

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

% **Order delivered on: 6th September, 2016**

+ **ARB. P. No.455/2015**

LESLIE DINIZ Petitioner
Through Mr.Nitin Sen, Adv. with
Mr.Krishanu Adhikary, Adv.

versus

LOTT CAREY BAPTIST MISSION IN INDIA Respondent
Through Mr.Romy Chacko, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the above said petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.
2. The relevant dates and events are referred as under:-
 - (i) On 1st April, 1997, the petitioner was appointed as T.G.T. (Western Music) at Somerville School, D-89, Sector-22, Noida-201301, Distt. Gautam Budh Nagar (UP).
 - (ii) After completion of the probation period, the petitioner was confirmed on regular basis vide Service Contract Agreement dated 15th April, 1999.
 - (iii) On 10th September, 2013, the petitioner was made an accused of misconduct. He was charge-sheeted for the alleged misconduct on 11th December, 2013. He replied to the charge-sheet on 27th December, 2013. However, on 29th

August, 2014, the inquiry report held the petitioner guilty of violating Section 1-57/1 (Xlvii) of the Code of Conduct and in contravention of Item No.7 of the Service Contract Agreement dated 15th April, 1999.

- (iv) On 13th October, 2014, show-cause notice was issued to the petitioner, to which the petitioner responded on 31st October, 2014. On 25th November, 2014, the Managing Committee decided to terminate the petitioner's services and the petitioner was informed about the said decision on the next day, i.e. 26th November, 2014.
- (v) On 16th February, 2015, the petitioner represented before the Member of the Executive Committee seeking reconsideration of the order of dismissal/termination. Thereafter, on 11th May, 2015, the petitioner through his Attorney requested the respondent to consider his representation dated 16th February, 2015 and revert with reasoned response.
- (vi) On 5th June, 2015, the petitioner invoked arbitration clause 19(c) of the Service Contract Agreement dated 15th April, 1999. Since the respondent has failed to appoint an Arbitrator, the petitioner filed the present petition before this Court in August, 2015.

3. The counter-affidavit has been filed by the respondent. Learned counsel appearing on behalf of the respondent has raised the plea of territorial jurisdiction.

4. On the other hand, the learned counsel for the petitioner has referred the following decisions:-

- (a) ***Management Committee of Montfort Senior Secondary School v. Vijay Kumar and others***, (2005) 7 SCC 472, paras 10 & 20 read as under:-

"10. In *St. Xaviers'* case the following observation was made, which was noted in *Frank Anthony's* case: (SCC p.783, para 92)

"92. A regulation which is designed to prevent mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of *Rev. Sidhajibhai Sabhai* regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test – the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it."

The effect of the decision in *Frank Anthony* case is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in *Frank Anthony's* case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed

under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV. The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights. In *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*, it has been observed that if a statute confers a right and in the same breath provides for a remedy for enforcement of such right, the remedy provided by the statute is an exclusive one. If an employee seeks to enforce rights and obligations created under Chapter V, a remedy is available to him to get an adjudication in the manner provided in Chapter IV by the prescribed forum i.e. the Tribunal. That being so, (*sic* it cannot be said that) the Tribunal cannot and in fact has no power and jurisdiction to hear the appeal on merits and only way is to ask the parties to go for arbitration.

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20. At first flush, Sections 8(3) and 15 of the Act may appear to be self-contradictory. But it is really not so, when considered in the background of what is stated in *Frank Anthony* and *St. Xavier's* cases. By giving benefit of Section 8(3) to employees of recognized unaided minority schools, they are put at par with their counterparts in private schools. The two provisions serve similar purpose i.e. providing a forum for ventilating grievances before a forum. Once a remedy under one is exhausted it is not permissible to avail the other one."

- (b) ***Apeejay School v. Darbari Lal & Ors.***, 2010 (117) DRJ 129, relevant para thereof reads as under:-

"12(xvii). It was further submitted that the view of the Punjab & Haryana High Court as well as of the Gujarat High Court also is that the remedy of School Tribunal does not deprive the workmen employed in the school of the remedy under the I.D. Act. Reference in this regard is made to *Hindu Kanya Mahavidalaya v. The Presiding Officer, Labour Court, Gurdaspur*, CW(P) 6495/1987 of the High Court of Chandigarh decided on 2nd July, 2009 and to *Arjunbhai Amritbhai Naik v. State*

of Gujarat (2000) 4 Gujarat Law Reporter 239. It is further informed that there is a conflict of opinion on this point in the Bombay High Court and the matter has been referred to the Full Bench of that High Court. Reliance is placed on Satyawadi v. Sow. Aruna, 2000 (3) Bom. CR 182 laying down that the non teaching employees of a school have the dual remedy of the School Tribunal and the I.D. Act and the teaching staff has the remedy only before the School Tribunal and on Adarsha Shikshan Sanstha v. Jaiprakash Ramvilas Lohia, WP(C) No. 4756/1996 of the Aurangabad Bench of the High Court at Bombay decided on 14th October, 2009 holding that in view of the special legislation covering employees of private school, the remedy is to approach the School Tribunal and not the Labour Court."

5. I have heard the learned counsel for the parties. In case the averments made in the petition and the documents placed on the record are read in a meaningful manner, I am of the view that the prayer made in the above said petition is liable to be allowed. As far as the objections raised by the respondent about the territorial jurisdiction are concerned, *prima-facie*, I am satisfied with the same. However, liberty is granted to the respondent to raise the said issue before the Arbitrator.

6. Accordingly, Mr.Pradeep Chaddah, Retired District Judge (R/o 37/29, East Patel Nagar, New Delhi-110008, Mobile No.9910384665), is appointed as sole Arbitrator to adjudicate the disputes arising out of the agreement in question between the parties as mentioned in the present petition. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator. Liberty is granted to the respondent to raise all the grounds as mentioned in the counter-affidavit including plea of territorial jurisdiction who will decide the same as per its own merit.

7. The arbitration shall take place under the aegis of Delhi International Arbitration Centre ('DAC'). The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. As agreed, the fee of the learned Arbitrator is fixed at Rs.60,000/- which shall be shared by both the parties in equal proportions. The parties to appear before the Arbitrator on 26th September, 2016 at 4:00 pm for directions.

8. The petition is accordingly disposed of.

9. Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

SEPTEMBER 06, 2016

**(MANMOHAN SINGH)
JUDGE**