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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 286/2015

13th January, 2015

SANTOSH SINDAL

.....Petitioner

Through: Mr. Raj Kumar Sherawat, Adv. and
Mr. Naresh Kr. Sharma,

VERSUS

SCHOOL MANAGEMENT OF DAYA NAND SCHOOL & ANR.

..... Respondents

Through: Mr. Yogesh Saini and Mr. Kartik
Jindal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India the petitioner, who was a teacher with the respondent no.1-school, impugns the order of the Delhi School Tribunal dated 11.11.2014 which has dismissed the appeal filed by the petitioner in which the petitioner had challenged the order of the school dated 31.7.2013 terminating her services.

2. The facts of the case are that the petitioner was employed as a part-time Yoga teacher in the respondent no.1-school on 6.7.2000 and she

was thereafter engaged as a full time Yoga teacher w.e.f 25.9.2004. Respondent no1-school abolished the post in question on account of financial stringency and in view of the fact that teaching of Yoga was not a prescribed subject under the CBSE syllabus. On account of abolition of the post, the services of the petitioner were effectively retrenched.

3. The issue before the Tribunal was that whether a teacher of a school working under the Delhi School Education Act and Rules, 1973 can or cannot be retrenched and the Tribunal has referred to the judgments of this Court holding that retrenchment is not an alien concept with regard to an employee/teacher under the Delhi School Education Act and Rules. The relevant observations of the Tribunal referring to the observations of judgments of different judges of this Court are contained in paras 16 to 18 of the impugned judgment and which read as under:-

“16. Ld. Counsel for the Respondent School placing reliance on **Prabhu Dayal Public School vs. Prahlad and Others**, WP(C) Nos. 3260/1996, 3261/1996 and 3262/1996 argued that the Appellant was not a workman as defined under industrial Dispute Act, his services were retrenched on account of closure of the transport department in the school by the school authorities. Hon’ble High court in this authority has held that the concept of retrenchment is not alien to the DSEAR-73. Hon’ble High court has upheld the retrenchment of Respondent No. 1 in this authority. The relevant portion of this authority is as under:

“8. *It is settled law that retrenchment is not termination for misconduct. In the decision reported as MANU/SC/0827/2004: 2004 (8)*

SCC 129 State of Punjab Vs. Jagir Singh in Para 11 it was observed as under:

II. It is not is dispute that workman did not perform any duty since 2.5.1979. The labour Court made its award only on the ground that before issuing the order of termination dated 3.8.2979, no disciplinary proceeding was held in terms of the Punjab Civil Services (Punishment and Appeal) Rules and furthermore the mandatory requirement of Section 25-F of the Industrial Disputes Act, 1947 were not complied with. The findings of the Labour Court are inconsistent and self-contradictory. If the services of the workman were terminated for misconduct, the question of payment of any retrenchment compensation or services of any statutory notice would not arise. The question of compliance with the provision of Section 25-F of the industrial Disputes Act would arise, if the services of the workman concerned were terminated on a ground other than misconduct.

9. Suffice would it be to state that the Tribunal did not understand the legal issue which was involved in the appeal before the Tribunal. It was not the case of the management that it had terminated the services of the workman on account of an alleged misconduct.

10. The Tribunal failed to appreciate that where a post is abolished on account of non-availability of work the incumbent loses lien to the post and since he loses lien to the post he must go home. The exception drawn is under the Industrial Disputes Act 1947 where a workman has to be retrenched when no work is available and has to be paid retrenchment compensation.

11. I Fail to understand as to from where has the Tribunal held that the concept of retrenchment is alien to the Delhi School Education Act 1973.

12. It has to be understood that the Industrial Disputes Act 1974 and the Delhi School Education Act 1973 operate in their own spheres and in case of overlapping, subject to the rule of repugnancy and subject to the rule of repugnancy and subject to the rule that the special act overrides the general act, every attempt has to be made to give effect to the statutory provisions of the two enactments.

13. In the instant case with the management taking the decision to close down the transport department the employees in the transport department obviously became surplus, in that, the post which they were holding came to be abolished. But for the fact some of them were workman, others, i.e. non workman had to suffer cessation of their employment. The respondent were lucky Being workman they got the necessary protection under the

Industrial Disputes Act 1947 and on said count while dispensing with their services the management rightly paid retrenchment compensation.

14. *For the reasons noted herein above the petitions have to be allowed and impugned orders have to be quashed.*

15. *Ordered accordingly.*

16. *Impugned order dated 25.6.1996 passed in Appeal No. 33/92 filed by Prahlad, impugned order of even dated passed in Appeal No. 32/92 filed by Jawahar Lal Singh and the impugned order of even dated passed in Appeal No. 3/95 filed by Arbind Kumar are quashed. The three appeals are dismissed.*

17. *Before concluding I note that in terms of the orders passed by the Tribunal, 50% of the wages have been paid to the workman when interim orders were passed staying the operation of the impugned orders. I record the consent of learned counsel for the petitioner that notwithstanding the writ petitions being allowed his clients would not recover the said amount paid to the first respondents. No costs."*

17. In the case in hand the Appellant was working as a part time regular Yoga Teacher in the Respondent School in view of the directions of the Hon'ble High Court vide order dated 04.05.2011. Yoga is a non-academic subject. Respondent School is recognized unaided school which is being run on no profit no loss basis. The School management decided to abolish the post of non-academic Yoga subject, therefore retrenched the Appellant. Hon'ble High Court of Delhi in the case of **Neharika Tyagi vs. Army Public School, 1999 III AD (Delhi) 609**, has held that closure of a subject did not amount to closure of a class itself, as such no permission is required from any authority.

18. Hon'ble High Court of Delhi in the case of **Mount Abu Education Society vs. Anshu Sharma and Another**, CM WP (C) 3964/2011 & CM No. 8235-36/2011 decided on 29.08.2011 has held that School Management can discontinue a subject and teacher can be declared surplus. It is held as follows in this authority:

"Constitution of India, 1950-Art. 226 – Writ – Question as to whether discontinuance of Hindi as subject for Classes XI and XII by

School required the prior approval of DoE in terms of Rule 46 DSER – Held, As regards Rule 47 DSER, it applies only to aided schools – Rule 47 (3) contemplates teacher being rendered surplus even on account of discontinuance of subject in school – However, such contingency is not envisaged in Rule 47 – It is not possible to accept submission of counsel for Respondent No. 1 that wording of rule 47 which is in context of aided school should be used as ‘external aid’ to interpretation of words “existing class” occurring in rule 46 – conscious distinction has been made by rule maker between situation occurring in aided school to which Rule 47, DSER applies and that in unaided recognized school covered by Rule 46 DSER – As far as rule 46 is concerned, prior approval of DoE is required only where School itself or entire class in School closed.”

4. I am bound by the earlier judgments passed by different judges of this Court, and the ratio of which judgments is that it is permissible for the school to retrench an employee by abolition of a post. There is therefore no merit in this writ petition.

5. Learned counsel for the petitioner sought to argue that retrenchment of the petitioner is bad because the same is in violation of various provisions of the Industrial Disputes Act, 1947, however, learned counsel for the petitioner had no option but to concede that in the appeal filed before the Tribunal which has been decided by the impugned order dated 11.11.2014, no cause of action is laid with respect to aspects that petitioner has been illegally retrenched inasmuch as provisions of the Industrial Disputes Act are not complied with. Once there is no case which

is set up in the pleadings, and which was also not argued before the Tribunal because this aspect is not discussed/ mentioned in the impugned judgment dated 11.11.2014, therefore in this petition a totally new case and which is factual in nature as this new case now pleaded has to show factual compliance of certain ingredients of the Industrial Disputes Act, 1947, cannot be raised for the first time in this Court.

6. Dismissed.

JANUARY 13, 2015

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VALMIKI J. MEHTA, J.