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

+ W.P. (C) 2275/2016 & CM APPLs. 9801/2016 and 18809/2018

G D GOENKA PUBLIC SCHOOL & ANR. Petitioners

Through: Mr. Rajat Aneja, Adv. and
Ms. Nisha Sharma, Adv.

versus

VINOD HANDA & ANR. Respondents

Through: Mr. Sanjeev Kumar, Adv. for
R-1
Mr. Devesh Singh, ASC (Civil) for GNCTD
with Ms. Sukriti Ghai, Adv. for DOE

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

07.08.2019

1. The petitioner school (hereinafter referred to as “the School”) seeks, by means of this writ petition, to assail order, dated 27th January, 2016, passed by the learned Delhi School Tribunal (hereinafter referred to as “the learned Tribunal”) whereby the appeal, of the respondent, under Section 8(3) of the Delhi School Education Act, 1973 (hereinafter referred to as “the DSE Act”) has been accepted and, consequently, the school has been directed to reinstate the respondent in service, with consequential benefits from the date of the impugned order.

2. The respondent had joined the services of the School on 11th September, 1995, as Taekwondo teacher, and was confirmed on 31st March, 2004.

3. On 10th August, 2011, the Punjab Police authorities visited the school, in connection with a criminal case, in which the respondent's name was mentioned. Investigations commenced, thereafter, in which the respondent participated. These investigations resulted in a report, dated 13th January, 2012, whereby the Police authorities exonerated the respondent. During this period, the respondent remained absent from service.

4. Consequent to his exoneration, the respondent approached the school, for being allowed to rejoin services, but was not permitted to do so.

5. The contention of the petitioner is that the respondent had submitted a letter, dated 10th August, 2011, to the petitioner, resigning from the services of the petitioner, and that the said letter had been accepted on 11th August, 2011. As against this, the respondent contends that the said letter had been typed out, by the petitioner, on a blank sheet of paper, on which the respondent had been made to append his signature, at the time of the visit by the Police on 10th August, 2011.

6. In June, 2013, the petitioner recruited another Taekwondo teacher, against the post which was being held by the respondent.

7. The respondent appealed, to the learned Tribunal, against the refusal, on the part of the petitioner, to allow him to join services. He prayed that the said decision be quashed and set aside, and that he be reinstated with full back wages. It was specifically averred, by the respondent, in the said appeal, that he never had any intention to resign, and that the resignation letter was a fabrication, by misusing the sheet of paper on which the respondent had been made to append his signature on 10th August, 2011.

8. As against this, the petitioner contended, before the learned Tribunal, that the respondent had, categorically, resigned from the services of the petitioner *vide* the letter dated 10th August, 2011 (*supra*), which was tendered by him on 11th August, 2011 and accepted by the petitioner on the same day. It was sought to be submitted that, the case being one of severance of service by reason of resignation, it could not be treated as a case of “dismissal, removal or reduction in rank” and was not, therefore, amenable to the appellate jurisdiction of the learned Tribunal, as conferred on it by Section 8(3) of the DSE Act. It was also pointed out that the appeal was barred by time, having been filed 575 days after the expiry of the prescribed period for doing so. On merits, it was contended that, as the respondent had severed relations with the petitioner, by resigning from the petitioner’s service of his own volition, he had no case. It was also sought to be submitted that there were several complaints against the respondent; however, this Court does not intend to examine the said contention, as the services of the respondent were never terminated on the ground of any complaint against him. The allegation of fabrication

of the resignation letter dated 10th August, 2011, as leveled by the respondent, was categorically denied by the petitioner.

9. The learned Tribunal, has *vide* the impugned order dated 27th January, 2016, allowed the respondent's appeal. It has not returned any finding on the issue of maintainability of the appeal, in the context of Section 8(3) of the DSE Act. On merits, the learned Tribunal has returned the following findings:

(i) The reply, of the petitioner, to the respondent's appeal, was contradictory, as the date of the respondent's resignation was mentioned, as at one point, as "10th August, 2011" and at another as "11th August, 2011".

(ii) The resignation of the respondent had not been accepted in terms of Rule 114A of the DSE Rules, which required it to be accepted by the Managing Committee. Rule 114A of the DSE Rules may, for ready reference, be reproduced thus:

"114A. Resignation— The resignation submitted by an employee of a recognised private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director:

Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period."

(iii) It was found that no minutes, of any meeting held on 11th February, 2011, accepting the respondent's resignation, had been produced by the petitioner, no date of acceptance of the resignation was forthcoming, and the identity of the officer, who had accepted the resignation, was also unknown.

(iv) The allegation, of the respondent, regarding fabrication of the resignation letter, was found to contain merit. In this context, the learned Tribunal noted that the resignation letter was not handwritten but was typed, and that, though a signature was appended, at the foot of the said letter, below the endorsement "accepted", no date had been appended thereunder. Besides it was noted, the resignation letter was dated 10th August, 2011, and a certificate, dated 12th August, 2011, had been issued by the school, to the effect that the respondent had resigned from its services. This indicated that the resignation of the respondent, if at all, had been accepted by the petitioner before 12th August, 2011. Para K of the preliminary objections, in the reply of the petitioner, to the respondent's appeal, specifically averred that the respondent was on leave on 10th August, 2011. The learned Tribunal found, in the circumstances, that it was not possible for the respondent to have tendered the resignation letter while on leave.

(v) Apropos the submission, of the petitioner, that the resignation letter was tendered and accepted on 11th August,

2011, too, the learned Tribunal expressed doubt as to how a managing committee meeting could have been convened on 11th August, 2011 itself, and the resignation of the respondent accepted therein. Specific note was taken of the mandatory requirement, contained in Rule 114A of the DSE Rules (*supra*), of acceptance, of the resignation of every employee, by the managing committee. A resignation, not accepted by the managing committee was, therefore, no resignation at all, in the eyes of law.

(vi) Finally, the learned Tribunal noted that there was an unusual space between the words “yours sincerely” at the foot of the letter dated 10th August, 2011, and the name of the petitioner. This, too, in the opinion of the learned Tribunal casts a cloud on the genuineness of the letter of resignation.

10. Following on the above observations, the learned Tribunal directed the reinstatement of the respondent, in service, with consequential benefits from the date of the impugned order, i.e. from 27th January, 2016. The respondent was also granted liberty to represent, to the petitioner, for back wages, in view of Rule 121 of the DSE Rules, and the petitioner was directed to pass a speaking order, on the said representation, if made.

11. The present writ petition, at the instance of the school, seeks to challenge the aforesaid order dated 27th January, 2016, of the learned Tribunal.

Rival stands

12. I have heard Mr. Rajat Aneja on behalf of the petitioner and Mr. Sanjeev Kumar on behalf of the respondent.

13. Appearing for the petitioner, Mr. Aneja submits that the consistent stand, of his client, has been that the respondent was on leave on 10th August, 2011, and submitted the letter of resignation on 11th August, 2011. The Punjab Police authorities had, it is submitted, arrived twice at the school on 10th August, 2011 and 12th August, 2011, whereas the respondent submitted his resignation on 11th August, 2011. Attention has been invited to the following passages from the reply, filed by the petitioner, to the respondent's appeal before the learned Tribunal:

“1. Again on 12.08.2011 the police authority visited the school looking for the Appellant where the authority informed the police officials that the Appellant is no more working with the school and provided the address available with the school management.

m. That thereafter Appellant approached the principal on 23/7/2012 and requested the principal that he is at dire need of money and requested the Respondent to hire his son Mr. Jimmy Handa as a Taekwondo coach on daily wages. On the request and on compassionate ground the management approved the request and appointed Mr. Jimmy Handa, however the management was constrained to remove Mr. Jimmy Handa in Feb 2013 as he was caught stealing mobile phone in the school premises.

n. Thereafter the Appellant never contacted the school authority and after a gap of almost 2 years, the

management was shocked to receive the notice of the present appeal from this Hon'ble Tribunal where first time management came to know that the Appellant has filed the present appeal. On the facts mentioned above the present appeal is liable to be dismissed.”

14. Mr. Aneja further draws attention to the communication, dated 14th January, 2012, from the respondent to the principal of the school, in which the respondent has referred to his “earlier letter dated 10.08.2011, wherein I had requested for leave from work due to some very urgent personal work which had come about because of an emergency and could not have been put off to be done later”. This reference, Mr. Aneja would seek to submit, has to be treated as a reference to the earlier letter of resignation, and not to any leave letter.

15. Mr. Aneja further seeks to submit that the respondent had remained on an unauthorized absence, as he had not referred to any sanction, being granted to him, of leave from work. He draws attention to the following passages from the judgment of this Court in *Cambridge Senior Secondary School v. Dr. Islam Uddin, 2017 SCC OnLine Del 12678* :

“7. Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that Supreme Court in *Vijay S. Sathaye (supra)*, has reiterated that absence from duty in the beginning is a misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically, without requiring any order to be passed by the employer. It has been clarified that if a person is absent beyond the prescribed period for which leave of

any kind could be granted, then he/ she should be treated to have resigned or ceased to be in service. Supreme Court has empathetically clarified in ***Vijay S. Sathaye (supra)*** that in such a case, there is no need to hold an inquiry or to give any notice as it would be useless formality.

8. Supreme Court in ***Syndicate Bank Staff Association (supra)*** has gone to the extent of declaring that even if it is assumed that an inquiry was necessitated, still it is required to be seen whether there was any explanation for absence from duty. Supreme Court in ***G.T. Lad (supra)*** has made it clear that temporary absence is not ordinarily sufficient to constitute an abandonment of service but the intention to abandon may be inferred from the acts and conduct of the parties and inference of abandonment of service cannot be easily drawn unless from the length of absence and other warranting circumstances, it can be assumed that an employee intended to abandon the service.

9. What is the prejudice caused to first respondent by non-holding of inquiry is a vital aspect which is required to be considered in the instant case in view of Supreme Court's decision in ***Aligarh Muslim University (supra)***, wherein while dealing the case of extension of leave, Supreme Court has declared that "principal of prejudice" has been consistently applied by the courts in several cases.

10. In the light of afore-noted legal position and upon scrutiny of the material on record, I find that first respondent had applied for three years' leave from August, 2012 to August, 2015 vide application of 11th May, 2012 (Annexure P-5), as respondent had been appointed as Associate Professor in Qassim University, Buradah, Kingdom of Saudi Arabia. It is true that petitioner-School vide Communication of 11th May, 2012 (Annexure P-6) had informed the Qassim University that first respondent would be relieved from duty when he is required to take up his new assignment. But no prudent

person can possibly treat petitioner-School's Communication of 11th May, 2012 (Annexure P-6) to be implied grant of leave for a period of three years. It is being so said because first respondent on the same day i.e. on 11th May, 2012 had made another application for one year's leave to petitioner-School and in that context petitioner-School's Communication of (Annexure P-6) is to be seen and it cannot be taken to be a grant of leave for a period of three years."

16. On the basis of the aforesaid paras from the judgment in *Cambridge School (supra)*, Mr. Aneja would seek to submit that the respondent could not have proceeded on leave on his own. This, in his submission, adds credence to his version that the respondent had actually resigned from his services.

17. It was further contended, by Mr. Aneja, that the inordinate delay, in the filing of the appeal, by the respondent, before the learned Tribunal, had been condoned without any reason. The appeal itself, he would submit, was not maintainable, in lieu of the fact that the case did not involve dismissal, removal or reduction in rank.

18. As a fallback argument, Mr. Aneja would submit that, at this point of time, there could be no question of reinstatement of the respondent and that, if at all, he could only be entitled to some monetary compensation.

19. Arguing in opposition, Mr. Sanjeev Kumar, appearing on behalf of the respondent, relies on the finding, of the learned Tribunal, that it was impossible to believe that the managing committee of the school

had accepted the respondent's resignation on the very day on which it was tendered. He points out that, rather, the minutes of the meeting of the managing committee of the school, held on 28th March, 2012 as annexed by the petitioner with his rejoinder to the writ petition, indicate that the alleged resignation, of his client was, if at all, approved by the managing committee of the school on 28th March, 2012 only. This, he would submit, was in clear violation of Rule 114A of the DSE Rules and could not be treated as a valid acceptance of resignation at all.

20. Apropos the argument of delay, as advanced by the petitioner, Mr. Kumar would submit that his client was cleared, by the Police of the charges, against him, on 13th January, 2012, and wrote, to the school, seeking reinstatement in service, on 14th January, 2012, without any delay whatsoever.

21. Mr. Kumar also relies on Section 8(3) of the DSE Act, which requires any order of termination to be communicated to the employee concerned. There was, in the present case, he submits, no such communication.

22. Mr. Kumar also points out that, as against the version now being advanced by the petitioner, is contrary to the stand, taken in para 8 of the reply, filed by it to the appeal of the respondent before the learned Tribunal, which was that the respondent had tendered his resignation on 10th August, 2011.

23. In fine, Mr. Kumar would seek to submit that the impugned order of the learned Tribunal, does not call for any interference by this Court, under Article 226 of the Constitution of India.

24. Mr. Aneja, arguing in rejoinder, seeks to meet the submission, of Mr. Kumar, regarding non-compliance with Rule 114A of the DSE Rules, by drawing attention to the judgment of this Court in *Management of Modern Public School v. Presiding Officer, Delhi School Tribunal, 2017 SCC OnLine Del 6720* and contending, on the basis thereof, that the petitioner had only ratified the acceptance of the respondent's resignation on 28th March, 2012, and that the resignation itself stood accepted on 11th March, 2011.

Analysis

25. A preliminary objection, to the very maintainability of the appeal, preferred by the respondent before the learned Tribunal, was raised, both before the learned Tribunal as well as before this Court. Unfortunately, the learned Tribunal has returned no finding thereon. The issue, however, is purely one of law, and is no longer *res integra*.

26. Section 8(3) of the DSE Act enables, any employee, of a recognised private school, who is dismissed, removed or reduced in rank, to appeal, against the order, to the learned Tribunal. The burden of the petitioner's song, before the learned Tribunal as well as before this Court, is that the respondent was not dismissed, or removed, or

reduced in rank and that, therefore, his appeal, before the learned Tribunal, was not maintainable.

27. This argument, is, in my view, completely devoid of substance. The expression “removed” is wide and comprehensive in its scope and ambit, and in the absence of any restrictive definition, attributed to the said expression in the DSE Act or the DSE Rules, has to be accorded in its widest possible meaning. One may also be informed, in doing so, by the principle, well settled in law, that the law is always required to be so interpreted as to confer, rather than exclude, jurisdiction, on a judicial or quasi-judicial authority.

28. One may also usefully refer, in this context, to the following passages, from *Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad*, (2002) 2 SCC 542, which was rendered in the context of the Industrial Disputes Act, 1947. Paras 4 and 5 of the said report read thus:

“4.The Court held in the aforesaid case that if a statute confers a right and in the same breath provides for a remedy for enforcement of such right the remedy provided by the statute is an exclusive one. It further held that under Section 9 of the Code, the courts have subject to certain restrictions, jurisdiction to try suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The Court examined the provisions of the Industrial Disputes Act and came to the conclusion that the Act envisages collective bargaining, contracts between the union representing the workmen and the management and such a matter was held to be outside the realm of the common law or Indian law of contract. The Court also held that the powers of the authorities deciding industrial disputes under the

Industrial Disputes Act are very extensive, much wider than the powers of a civil court while adjudicating a dispute which may be an industrial dispute. But under the provisions of the Industrial Disputes Act since the workman cannot approach the Labour Court or tribunal directly and the Government can refuse to make a reference even on grounds of expediency, such handicap would lead to the conclusion that for adjudication of an industrial dispute in connection with a right or obligation under the general or common law and not created under the Act, the remedy is not exclusive, and on the other hand is an alternative, and therefore, the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act and not otherwise. In other words it was held that if the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the civil court. But if the dispute is an industrial dispute arising out of the right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is an alternative, leaving it to the election of suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy. It was also held that if the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act. Mr. Ahmadi, learned counsel appearing for the appellants strongly relied upon the aforesaid observations for his contention that the dispute in the case in hand cannot be held to be a dispute arising out of a right or liability under the Act, and on the other hand, is a dispute arising out of a right or liability under the common law, and as such, the jurisdiction of the civil court could not have been held to have been barred. This decision of the Court was considered by this Court in ***Rajasthan SRTC v. Krishna Kant* [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110]**. After quoting the principles enunciated by the Court in ***Premier Automobiles case* [(1976) 1 SCC 496 : 1976**

SCC (L&S) 70] and on consideration of a large number of decisions, it was held:

“28. Now, coming back to Principle 2 and its qualification in para 24, we must say that para 24 must be read harmoniously with the said principle and not in derogation of it — not so as to nullify it altogether. Indeed, Principle 2 is a reiteration of the principle affirmed in several decisions on the subject including *Dhulabhai [AIR 1969 SC 78 : (1968) 3 SCR 662]*. Principle 2 is clear whereas para 24 is more in the nature of a statement of fact. It says that most of the industrial disputes will be disputes involving the rights and obligations created by the Act. It, therefore, says that there will hardly be any industrial dispute which will fall under Principle 2 and that almost all of them will fall under Principle 3. This statement cannot be understood as saying that no industrial dispute can ever be entertained by or adjudicated upon by the civil courts. Such an understanding would not only make the statement of law in Principle 2 wholly meaningless but would also run counter to the well-established principles on the subject. It must accordingly be held that the effect of Principle 2 is in no manner whittled down by para 24. At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and the State Legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural

laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them.

29. Now let us examine the facts of the appeals before us in the light of the principles adumbrated in *Premier Automobiles [(1976) 1 SCC 496 : 1976 SCC (L&S) 70]*. The first thing to be noticed is the basis upon which the plaintiff-respondents have claimed the several reliefs in the suit. The basis is the violation of the certified Standing Orders in force in the appellant-establishment. The basis is not the violation of any terms of contract of service entered into between the parties governed by the law of contract. At the same time, it must be said, no right or obligation created by the Industrial Disputes Act is sought to be enforced in the suit. Yet another circumstance is that the Standing Orders Act does not itself provide any forum for the enforcement of rights and liabilities created by the Standing Orders. The question that arises is whether such a suit falls under Principle 3

of *Premier Automobiles [(1976) 1 SCC 496 : 1976 SCC (L&S) 70]* or under Principle 2? We are of the opinion that it falls under Principle 3. The words ‘under the Act’ in Principle 3 must, in our considered opinion, be understood as referring not only to the Industrial Disputes Act but also to all sister enactments — [like the Industrial Employment (Standing Orders) Act] which do not provide a special forum of their own for enforcement of the rights and liabilities created by them. Thus a dispute involving the enforcement of the rights and liabilities created by the certified Standing Orders has necessarily got to be adjudicated only in the forums created by the Industrial Disputes Act provided, of course, that such a dispute amounts to an industrial dispute within the meaning of Sections 2(k) and 2-A of the Industrial Disputes Act or such enactment says that such dispute shall be either treated as an industrial dispute or shall be adjudicated by any of the forums created by the Industrial Disputes Act. The civil courts have no jurisdiction to entertain such suits. In other words, a dispute arising between the employer and the workman/workmen under, or for the enforcement of the Industrial Employment Standing Orders is an industrial dispute, if it satisfies the requirements of Section 2(k) and/or Section 2-A of the Industrial Disputes Act and must be adjudicated in the forums created by the Industrial Disputes Act alone. This would be so, even if the dispute raised or relief claimed is based partly upon certified Standing Orders and partly on general law of contract.”

5. The three-Judge Bench in *Rajasthan SRTC [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110]* summarised the principles as below: (SCC pp. 94-95, para 35)

“35. (1) Where the dispute arises from general law of contract i.e. where reliefs are claimed on the

basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an 'industrial dispute' within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like the Industrial Employment (Standing Orders) Act, 1946 — which can be called 'sister enactments' to the Industrial Disputes Act — and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of the Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer and not the power to decide,

though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly — i.e. without the requirement of a reference by the Government — in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to ‘statutory provisions’. Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the civil court where recourse to civil court is open according to the principles indicated herein.

(7) *The policy of law emerging from the Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.”*

It may be borne in mind that the Industrial Disputes Act was enacted by Parliament to provide speedy, inexpensive and effective forum for resolution of disputes arising between workmen and the employers, the underlying idea being to ensure that the workmen do not get caught in the labyrinth of civil courts which the workmen can ill-afford, as has been stated by this Court in *Rajasthan SRTC case [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110]*. It cannot be disputed that the procedure followed by civil courts are too lengthy and consequently, are not an efficacious forum for resolving the industrial disputes speedily. The power of the Industrial Courts also is wide and such forums are empowered to grant adequate relief as they think just and appropriate. It is in the interest of the workmen that their disputes, including the dispute of illegal termination are adjudicated upon by an industrial forum. To our query Mr Ahmadi, learned counsel appearing for the appellants was not in a position to tell that the relief sought for in the cases in hand, cannot be given by a forum under the Industrial Disputes Act. The legality of the order of termination passed by the employer will be an industrial dispute within the meaning of Section 2(k) and under Section 17 of the Industrial Disputes Act, every award of the Labour Court, Industrial Tribunal or National Tribunal is required to be published by the appropriate government within a period of thirty days from the date of its receipt and such award published under sub-section (1) of Section 17 is held to be final.”

(Emphasis supplied)

29. This Court sees no reason why, by analogy, the grievance, of a school teacher whose services, with a school, stand severed by reason of a resignation which, according to her/him, never took place, should not be permitted to be agitated by allowing recourse to the expedient course of an application under Section 8(3) of the DSE Act, rather

than by any other modus, which is bound to be more inexpedient and time consuming.

30. The issue has earlier engaged the attention of the Supreme Court, as well as of this Court. In *Shashi Gaur v. NCT of Delhi*, (2001) 10 SCC 445, the Supreme Court specifically examined the scope of Section 8(3) of the DSE Act. The services of the petitioner-teacher in that case, were terminated on the ground that he did not possess the requisite qualification to hold the post. The matter was carried, in appeal, to the learned Tribunal and reached, in due course of time, the Supreme Court. It was sought to be contended, by the respondent, before the Supreme Court, therefore, that as “termination”, was not one of the exigencies, to which, Section 8(3) of the DSE Act alludes, no appeal against such an order of termination, for want of the requisite qualification to hold the post, could be maintained before the learned Tribunal. In paras 7 and 8 of its judgment, the Supreme Court held thus:

“7. ...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 on 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.*”

(Emphasis supplied)

31. The above decision was followed, by a learned Single Judge of this Court in ***Daya Nand Adarsh Vidyalyaya v. Deepa Chibber, 2013 SCC OnLine Del 3754***, in which the court was specifically confronted with the question of whether a case of severance of employment by reason of resignation, by the teacher concerned, would also be amenable to appeal, to the learned Tribunal, under Section 8(3) of the DSE Act. This Court, first referred to the above extracted passages from the judgment of the Supreme Court in ***Shashi Gaur (supra)***, and proceeded, thereafter, to opine thus :

“4. In view of the aforesaid judgment of the Supreme Court in the case of ***Shashi Gaur (supra)***, in my opinion, there can be no doubt that once a teacher/employee of a school takes up a case that she has been illegally removed, this aspect very much falls within the jurisdiction of the Tribunal. *The mere fact that in determining this issue the Tribunal has also to consider that whether or not the teacher or employee has resigned or not cannot mean that Tribunal will have no*

jurisdiction because it is only on arriving at a conclusion that there is no valid resignation, would thereafter the Tribunal arrive at a decision of illegal removal of a teacher/employee of a school.”

(Emphasis supplied)

32. This Court, therefore, held that the appeal preferred by the respondent before it, in the above judgment, i.e. **Deepa Chibber (supra)**, to the learned Tribunal, was maintainable.

33. I express my complete, and respectful, concurrence, with the said decision.

34. The objection of the petitioner, to the entertainment of the respondent's appeal, by the learned Tribunal, on the ground that the said appeal was not maintainable, therefore, merits rejection.

35. Proceeding now, to the merits of the dispute, it is required to be borne in mind, at the very outset that, while exercising writ jurisdiction, over an award of the Industrial Tribunal or, for that matter, an order passed by the learned Tribunal, this Court acts as a court of certiorari. The parameters of certiorari jurisdiction stand classically expounded by the following passages, from the judgment of the Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477**:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals:

these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or in properly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.”

36. Relying on the principles enunciated in the above decision, a catena of pronouncements of the Supreme Court, including

Management of Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan, (2005), 3 SCC 193, *P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar*, (2001) 2 SCC 54 and *M.P. State Electricity Board v. Jarina Bee*, (2003) 6 SCC 141, followed, which may be regarded as having laid down, authoritatively, the following principles:

- (i) The Labour Court/Industrial Tribunal is the final fact finding authority.
- (ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/unacceptable evidence.
- (iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/Industrial Tribunal, before proceeding to do so.
- (iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.
- (v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

37. “Perversity”, for its part, is attributed to a judicial/quasi-judicial decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality [Refer *Damodar Lal v. Sohan Devi*, (2016) 3 SCC 78; *S.R. Tewari v. Union of India*, (2013) 6 SCC 602; *Rajinder Kumar Kindra v. Delhi Administration*, (1984) 4 SCC 635; *Kuldeep Singh v. Commissioner of Police*, (1999) 2 SCC 10; *Gamini Bala Koteswara Rao v. State of Andhra Pradesh*, (2009) 10 SCC 636; *Babu v. State of Kerala*, (2010) 9 SCC 189; *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra*, (2010) 13 SCC 657].

38. *Damodar Lal (supra)* further postulates that in examining whether a decision is, or is not, perverse, the classic test, of the reasonable man's conclusion on the facts before the authority concerned would apply. The same decision also reiterates the trite position that inadequacy of evidence, or the possibility of reading the evidence in a different manner, would not amount to perversity.

39. This Court, therefore, has to limit its examination, of the pregnability, or impregnability, of the impugned order of the learned Tribunal, within the confines of certiorari jurisdiction, as explained in the above passages.

40. In so doing, this Court has also to resist the temptation to overturn the award, or order, of the authority below, merely because,

in the opinion of this Court, another view could possibly be taken – even if such view may appear to be more attractive at first glance.

41. Viewed thus, I am of the opinion that the impugned order, dated 27th January, 2016, of the learned Tribunal, does not call for any interference.

42. The learned Tribunal has come to a finding, after examining the evidence, that the purported resignation, from his service, by the respondent, *vide* the letter dated 10th August, 2011, does not inspire confidence. In so holding, this Court has noted the fact that the petitioner has been somewhat ambivalent, regarding the date of tendering of the said letter, stating, at one point that it was tendered on 10th August, 2011 and, at another, that it was tendered on 11th August, 2011. The learned Tribunal has also noted the fact that there is no evidence, whatsoever, to indicate acceptance, by the petitioner, of the purported letter of resignation, of the respondent, on 11th August, 2011. Significantly, the petitioner, too, does not seriously dispute this finding, inasmuch as its contention is that the resignation was “orally” accepted. Such “oral” acceptance of the resignation is, in my view, totally foreign to the law and, especially, given the mandate of the DSE Act, such a submission cannot be tolerated for an instant. Rule 114A of the DSE Rules specifically requires acceptance of the resignation of an employee within 30 days by the managing committee with the approval of the Director of Education. It is fossilized in law, from the times of *Taylor v. Taylor (1875) 1 Ch. D 426* and *Nazir Ahmed v. King Emperor, AIR 1936 PC 253* that, where the law

requires a particular act to be done in a particular manner, it has to be done in that manner or not at all. Where, therefore, Rule 114A of the DSE Rules requires the resignation, submitted by an employee, to be accepted, within 30 days by the managing committee, with the approval of the Director, that, and that alone, is the manner in which resignation, of an employee, could be accepted, and no other manner of acceptance of resignation is tolerable in law. It is, apparently, in awareness of this legal position that the school has attempted to submit that the purported letter of resignation, dated 10th August, 2011, allegedly tendered by the respondent on 11th August, 2011 was accepted on the very same day. Even so, it is a conceded position, even in the writ petition, that this acceptance was not by the managing committee with the approval of the Director. It is no answer to the command of Rule 114A of the DSE Rules, to contend that, because of the extenuating circumstances in which the petitioner claimed to have found itself, it decided, *suo motu*, that the resignation of the respondent would orally be accepted by the principal, without involving either the managing committee or the Director of Education. Such acceptance of resignation is no acceptance in law. Inasmuch as, within a period of 30 days from 10th August, 2011, the purported resignation, of the respondent, was never accepted by the school, in a manner postulated by Rule 114A of the DSE Rules, the inevitable consequence, in law, would be that there is in fact, been no valid acceptance of the respondent's resignation – assuming such resignation was ever tendered – in law.

43. The learned Tribunal has also expressed its discomfiture with the submission, of the school, that the resignation, of the respondent, stood accepted on 11th August, 2011, by referring to the certificate, dated 12th August, 2011 (*supra*), issued by the school, to the effect that the respondent had resigned his services. This, the learned Tribunal notes, would indicate that the resignation of the respondent is being treated as having been accepted even prior to 12th August, 2011. The learned Tribunal has not been able to digest the submission that the respondent had, while on leave on 10th August, 2011, drafted out and signed the resignation letter, and had tendered it on 11th August, 2011, on which date it was accepted by the petitioner. This Court confesses that it is equally unable to stomach the said submission.

44. The stand, of the school, to the effect that the relationship of employer and employee, between the respondent and the school, stood severed by the act, of the respondent, in resigning from the services of the school cannot, therefore, be accepted as, even if the letter dated 10th August, 2011 (*supra*) is to be treated as a valid letter of resignation, which has not been accepted in the manner contemplated by Rule 114A of the DSE Rules.

45. Mr. Aneja sought to submit, in the alternative, that the respondent was guilty of having remained unauthorizedly absent from work. Unauthorized absence is a misconduct in itself, and if the services of an employee are to be discontinued on the ground of unauthorized absence, it has to be in accordance with the law prescribed in that regard, which would require conducting of proper

disciplinary proceedings, with adequate opportunity to the employee. The respondent in the present case has never been charged with unauthorized absence from duty; this submission of Mr. Aneja, therefore, does not merit any further consideration by this Court.

46. Mr. Aneja also sought to question the legitimacy of the decision, of the learned Tribunal, to condone the delay – which, according to him, was inordinate – on the part of the respondent in approaching the learned Tribunal. This Court is not inclined to interfere on this aspect of the matter either. Condonation of delay is essentially an issue of discretion, to be exercised by the appellate authority concerned, and, unless the exercise of such discretion suffers from manifest arbitrariness, or like infirmity, a writ court ought not to interfere with such exercise. In the present case, this Court cannot subscribe to the opinion that the decision, of the learned Tribunal, to condone the delay, on the part of the respondent, in preferring the appeal before it, was condonable. One may also take stock, in this context, of the well settled principle that meritorious causes ought not, if possible, to be rejected only on the ground of delay. The findings recorded by this Court hereinabove clearly indicate that the act of the petitioner, in refusing to allow the respondent to join service, on the ground that he had resigned from the service of the petitioner on 11th August, 2011, was unsustainable on facts and in law. In that view of the matter, this Court is of the opinion that the learned Tribunal could not be said to have erred in allowing the respondent's appeal and, for the said purpose, condoning the delay occasioned in preferring the same.

Conclusion

47. For all the above reasons, this Court is of the opinion that the impugned order dated 27st January, 2016 of the learned Delhi School Tribunal does not warrant any interference, especially in exercise of the certiorari jurisdiction vested in this Court under Article 226 of the Constitution of India.

48. The writ petition is accordingly dismissed with no orders as to costs.

AUGUST 07, 2019/kr

C. HARI SHANKAR, J.

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