreaded to be confined in the toilet. The children were found to be mentally disturbed. Respondent no.1 was called and explanation was sought from her. In her explanation, she had stated as the children were found playing with the water in the washroom and were wet, she as a teacher told them to remain in toilet and they will not go home. However, she denied physically assaulting the students. Petitioner no.2 prepared a report regarding the alleged acts and misconduct of the respondent no.1 and submitted the same to the petitioner no.3. It was decided that respondent no.1 be sent home for an indefinite period for her insensitive and harsh behaviour.

3. In the appeal filed before the Delhi School Tribunal, it was the case of the respondent no. 1 that on October 17, 2014, she met the petitioner no. 3 on the occasion of Diwali and enquired as to when she should join back. She was told to meet after Diwali. Thereafter despite sending messages through SMS and asking petitioner no. 3 to give an appointment, petitioner no. 3 has been sending messages, '*wait till we decide*'. Be that as it may, respondent no. 1 wrote a letter to respondent no. 3 requesting her for permission to join the School. After receiving the letter dated January 4, 2015, petitioner no. 3 had asked respondent no. 1 to meet her on January 15, 2015. It is the case of the respondent no. 1 that petitioner no. 3 had asked her to sign an undated letter,

in which it was mentioned that for violating the guidelines of RTE Act with regard to awarding punishment to the students, she (respondent no.1) was being prevented from attending the School and performing her duties as a teacher. Respondent no.1 refused to sign such a letter. On her refusing to sign such letter, the petitioner no.3 threatened her on dire consequences including removal her from her services for the incident dated October 10, 2014. It was the case of the respondent no.1 that on February 4, 2015, she received a letter dated January 16, 2015 informing about the action of sending her home because of awarding the punishment to the children. Thereafter, respondent no.1 made a representation dated February 16, 2015 to Directorate of Education. It was the case of the respondent no.1 that the letter dated January 16, 2015 is a letter of termination, which is arbitrary and illegal. The stand of the petitioners before the School Tribunal was about the incident that had taken place on October 10, 2014, which has been referred above. It was also the case of the petitioners that on July 9, 2015, respondent no.1 was suspended and thereafter memorandum dated September 4, 2015 was issued to the respondent no.1. An Enquiry Officer was appointed and the respondent no. 1 was awarded punishment of dismissal by the disciplinary authority in view of the Enquiry Report. A letter was written to the Directorate of

Education for sending approval of the termination of the respondent no.1. Respondent no.1 has also taken a stand before the Tribunal that she has not been paid salary between October 14, 2014 till July 9, 2015. That apart, even in terms of the letter dated July 9, 2015, subsistence allowance has not been paid. The Tribunal held that the relationship between the respondent no.1 and the petitioners came to an end on October 14, 2014 when the respondent no.1 was not paid her salary. It also held that the alleged proceedings of issuing of suspension letter, appointing of Enquiry Officer and conducting of enquiry were illegal, afterthought to cover their lapses to regularize the illegal termination of the respondent no.1 w.e.f October 14, 2014. The Tribunal directed the reinstatement of the respondent no.1, with liberty to the respondent no.1 to make a representation under Rule 121 of the Delhi School Education Act and Rules, 1973 with regard to back wages.

4. The matter was heard on different dates. When the matter was heard on May 8, 2017, it was adjourned to enable the parties to take instructions. On May 17, 2017, this Court had recorded the statement of the counsel for the petitioners that petitioners are willing to pay the back wages for the period October 14, 2014 to July 9, 2015, i.e., the date when the respondent no.1 was suspended and thereafter from July 10, 2015 onwards to pay suspension

allowance and also to hold *de-novo* enquiry wherein respondent no.1 may participate. On July 7, 2017, counsel for the respondent no.1 had argued that even the respondent no.1 cannot be treated to have been validly suspended on July 9, 2015 as no approval of the Directorate of Education was taken in that regard. He also stated that till such time fresh order of suspension is passed, respondent no.1 shall also be entitled to back wages w.e.f July 10, 2015 till the date of suspension. This submission was not acceptable to the counsel for the petitioners, who on July 19, 2017 made a submission that the petition needs to be decided on merit. The submission of the learned counsel for the petitioners has been that the charges against the respondent no.1 being of very serious nature, the Tribunal could not have directed her reinstatement. He had also submitted that the Tribunal should have given liberty to the petitioners herein to conduct a *de-novo* enquiry against the respondent no.1 on serious allegations. On the other hand, learned counsel for the respondent no.1 would justify the order of the Tribunal inasmuch as the letter dated January 16, 2015, whereby the petitioners had sent the respondent no.1 home in fact is an order of termination which should not have been issued without following due process of law. He seeks reinstatement of the respondent no.1 with all back wages.

5. Having heard the learned counsel for the parties, there is no dispute that there was no enquiry held against the respondent no.1 before issuing the letter dated January 16, 2015. The Tribunal was justified in holding that said letter has the effect of terminating the services of the respondent no.1. If that be so, the order of the Tribunal cannot be faulted except to the extent that Tribunal noting the seriousness of the charges alleged against the respondent no.1 should have granted liberty to the petitioners to conduct a *de-novo* enquiry against the respondent no.1. Unfortunately that has not been done. The order of the Tribunal needs to be modified to the extent giving liberty to the petitioners to conduct *de-novo* enquiry if so advised in accordance with the provisions of the Delhi School Education Acts and Rules, 1973. In so far as the payment of back wages are concerned, same shall be governed by the direction of the Delhi School Tribunal in Para 26 of the impugned order.

6. During the course of the submissions, an issue arose whether the respondent no.1 shall be deemed to be under suspension w.e.f July 9, 2015, which was contested by the counsel for the respondent no.1 on the ground that same was non-est as the same to be effected with approval of the Directorate of Education which has not been done. I deem it appropriate that on this aspect, respondent no.1 shall make a representation to the Directorate of

Education within one week from today detailing the grounds on which according to her the suspension is illegal. The Directorate of Education shall pass a reasoned order within three weeks thereafter after seeking the comments from the School. If the Directorate of Education agrees with the stand of the respondent no.1 then the suspension of the respondent no.1 w.e.f July 9, 2015 shall be deemed to have been revoked and the respondent no.1 shall be entitled to full back wages for the period after July 9, 2015 and shall be reinstated forthwith. This would not preclude the petitioner no.1 School to issue a fresh suspension order in accordance with the Rules. The petition is disposed of.

CM. NO. 17584/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

NOVEMBER 14, 2017/jg