

Sh. N.N. Seth And Ors. vs Renu Gupta And Ors. on 1 February, 2006

Equivalent citations: 128(2006)DLT626

Author: Markandeya Katju

Bench: Markandeya Katju, Madan B. Lokur

JUDGMENT

Markandeya Katju, C.J.

1.This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 13.1.2004.

2. Heard counsel for the parties and perused the record.

3. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. By means of the writ petition, the petitioner prayed for a writ of certiorari to quash the suspension order dated 26.5.2000 annexure 'I' to the writ petition, the order dated 13.6.2000 extending the suspension period for another one month vide annexure 'L' to the writ petition and the suspension orders dated 13.7.2000 & 29.7.2000 vide annexure 'M' to the writ petition.

5. The petitioner also challenged the orders dated 24.11.2000, 25.4.2000 approving the extension of the suspension. The petitioner has also prayed for a mandamus directing the respondents No. 3 to 6 to pay full pay and allowances for the period from 27.5.2000 onwards.

6. The writ petitioner (respondent in this appeal) was the Vice Principal of Dayanand Model Secondary School, Patel Nagar, New Delhi. A show cause notice dated 21.12.1999 was issued to her, a copy of which is annexure 'H' to the writ petition. Various allegations were made in the same e.g. :-

(a)willful neglect of duties etc.

(b) Disregard to the Rules and regulations.

(c) Showing disrespect to the constituted authority.

(d) Using indecorous language for the superiors and others.

(e) Misbehavior and Cruelty towards teachers.

(f) Encouraging rowdyism.

(g) Financial and Administrative irregularities involving Moral Turpitude.

7. The petitioner gave a reply to the said show cause notice vide annexure 'H2' to the writ petition. However, she was placed under suspension by the Managing Committee in its meeting held on 26.5.2000 which was conveyed to the petitioner by letter dated 26.5.2000 vide annexure 'I' to the writ petition. Subsequently, the period of suspension was extended. A departmental inquiry was initiated against the petitioner leveling as many as 67 charges including charges of embezzlement, misappropriation etc.

8. It is alleged in paragraph 22 of the writ petition that the Directorate of Education had refused permission for the suspension and the 15 days time expired on 10.6.2000 and as such the petitioner was taken back in service and rejoined the school on 12.6.2000. However, the management appeared before the Director of Education with another letter dated 2.6.2000 seeking approval of extension of the suspension period. Hence the Director of Education extended the suspension for another one month up to 11.7.2000.

9. In paragraph 23 of the writ petition, it is alleged that on 12.7.2000 the petitioner again joined the school. The management again on 13.7.2000 suspended the petitioner for 15 days. Thereafter she was again put under suspension from 31.7.2000 for 15 days. It is alleged that these suspension orders were illegal, because suspension orders cannot be passed by the management once the suspension is refused by the Director. On 24.11.2000 the then Dy. Director of Education conveyed the approval of the Director of Education for extension of the petitioner's suspension up to 31.3.2001.

10. Consequently, the Directorate of Education considering the fact that no order of suspension can be passed for more than six months unless the Managing Committee for reasons to be recorded in writing directs the continuation of the suspension beyond the period of six months under Rule 115 (2) of the Delhi School Education Rules, 1973, passed orders revoking the order of suspension on 19.7.2001 vide annexure-Q to the writ petition.

11. It appears that the petitioner had filed the writ petition being W.P (C) No. 4469/2001 and this Court disposed of the petition with the direction to complete the enquiry within three weeks and ordered that in the meantime the order dated 19.7.2001 be kept in abeyance.

12. In another writ petition being W.P (C) No. 4560/2000, the Court had directed the Manager vide order dated 13.3.2001 to submit the statement of accounts with respect to payment of Subsistence Allowance to the petitioner and directed the parties to have a meeting to settle the accounts. It is alleged that from the minutes of the meeting, it transpired that the petitioner's subsistence allowance instead of being increased was reduced to 25% . It is alleged that subsistence allowance can be reduced only if the delinquent is instrumental in delaying the inquiry and not participating in

the inquiry. However, there are no such allegations against the petitioner.

13. It is alleged in paragraph 40 that the petitioner should have been paid 75% of the subsistence allowance instead of 25% as per the rules. In the writ petition, the petitioner has restricted her claim for payment of full pay and allowances on the ground that suspension is illegal and the reduction of subsistence allowance was also illegal. The petitioner has not challenged the inquiry proceedings in the case.

14. A counter affidavit was filed on behalf of respondents No. 3 to 7 in the writ petition who are the Chairman, Manager etc. of the Dayanand Model Secondary School. It is stated that the respondent is a private unaided school and it is for the managing Committee of the school to suspend the Principal, Vice Principal or teacher, and the Managing Committee is also empowered to revoke or modify the suspension order, once it has been approved by the Director of Education.

15. In this connection Rule 115 of the Delhi School Education Rules, 1973 (in short the DSER) states:-

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

(b) Where an employee is suspended or is deemed to have been suspended and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the managing committee may for reasons to be recorded by it in writing, direct that the employee shall continue to be under suspension until the termination of all or any such proceeding.

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

16. As regards the quantum of subsistence allowance Rule 116 (ii) of DSER' 1973 states:-

Rule 116 (ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding fifty percent of the subsistence allowance admissible for the first (six months), if, in the option of the managing committee, to be recorded in writing the period of Suspension has been prolonged due to reasons directly attributable to the employee.

17. It has been pointed out in the counter affidavit that the petitioner/respondent in this appeal has already been removed from service vide letter dated 21.6.2002 annexure R-3 to the writ petition. That letter states:-

No. 72/2002-03 Dated: 21.6.2002 Mrs. Renu Gupta A-27, New Rajinder Nagar New Delhi-110060 Subject:- Approval of major Penalty in respect of Mrs. Renu Gupta,

Vice-Principal/Head of Dayanand Model Sec. School, Patel Nagar, New Delhi.
Madam, You are hereby informed that the Competent Authority of Directorate of Education has approved the major penalty proposed against you under rule 117 (b) (iii) i.e. removal from service which shall not be a disqualification for further employment in any other recognized private school w.e.f. 19.12.2001. Please Note.
Yours faithfully, Chairman Managing Committee

18. It is submitted in paragraph 6 of the counter affidavit that the writ petition is highly belated and deserves to be dismissed on the ground of laches. The petitioner is raising the issue of her suspension and subsistence allowance, which had already been settled about two years ago and a major penalty has already been awarded and approved. It is alleged that the petitioner had collected funds against the specific instructions of the management of the school and violated the Code of Conduct.

19. It is alleged in paragraph 10 of the counter affidavit that the management of the school never interfered in the day to day working of the writ petitioner. It only initiated action when the petitioner committed several irregularities, started running a parallel administration in the school and created a situation that a large number of school teachers went on strike, which was unprecedented and which brought a slur on the name of the institution.

20. In paragraph 13 of the counter affidavit, it is alleged that the petitioner challenged the opening of the management's office in the school for which she has no authority. Secondly, she challenged the authority of the management by stating that it cannot be an Appellate Authority over her functions/actions.

21. The management of the school has stated that the petitioner is also an employee and hence it can hear grievances against her. The petitioner has been found guilty of gross misconduct in terms of Code of Conduct provided under the DSER's 1973.

22. In paragraph 32 of the counter affidavit, it is stated that the petitioner was instrumental in getting the inquiry prolonged unnecessarily and hence she cannot claim any benefit by her own acts. It is alleged that the decision of the Managing Committee to reduce the quantum of subsistence allowance was absolutely lawful and justified. The petitioner was instrumental in delaying the inquiry proceedings and hence the subsistence allowance was reduced.

23. The learned Single Judge has observed in paragraphs 21 to 25 of his judgment that the Director of Education by his order dated 13.6.2000 granted approval for suspension of the petitioner up to 11.7.2000. According to the learned Single Judge the suspension which had lapsed on 11.7.2000 could not have been revived by the Director of Education subsequently, and hence the orders dated 13.7.2000 and 29.7.2000 suspending the petitioner were bad in law.

24. With respect we cannot agree. There is nothing in law which prohibits the Director of Education from granting approval of the extension of suspension after the suspension had lapsed. In our opinion, there is nothing illegal in re-suspension of the petitioner particularly when there were grave

and serious charges against her. No rule has been shown to us prohibiting such re-suspension, or extending the suspension period after it had lapsed.

25. The respondent was suspended w.e.f. 27.5.2000 because she was found prima facie guilty of various grave misconducts e.g. embezzlement of school funds, running a parallel management in the school, insubordination, misbehavior towards the management and various other serious violations of the Code of Conduct.

26. The details of the suspension periods as well as ex-post facto approval of the Director of Education are as follows:-

Period of Suspension Date of ex-post approval of the Directorate of Education.

27.05.2000 to 11.7.2000 13.06.2000 12.07.2000 to 13.11.2000 18.08.2000 14.11.2000 to 31.03.2001 24.11.2000 01.04.2001 to 30.04.2001 25.04.2001 01.05.2001 to 30.06.2001 23.05.2001 01.07.2001 suspension revoked 19.07.2001

27. From the facts stated above, it is clear that from 27.5.2000 i.e. the date of suspension till 10.6.2002 which is the date when the Director of Education finally granted approval for removal of respondent No. 1 from the school, there is no period of suspension which could be said to be not approved by the Director of Education. Throughout the period of suspension, the respondent No. 1 was paid subsistence allowance in accordance with the Rule 116 of the DSER.

28. In *Prem Sehgal v. Director of Education* 1986 Rajdhani Law Reporter 147 a Division Bench of this Court held that in the case of private unaided institutions the principle of internal management being by and large unfettered has to be observed. There is no doubt that there exists a regulatory power but it can be exercised by the Director of Education only on cogent and rational grounds. Unless the action of the Managing Committee is malafide or absolutely arbitrary, the director cannot withhold approval. It was also observed that a private unaided school is an autonomous body.

29. Thus, the above decision clearly noted that there is a difference between aided schools or Government schools on the one hand, and unaided private schools on the other, and the principle of internal management has to be followed in the case of the latter and the Director of Education can only interfere when there is cogent material to show that action of the management is clearly malafide.

30. In the case of *TMA Pai Foundation and Ors. v. State of Karnataka and Ors.* the Supreme Court has held that in the case of unaided school there should be no interference with its internal management.

31. No doubt in *Delhi Public School and Anr. v. The Director of Education and Ors.* 2002 VIII AD (DELHI) 645 the Court held that:

the effect of non-grant of approval of a suspension order within 15 days from the date of suspension is that in view of Section 8(4) the suspension lapses after 15 days vide the second proviso to Section 8 (5).

32. However, in our opinion, there is no bar to a fresh suspension order being passed subsequently, or extension of suspension even after the suspension period lapses, since there is no rule prohibiting this. .

33. In *Kathuria Public School and Ors v. Director of Education and Anr.* 2005 VI AD (DELHI) 893 it was held by a Division Bench of this Court:-

That there is a difference between the administration of a private unaided institution and a Government aided institution.

34. In paragraph 38 of the said decision in *Kathuria Public School's* case (supra) it was held that in so far as unaided schools are concerned there is no requirement of prior approval of the Director under Section 8(2) before disciplinary action is taken under Section 8(4) in so far as suspension is concerned. From the facts of the case we are of the opinion that the respondent was responsible for the delay in the enquiry.

35. In view of the above, this appeal is allowed and the impugned judgment of the learned Single Judge is set aside.