

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

+ **W.P.(C) No. 330/2010**

% **15th February, 2017**

RAJINDER KUMAR GUPTA Petitioner
Through: Mr. Shiv Prakash Pandey,
Advocate with petitioner in person.

versus

THE GOVT. OF NCT OF DELHI AND ORS. Respondents
Through: Mr. Rahul Sharma and Mr. C.K.
Bhatt, Advocates for R-1 to 3 & 6.

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 Articles 226 and 227 of the Constitution of India the petitioner impugns the judgment of the Delhi School Tribunal (DST) dated 31.7.2009, and by which judgment the DST has dismissed the appeal filed by the petitioner challenging the orders dated 16.10.2002 and 14.11.2002 reflecting the termination of services of the petitioner from the respondent/New Saraswati Public Secondary School, Nangloi, Delhi, and which school is represented by respondent nos. 4 and 5.

2. The facts of the case as appearing from the record are that petitioner was appointed as an Assistant Teacher in the New Saraswati Public Secondary School, Nangloi, Delhi with effect from 15.10.1993 as reflected in the certificate dated 31.8.1996 issued by the said school, which reads as under:-

“NEW SARASWATI PUBLIC SCHOOL
(RECOGNISED)
MAIN ROAD, NANGLIO EXTN. NO. 2, DELHI -110041

Ref:- Dated 31st August, 1996

TO WHOM IT MAY CONCERN

Certified that Sh. Rajendra Kumar Gupta has been working as an assistant teacher in this school in the grade of 1200-2040 with effect from October 15, 1993.
He has been teaching science & maths to junior classes satisfactorily.
wish him success in life.

Sd/-
(Mrs. K. Yadav)
Principal
New Saraswati Public School
Nangloi, Ext. Delhi -41.”

3. Petitioner was thereafter confirmed, however, in the job of Assistant Teacher (Computer), and not Assistant Teacher General as seen from the letter dated 24.8.2000 of New Saraswati Public Secondary School and which reads as under:-

“NEW SARASWATI PUBLIC SCHOOL
(RECOGNISED)
MAIN ROAD, NANGLIO EXTN. NO. 2, DELHI -110041

Ref:- Dated 24.08.2000

TO WHOM IT MAY CONCERN

This is to Certify that Mr. Rajendra Kumar Gupta (B.Sc., Dip-in-Computer) S/o Late Sh. Suraj Bhan Gupta has been teaching in this school since 1st Sept 1996 as an Assistant Teacher (Computer) in the pay

scale of Rs.4500-7000. He is a regular full time teacher of this school. He is sincere and dutiful. He has about 4 years teaching experience. This school is a Govt. recognized unaided institution. Wish him success in life.

Place:- Delhi
Dated: 24.08.2000

Sd/-
Signature of Principal
(Mrs. K. Yadav)
Principal
New Saraswati Public School
Nangloi, Ext. Delhi -41.”

4. Petitioner claims that suddenly he was asked to stop the work from 2.9.2002. Petitioner was called for hearing before the Principal vide letters dated 9.9.2002 and 21.9.2002, and which read as under:-

1. Letter dated 9.9.2002

“OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION
DISTRICT WEST-BIG-BLOCK: VIKAS PUR: NEW DELHI
No. DDE/W-B/PRBr./2002/720 Dated 09.09.02
To
Sh. Rajender Kumar Gupta,
New Saraswati Public School,
Nangloi, N. Delhi
Sir,
You are hereby directed to see the undersigned in her office at 3.00 PM on 13.09.2002 regarding some complaints received against you.

sd/-
(DALJEET KAUR)
D.D.E. (West-B)”

2. Letter dated 21.9.2002

“NEW SARASWATI PUBLIC SECONDARY SCHOOL
(RECOGNISED)
MAIN ROAD, NANGLOI EXTN. NO. 2, DELHI -110041

Ref:- 326/2002

Dated 21.09.2002

MEMORANDUM

You are asked by the worthy Dy. Director of Education, District West (B) vide her letter No. DDE/W-B/Pr-Br/2002/722 dated 09.09.2002 (copy endorsed to you also vide office order No. 723 dated 09.09.2002 to meet her in her office on 13.09.2002 at 3 p.m.

You did not go to meet her nor have you been attending the school since 11.09.2002 and have also not put up any application for leave.

This is not a teacher-like attitude, which please note.

sd/-
(K. Yadav)
V. Principal

To
Sh. R.K. Gupta,
E-106/4, Rama Vihar,
(Rohini Sec.-22)
New Delhi-110081”

5. Petitioner appeared before the Principal but he was not given any hearing and the Department of Education upheld the termination of services of the petitioner vide its order dated 25.2.2003.

6. It was alleged by the school that the petitioner did not have requisite qualifications at the time of his appointment, and consequently a letter dated 18.10.2004 was issued by the Director of Education giving *ex-post facto* approval for termination of services of the petitioner. This letter dated 18.10.2004 reads as under:

“GOVT. OF N.C.T. OF DELHI
DIRECTORATE OF EDUCATION
BRANCH OF DDE (HQ)
OLD SECTT. DELHI -110054
PHONE NO. 23890432

No. 2912

Dated:- 18.10.2004

To
The Secretary,
Public Grievances Commission,
IInd Floor, M-Block, Vikas Bhawan,

New Delhi.

Sub:- Regarding payment of salary and termination in respect of Rajinder Kumar Gupta.

Reference:- F.6(153) / 03

Sir/Madam,

Kindly refer to the above cited subject, I am directed to inform that as per direction of PGC, Sh. Gupta did not reach the school to collect his salary cheque of Rs.17,356 for July & August 2002 on 23.08.2004. The Competent Authority has approved ex-post facto termination of services of Sh. Rajinder Kumar Gupta, Computer Teacher, New Saraswati Public School, Extn. II Nangloi, Delhi as he did not possess the required qualification.

Hence, this case may be kindly closed.

Yours faithfully,

sd/-

(A.K. Chakravarty)

DDE (HQ)

18.10.2004”

7. Petitioner filed an appeal before the DST pleading that petitioner's certificate and qualifications were duly seen at the time of his original appointment as an Assistant Teacher on 15.10.1993 and thereafter he was confirmed as an Assistant Teacher (Computer) on 1.9.1996. It was contended that in any case since petitioner was a confirmed employee his services could not have been terminated without following the due process of law and which is by constituting of a Disciplinary Committee in terms of Rule 118 of Delhi School Education Rules, 1973 and thereafter inquiry proceedings being held and punishment being imposed of termination of services of the petitioner under Rule 120 of the Delhi School Education Rules. It is seen from the impugned judgment of the DST that the appeal of the

petitioner has been dismissed on the ground that petitioner did not have the requisite qualification of Diploma in Computer Sciences, inasmuch as, it has been held that there was no institute existing which had issued the diploma certificate to the petitioner, and hence the diploma certificate of the petitioner was fake. Petitioner's termination of services as an Assistant Teacher (Computer) with effect from 1.9.1996 was, accordingly, held to be illegal and bad, and consequently, DST upheld the validity of the termination of services of the petitioner in terms of the letters dated 16.10.2002 and 14.11.2002 issued by New Saraswati Public Secondary School.

8. Learned counsel for the petitioner firstly argues that in the present case admittedly, the petitioner was a confirmed employee of the New Saraswati Public Secondary School, and once that is so, the petitioner had statutory protection of services and hence could not be removed without following the due process of conducting of an inquiry and disciplinary authority imposing punishment as provided under Rules 118 and 120 of the Delhi School Education Rules. Reliance in support of the argument is placed upon the judgment of the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Others*, (2005) 7 SCC 472 and which holds that services of employees/teachers in schools

have statutory protection. Para 10 of the judgment in the case of *Management Committee of Montfort Senior Secondary School*

(*supra*) is relevant, and the same reads as under:-

“10. In *St. Xaviers' case* (*supra*) the following observation was made, which was noted in *Frank Anthony's case* (*supra*):

"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 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* (*supra*), 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's case* (*supra*) 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.....”

(emphasis added)

9. I completely agree with the final argument urged on behalf of the petitioner because petitioner was undoubtedly a confirmed employee of the New Saraswati Public Secondary School and as is seen from the letter dated 24.8.2000 issued by the New Saraswati Public Secondary School.

10. In any case I may note, and this aspect is discussed subsequently, that petitioner only claims the relief that even assuming that petitioner could not have been appointed as an Assistant Teacher (Computer) with effect from 1.9.1996, inasmuch as, the petitioner did not have qualifications of a computer teacher, yet, original appointment of the petitioner was as an Assistant Teacher in New Saraswati Public Secondary School with effect from 15.10.1993, and since that is not being not disputed, and therefore, the termination order of the school could only be as removal of the petitioner as Assistant Teacher (Computer) but the appointment and position of the petitioner as an Assistant Teacher from 15.10.1993 would stand reverted to and hence continued. I agree.

11. It is therefore held that the termination of the services of the petitioner from the New Saraswati Public Secondary School being illegal and in violation of the principles of Rules 118 and 120 Delhi

School Education Rules, and the ratio of the judgment of the Supreme Court in the case of *Montfort Senior Secondary School (supra)*, is therefore illegal and is set aside with the condition and clarification that the petitioner is only claiming reliefs of being an Assistant Teacher in the respondent/New Saraswati Public Secondary School in terms of the letter dated 31.8.1996 that is Assistant Teacher with effect from 15.10.1993 but not as Assistant Teacher (Computer) with effect from 1.9.1996.

12. The second argument urged on behalf of the petitioner, which has been already referred to above, is that even if the petitioner would stand removed from the post of Assistant Teacher (Computer), and to which post petitioner was appointed with effect from 1.9.1996, yet, the removal of the petitioner will only be from the post of Assistant Teacher (Computer) and not from a normal Assistant Teacher and to which post the petitioner was employed from 15.10.1993, and which appointment as Assistant Teacher is clear from the letter dated 31.8.1996 of the respondent/New Saraswati Public Secondary School which has been reproduced above. On account of petitioner not having the qualifications for appointment as an Assistant Teacher (Computer) will only mean that petitioner cannot be appointed to or continue to the post of Assistant Teacher (Computer), but petitioner will surely in law

be entitled to continue as an Assistant Teacher with effect from 15.10.1993 and to which post of Assistant Teacher petitioner was given appointment as shown in letter dated 31.8.1996 of the respondent/school.

13. In view of the above, this writ petition is allowed. The impugned judgment of the DST dated 31.7.2009 is set aside. Petitioner will stand reinstated in his services as Assistant Teacher with the respondent/school, namely, New Saraswati Public Secondary School. As regards what are the back wages which are liable to be paid to the petitioner, in view of Rule 121 of the Delhi School Education Rules, the petitioner will move to the school with a representation for claiming such monetary emoluments/back wages.

14. The writ petition is accordingly allowed and disposed of in terms of the aforesaid observations.

FEBRUARY 15, 2017

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VALMIKI J. MEHTA, J