



2024:DHC:2986



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

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Judgment delivered on: 10.04.2024

+ W.P.(C) 7236/2018 & CM APPL. 27569/2018, CM APPL.
16778/2022

RITU PHORE

..... Petitioner

versus

RAMJAS SCHOOL AND ORS.

.....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Vijay Kumar, Senior Advocate with Mr.
Thomas Oommen, Advocate alongwith
Petitioner-in-Person.

For the Respondent: Mr. Aman Ullah and Ms. Nishu Khan,
Advocates for R-1 and 2.

Mr. Shankar Raju, Advocate for R-6

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a petition under Article 226 of the Constitution of India,
inter-alia, seeking the following prayers:

Signature Not Verified

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By: VINOD KUMAR
Signing Date: 16.04.2024
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W.P.(C) 7236/2018**Page 1 of 11**



“(a) Allow the present petition and quash the ranking of seniority of Respondent No.6 Richa Singh, PGT History shown as senior to Petitioner;

(b) Quash the act of condoning the break in service of Respondent No.6 Richa Singh, PGT History;

(c) Direct the Respondent No.1 School and. Respondent No.3 Foundation to furnish the record of service of Petitioner and Respondent No.6;

(d) Quash the appointment of Respondent No.6 as PGT Teacher in view of no advertisement and prior approval school managing committee;

(e) Direct the Respondent No.4 Directorate to take action against Respondent No.1 to Respondent No.3 herein;

2. The issue in the present petition lies within a very narrow compass. In that, the only issue to be decided by this Court is as to who, out of the two, i.e., the petitioner or respondent no.6, would be senior to the other person. This case arises out of a peculiar situation which is as under:

3. It has not been doubted by either of the party that respondent no.6 was senior to the petitioner on the date of joining. While both the petitioner as well as respondent no.6 were in service with respondent nos.1 to 3/School, the respondent no.6 admittedly, had tendered resignation on 20.12.2016. Following that, the respondent no.6 by the letter dated 21.12.2016 had requested the management of respondent no.1 to relieve her latest by 10.02.2017.

4. It is the case of respondent no.6 that by virtue of letter dated 03.01.2017, the respondent no.6 had withdrawn her resignation which was tendered on 21.12.2016. Since, there was no response from management of the school/respondent no.1, the respondent no.6 gave number of reminders and a third reminder thereto was tendered by her to



the school on 27.01.2017.

5. In the meantime, the respondent no.6 applied for and joined services of another school, namely, G. D. Goenka School/respondent no.5, on 15.02.2017.

6. It is the case of the petitioner that in the meantime, the respondent school seemingly having accepted the resignation of the respondent no.6, treated the petitioner as senior. It is also case of the petitioner that the said situation reflected right up till March, 2017, when the petitioner was suddenly reverted back. It is this reversion which is under challenge by the petitioner. It is stated that a number of letters and representations were given to the schools, as also Directorate of Education (DoE); however, the same did not elicit any positive response.

7. It is the case of the petitioner that the respondent no.6 had rejoined the respondent no.1 school w.e.f. 01.12.2017. The said joining is stated to be based on the continuity of service and seniority.

8. The grievance of the petitioner arises not from the fact that the respondent no.6 had rejoined the institution but from the fact that after joining the respondent no.6 was yet again shown to be senior to the petitioner. It is this grievance that is projected in the present writ petition.

9. The respondent no.1/school through Mr. Amanullah, learned counsel reiterates the position that the school agrees with the contention of the petitioner and would treat the petitioner as senior to the respondent no.6. The contention is based on the assumption that the respondent no.6 had ended her jural relation with the respondent no.1 and as such, the rejoining amounts to a fresh appointment.



10. Mr. Shankar Raju, learned counsel for respondent no.6 firstly submits that respondent no.6 had tendered her resignation which is not disputed. He submits that the said resignation having not been accepted in terms of Rule 114 of the Delhi School Education Rules (in short “*DSER 1973*”), respondent no.6 would be deemed to be continuing in service and rejoining of the school in December, 2017 would continue her seniority in service. This is stated to be by virtue of fact that respondent no.6 would be deemed to have continued her lien on the post. To substantiate the aforesaid submission, Mr. Raju, invites attention to the letter dated 13.11.2017 issued by the respondent school whereby School Management Committee (*hereinafter referred to as ‘SMC’*) being the competent authority had accepted the request of respondent no.6 of withdrawing the resignation and had decided to reinstate her in the services of the school. This, according to Mr. Raju, was a decision by the Competent Authority and not challenged by any person and had become final.

11. Learned counsel invites attention of this Court to reasons tendered by respondent no.6 for resignation *vide* letter dated 28.03.2017, to buttress the argument that the resignation was not a voluntary resignation but a forced one, on account of the harassment that respondent no.6 faced at the hands of the Head of the School during that period.

12. In any case, learned counsel submits that school having accepted the withdrawal of the resignation and reinstating respondent no.6 back in services, there is no break in service and as such the seniority of respondent no.6 has to be continued as it was prior to her application



seeking resignation.

13. On a query put by this Court, Mr. Raju submits that though this is a private school, the *inter se* seniority between the employees of the school on a particular grade is regulated by Rule 109 DSER, 1973. He invites attention to Sub-Rule (iv) of Rule 109, to submit that wherever there is a dispute regarding *inter se* seniority of the employees, the schools are mandated to consider the rules applicable to the employees of the corresponding posts in the government schools. On that basis, Mr. Raju submits that non acceptance of the resignation followed by non grant of approval by DoE, the respondent no.6 would be deemed to have continued on lien till date of rejoining.

14. According to Mr. Raju, the concept of lien is well settled by catena of judgments of the Supreme Court. He relies upon the judgment of ***L.R. Patil vs. Gulbarga University***, in ***Civil Appeal 3254/2023***, delivered on 04.09.2023. According to Mr. Raju, this judgment lays on the proposition that lien of a government servant, in this case the respondent no.6, would cease to exist only when the respondent no.6 would have been appointed to another substantive post and confirmed or absorbed permanently in such post. He submits that, that would be indication of the end of jural relation of employer and employee. That having not happened in the present case, the respondent no.6 is deemed to have continued to have a lien over the said post and rejoining would only be an exercise under the right of the said lien.

15. That apart, he also submits that no action worth its name was taken or initiated by the respondent no.1/school of the absence of the respondent no.6 *w.e.f.* 10.02.2017 till 01.12.2017, when she rejoined the



services in respondent no.1/school. This itself, is an indication that the school had not accepted her resignation. In fact, he submits that by a letter dated 13.11.2017, the SMC had, in fact, accepted withdrawal by a positive assertion and direction for reinstatement was also passed in the said letter.

16. In that view of the matter, Mr. Raju submits that there is no break in service and lien continued and as such the seniority of the respondent on rejoining the respondent no.1 would get maintained at the same position.

17. This Court has heard arguments of Mr. Vijay Kumar, learned Senior Counsel for petitioner and Mr. Raju, learned counsel for respondent no.6 and Mr. Amanullah for respondent no.1/school.

18. The long and short of the entire conspectus presented before this Court is as to whether the jural relation of an employer and the employee between respondent no.1 and respondent no.6 continued post resignation.

19. The arguments of Mr. Raju that the respondent no.1 school had not accepted the resignation and therefore respondent no.6 is deemed to have continued would not be tenable in the facts which arise in the present case.

20. This is not a case where respondent no.6 after having tendered resignation had not further joined any other school and had waited for the respondent no.1 school to act upon her resignation.

21. It is not even a case where, after the respondent no.6 had sought withdrawal of her resignation within the stipulated period of time, had either awaited for such decision to be taken by the school or had raised



any grievance before the Directorate of Education. The respondent no.6 did not even approach any Court of Law for redressal, if at all, she had any grievance to that effect.

22. In this case, not only did the respondent no.6 tender her resignation but also by the letter dated 21.12.2016, had indicated the particular date as to when the said resignation would become effective. According to the resignation letter dated 20.12.2016, the respondent no.6 had requested to be relieved by 05.02.2017. It is not disputed by respondent no.6 that soon thereafter, on 15.02.2017, the respondent no.6 had, in fact, admittedly joined another school, i.e., G.D. Goenka School/respondent no.5. The resignation letters dated 20.12.2016 & 21.12.2016 are extracted hereunder:-

Letter dated 20.12.2016

*"The Manager,
Ramjas School,
Anand Parvat,
New Delhi - 11005.*

*Reg: **Resignation from the post of PGT History***

Respected Sir,

Due to unforeseen personal reasons, I regret to inform you that I am resigning as PGT' History from the school. I sincerely request you to kindly relieve me by 5th Feb, 2017.

I further request you to kindly condone me balance One and half month of notice period and oblige.

I feel privileged to work in your school, where I had learned a lot and enjoyed working under the able guidance of the school management and principal. It's unfortunate that I could not work longer under your guidance.

I wish and sincerely request you, sir, to kindly accept the same and oblige.



2024:DHC:2986



With Regards

Yours Sincerely

Sd/-

*Richa Singh
PGT History,
Ramjas School"*

Date

20/12/2006

Letter dated 21.12.2016

*"The Principal,
Ramjas School, AP,
Anand Parvat,
New Delhi- 110005*

Reg: My Resignation dated 20.12.2016

Madam,

In continuation to nay resignation dated 20.12.2016, I humbly request you to kindly relieve me latest by 10th Feb.2017.

In case my request to condone the notice period is not as per management policy, then I am willing to pay for balance days of notice period, as per rules. This may kindly be adjusted against my Earned and Half Pay leaves.

If still any left, I shall pay for that.

I humbly request to kindly clear all as applicable, at earliest convenience and oblige.

Thanks & Warm Regard,

Yours Sincerely,

Sd/-

21/12/2016

*Richa Singh
PGT, History
Ramjas School, AP-05
Mob. +919*****"*

23. The issue that Mr. Raju had raised regarding the petitioner being on probation is not relevant. What is relevant is, that followed by the resignation, respondent no.6 confirmed her willful and intentional



termination of the jural relation of an employer and employee between respondent no.1 and herself, clearly by actually joining the other school. In fact, she had served the other school for 10 months w.e.f. 15.02.2017.

24. The issue that the school had not accepted her resignation during the entire period and therefore, she has a right to join back and that too with the seniority which existed prior to her resignation, is untenable and appear to be a bogey. Rule 109 referred to by Mr. Raju, of DSER Rule 1973, is reproduced hereunder:

109. Seniority— '(i) *There shall be a seniority roster for each grade and the names of the employees appointed to posts in each grade shall be arranged in the roster in accordance with this rule.*

(ii) *Seniority of employees shall be determined by the order of merit in which they were selected for appointment to the concerned post, these selected un an earlier occasion being ranked senior to those selected later :*

Provided that in a case where a joint seniority roster of employees of each grade common to all schools used to be maintained by society or trust running such schools prior to the commencement of these rules, inter-se-seniority of all employees of such schools shall continue to be maintained jointly.

(iii) *Inter-se-seniority between direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruities and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the recruitment rules.*

(iv) *Inter-se-seniority of employees of any grade shall be determined by the managing committee in accordance with the rules applicable to the employees of corresponding posts appointed in the Government schools :*

Provided that in a case where a joint seniority roster of employees of each grade common to all schools used to be maintained by the society or trust running such schools prior to the commencement of these rules, such inter-se seniority shall be determined by such society or trust.



2024: DHC: 2986



Explanation— In this rule the word 'grade' means a post or a group of posts created for work of the same nature in a school:

'[Provided that where posts are created for work of the same nature in different schools run by the same society or trust all such posts shall be deemed to be in a single grade, if they were treated as such by the society or trust prior to the commencement of these rules.]'

By scrutinizing the said provisions, it appears on first blush that the arguments addressed by Mr. Raju to be very attractive however, on a closure scrutiny it merits rejection. All that Sub-Rule (iv) of Rule 109 stipulates is that, where there could be a possibility of a dispute *inter se* seniority of the employees of a particular grade, it mandates that the same shall be determined by the Managing Committee in accordance with rule applicable to the employees of the corresponding post appointed in the government schools. To the mind of this Court, it appears that this provision has been deliberately inserted in the said rule, for the reason that, where question of more than one employee being selected on the same day under the same advertisement and same interview process, the Managing Committee could resolve the dispute regarding *inter se* seniority by reference to the rules applicable in that regard to the Government Schools. To that extent alone this rule provides the remedial measures.

25. So far as the issue of lien is concerned, that too in a private unaided school, there exists no rule nor could Mr. Raju show any regulation which would have any bearing on whether there is any concept of lien at all in the private unaided school. It is another matter that the private schools may, on their own volition, frame rules which may have been sanctioned and approved by the DOE, but that is not the



case in the present petition.

26. So far as the judgment of Supreme Court relied upon by Mr. Raju in *L.R. Patil (supra)* is concerned, this Court possibly cannot have any quarrel on the proposition laid down. However, the issue in the present case is that there is a deliberate and intentional step taken by the respondent no.6 to sever her jural relation with the respondent no.1, which action was confirmed by her joining another institution. It also appears by reading all these documents that the respondent no.6 was well prepared to join another institution, since her letter of resignation dated 20.12.2016, specifically stipulated that the said resignation be treated as effective from 05.02.2017. It is beyond any pale of doubt that the respondent no.6, in fact, had joined another institution on 15.02.2017.

27. The question of lien being brought in cannot be countenanced for the aforesaid reasons. In that view of the matter, this Court is not convinced by the arguments of respondent no.6.

28. The petition stands allowed. As a consequence, the school/respondent no.1 is directed to rectify the seniority list by showing the petitioner as senior to respondent no.6 *w.e.f.* the date when respondent no.6 had joined another institution. Consequential benefits, if any, shall flow to the petitioner.

29. The petition is disposed of, with no order as to costs.

TUSHAR RAO GEDELA, J

APRIL 10, 2024/ssc