

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

+ **W.P.(C) No.3108/2017 & C.M. No.13539/2017(stay)**

% **11th April, 2017**

VIRENDRA SINGH Petitioner

Through: Mr. Piyush Sharma, Advocate.

versus

**MANAGING COMMITTEE, HARYANA SHAKTI SR.
SECONDARY SCHOOL AND ORS.** Respondents

Through: Ms. Swati Singh Malik,
Advocate for respondent Nos.2
and 3.

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner by this writ petition under Article 226 of the Constitution of India impugns the order dated 31.3.2017 by which petitioner has been pre-maturely retired as per the principle contained in FR 56(j) of the FRSR.

2. Petitioner by virtue of the impugned order therefore is in effect removed from services and any issue with respect to an employee of a school in Delhi being removed/terminated from services has to be challenged by means of filing of an appeal under Section 8(3) of the Delhi School Education Act, 1973 before the Delhi School Tribunal

(DST). This is categorically so held by the Supreme Court in its judgment in the case of *Shashi Gaur Vs. NCT of Delhi (2001) 10 SCC*

445. The said judgment is a short judgment and is reproduced as under:-

“1. Leave granted.

2. The short question that arises for consideration in this appeal is, whether a teacher of a private school whose services stood terminated not as a measure of penalty but on account of the fact that he allegedly did not have the requisite qualification, could move the Delhi School Tribunal (hereinafter referred to as 'the Tribunal') against the order of termination, constituted under Section 11 of the Delhi School Education Act, 1973 (hereinafter referred to as 'the Act') or not.

3. The appellant being of the view that the impugned order would not come within the expression "dismissal, removal or reduction in rank" used in Sub-section (3) of Section 8 of the Act, directly approached the High Court in a petition under Article 226 of the Constitution of India.

4. A learned Single Judge of the High Court came to the conclusion that availability of an alternative remedy oust the jurisdiction of the Court and, therefore, refused to interfere. The appellant approached the Division Bench in LPA and the order of the learned Single Judge having been confirmed, the appellant has approached this Court.

5. Mr. Das, the learned senior Counsel appearing for the appellant contends that Section 8(3) provides for an appeal against an order of dismissal, removal or reduction in rank and not against any order of termination as is apparent from the provisions contained in Sub-section (2) of Section 8, which provides for obtaining prior approval of the Director before dismissal, removal or reduction in rank or otherwise terminating the services of an employee of a recognised private school. The very fact of absence of the expression "otherwise termination" available in sub-section (2) from the provisions of Sub-section (3) clearly demonstrates that against an order of termination which does not come within the expression "dismissal, removal or reduction in rank", the Legislature has not provided for an appeal to the Tribunal constituted under Section 11 of the Act.

6. In support of this contention, the counsel also placed reliance on Rule 117 -explanation which indicates that replacement of a teacher who was not qualified on the date of his appointment by a qualified one, will not amount to a penalty within the meaning of the said Rule [see Explanation (c)]. The learned Counsel also placed before us the observations made by this Court in the case of *Principal v. Presiding Officer* wherein this Court had observed that for applicability of the provisions of Section 11 two conditions must co-exist, namely, (i) that the employee should be an employee of a recognised private school, and (ii) that he should be visited

with either of the three major penalties, i.e., dismissal, removal or reduction in rank.

7. This judgment and the interpretation put to the provisions of Sub-sections (2) and (3) of Section 8 undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The governmental authorities, having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that availability of an alternative remedy oust the jurisdiction of the Court under Article 226 of the Constitution.

9. We are told that the appellant has already approached the Tribunal aforesaid and we hope the Tribunal would do well in disposing of the matter at an early date.

10. This appeal stands disposed of with the above observations.”

(emphasis added)

3. I put it to the counsel for the petitioner that since this petition is not maintainable if petitioner agreed that this writ petition can be transferred for decision to DST, but, the counsel insists on a judgment on merits.

4. In view of the above position, since there is an alternative efficacious remedy of petitioner being entitled to challenge the impugned order before the DST, and since this Court is bound by the ratio of the judgment of the Supreme Court in the case of *Shashi Gaur (supra)* which mandates that it is the DST which will exercise jurisdiction under Section 8(3) of the Act on the issues covered under Section 8(3), accordingly, this writ petition is dismissed as petitioner has an alternative efficacious remedy and hence this Court would not exercise jurisdiction under Article 226 of the Constitution of India.

5. Dismissed.

APRIL 11, 2017
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VALMIKI J. MEHTA, J