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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7998/2014, CM No. 18725/2014

VIRENDRA KUMAR GOEL

..... Petitioner

Through: Mr.Avinash Trivedi, Adv. alongwith
petitioner in person.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms.Nidhi Raman, Adv. for R-1-2 along
with Mr.Pankaj, Legal Assistant.
Mr.Arvind Sah, Adv. for R-3-4

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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01.05.2017

1. The present petition has been filed with the following prayers:-

“A) Issue an appropriate writ, order or direction in the nature of Mandamus directing the respondents no.3 and 4 to allow the petitioner to join his service as Lab Asstt. In Gyan Mandir Public School, E-Block, Naraina, New Delhi-110028 with due salary and other service benefits, as well as the substance allowance during suspension period from 1997 till 18.4.2012 alongwith interest @10% per annum and further due salary and other benefits from 18.4.2012 onwards.

B) Issue an appropriate writ, order or direction in the nature of Mandamus directing the respondents no.3 and 4 to not to harass, humiliate and torture the petitioner while performing and discharging his duties as Lab Asstt. In Gyan Mandir Public School.

C) Pass such other /direction as may be deemed fit and proper in the facts and circumstances of the case.”

2. It is the case of the petitioner and also contended by the learned counsel for the petitioner that the petitioner was appointed as a Lab

Assistant in the respondent no.4 school. On 13th December, 1996 and 22nd January, 1997, memos were issued to the petitioner. On 7th February, 1997, he was placed under suspension. On 11th April, 1997, a charge sheet was issued to him. The enquiry officer in his report dated 12th September, 2002, exonerated the petitioner of all the charges. On 24th December, 2002, Disciplinary Authority Committee considered the report of the Inquiry Officer and disagreed with the findings of the Inquiry Officer.

3. He further states that on 10th January, 2003, the enquiry report was vitiated and a fresh charge sheet was issued on 13th February, 2003. The petitioner was directed to submit reply within 15 days. Aggrieved by the order dated 10th January, 2003, the petitioner filed WP(C) No.4223/2003. According to him, this Court vide order dated 26th April, 2005, has set-aside the order dated 10th January, 2003 with an observation that the Disciplinary Authority Committee shall be free to take a decision in the matter within 60 days after giving the petitioner an opportunity of being heard. The Disciplinary Authority Committee in its meeting on 20th July, 2005 has imposed the penalty of removal from service, which shall not be a disqualification for future employment in any other recognized private school. It appears, in the meantime, the petitioner filed a WP(C) no.11366/2005 in this Court, which was disposed of on 19th January, 2006 directing the respondent to ensure all payments, subsistence allowances as per applicable Rules are paid to the petitioner within two weeks. It was also observed that the petitioner shall be at liberty to approach the respondent no.1 Directorate of Education with a suitable representation concerning merits of the proposed penalty in view of the statement made on behalf of respondent no.4 school.

4. It is also his submission that on 11th August, 2005, the Management Committee wrote a letter to the Directorate of Education seeking approval of the Directorate removing the petitioner from service. He contends that the Directorate of Education vide its letter dated 13th February, 2006 rejected the request of the respondent no.3 for giving approval, removing the petitioner from service. The Directorate instructed the Management Committee to reinstate the services of the petitioner herein. He further states that the said order has never been challenged by respondent nos.3 and 4. He also states that an appeal was preferred by the petitioner before the Delhi School Education Tribunal being appeal no.02/2007 challenging the order of the removal.

5. The said appeal was disposed of vide order dated 18th April, 2012, wherein it was held that there is no termination of service of the petitioner and his services still exists with the respondent no.3. Pursuant thereto, the petitioner gave successive representations on 1st October, 2012, 25th October, 2012, 9th November, 2012, 10th December, 2012 and also got issued legal notices on 30th September, 2013, 25th November, 2013 before approaching this Court by way of this writ petition.

6. It is the submission of the learned counsel for the petitioner that despite the order of the Directorate of Education, respondent no.1 and the conclusion of the Delhi School Education Tribunal that there is no order of termination, the petitioner has not been reinstated. He states, the approval sought by the respondent nos.3 and 4 of the Director under Section 8(2) of the Delhi School Education Act, pre-supposes a prior approval from the Director for removal is mandatory. The plea that Section 8(2) shall not be applicable, in view of *Kathuria Public School vs. Directorate of Education*

& Anr. 113 (2004) DLT 703 (DB) is untenable, in view of the judgment of the Supreme Court in the case of *Rajkumar vs. Directorate of Education & Ors.* III 2016 SLT 236, wherein the Supreme Court in para 36, has held that termination of appointment in school for non compliance of mandatory provision of Section 25F of the ID Act and also Section 8(2) of the Delhi School Education Act is bad in law. According to him, in this case also the approval sought and not granted would mean, the petitioner is in service. He presses for relief as prayed for in the present case. On the other hand, Mr.Arvind Sah, learned counsel for the respondent nos. 3 and 4 would submit that the respondents 3 and 4 were not required to seek approval of the Director for removing the petitioner in view of the judgment of this Court in *Kathuria Public School (supra)*. He states seeking approval in petitioner's case was on a bona fide belief that such an approval was required. In other words, if there is no requirement in law to seek approval of the Directorate, the action of the respondent nos.3 and 4 cannot be faulted. He would submit that the judgment of the Supreme Court in the case of *Rajkumar (supra)* shall not be applicable to the case in hand inasmuch as in para 34, the Supreme Court's reasoning was the retrenchment of the service of the appellant therein was on 25th July, 2003, before the judgment of the *Kathuria Public School* was rendered. In other words, *Kathuria Public School* would have no applicability and the School was required to follow Section 8(2) of DSE Act.

7. It is his submission that the date when the petitioner was removed, the judgment of *Kathuria Public School* was in place in terms of which, no approval was required to be taken.

8. On the other hand, the learned counsel for the Directorate of

Education would submit that the Directorate has vide its letter dated 16th February, 2006 in unequivocal terms had rejected the request of the respondent nos.3 and 4 for approval of the removal of the petitioner. She states that the order has not been challenged.

9. Having heard the learned counsel for the parties, it is a conceded position that the respondent nos.3 and 4 have not challenged the order dated 13th February, 2006.

10. The plea of Mr.Sah that in view of the judgment of Kathuria Public School, the respondent nos.3 and 4 were not required to seek the approval of the Directorate would not be sustainable in view of the judgment of the Supreme Court in *Rajkumar(supra)*. That apart, I note, the Directorate had issued the order dated 13th February, 2006 on the asking of the respondents 3 and 4 rightly so, as the law in terms of Section 8(2) clearly stipulates such approval need to be taken, the mandate of the said section could not have been ignored. The approval having been rejected, the order of removal of the petitioner is nonest. Further, the Education Tribunal has rightly held that there is no order of termination. I reproduce the relevant paras of the judgment of the Supreme Court in ***Rajkumar (supra)***, as under:-

“36. The termination of the appellant is bad in law for non-compliance with the mandatory provisions of Section 25F of the ID Act and also Section 8(2) of the DSE Act. Further, the respondent-School has not produced any evidence on record to show that the retrenchment of the appellant was necessary as he had become ‘surplus’. The termination of the appellant was ordered in the year 2003 and he is unemployed till date. The respondents have been unable to produce any evidence to show that he was gainfully employed during that period and therefore, he is entitled to back wages and other consequential benefits in view of the law laid down by this Court in the case of Deepali Gundu Surwase vs. Kranti Junior

Adhyapak Mahavidyala (D.ED.) & Ors. (2013) 10 SCC 324, wherein it was held as under:

22. *The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has been effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory Forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or Court that the action taken by the employer is ultra vires the relevant statutor provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plea and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."*

11. The plea of Mr.Sah that the Supreme Court had allowed the appeal primarily on the ground that in the said case, the date of retrenchment was 25th July, 2003 before the date of judgment in ***Kathuria Public School (supra)*** is also unsustainable. Suffice to state the same was an additional

ground for the Supreme Court to allow the appeal. In view of clear mandate of the judgment of the Supreme Court in *Rajkumar's case (supra)*, and the approval not been granted, the petitioner is entitled to relief as prayed for.

12. During the submission, Mr.Sah has stated, respondent nos.3 and 4 have paid the subsistence allowance to the petitioner till 31st January, 2006. This aspect has been conceded by the learned counsel for the petitioner. If that be so, the petitioner shall be entitled to subsistence allowance effective from 1st February, 2006 to 18th April, 2012, the date as reflected by the petitioner in prayer 'A' of the writ petition. The petitioner shall also be entitled to reinstatement as Lab Assistant. The petitioner shall also be entitled to salary effective from 19th April, 2012. The arrears of subsistence allowance /salary shall be paid with interest @ 9% per annum. The aforesaid direction shall be complied with within eight weeks from the date of receipt of this order.

13. The petition is disposed of.

V. KAMESWAR RAO, J

MAY 01, 2017

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