

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

+ **FAO No. 365/2017 and CM Nos. 32556/2017(Exemption) & 32557/2017 (for condonation of delay)**

% **12th September, 2017**

NIKHIL KUMAR SINGH Appellant

Through: Mr. Sagar Saxena, Advocate

versus

DAV COLLEGE MANAGING COMMITTEE & ORS.

.... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The plaintiff/appellant impugns the order of the Trial Court dated 01.04.2017 by which the trial court has held that the civil court in Delhi would have no jurisdiction because either appellant/plaintiff/teacher will have to approach the Delhi School Educational Tribunal under the Delhi School Education Act, 1973 or the appellant/plaintiff will have to approach the concerned Educational Tribunal in Bihar.

2. As per the plaint, the appellant/plaintiff seeks the following reliefs: -

“

- a) Pass a decree of recovery for a sum of Rs.10,00,000/- (Rupees Ten Lacs Only) alongwith interest at the rate of 18% per annum from 24.06.13, till realisation, in favour of the plaintiff and against the Defendants;
- b) Declare that the termination of the Plaintiff from his services is null and void and direct the Defendants to reinstate the services of the Plaintiff and pay the consequential financial benefits to the Plaintiff from 28.01.2011 till date;
- c) The defendant may be directed to make the payment of the difference of the salary of the petitioner by rectifying the fixation of the pay scale of the plaintiff according to 5th pay commission and thereafter 6th Pay Commission since at the time of fixation of pay scale according to 5th Pay Commission which has been done on 01.4.1998 as the pay scale of the Plaintiff has been fixed Rs.250/- less by not providing two increments and all consequential upon after rectification of the pay scale accordingly;
- d) On adjudication of the facts as stated above it be declare that clause 7 of the appointment letter is ultra vires by which it has been interpolated that the transfer of the employee may be done in whole of the country as no such clause in the advertisement of the employment of the staffs/teachers of the D.A.V. Public schools of Bihar;
- e) Award cost of the suit favour of the plaintiff and against the Defendant; and
- f) Pass any other or such further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. As seen from the prayer clauses, the grievance of the appellant/plaintiff, and who is a teacher with the school of the respondent no. 1 at Patna in Bihar, is with respect to the reinstatement of the appellant/plaintiff in services and for appellant/plaintiff being granted a particular scale of pay etc. Appellant/plaintiff also seeks

recovery of an amount of Rs.10lacs as damages against his employer/school.

4. The impugned order passed by the trial court reads as under:-

“Matter is listed for arguments on application under order 7 rule 11 CPC. Prima facie, the Delhi School Educational Tribunal or the Bihar School Education Tribunal is having the exclusive jurisdiction to entertain the relief prayed for by the plaintiff in the preset suit. Therefore, without commenting on the merits of the rival contentions made by the Ld. Counsels for the parties on the application, I deem it appropriate to return this plaint to the plaintiff to be presented before the appropriate forum, as per law. Needless to say that the benefit of Section 14 of the Limitation Act will be available to the plaintiff as and when he approaches the appropriate forum in this regard. The application under order 7 Rule 11 CPC is disposed off accordingly. The plaint be returned to the plaintiff after filing of certified copy thereof.
File be consigned to record room.”

5. It is undisputed that a teacher of a school in Delhi is governed by the Delhi School Education Act and Rules, 1973. In case services of a teacher of a school in Delhi are terminated, then challenge to the such termination of services has to be before the Delhi School Tribunal, as is laid down in ***Shashi Gaur Vs. NCT of Delhi and Others, (2001) 10 SCC 445***. This short judgment 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)

6. Therefore, if the appellant/plaintiff was an employee/teacher of the school in Delhi, then the civil courts in Delhi would have no jurisdiction and the appellant/plaintiff would have to approach the Delhi School Educational Tribunal. The fact of the matter, however, is that the entire services rendered by the appellant/plaintiff is at the branch of the school of the respondent no. 1 at Patna in Bihar and the appellant/plaintiff is also admittedly resident of Patna in Bihar. The relationship between the appellant/plaintiff and his employer/school will be governed by the Local School Education

Acts applicable in Bihar. On checking from the internet it is found that there exists a State Appellate Authority and District Appellate Authorities constituted under the Bihar State of School Teachers & Employees Compact Redressal Rules, 2015 for redressal of Employment of Teachers and Non-teachers of Elementary, and Higher Government Aided and Minority School Institutions and Urban Institutions under the Notified Employment Rules 2006 and also for resolution of disputes between the Management and the Teaching and Non-teaching staff of aided Elementary, Secondary, and Higher Secondary Schools. The website is stateappellateauthority.bihar.gov.in. The different statutes pertaining to school education in Bihar are detailed on the aforesaid website.

7. The civil courts in Delhi would have territorial jurisdiction, either if the defendant resides at Delhi or if whole or part of cause of action would have arisen at Delhi vide Section 20 CPC. Merely, because the main DAV Managing Committee is situated at Delhi and which Managing Committee is the apex body with respect to different branches of DAV Committee schools/educational institutions running in different States, would not mean that the

defendants reside in Delhi. The cause of action, in the present case arises in favour of the appellant/plaintiff on account of the School Managing Committee at Patna in Bihar since the entire services of the appellant/plaintiff are rendered in Bihar, and not against the respondent no. 1 which is only the apex body of DAV Educational Institutions which include different schools and its different branches being run in different states of this country. Therefore, civil courts at Delhi would not have territorial jurisdiction merely because the apex DAV Managing Committee is situated at Delhi. In similar circumstances, under Explanation of Section 20 of CPC, it has been held by the Hon'ble Supreme Court in the case of *Patel Roadways Limited, Bombay vs. Prasad Trading Company, (1991) 4 SCC 270* that where the defendant is a company then the cause of action will not arise where the principal office or head office of the defendant company is situated, if there exists a branch of the defendant company where the cause of action arises, wholly or in part. On similar reasoning and ratio, since the school at which the appellant/plaintiff rendered his services right from the beginning to the end was at Patna in Bihar, it is the concerned school and its Managing Committee

which will be the relevant defendant and not the respondent no. 1 which is only the apex DAV College Managing Committee with respect to any or every educational institution of the DAV Managing Committee in India. Therefore, this Court does not have territorial jurisdiction merely on account of respondent no. 1 having its head office at New Delhi when the branch school at which appellant/plaintiff rendered services was at Patna in Bihar. Also as stated below in fact the civil courts either at Delhi or at Patna would have no jurisdiction to try suits such as the present once there is a specific education tribunal created to decide disputes between teachers of schools and their managements situated in Bihar. In view of the ratio of *Shashi Gaur's* case (*supra*) and the bar contained in Section 9 CPC it is only the concerned educational tribunal in Bihar which will have jurisdiction to decide disputes between teachers and the school management.

8. The next question is whether whole or part of cause of action has arisen at Delhi. It is argued on behalf of the appellant/plaintiff that cause of action has arisen in Delhi because the departmental proceedings have taken place at Delhi, report of the

inquiry officer has been given at Delhi and the impugned order imposing punishment of removal from the services of the appellant/plaintiff was also passed at Delhi.

9. On the first blush, arguments of the appellant/plaintiff seemed to have substance, however, since the rights of the appellant/plaintiff will be governed by the Local School Education Acts at Patna in Bihar (different statutes given in the website stated in para 6 above), and operation of which Acts are territorial in nature confined to the State of Bihar and for resolution of disputes between teachers and management duly constituted tribunals exist, this Court would not have territorial jurisdiction or otherwise jurisdiction to enforce the provisions of the Local School Education Acts as applicable in Bihar or to decide the subject suit. Therefore, in the opinion of this Court, civil courts in Delhi would have no territorial jurisdiction or other jurisdiction in view of the constitution of the State and District Appellate Authorities for redressal of disputes between teachers and management of schools functionaries under different Education Acts at Patna in Bihar. Challenge to termination of services and seeking other reliefs related to service as a teacher will have to be

decided not before even the civil court at Patna in Bihar but only by the Concerned Tribunal at Patna in Bihar and as stated above. Once specific tribunals are created for resolution of disputes in question, the civil courts, whether at Delhi or at Patna, would have no jurisdiction to try matters which are to be decided by the specifically created appellate and district authorities/tribunals.

10. After arguments, I put it to counsel for the appellant/plaintiff that this Court can infact direct return of the plaint or allow filing of the fresh appropriate proceedings giving benefit of Section 14 of the Limitation Act, 1963 to the appellant/plaintiff, however, counsel for the appellant/plaintiff submits that he has taken instructions from the appellant/plaintiff who is a resident of Patna in Bihar that the present/subject suit should be continued and pursued for seeking reliefs at Delhi and appellant/plaintiff will not file appropriate proceedings before the concerned Local School Educational Tribunal existing under the Local School Education Acts of Bihar.

11. In view of the above, there is no reason to interfere with the impugned order. Dismissed.

SEPTEMBER 12, 2017/P

VALMIKI J. MEHTA, J