

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: April 19, 2017

Judgment delivered on: April 25, 2017

+ W.P.(C) 9390/2015, CM No. 21896/2015

APEEJAY SCHOOL & ANR

..... Petitioner

Through: Mr. H.L. Tiku, Sr. Adv. with Ms.
Yashmeet Kaur & Mr. Amit Dogra, Advs.

versus

GOVT OF NCT OF DELHI & ANR

..... Respondent

Through: Mr. Vinod Kumar Bhati, Adv. for
Mr. Devesh Singh, ASC for R1
Mr. C.S. Parasher, Adv. with Mr. Mohit
Kumar, Mr. S.K. Badal, Adv. for R2
Ms. Sumeeta Bahl, DEO Zone 23 in person

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to the order passed by the Delhi School Tribunal in Appeal No. 43 of 2012 filed by the respondent No.2 on the ground that he was not allowed to enter the premises of the petitioner No.1 School on June 23, 2012 and was informed that his services have been dispensed with. The Tribunal vide the impugned order has held that the respondent No.2 was a regular employee of the petitioner No.1 School with effect from June 6, 2006 onwards and had directed the petitioner No.1 to reinstate him with immediate effect with all consequential benefits.

2. It is the case of the petitioners herein that the respondent No.2 was appointed as

Accounts Officer in the petitioner No.2 Society on June 5, 2004 for a period of one year. In accordance with the terms of appointment, the respondent No.2 could have been sent to any of the Apeejay Institutions as per the requirement. On June 06, 2005, the petitioner No.2 Society renewed the contract of employment of respondent No.2. Keeping in view, the terms of appointment, the respondent No.2 was sent on deputation to the petitioner No.1 School by the petitioner No.2 Society. It is the case of the petitioners that the petitioner No.2 Society runs the petitioner No.1 School in conformity with Rule 50(1) of the Delhi School Education Rules. The respondent no.2 was sent to the petitioner No.1 School on deputation, so therefore, the contribution towards the Provident Fund, as was required statutorily was made both by the respondent No.2 and the petitioner No.1 School, which were later on deposited in his Provident Fund account. Later on, vide letter dated October 8, 2005, the petitioner No.2 gave to respondent No.2 an additional duty of supervising the Accounts department of Apeejay School, Saket for one month and was required to visit the School twice a week. On November 12, 2008, the then Principal of the School had issued a certificate to the respondent No.2 in which he was stated to be the regular employee of the School with effect from June 06, 2005 in the pay scale of 6500-10500.

3. It is the stand of the petitioners that no Rules were followed in the appointment of respondent No.2 in the petitioner No.1 School. Hence, the letter whereby, he was shown to be an employee of the School is without any merit, as being contrary to the provisions of law. The petitioners have mentioned that the respondent No.2 was authorized to operate the Bank account of the petitioner No.1 School. It is averred that

the respondent No.2 has committed financial irregularities, which came to the notice of the Management and when the respondent No.2 was confronted with the same, he accepted the violations and wrongs committed by him. Later on, the respondent No.2 was told verbally on June 22, 2012 to revert and report for duty at petitioner No.2 Society with effect from June 23, 2012 at Apeejay Satya House, 14 Commercial Complex, Masjid Moth, Greater Kailash-II, New Delhi-48 as per the directions given by the Apeejay Education Society. The respondent No.2 came to the School on June 23, 2012 and he was again informed that he had been called back by the parent body petitioner No.2 Society as he was required to report for duty at the office of the Apeejay Education Society and co-operate in the investigation. For three days, the respondent No.2 reported at petitioner No.2 office but subsequently stopped reporting and got sent a legal notice dated August 14, 2012 through his Advocate in which he has prayed that he should be allowed to join duties in the School and be given all the dues as are admissible to the regular employees. A reference is made to the appeal filed by the respondent No.2 and the reply filed by the petitioner No.1 School. It is also stated that the petitioner No.2 Society got itself impleaded as a party in the proceedings.

4. It is the submission of Mr. H.L. Tikku, learned Senior Counsel for the petitioners that the Tribunal has misdirected itself in giving the directions in the impugned order by holding that the respondent No.2 was an employee of the petitioner No.1 School. He would draw my attention to letter dated June 5, 2004 issued by the petitioner No.2 Society to contend that it was specifically mentioned in the said appointment letter that the respondent No.2 can be sent to any site by the Society/Institution, as per its

requirement. Similarly, he draws my attention to letter dated June 6, 2005, which was with regard to extending the Contract of the respondent No.2 to submit that it was mentioned in the said letter that the respondent No.2 could be sent to any Apeejay Institution as per its requirement. He states that in view of such a stipulation and in view of the requirement of the Society, the respondent No.2 was sent on deputation to the petitioner No.1 School as Accounts Officer to look after the accounts of the School. As there were serious financial irregularities committed by the respondent No.2, his employer petitioner No.2 has called upon him to report back to his place of appointment i.e with the petitioner No.2. He states that the respondent No.2 had reported for duty for three days but all of a sudden stopped coming to the petitioner No.2 for the reasons best known to him. He states the said aspect reflects that the respondent No.2 accepted his employment with the petitioner No.2 Society. Unfortunately, the Tribunal overlooking the aforesaid aspects, has held that the respondent No.2 is an employee of the petitioner No.1 School. He would rely upon the following judgments in support of his contention:-

- (i) ***2013(1) Scale 197 Kavi Raj v. State of J & K;***
- (ii) ***2009(3) SCC 194 Samarth Shiksha Samiti v. Bir Bahadur Singh;***
- (iii) ***1997(8) SCC 372 State of Punjab v. Inder Singh.***

5. On the other hand, Mr. C.S. Parasher would submit that the respondent No.2 was an employee of the School and not of the Society. He states that, no doubt initial appointment letter was issued on June 5, 2004 by the Society but that was only for a limited period of one year. Even the appointment letter dated June 6, 2005 was on

similar terms but that is for one year. But vide letter dated June 29, 2006, the Society had conveyed to the School that the respondent No.2 be appointed as Accounts Officer on regular basis in the pay scale of Rs.6500-10500. He states, even though no appointment letter was issued to the respondent No.2 but for all purposes, the respondent No.2 continued in the School and with effect from June 6, 2006, the respondent No.2 ceases to be an employee of the Society having joined the School with effect from June 6, 2006. That apart, he would draw my attention to the letter dated April 19, 2005 from the Principal to the Regional Provident Fund Commissioner asking him to transfer the Provident Fund account of the respondent No.2 from the previous employer to the School to contend, the same was because he was employee of the School.

6. That apart, it is his submission that as in the case of all other confirmed and regular employees of the School, increment performa was filled up and certified by the Principal and was approved by the Chairman. He states, an employee does not become an employee of the Society only by the fact, his increments are approved by the Chairman. He also draws my attention to the certificate issued by the Principal dated November 12, 2008, wherein the Principal has certified that the respondent No.2 was working as a regular employee in the petitioner No.1 School. He also draws my attention to the resolution passed by the Society from time to time wherein the respondent No.2 was represented to be an employee of the School and not of the Society. He vehemently oppose the plea of Mr. Tiku that the respondent No.2 was sent on deputation. In this regard, he states, a deputation is for a definite and specified

period, which is not the case here as the respondent No.2 was appointed in the School w.e.f June 6, 2006 and has been continuing as such, uninterrupted.

7. That apart, the plea that respondent No.2 is on deputation is also liable to be rejected as no consent of the respondent No.2 was taken. He denies having committed financial irregularities. He would rely upon the judgment of the Supreme Court in the case of *State of Punjab v. Inder Singh and ors (supra)*, in support of his contention.

8. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the Tribunal has rightly held that the respondent No.2 is an employee of the petitioner No.1 School. Before I deal with the relevant submissions made by the learned counsel for the parties, the finding of the learned Tribunal on this aspect is as under:-

“32. I have also gone through the authorities relied upon by the Ld. Counsel for R2 School and R3 Society, there is no dispute with the ratio of law laid down, in these authorities. Ratio of law, in an authority always laid down according to the peculiar facts and circumstances of that case, hence the ratio of law laid down in a particular authority, may not be squarely applicable in the facts and circumstances of the other cases. As discussed above the facts and circumstances of the case in hand, are entirely different, the Principal of the R2 School in certificate dated 12.11.2008, has specifically admitted that the Appellant is the regular employee of the R2 School w.e.f 06.06.2006, no explanation has been given on behalf of R3 Society as to why the Principal has mentioned the Appellant as regular employee of R2 School. R3 Society has not issued any document qua the appointment of the Appellant in its office and qua sending him on the alleged deputation to R2 School. Though it is claimed

by R3 Society that the Appellant had repatriated / reported back to the office of R3 Society after 23.06.2012 and he had allegedly marked his presence in the attendance register in the office of R3 Society but no joining letter of the Appellant qua his joining in the office of R3 Society has been produced. In these circumstances the ratio of law laid down in the authorities relied upon by the Ld. Counsel for R2 School and R3 Society is not applicable to the facts and circumstances of the present case.

33. In view of the above discussion this Tribunal is of considered opinion that the Appellant was a regular employee of R2 School w.e.f 06.06.2006 onwards. Though according to R2 School and R3 Society services of the Appellant have not been terminated by them yet according to the Appellant since 23.06.2012 he was not allowed to join R2 School and his services has been orally terminated by R2 School. In these circumstances R2 School is directed to reinstate the Appellant with immediate effect along with all consequential benefits. Accordingly the appeal of the Appellant is accepted.”

9. No doubt, the letter dated June 5, 2004 was issued by the Society but the same was for a period of one year. Even the letter of appointment dated June 6, 2005 was by the Society but for a period of one year. In any case, vide letter dated June 29, 2006, the petitioner No.2 Society called upon the Principal to issue a formal appointment letter in the pay scale of Rs.6500-10500. His employment in the School was to be from June 6, 2006. Since June 6, 2006, the respondent No.2 has been working in the School till 2012 when he was asked to report to the Society. At least, nothing has been brought to the notice of the Court to contend otherwise. I agree with the submission made by Mr.

Parasher that vide letter dated April 19, 2005 the Regional Provident Fund Commissioner was requested to transfer the Provident Fund account of the respondent No.2 from his previous employer to the School, as the respondent No.2 was its employee.

10. The plea of Mr. Tiku, as the respondent No.2 was working in the School, the account was transferred to the School would not make him the employee of the School, is not appealing. It has been transferred as the School was its employer. That apart, the certificate given by the Principal is conclusive, which clearly reveals that the respondent No.2 was a regular employee of the petitioner No.1 School with effect from June 6, 2006. That apart, the increments granted by the School under the signatures of the Principal and the Chairman would also evince that respondent No.2 was an employee of the School. That apart, even the communication dated October 8, 2005 from the Apeejay Education Society to the Principal reveals that the respondent No.2 was working as an internal auditor in the Apeejay School, Sheikh Sarai. Even the resolutions, passed by the Society from time to time reveals the respondent No.2 was Accounts Officer of the petitioner No.1 School. The aforesaid conclusively proves that the conclusion of the learned Tribunal holding that the respondent No.2 is a employee of the petitioner No.1 School is proper. That apart, I note no order of so-called deputation has been placed by the Society on the record of the Tribunal or this Court. Further a deputation cannot be for eight years. No Rules have been shown, in support of the stand that the respondent No.2 can be on deputation for eight years. The plea that the respondent No.2 was on deputation cannot be accepted.

11. The reliance placed by Mr. Tiku on the judgment in the case of *Kavi Raj (supra)*, to contend that the willingness of posting on deputation need not be expressed; it can be implied is concerned, the said judgment has no applicability in the facts of this case and in view of my conclusion above.

12. Insofar as the judgment in the case of *State of Punjab vs. Inder Singh (supra)*, is concerned, the said judgment primarily relates to deputation wherein the Supreme Court held the deputationist is liable to be repatriated to his parent cadre/department on expiry of period of deputation and the repatriation from deputation cannot be resisted by the employee on the ground that he has continued on deputation for a long time. Suffice to state, that the said judgment has no applicability in the facts of this case.

13. Insofar as the judgment in the case of *Samarth Shiksha Samiti (supra)* as relied upon by Mr. Tiku is concerned, there the Supreme Court was concerned with facts that on May 09, 1992, the appellant Society appointed the respondent No.1 as an LDC and posted him in the appellant No.2 School. From the appointment letter issued to the respondent No.1 by way of an Office Memorandum dated May 09, 1992, he was appointed as an employee of the Samiti. The condition No.4 of the terms and conditions of his appointment also indicated that during his service period, the respondent No.1 could be transferred to the Samiti or to any of the Bal Mandirs managed by the Samiti. Condition No.6 provided that during his period of service, the respondent No.1 would have to abide by the discipline of the Samiti. Condition No.15 provided that in case he failed to comply with the aforesaid conditions and the rules as mentioned in 123 of Delhi School Education Rules, 1973, the Samiti will have full right to remove him from

service according to the law. The respondent No.1 was promoted as UDC on August 9, 1999 and was posted at the same School at Hari Nagar. There is a finding of the Supreme Court that the respondent No.1 was not an employee of the School but of the Samiti, though he was posted in the School as a Lower Division Clerk. It appears on September 2003, interviews were held for the post of Superintendent Grade II and a list of selected candidates was drawn up, which included the name of one Mr. Arun Kumar. According to respondent No.1, he too submitted a representation for promotion to the said post and his case was also recommended by Manager of the School to the General Secretary of the Samiti. Not only he was granted promotion, but by an order dated July 16, 2005, he was transferred from the School to the office of the Samiti. Subsequently, in an incident involving the respondent No.1 and one Shiv Nath Pandey, an order of suspension was issued against the respondent No.1 by the Samiti. While the disciplinary proceedings were pending, the respondent No.1 filed a writ petition challenging the transfer order dated July 16, 2005; the suspension order dated September 21, 2005; and the charge-sheet dated September 29, 2005 and the letter dated October 26, 2005, initiating the departmental enquiry against him. The writ petition was dismissed by the learned Single Judge of the High Court on November 03, 2006. On an appeal filed by the respondent No.1, notice was issued to the appellants in the month of January, 2007. In the appeal, it was contended on behalf of respondent No.1 that his services were governed not by the Rules and Regulations of the Samiti but by the Delhi School Education Act, 1973, and the Rules framed thereunder. The Division Bench of the High Court reversed the judgment and held that since the said respondent

was working in the School as a Lower Division Clerk on permanent appointment with effect from April 01, 1992 and was given promotion in the said School, which was also regularized, for all practical intents and purposes he must be considered as an employee in the school and, therefore, the provisions of the Delhi School Education Act and the Rules framed thereunder would apply to his services. The Supreme Court in paras 31 to 35 held as under:-

“31. Condition No.4, which allows the Samiti to transfer the respondent from one Bal Mandir to another run by the Samiti or to the Samiti itself, read with Condition No.3, indicates that the service of the Respondent No.1 was under the Samiti and under its control.

32. Conditions 11 and 15, on which a good deal of reliance has been placed on behalf of the Respondent No.1, read as follows :

“11. During the period of service he will have to obey all the rules as mentioned in Chapter-IX of Delhi Education Act (sic Delhi School Education Rules, 1973).

*15. In case he failed to comply with the aforesaid conditions and the rules as mentioned 123 of Delhi Education Act, the Samiti will have full right to remove him from service according to law.”
(Emphasis added)”*

33. This brings us to the next question as to whether despite being an employee of the Samiti, the Respondent No.1's services would be governed by the Delhi School Education Act and the Rules framed thereunder or under the Rules of the Samiti.

34. Condition No.11, which has been reproduced hereinabove, only indicates that during his period of service, the Respondent No.1 would have to obey all the rules as mentioned in Chapter 9 of the Delhi School

Education Rules. The said provision supports the stand taken on behalf of the Samiti that Chapter 9 of the said Rules relating to the Code of conduct for teachers and other employees was adopted by the Samiti to govern the code of conduct of its employees as well.

35. Except for indicating that the Respondent No.1 would have to obey the rules in question, Condition No.11 does not provide that the Act and Rules would directly govern the services of the said respondent. Furthermore, condition No.15 gives the Samiti the right to remove the Respondent No.1 from service according to law.”

14. Suffice to state, in the aforesaid judgment the facts were totally different from this case, inasmuch as the terms of appointment of the respondent No.2 in the case in hand by the Society was for one year only. Pursuant thereto, the Society itself recommended the Principal of the School for appointment of respondent No.2 as Accounts Officer in the School and directed the Principal to issue an appointment letter. That apart, as stated above, the Provident Fund was transferred to the School; increments were granted by the School; the certificate of the Principal certifies that the respondent No.2 was working in the School. The said judgment has no applicability in the facts of this case and is distinguishable.

15. In view of my aforesaid finding, the judgments as relied upon by Mr. Tiku have no applicability. In view of the above discussion, the present petition is without any merit. The same is dismissed. No costs.

CM No. 21896/2015 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

APRIL 25, 2017/ak