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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 29.01.2018

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LPA 24/2018, C.M. No. 2166/2018 (stay)

ISLAM UDDIN

..... Appellant

Through: Ms. Indrani Ghosh, Advocate.

versus

CAMBRIDGE SR SCHOOL & ORS

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel along with Mr. N.K. Singla,
Advocate for respondent Nos. 3 &4.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

C.M. No. 2167/2018 (exemption)

Allowed, subject to just exceptions.

The application is disposed off.

LPA 24/2018 & C.M. No. 2166/2018 (stay)

1. The present appeal under Clause 10 of the Letters Patent Appeal assails an order dated 21.12.2017, passed by a learned Single Judge of this Court in Writ Petition No. 9011/2017 titled as ***“Cambridge Sr. School & Ors. vs. Islam Uddin”***, whereby, an order dated 12.09.2017 of the Delhi School Tribunal (hereinafter referred to

as ‘the Tribunal’) reinstating the appellant and awarding him full salary from the date thereof, was set aside and quashed.

2. The facts as are relevant for the adjudication of the present appeal are as adumbrated herein below:-

- a) The respondent No. 1 is a recognised unaided private school run in terms of the provisions of the Delhi School Education Act & Rules, 1973 (hereinafter referred to as the ‘said Act’);
- b) The appellant was appointed on the rolls of respondent No. 1, namely, Cambridge Sr. School (hereinafter referred to as “the School”) as PGT Physics w.e.f. 01.07.1995, vide appointment letter dated 28.06.1995;
- c) Clause 7 of the said appointment letter dated 28.06.1995 requires the appellant to obtain a “No Objection Certificate” from the Principal of the School, prior to applying for any job or appointment elsewhere;
- d) On 11.05.2012, the appellant submitted an application with the then Principal of the School, namely, Smt. D. Kalsi (who was to retire four days thereafter i.e. 15.05.2012), requesting for grant of leave for *three years* from August, 2012 to August, 2015 and for furnishing a relieving certificate in that behalf;
- e) The appellant asserts that the then Principal of the School vide communication dated 11.05.2012, addressed to Qassim University, Saudi Arabia, conveyed to the latter that “*Dr. Islam Uddin will be relieved from his duties when he is required to take up the new assignment in your University.*”;

f) On 19.07.2012, the appellant submitted yet another application for leave for *one year* with the new and current Principal of the School, namely, Smt. Poornima Narayan. It would be profitable to extract the said leave application dated 19.07.2012 in full, in order for the effective adjudication of the issue raised in the present appeal:-

“With reference to my earlier letter dated 11.05.2012, I Dr. Islam Uddin want to inform you that I have to join on 23rd August 2012 in Qassim University Buraydah, Kingdom of Saudi Arabia. Therefore I request to grant me leave (lien) for one year from 20th August 2012 to 19th August 2013. I also need relieving certificate as well as experience certificate.”

g) It transpires that in the meantime, the matter for consideration of the said leave application of the appellant for one year had been placed before the Management Committee of the School, and on 20.10.2012 the following was recorded at Serial No. 8 of the Minutes of Meeting of the Managing Committee:-

“8. Consideration of the leave application of Dr. Islamuddin, Physics P.G.T. (for 1 year)

The Committee did not approve the application for long leave of Dr. Islamuddin, Physics P.G.T. as he has taken up a new assignment in Saudi Arabia. The termination letter will be sent to him from the Manager.”

h) The appellant stopped attending the School from 08.09.2012, without being relieved.

i) In response to the said application of the appellant for grant of leave for three years, Ms. Poornima Narayan vide letter dated 31.12.2012 stated as follows:-

“Ref No. CS/4706/2012 31st December, 2012

Dr. Islamuddin Siddiqui

Re: Leave Application for grant of leave

Dear Dr. Islamuddin Siddiqui,

This is with reference to your leave application for grant of leave for three years from August 2012 to August 2015 for the reason that you have been appointed as Associate Professor in Quasim University, Burad, Kingdom of Saudi Arabi.

In this regard, we would like to inform you that there is no provision/rule under which your request for grant of leave can be allowed on the grounds stated in your leave application.

However, you are at liberty to take up a new job elsewhere after submitting your resignation and complying with the relieving formalities as per applicable rules.

Yours Sincerely

Poornima Narayan

Principal”

j) The said letter dated 31.12.2012 was also communicated to the appellant vide an email dated 21.01.2013;

k) It is an admitted position that the appellant neither reported back on service nor responded to the said email dated 21.01.2013.

Thereafter, since no reply was received from the appellant, the services of the appellant with the School were terminated w.e.f. 14.03.2013, under intimation to the appellant vide an email dated 14.03.2013;

l) It is further an admitted position that almost more than two and a half years thereafter, when his appointment with the Qassim University, Saudi Arabia was not confirmed, the appellant dispatched a letter dated 22.04.2015, stating therein that he would not be able to join duties with the said School due to some unavoidable circumstances and requested for further extension of his leave for another year, from August 2015 to August 2016;

m) At this stage, it was reiterated on behalf of the School vide a letter dated 12.05.2017 to the appellant that his services had already been terminated w.e.f. 14.03.2013, as per the decision of the Managing Committee, which fact had already been duly communicated to him;

n) The appellant, thereafter, instituted an appeal No. 29/2017 before the Tribunal under Section 8 of the said Act, which was allowed while, *inter alia*, reinstating him in the employ of the School from the date of the said order dated 12.09.2017;

o) Aggrieved thereby, the School assailed the said order dated 12.09.2017 passed by the learned Presiding Officer of the Tribunal, by way of Writ Petition No. 9011/2017, which as aforesaid came to be allowed by the learned Single Judge of this Court vide the impugned order dated 21.12.2017.

3. Ms. Ghosh, learned counsel appearing on behalf of the appellant assails the impugned order essentially on two limbs.
4. The first submission canvassed in the present appeal is that the Principal of the School had no jurisdiction to pass the termination order, in view of the circumstance that she is merely an employee of the School and only the Management Committee could have passed a valid order of termination.
5. The second submission made on behalf of the appellant is that even otherwise the termination was invalid, on account of the circumstance that it was rendered without holding an enquiry against the appellant.
6. *Per contra*, it was argued on behalf of the School before the learned Single Judge that the present was a case of abandonment and, consequently, holding of enquiry was not *de rigueur*.
7. It was also urged that even if it were to be assumed that an enquiry was necessitated in accordance with law, it had to be considered whether the appellant had furnished any cogent explanation for his long absence from duty.
8. We have heard the learned counsel appearing on behalf of the parties and perused the case record.
9. Insofar as, the question of the termination being without jurisdiction is concerned, the learned Single Judge vide impugned order dated 21.12.2017 held as follows:-

“12. So far as the jurisdictional aspect is concerned, I find that counsel for first respondent is not right in submitting that dismissal order has been passed by the

Principal of petitioner-School. It is quite evident from the Minutes of Meeting of 20th October, 2012 of petitioner's Management Committee that first respondent's application for one year's leave was considered by the Management Committee of petitioner-School and it was noted in proceedings of Management Committee that since respondent had taken up the new assignment in Qassim University, Saudi Arabia, therefore, his application for long leave could not be acceded to and it was directed that first respondent's service stood terminated. Thereafter, only petitioner's School Principal vide e-mail of 31st December, 2013 (Annexure P-10) had conveyed to first respondent that leave of three years, as sought by first respondent, cannot be acceded to, as there is no provision/rule to grant it and respondent was advised to resign from service. Thereafter, vide e-mail of 21st January, 2013 (Annexure P-11), Principal of petitioner –School had intimated first respondent that since no response of earlier Communication of 31st December, 2013 (Annexure P-10) has been received, therefore, his service stood terminated w.e.f. 14th March, 2013. It is the case of first respondent that the aforesaid communication of 21st January, 2013 (Annexure P-11) was not received by him. Even if it is so, still first respondent was required to report back on duty after availing leave of one year i.e. in September, 2013. There is nothing on record to show that first respondent had reported back on duty in September, 2013.”

10. In this behalf, we concur with the finding arrived at by the learned Single Judge *a fortiori* for the reason that in our view the Managing Committee, as is evident from the minutes of its meeting dated 20.10.2012, whilst considering the appellant's application for leave for one year had clearly directed the dispatch of a letter of termination to him, whilst disapproving his application for long leave. Further, the communication dated 31.12.2012 left no manner of doubt

that leave as sought could not be granted to the appellant and that the appellant was at liberty to take up a new job elsewhere after submitting his resignation to the School.

11. In order to counter the argument of abandonment made on behalf of the school, the appellant has pressed into service the letter dated 11.05.2012 issued by the then Principal of the School, to urge that the appellant was on a long leave duly sanctioned by the competent authority.

12. We do not find favour with this submission made on behalf of the appellant for the reason that the letter dated 11.05.2012 does not mention either the period for which leave was purportedly sanctioned nor does it mention the date of commencement thereof. Even otherwise, had that been so, there would have been no occasion for the appellant to submit another application subsequently on 19.07.2012, seeking leave for one year from 20.08.2012 to the 19.08.2013.

13. In this view of the matter, we are in agreement with the learned Single Judge when he holds that when a person is indefinitely absent without sanction, it is sufficient to constitute an abandonment of service and, in this circumstance, there is no need to hold an enquiry or to give any notice as that would merely be a useless formality.

14. Even otherwise, the conduct of the appellant both at the relevant time and subsequent thereto, leads to one inescapable conclusion that it was his intention to leave for green pastures, whilst seeking to exercise lien over his employment with the school.

15. It is only when the new assignment had not fructified into a permanent employment that the appellant belatedly stated his claim to his earlier assignment by assailing his termination; which has eventually led to the consideration of the present appeal.

16. The appellant having applied for a fresh assignment, contrary to the agreed terms of Clause 7 of the appointment letter dated 28.06.1995, and proceeded on a long leave in the teeth of refusal to grant sanction therefor, cannot now be heard to say that his termination was without jurisdiction or *de hors* an enquiry.

17. In view of the foregoing, we see no error in the impugned order dated 21.12.2017 so as to warrant any interference by this Court.

18. The appeal is therefore devoid of merit and is accordingly dismissed.

**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JANUARY 29, 2018/ss