

\$~40

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

+ W.P.(C) 11906/2018 & CM APPL. Nos. 46116-17/2018

ARMY WELFARE EDUCATION SOCIETY
AND ANR.

..... Petitioners

Through : Mr. Sushil Jaswail, Advocate.

versus

DIRECTORATE OF EDUCATION AND ANR. Respondents

Through : Mr. N.K. Singh, Advocate for
Ms.Avnish Ahlawat, Standing
Counsel for GNCTD
(Services)/R1/DOE.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

%

02.11.2018

CM APPL. 46117/2018 (Exemption)

Allowed, subject to all just exceptions.

Accordingly, this application is disposed of.

W.P.(C) 11906/2018 & CM APPL. 46116/2018

1. Issue notice.
2. Learned counsel appearing on behalf of respondent No. 1 accepts notice.
3. With the consent of learned counsels appearing on behalf of the parties, the present writ petition is taken up for hearing and disposal.

4. Vide the present writ petition, the petitioner has challenged the order dated 16.03.2018, passed by the Delhi School Tribunal in *Appeal No. 36/2017* titled '*Ms.Mandeep Kaur Bajaj v. Directorate of Education & Ors.*', whereby, the impugned office order dated 09.12.2016, was set aside and the petitioners herein were directed to reinstate Ms. Mandeep Kaur Bajaj who is respondent No. 2 herein within a period of four weeks. It was further directed that Ms. Mandeep Kaur Bajaj will be entitled for all the consequential benefits and full wages from the date of the order onwards.

5. On the issue of the back wages, the learned Tribunal opined that in view of Rule 121 of the Delhi School Education Act and Rules 1973, the respondent No. 2 herein was directed to make exhaustive representation to the petitioners herein within a period of four weeks from the date of that order, as to how, and in what manner the respondent No. 2 would be entitled to complete wages. The petitioners herein were directed to decide the representation given by the respondent No. 2 within four weeks of receiving the same by way of a speaking order and to communicate the order along with a copy of the same to the respondent No. 2.

6. Learned counsel appearing for the petitioners submits that the Tribunal has failed to appreciate the fact that the respondent No. 2, at the time of her appointment on contractual basis was already over-aged, thereby, she was not fulfilling the terms of employment with the petitioner No. 2/School and that being the situation, the respondent No. 2 was not eligible to be appointed on permanent post with the petitioner No.2/School.

7. In the said situation, the services of the respondent No. 2 was terminated for not fulfilling the criteria to continue on the said job. Learned counsel further argued that the learned Tribunal has wrongly relied upon the judgment of the Hon'ble Supreme Court delivered in ***O.P. Bhandari v. Indian Tourism Development Corporation Ltd. & Ors.*** Learned counsel submits that the said judgment is not applicable on the facts of the instant case, as the same deals with the employees, who were regular and permanent employees, whereas, the respondent No.2 herein was appointed on contractual basis, which is evident from the appointment letter issued to respondent No. 2. He further submits that in view of this position, the present writ petition deserves to be allowed, by setting aside the order passed by the Tribunal on 16.03.2018.

8. It is not in dispute that the respondent No. 2 was appointed on contract basis as per the appointment letter dated 17.08.2011, which is reproduced as under:

***19305/APSDC
Mrs. Mandeep Kaur
w/o Mr. SGS Bajaj
TD-11 B, Pitampura
New Delhi-59***

08 Jun 2013

APPOINTMENT : ADHOC TEACHER

Dear Madam,

***1 Please refer to your application for TGT
(Librarian)***

2 The Management of the School is pleased to

appoint you to the adhoc post of TGT (Librarian) to meet the need of our school. Army Public School comes under the category of Unaided Private School. The post carries consolidated pay of Rs.24000/- per month all inclusive for the period from 20 May 2013 to 26 Mar 2014. One month notice or one month pay in lieu of notice will be given to your for termination of your service by the management. Likewise you may also resign your service by giving one month notice or one month pay in lieu of notice. Your service will automatically stand terminated w.e.f. 27 Mar 2014 and no notice will be given for the same. If the need subsists w.e.f. 27 Mar 2014, the management may extend the duration of appointment for further period. It will be mandatory on your part to keep a security deposit will be returned to you interest free at the time of leaving the service of the school on submission of clearance certificate. Your terms and conditions of service will be governed as per AWES rules and regulations Vol-I for Army Public School (Sep 2011 Edition). Your appointment has been made based on the certificate/degrees/diplomas submitted by you and the information given by you at the time of interview. In case the certificate/degrees/diplomas submitted by you and/or the information given by our are found to be false, your appointment will be

*invalid abinitio and terminated by the management
without giving any notice or pay in lieu of notice.*

*Certified to be True Copy
Delhi School Tribunal
Delhi.*

9. Thereafter, vide order dated 09.12.2016, respondent No. 2 was directed to be terminated from the services, the same is reproduced as under:

*“19305/APSDC
Ms. Mandeep Kaur Bajaj
TGT (Librarian)
APS, Delhi Cantt*

9 Dec 2016

TERMINATION OF TEACHERS

*1. Please ref our letter No. 19305/APSDC dated 04
Apr 2016.*

*2. Due to optimization of manpower in this school
your services will no longer be required beyond 09
Dec 2016. You are being paid one month salary in
lieu of notice period as per the terms and conditions
laid down in Para 4 of the above appointment letter.*

*Sd/-
(Piyush Bisht)
Brig
CHAIRMAN”*

10. He further submits that the Tribunal has wrongly relied upon the judgement, titled *Delhi Transport Corporation Vs. D.T.C.Mazdoor Congress* wherein, a Constitution Bench of the Hon’ble Supreme Court has held as follows:

“On a conspectus of the catena of cases decided by the Supreme Court the only conclusion follows is that Reg.9(b) which confers powers on the authority to terminate the services of permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted, violating principles of natural justice as well as Art. 14 of the Constitution prescribed by their Rules and Regulations must be fair, reasonable and just and not arbitrary, fanciful and unjust,-----

Right to public employment includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law. It is an integral part of the right to livelihood which in turn is an integral facet of right to life assured by Art.21. Any procedure prescribed to deprive one of such right, must be just, fair and reasonable. Any law or rule in violation thereof is void.”

11. Learned counsel for the petitioner submits that a perusal of the judgment of Hon’ble Supreme Court in *O.P. Bhandari (supra)*, being relied

upon by the Tribunal, states that a similar regulation authorizing the termination of the services of a permanent employee by serving three month's notice or on payment of salary for the correspondent period in lieu thereof, was ex facie and arbitrary and capable of vicious discrimination. Learned counsel for the petitioner further submits that the this judgment of ***O.P. Bhandari (supra)*** is referred by the Tribunal regarding the termination procedure for regular employees, whereas, the respondent No. 2 was appointed on contractual basis and on consolidated salary, which is very much evident from the appointment letter reproduced hereinabove

12. However, in my considered view, the fact here, remained that the petitioner No. 2/School in question is governed by the Delhi School Education Act and Clause (2) of Section 8 of the Act depicts that subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

13. In the present case, no such decision is taken while removing the respondent No. 2 and the petitioners failed to produce any record in this regard or the Minutes of the meeting regarding the abolition of the posts.

14. Clause (2) of Section 8 of the Delhi School Education Act is reproduced herein under :

“(2) subject to any rule that may be made in this

behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.”

15. The Supreme Court, in the case of ***Miss Raj Soni Vs. Air Officer Incharge Administration and Anr. AIR -1990, Supreme Court 1305***, has held that the management of the schools in Delhi, is under statutory obligation to uniformly apply the provisions of the Act and Rules to the teachers employed in the school.

16. Moreover, the issue raised in the present petition has been decided on 27.04.2015 by this Court in ***W.P. (C) No. 6180/2013*** titled ***Renu Barrot v. The Directorate of Education & Ors.*** In the issue of long serving contractual employee and not making the employees service as permanent/regular, this Court has decided in case of ***Hamdard Public School Vs. Directorate of Education and Anr. 202 (2013) DLT- 111*** and other connected cases on 30.08.2013.

17. The petitioner school has not taken prior approval from the Directorate of Education before terminating the services of Respondent No.2 which is mandatory.

18. In view of aforesaid facts, the learned Tribunal has set aside the impugned order dated 09.12.2016 by allowing the appeal filed by the respondent No. 2. Since, the petitioners have not adopted the proper

procedure as laid down under the Delhi School Education Act & Rules, I do not find any illegality or perversity in the impugned order dated 16.03.2018 passed by the Presiding Officer, Delhi School Tribunal.

19. In view of above discussion, finding no merit in the present writ petition, the same is accordingly dismissed with no order as to costs.

20. The pending application, if any, is also accordingly, disposed of.

SURESH KUMAR KAIT, J

NOVEMBER 02, 2018

j