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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 12th December, 2024*

+ W.P.(C) 5551/2018 & CM APPL. 21624/2018

VEDA VYASA DAV PUBLIC SCHOOLPetitioner

Through: Mr. Anurag Lakhotia, Advocate

versus

SH. DEVENDER KUMAR ARYA AND ANR.Respondents

Through: Mr. Om Prakash Mishra, Mr. Abhishek Pandey, Mr. Mayank Pandey and Mr. Vikas Negi, Advocates for R-1.

Mr. Sujeet Kumar Mishra and Mr. Sanyam, Advocates for R-2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India laying a challenge to the impugned judgment dated 09.03.2018 passed by the Delhi School Tribunal ('DST') in Appeal No.90/2017 titled ***Devender Kumar Arya v. Veda Vyasa DAV Public School & Ors.***

2. Facts to the extent necessary and relevant are that Respondent No.1 was appointed as Assistant Teacher in Veda Vyasa DAV Public School ('School') w.e.f. 10.07.1996 and subsequently as TGT vide letter dated 28.05.2001 and continued to work in the said capacity till he was relieved on 28.02.2017. Aggrieved by the relieving order, Respondent No.1 filed an appeal before the DST being Appeal No.90/2017.



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3. From the impugned judgment of the DST, it is evident that Respondent No.1 had assailed the relieving order only on one ground that the said order dated 15.02.2017 was illegal being without the approval of Directorate of Education ('DoE'). School contended that Petitioner had tendered his resignation dated 28.11.2016 after several complaints were received against him including a complaint for inflicting corporal punishment on 15.11.2016 on a student, for which show cause notice was issued to him. In the preliminary inquiry, Respondent No.1 accepted the misconduct and tendered an apology. Knowing that the School was on the verge of taking disciplinary action, Respondent No.1 tendered his resignation on 28.11.2016 setting out health grounds as a reason, which was duly accepted and approved by the Managing Committee. DoE contended that the Managing Committee of the School never sought approval with respect to the resignation tendered by Respondent No.1 as required under Rule 114(A) of Delhi School Education Act and Rules, 1973 ('DSEAR'), despite a circular dated 20.05.2016 issued in this behalf.

4. After hearing the parties, by impugned judgment dated 09.03.2018, DST set aside order dated 15.02.2017, whereby Respondent No.1 was relieved and directed reinstatement within four weeks with consequential benefits including full back wages from the date of the judgment of DST. With respect to back wages in view of Rule 121 of DSEAR, DST directed Respondent No.1 to make a representation to the School with a direction to the School to decide the same by a speaking order. Judgment of DST is primarily based on Rule 114(A) of DSEAR and the judgment of the Supreme Court in *Raj Kumar v. Directorate of Education and Others*,



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(2016) 6 SCC 541, wherein the Supreme Court held that a removal or dismissal order passed by a School without the approval of DoE is bad in law. By an interim order dated 22.05.2018, the impugned judgement was stayed by this Court.

5. Learned counsel for the School assails the impugned order *inter alia* on the ground that DST has erroneously placed reliance on the judgment of the Supreme Court in **Raj Kumar (supra)** as in the said case the issue before the Supreme Court was with respect to the mandate of prior approval of DoE before passing an order of dismissal or removal under Section 8(2) of DSEAR, while the present case is a case of resignation. It is urged that DST has totally misconstrued and misread Rule 114(A) of DSEAR and on an analogy of Section 8(2) of DSEAR erroneously held that prior approval is required, whereas the two provisions read differently. Section 8(2) of DSEAR provides that no employee of a recognised private school shall be dismissed, removed or reduced in rank except with prior approval of the Director whereas Rule 114(A) of DSEAR does not mandate any prior approval and provides that resignation submitted by the employee shall be accepted within 30 days from the date of receipt with the approval of the Director and if no approval is received within 30 days, such approval would be deemed to have been received after the expiry of the said period. In the present case, vide communication dated 30.11.2016, the School had sought approval from DoE but no approval was granted within the statutory period and the deeming fiction will come into play.

6. It is further argued that DST failed to appreciate that nominee of the DoE was present in the meeting of the Managing Committee on 17.01.2017



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wherein resignation of Respondent No.1 was considered and approved, which implies knowledge and approval of DoE in terms of Rule 114(A) of DSEAR. DST also failed to appreciate the circumstances under which the resignation was tendered by Respondent No.1. The preamble of DSEAR shows that the legislation was enacted to provide better education to the students and is for their development and benefit and thus a teacher who inflicts corporal punishment on the students cannot be reinstated. Moreover, it was not the School which terminated the services of Respondent No.1 as he himself tendered his resignation to save himself from disciplinary action and cannot turn around later and complain of violation of Rule 114(A) of DSEAR, *albeit* there is none. It is also urged that after the resignation was accepted, School sent a communication to DoE on 30.11.2016 seeking approval and once there was no response within 30 days, approval was deemed in law and therefore, the impugned judgment of DST deserves to be set aside.

7. Counsel for Respondent No.1 argues that the resignation was taken under threat and duress and has no meaning in law. It is further argued that even assuming the judgment of the Supreme Court in ***Raj Kumar (supra)*** was strictly dealing with Section 8(2) of DSEAR, the ratio and essence of the judgment that the Legislation is to provide safeguards to the employees of recognised private Schools against illegal termination, applies. In any case, there is violation of Rule 114(A) of DSEAR inasmuch as resignation was accepted without the approval of DoE and cannot be sustained in law.

8. Mr. Mishra, learned counsel appearing for DoE submits that a categorical stand was taken by the answering Respondent before DST in its



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reply that no approval was sought by the School while accepting the resignation of Respondent No.1 as required under Rule 114(A) of DSEAR. The communication dated 30.11.2016, on which heavy reliance is placed by the School before this Court was never received by the office of the DoE and therefore, the question of approving the resignation does not arise.

9. Heard learned counsels for the parties and examined their submissions.

10. Insofar as the contention of Respondent No.1 that resignation was given under threat or coercion is concerned, there is no material or even circumstantial evidence on record to support this allegation. On merits, plain reading of Rule 114(A) of DSEAR makes it palpably clear that once an employee submits a resignation, it shall be accepted by the Managing Committee of the recognised private school within 30 days from the date of receipt of the resignation with the approval of the Director of Education. The provision may not mandate a prior approval and to this extent, Mr. Lakhotia is right in his submission that Rule 114(A) of DSEAR differs from Section 8(2) of DSEAR, but it cannot be overlooked that approval of DoE is required and a time frame of 30 days has been stipulated to complete the exercise. The proviso to Rule 114(A) provides a deeming fiction that if no approval is received within 30 days, then such approval would be deemed to have been received after expiry of the said period. There can be no two opinions that the provision is a safeguarding provision to protect employees from arbitrary exercise of power by the School Managing Committees and to this extent the judgment of the Supreme Court in **Raj Kumar (supra)** is relevant *albeit* strictly the judgment deals with Section 8(2) of DSEAR.



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11. Once it is clear that the statutory obligation of the Managing Committee of the School to seek approval cannot be done away, it needs to be seen whether in the present case, the School had sought the approval within 30 days from the date the resignation letter dated 28.11.2016 was received from Respondent No.1. While the School asserts that approval was sought vide communication dated 30.11.2016, DoE has categorically refuted having received any such communication. This stand was taken by DoE in the reply before DST and School had every opportunity to rebut the position but as Mr. Lakhotia candidly admits, the School did not file any rejoinder to controvert the stand of DoE. Once the School did not even seek approval as required under Rule 114(A) of DSEAR, the question of deemed approval under proviso to the said provision does not arise and DST is right in its conclusion that there was violation of Rule 114(A) of DSEAR making the impugned order dated 15.02.2017, by which Petitioner was relieved, vulnerable and thus the impugned judgment warrants no interference.

12. For all the aforesaid reasons, the writ petition is dismissed and the judgment of DST dated 09.03.2018 is hereby upheld. Consequently, interim order dated 22.05.2018 stands vacated.

13. Pending application also stand disposed of.

JYOTI SINGH, J

DECEMBER 12, 2024