The Principal and Others

Vs

The Presiding Officer and Others

Civil Appeal No. 1804 (N) of 1977

(Syed Fazal Ali, Jaswant Singh JJ)

09.01.1978

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leave is directed against an order dated January 18, 1977 passed by the Delhi School Tribunal, Delhi (hereinafter referred to as 'the Tribunal') in Appeal 22 of 1975 purporting to have been preferred under sub-section (3) of Section 8 of the Delhi School Education Act, 1973 (hereinafter referred to as 'the Act') by Kunj Behari Lal, respondent 2 herein.

2. It appears that respondent 2 who is an M. Com. but does not posses a Training Degree or a recognised Diploma in Education of three year's experience of teaching intermediate or higher classes or a recognised training certificate was appointed as Commerce Teacher on two years probation in the pay scale of Rs. 418-10-438-15-513-20-613-25-788-32-820 in the N. C. Jindal Public School, Punjabi Bagh, New Delhi (hereinafter referred to as 'the school') vide Memorandum dated July 26, 1972 to teach the subject of Commerce to ninth and tenth classes. The terms and conditions governing the appointment inter alia provided that the services of respondent 2 were 'liable to be terminated with one month's notice on either side or a month's salary in lieu to notice without assigning any reason during the probation period and three months thereafter". Pursuant to the warning contained in the letters dated November 2, 1972, December 24, 1973, and August 4, 1975 of the Central Board of Secondary Education, New Delhi (hereinafter referred to as 'the Board'), to which the school is affiliated since 1971 that respondent 2 was not qualified to teach the subject of Commerce to higher secondary classes as per the minimum qualification laid down by the Board, the Manager of the school served respondent 2 with three month's notice on August 8, 1975, informing him that his services would not be required by the school with effect from November 8, 1975. On September 8, 1975, the Manager of the school gave another notice to respondent 2 enclosing therewith a cheque of Rs. 1300 (drawn on Syndicate Bank, Punjabi Bagh, Delhi) by way of the latter's salary for two months i.e. from September 8, 1975 to November 7, 1975 in lieu of the remaining period of two months of the aforesaid notice dated August 8, 1975 and relived him of his duties with effect from the afternoon of that date. Aggrieved by these notices, respondent 2 filed the aforesaid appeal before the Tribunal asserting inter alia that after the expiry of the probationary period of two years, he was confirmed by the school authorities in the post of Commerce Teacher in July, 1974; that despite sincere and hard work put in by him, his services were terminated on the basis of false and baseless charges because of the personal grudge/malice which the principal of the school bore towards him; that the plea of the school authorities that he was not academically qualified was incorrect; that the Manager and the Principal who were fully cognizant of Clause 18 of Chapter 4 of the Central Board of Secondary Education Hand Book having issued the letter of appointment and subsequently that of confirmation, were estopped from pleading that he

(respondent 2) was not qualified to teach the higher classes; that the said clause could at the most be construed to imply that he was not qualified to teach higher classes but the same could not be made a ground for terminating his services and that after completion of three years of teaching experience in the school, the disqualification, if any, had disappeared. It is further pleaded by respondent 2 that his services could not be terminated without the prior approval of the Director of Education as provided by sub-section (2) of Section 8 of the Act and without following the provisions of the Act and the rules made thereunder. On these pleas, respondent 2 sought annulment of the aforesaid notices dated August 8, 1975 and September 8, 1975 and a declaration that he continued to be in the service of the school. The Manager and the Principal of the school contested the appeal contending inter alia that since the school was neither an aided one nor had been recognised by the appropriate authority, the Act and the rules framed thereunder were not applicable to it and consequently the appeal was incompetent and the Tribunal had no jurisdiction to entertain the same; that the appeal was even otherwise incompetent as the impugned order did not impose any of the penalties of dismissal, removal or reduction in rank on respondent 2 but was an order simpliciter of termination of his services and the conditions necessary for the applicability of Section 8(3) of the Act under which it purported to have been filed were not satisfied; and that in the circumstances of the case the prior approval of the Director of Education for terminating the service of respondent 2 was not at all necessary. The Manager and the Principal of the school further pleaded that although respondent 2 was appointed on probation for two years, no letter of confirmation was issued to him; that the services of respondent 2 were terminated as they were told by means of the aforesaid letters by the Board to which the school was affiliated since 1971 that the respondent should be replaced by a qualified teacher because he did not possess the prescribed qualification to teach the subject of Commerce; that respondent 2 was paid a sum of Rs. 1300 vide cheque 454889 dated September 8, 1975 as his salary for two months from September 8, 1975 to November 7, 1975 in lieu of the remaining period of the notice; and that they were obliged to dispense with the services of respondent 2 as despite the opportunity afforded to him by continuing him in service on temporary basis to enable him to get himself duly qualified, he did not care to do so. The allegation of mala fides made by respondent 2 were also denied by the Manager and the Principal of the school. It was further contended by them that since the instant case was not governed by the Act and the rules framed thereunder, the question of obtaining the prior approval of the Director of Education did not arise. On the appeal filed by respondent 2 being allowed by the Tribunal, the Principal and the Manager of the school filed a writ petition in the Delhi High Court challenging the Tribunal's order which was dismissed as withdrawn on February 24, 1977. Thereupon they approached this Court for special leave to appeal which was granted vide order dated August 25, 1977.

3. We have heard the learned Counsel on both sides, who have reiterated the contentions raised by the parties before the Tribunal.

4. Three points viz. (1) Whether the school was a recognised private school on the relevant date; (2) whether the service of the respondent 2 could not be terminated without the prior approval of the Director of Education and (3) whether the impugned order of termination of service of respondent 2 was appealable to the Tribunal arise for determination in this case. We shall deal with these points seriatim.

5. Re point 1 : For determination of this point which is crucial, it is necessary to refer to Section 2(t) of the Act which defines a "recognised school" as a school recognised by the appropriate authority. The expression "appropriate authority" is defined in Section 2(e) of the Act as under :

> 2. (e) 'appropriate authority' means

(i) in the case of a school recognised or to be recognised by an authority designed or sponsored by the Central Government, that authority;

(ii) in the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorised by him in this behalf;

(iii) in the case of the school recognised or be recognised by the Municipal Corporation of Delhi that Corporation;

(iv) in the case of any other school, the Administrator or any other officer authorised by him in this behalf.

6. From the above definitions, it is clear that no school can be treated as a 'recognised school' unless it is recognised or acknowledge by the 'appropriate authority'. In case of the school in question, it is the Administrator or the officer authorised by him who could accord recognition to it. A perusal of letters dated April 6, 1976, February 1, 1977 and June 6, 1977 of the directorate of Education, New Delhi (at pages 90, 95 and 162 of the record) makes it clear beyond any shadow of doubt that the school was not recognised in terms of the Act till the end of April, 1977 and it was only with the effect from May 1, 1977 i.e. long after the relevant date viz. August 8, 1975 that the approval of recognition was accorded to its vide letter F. 22(15) Z-XI(B)-1968/2003 dated June 6, 1977 of the Directorate of Education, Rajinder Nagar, New Delhi. This position has been admitted even by respondent 2 in para 4 of the Supplementary Affidavit filed by him before this Court. Even according to Para 2 of the said affidavit, the recognition of the school by the competent authority was not there on the relevant date. The observations of the Tribunal in regard to the point under consideration appear to be based on a misconception of the true legal position. It seems to think that since the name of the school figured in the list of the Higher Secondary and Middle Schools in the Union Territory of Delhi for 1974-75 prepared by the Statistical Branch of the Directorate of Education of the Delhi Administration, the school must be treated as a 'recognised school'. This is clearly a wrong assumption. The fact that the name of the school find a mention in the aforesaid list is not enough to clothe it with the status of a 'recognised school'. It appears to us that since the school was affiliated to the Board, the Delhi Administration caused it name to be included in the aforesaid list. The fact that the school is affiliated or attached to the Board is also of no consequence and cannot justify the conclusion that the school is a 'recognised school'. There is a significance difference between 'affiliation' and 'recognition'. Whereas 'affiliation', it may be noted, it meant to prepare and present the student for public examination, 'recognition' of a private school is for other purposes mentioned in the Act and it is only when the school is recognised by the 'appropriate authority' that it becomes amenable to other provisions of the Act. Again the fact that the school was in existence at the commencement of the Act cannot confer on it the status of a recognised school and make it subject to the provisions of the Act and the rules made thereunder. To clothe it with that status, it is essential that it should have been a 'recognised private school' as contemplated by the Act. Nothing has, however, been brought to our notice to show that it was an 'existing school' as defined in Section 2(j) of the Act. In view of all this, we have no hesitation in holding that the school was not a 'recognised private school' on the relevant date and was, therefore, not amenable to the provision of the Act.

7. Re Point 2 : Sub-section (2) of Section 8 of the Act ordains that subject to any rule that may be made in this behalf, no employee or a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the

Director of Education. From this, it clearly follows that the prior approval of the Director of Education is required only if the service of an employee or a recognised private school is to be terminated. As in the instant case, the school was not recognised private school, the approval of the Director of Education was not at all necessary to make the order termination of service of respondent 2 valid and legal.

8. Re Point 3 : Under Sub-section (3) of Section 8 of the Act it is only an employee of a recognised private school against whom an order of dismissal, removal or reduction in rank is passed who is entitled to file an appeal against such order to the Tribunal constituted under Section 11 of the Act within three months from the date of communication to him of the order. For the applicability of this provision of the Act, two conditions must co-exist. These are (1) that the employee should be an employee of a recognised private school and (2) that he should be visited with either if the three major penalties of dismissal, removal or reduction in rank. As the school was neither a recognised private school on the relevant date nor was the impugned order one of dismissal, removal or reduction in rank but was an order simpliciter of termination of service, the aforesaid appeal filed by respondent 2 to the Tribunal constituted under Section 11 of the Act was manifestly incompetent and the order passed therein by the Tribunal was clearly without jurisdiction.

9. For the foregoing reasons, we allow the appeal and quash the order of the Tribunal. In the circumstances of the case, there will be no order as to costs.

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