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

Reserved on: 27th August, 2019
Decided on: 4th September, 2019

+ **LPA 259/2009**

MANAGER, GEETA BAL BHARTI
SR. SEC. SCHOOL & ANR.

.....Appellants

Through: Mr. Vikas Mahajan, Mr. Aakash
Varma, Mr. Prajesh V.S. and Mr.
Deepak Goyal, Advocates.

Versus

RAMESH CHANDER DUBEY & ANR.

....Respondents

Through: Respondent No.1 in person.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This appeal is directed against a judgment dated 23rd March, 2009 passed by the learned Single Judge allowing W.P.(C) 2189/2004 filed by the Respondent, thereby setting aside an order dated 31st July, 2003 passed by the Appellant i.e. Manager, Geeta Bal Bharti Senior Secondary School ('Appellant No. 1') (hereafter 'School') placing the Respondent No. 1 under suspension. The learned Single Judge directed as a consequence that the present Appellant should pay the full back wages to the Respondent No. 1 with effect from 1st April, 2003 till the date of termination after adjusting the subsistence allowance, if any paid, within 1 month from the date of the impugned order.

2. At the outset, it requires to be noticed that on 26th May, 2009 while directing notice to be issued in this appeal, this Court granted an interim stay of the impugned order of the learned Single Judge. Thereafter, the appeal was admitted on 18th May, 2010, while making the aforementioned interim order absolute till the disposal of the appeal. A direction was issued to the Appellants to pay to Respondent No.1 the full wages due till 31st July, 2003 within 2 weeks.

3. The background facts are that Respondent No.1 was appointed as the Principal of Geeta Bal Bharti Senior Secondary School, Delhi by an appointment letter dated 24th April, 1997. His services as Principal were confirmed with effect from 15th May, 1998. The services of Respondent No.1 were terminated by a letter dated 31st March, 2003 issued by the Chairman, Hindu Siksha Samiti Nyas ('Appellant No. 2') in terms of clause 2 of the appointment letter, which permitted discontinuation of the services of Respondent No.1 by giving either 3 months' notice or in lieu of such notice, paying him 3 months' salary.

4. Respondent No.1 challenged the aforementioned termination order before the Director of Education ('DOE'), Respondent No.2. By an order dated 21st April, 2003, DOE quashed the termination order. When despite the above order of the DOE the Appellants did not allow Respondent No.1 to resume duties, he filed a writ petition being C.W.P. 2637/2003 in this Court. In the said petition, the following order was passed on 22nd April, 2003:

“Counsel for the petitioner says that in view of the letter dated 21.4.2003 received by the petitioner whereby the termination order in relation to the services of the petitioner has been

quashed by the Director of Education, she insists on prayer clause (b).

Notice to respondents to show cause as to why rule nisi be not issued in terms of prayer clause (b), on filing of process fee regd. AD cover as well as by ordinary process, returnable on 16.7.2003.

Ms. Gupta has contended that in view of the order passed by the Director of Education, the management is not allowing the petitioner to join the school. Let a representation in this regard be made by the petitioner to the Director of Education.

Dasti.”

5. The Petitioner then submitted representations on 24th April, 30th April, 13th May and 23rd May, 2003 seeking implementation of the order of the High Court and permitting him to join duty. A separate letter was sent on 2nd June, 2003 to the DOE.

6. Another writ petition being C.W. 3807 of 2003 was filed by Respondent No.1 in this Court for directions to be issued to the present Appellant to allow Respondent No.1 to join duty as Principal of the School. The aforementioned C.W. 3807 of 2003 came up for hearing on 31st July, 2003 and the following order was passed disposing of the said writ petition:

“It is contended by counsel for the petitioner that the petitioner's services were first terminated without following the procedure of law and now he has been suspended. On the other hand, Mr. L.R. Gupta, counsel for respondent/ school says that the Director of Education has granted approval of suspension of the petitioner. Be that as it may, the respondent/school is directed to give subsistence allowance to the petitioner as per law. Counsel for the petitioner has contended that petitioner has not received any suspension

order. But suspension order be served on the petitioner today itself. In view of the approval to termination of the petitioner having not been given by Director of Education, respondent/school is also directed to pay the salary for the period from the date of termination order till the date of suspension to the petitioner. It is contended by counsel for the respondent that the salary for the months of April, May and June, 2003 has already been paid to the petitioner. Let counsel for the petitioner check up and thereafter according to rules if anything has to be paid the same be paid to the petitioner.

In view of the aforesaid order, writ petition stands disposed of.”

7. It was for the first time on 31st July, 2003 that Respondent No.1 became aware of the impugned order issued by the Appellant No. 2 placing him under suspension to which the DOE purportedly granted approval. By an Office Memorandum (OM) dated 31st July, 2003 Appellant No.1 communicated to Respondent No. 1 the fact of his having been placed under suspension. The resolution passed by school in this regard reads as under:

“Under the stated circumstances developed due to past and present acts of misconduct, misbehaviour, irregularities and corruption of Sh. R.C. Dubey as Principal GBBSS School, it is unanimously resolved by the managing committee of Geeta Bal Bharati Senior Secondary School that in accordance with the Rule 115(4) of DSEAR 1973, and in continuation of the decision dated 6.5.2003 taken by our parent body Hindu Shiksha Samiti Nyas, Sh. R.C. Dubey shall be deemed to have been placed under suspension w.e.f. 31.3.2003 necessary approval for his suspension from Director of Education be taken by the Manager on behalf of the managing committee of the school. The memorandum and the statement of article of charges to be given to Sh. Dubey follow the approval.”

8. This was followed by an approval granted by the DOE to the suspension

of Respondent No. 1 with effect from 30th May, 2003. A further direction was issued to conduct an enquiry following the procedure laid down in the Delhi School Education Act ('DSE Act') and the Delhi School Education Rules, 1973 ('DSE Rules') within 2 months from the date of such approval i.e. 23rd June, 2003. The OM dated 31st July, 2003 addressed to the Respondent No. 1 sought to justify the initiation of disciplinary proceedings against Respondent No. 1 'on the basis of complaints and the acts of misconduct reported to the managing committee.' It is, thereafter, that W.P.(C) 2189 of 2004 was filed by the Respondent No.1, praying *inter alia* for the setting aside of the suspension order dated 31st July, 2003.

9. In the impugned judgment, the learned Single Judge held as under:

"14. In view of the above discussion, the suspension order dated 31.7.2003 is hereby set aside. Resultantly, the directions are given to the respondent nos. 2 and 3 to pay full back wages to the petitioner w.e.f. 1.4.2003 till the date of termination after giving an adjustment of subsistence allowance, if any, paid by the respondent school, within a period of one month from the date of this order."

10. Although in the present appeal, the Appellants have sought to contend that this is not a case of deemed suspension under Rule 115(4) of the of the DSE Rules, they do not dispute that the Managing Committee of the School while passing the resolution on 27th May, 2003 invoked Rule 115(4) of the DSE Rules to state that Respondent No.1 shall be deemed to have been placed under suspension. Rule 115 reads as under:

"115. Suspension

(1) Subject to the provision of sub-sections (4) and (5) of section 8, the managing committee may place an employee of

a recognised private school, whether aided or not, under suspension:—

(a) where a disciplinary proceeding against such employee is contemplated or pending; or

(b) where a case against him in respect of any criminal offence is under investigation or trial; or

(c) where he is charged with embezzlement; or

(d) where he is charged with cruelty towards any student or other employee of the school; or

(e) where he is charged with misbehaviour towards any parent, guardian, student or employee of the school; or

(f) where he is charged with the breach of any other code of conduct.

(2) No order for suspension shall remain in force for more than six months unless the managing committee, for reasons to be recorded by it in writing, directs the continuation of the suspension beyond the period of six months:

Provided that where a suspension is continued beyond a period of six months, the Director may, if he is of opinion that the suspension is being unreasonably prolonged, revoke the order of suspension.

(3) An employee of a recognised private school, whether aided or not, shall be deemed to have been placed under suspension by an order of the appointing authority:

(a) with effect from the date of his detention, if he is detained in custody for a period exceeding forty-eight hours on a charge of an offence which in the opinion of the managing committee involves moral turpitude;

(b) with effect from the date of his conviction, if in the event of a conviction for an offence involving, in the opinion of the managing committee, moral turpitude, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired from service consequent on such conviction.

Explanation—The period of forty-eight hours referred to in this rule shall be computed from the commencement of detention or conviction, as the case may be, and for this purpose, intermittent periods of detention shall be taken into account.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or rendered void, in consequence of or by, a decision of a court of law or of the Tribunal; and the disciplinary authority on a consideration of the circumstances of the case decides to hold further inquiry against such employee on the same allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such employee shall be deemed to have been placed under suspension by the managing committee from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.

(5) (a) An order of suspension made or deemed to have been made in these rules shall continue to remain in force until it is modified or revoked by the managing committee or the Director.

(b) Where an employee is suspended or is deemed to have been suspended and any other disciplinary proceeding is

commenced against him during the continuance of that suspension, the managing committee may for reasons to be recorded by it in writing, direct that the employee shall continue to be under suspension until the termination of all or any such proceeding.

(c) An order of suspension made or deemed to have been made under these rules may, at any time be modified or revoked by the managing committee or in the case of an aided school, by the Director.”

11. There are only three scenarios in which suspension of an employee can be resorted to. If an employee's services already stand terminated, such employee cannot be suspended unless the termination is set aside in law. In ***Mahender Singh v. Union of India 1991 Supp (2) SCC 127***, the Supreme Court was discussing Rule 10(4) of the Central Civil Services ('CCA') Rules, 1965, which is *in pari materia* with Rule 115(4) of the DSE Rules. It was held there that since no enquiry took place before termination, no further enquiry was possible. It was clarified that the suspension dated 10th November, 1988 would operate prospectively.

12. In ***Ajay Singh v. Delhi Police Public School 117 (2005) DLT 516*** the Delhi School Tribunal had set aside the termination order on 9th January, 2003. The appeal filed by the Management in this Court against the said decision stood dismissed as withdrawn on 6th November, 2003 as a result of which the order dated 9th January, 2003 of the Tribunal became final. On 7th November, 2003 the management suspended the Petitioner in that case with effect from the date of termination. The Court held that Rule 115(4) permitted suspension retrospectively only if there had been an enquiry prior to termination. In the absence of an enquiry prior to termination, the

suspension would have to apply prospectively in terms of Rule 115(1) of the DSE Rules.

13. In the present case, since the DOE has already set aside the termination order, there was no question of the Appellant resorting to Rule 115(4) of the DSE Rules. The second requirement of Rule 115(4) of DSE Rules was not met, as under the aforesaid rule further enquiry could be held on the same allegations, but in the present case no allegations had been levelled earlier to justify the termination of the services of Respondent No.1. Rule 115(4) of the DSE Rules was not applicable as the services of Respondent No.1 were been terminated without following Rule 120 of the DSE Rules.

14. The contention of the Appellants that the DOE granted prospective approval to the deemed suspension with effect from 30th May, 2003 and that this was communicated to Respondent No.1 on 31st July, 2003 overlooks the fact that the termination of Respondent No.1 by the order dated 31st March, 2003 was not set aside by a Court and the Appellants were refusing to comply with the order of the Director dated 21st April, 2003 quashing the said termination order. A terminated employee could not have been placed under suspension.

15. Also, the Director of Education had no power under Rule 115 of the DSE Rules to place Respondent No.1 under suspension. His role was to accord approval to the order in that regard passed by the Appellants. There was no scope for the Director in the facts of the present case to accord approval to the illegal suspension order from a prospective date.

16. The Court finds that the learned Single Judge has committed no legal error in the impugned judgment. It was indeed erroneous on the part of the Appellants to have invoked Rule 115 of the DSE Rules to place Respondent No.1 under deemed suspension, in the facts and circumstances of the case.

17. There is no merit in this appeal and it is dismissed as such.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 04, 2019

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