

R.A. Mishra And Ors. vs Government Of Nct Of Delhi And Ors. on 27 September, 1999

Equivalent citations: 82(1999)DLT131, [2000(84)FLR431]

Author: A.K. Sikri

Bench: A.K. Sikri

JUDGMENT

A.K. Sikri, J.

1. Rule.

2. With the consent of the parties the matter is finally heard.

3. This writ petition is filed by seven persons and all of them are working as teachers with Central Academy Senior Secondary School (hereinafter referred to as 'School', for short) run by respondent No. 5. They are not paid their salaries for varying period and to claim the same they have filed the present writ petition. Petitioners 1 to 3 would be referred to, hereinafter, as Group 'A' petitioners as facts relating to them are common. Likewise, petitioners 4 to 7 would be referred to, hereinafter, as Group 'B' petitioners in view of commonality of their facts.

4. It is the case of the petitioners that all the teachers of the School submitted a memorandum to Directorate of Education on 23rd July, 1974 against the malpractices resorted to by the management of the School headed by respondent No. 5. Thereafter the teachers of the School alongwith parents of the students formed a parent-teachers association in September/October, 1994. This annoyed respondent No. 5 who issued show cause notice to Group 'A' petitioners on 30th November, 1994 and suspended them from service. Directorate of Education however vide order dated 11th January, 1995 refused to grant permission to suspend the Group 'A' petitioners. However, in the meantime respondent No. 5 had filed civil suit in the Court of Shri P.K. Bhasin, Addih'onol District Judge, Delhi seeking to restrain Group 'A' petitioners from entering the School and obtained ex parts injunction order dated 5th January, 1995. This injunction order was subsequently confirmed by the said Civil Court on 18th January, 1996. Thus even when Directorate of Education had refused to grant permission to suspend Group 'A' petitioners, they could not join their duties because of the aforesaid injunction order.

5. In April, 1995 entire teaching and non-teaching staff of the School filed Civil Writ Petition No. 1315 of 1996 for taking over the administration of the School. During the pendency of this petition management of the School was taken over by the Administrator vide communication dated 3rd July, 1996. However, before that on 25th November, 1995 services of Group 'A' petitioners were terminated by respondent No. 5.

6. In February, 1996 respondent No. 5 disbanded XIth and XIIth standard and declared services of Group 'B' petitioners as surplus. Thus before the management of School was taken over by the Administrator on 3rd July, 1996, services of Group 'A' petitioners were terminated and Group 'B' petitioners declared surplus.

7. Respondent No. 5 filed Civil Writ Petition No. 2577 of 1996 in this Court against order dated 3rd July, 1996 taking over the management of the School. On 24th July, 1996, in this petition, this Court passed order constituting Interim Management Committee. Thereafter vide order dated 7th August, 1996 petitioner No. 6 was taken back in service and vide order dated 29th August, 1996 petitioner Nos. 4, 5 and 7 were also taken back in service. On 1st April, 1997 Group 'A' petitioners were also reinstated by the respondent/Directorate of Education.

8. A Division Bench of this Court dismissed Civil Writ Petition No. 2572 of 1996 filed by School management against taking over of the School and the judgment of the Division Bench is .

9. In the instant writ petition, Group 'A' petitioners claim their back wages/salary from the date of suspension i.e. 30th November, 1994 to the date of reinstatement i.e. 1st April, 1997. They also claim balance amount of salary for subsequent period from 1st April, 1997 as according to them salary has not been paid as per grades prescribed by the Directorate of Education. Group 'B' petitioners claim back wages/salary w.e.f. 12th February, 1996 when they were declared surplus upto 20th August, 1996 when they were taken back in employment. They also claim balance amount of salary for the period after 29th August, 1996 on the ground that salary is not paid as per the grades prescribed by the Directorate of Education.

10. It may be relevant to mention here that Civil Writ Petition No. 1315 of 1995 which was preferred by teaching and non-teaching staff of the School for taking over the management was ultimately disposed of on 2nd May, 1997 as it had become infructuous Inasmuch as management of the School had been taken over by the Administrator as noticed above. Order dated 2nd May, 1997 is as under :

It is stated by all the parties before us that the management of the School has been taken by the Delhi Administration, and it is functioning under its control.

The writ petition as such, has become infructuous and is disposed of.

It is made clear that on the claim in the amended petition regarding the dues payable to the teachers, who have not been paid their salaries, we pass no orders thereon. The affected persons may make a representation to the management for their dues.

There is some money lying deposited in this Court. The persons concerned may make the payment on application.

11. The aforesaid fact is mentioned because it is argued by respondent No. 5 that after order dated 2nd May, 1997, the petitioners cannot file present petition as their claim was rejected by this order. However perusal of order dated 2nd May, 1997 shows that such a contention is totally misconceived and I reject the same.

12. While passing order dated 2nd May, 1997 Division Bench observed that the claim in the amended petition regarding the dues payable to the teachers who have not been paid the salary, no orders are being, passed and affected persons may make representation to the management for their dues.

13. It is stated by the petitioners that after order 2nd May, 1997 they made their representations to the Administrator/Directorate of Education as well as to respondent No. 5 but since salaries were not paid the present petition has been preferred. In the counter affidavit filed by the department it is stated that the payment of outstanding dues, if any, prior to 1st April, 1997 is the responsibility of respondent No. 5. On the other hand, respondent No. 5 in its counter affidavit has stated that act of the School in terminating the Group 'A' petitioners and declaring Group 'B' petitioners as surplus has not been set aside by any competent Court, the reinstatement orders in respect of these petitioners were passed by the Department without taking erstwhile management of the School into confidence, issue has been adjudicated by this Court in Civil Writ Petition No. 1315 of 1995 and as the management of the School has been taken over by the respondents/Directorate of Education, there is no liability of the erstwhile Management Committee to pay any salaries as Delhi School Education Act, 1973 does not recognise the manager of erstwhile Management Committee to be responsible. Respondent No. 5 has also placed on record copy of order dated 19th March, 1999 passed by Division Bench of this Court in CM 2033 of 1988 in Civil Writ Petition No. 2572 of 1996 as per which amount lying in the fixed deposit in this Court together with interest accrued was directed to be remitted to the account being operated by authorised officer of the School who is running the School. The relevant portion of the said order is reproduced below :

"We have considered all aspects of the matter. We are of the view that the amount lying in the fixed deposit, together with interest accrued, should be remitted to the account being operated by the Authorised Officer of the Central Academy Senior Secondary School, who is running the School."

We accordingly direct that Registrar, Delhi High Court would have the FDR encashed by the Union Bank of India, Moti Bagh, Opposite Hyatt Regency, New Delhi and have the proceeds remitted to and credited to account No. 30065, Canara Bank, R.K. Puram (Moti Bagh), New Delhi of the Central Academy Senior Secondary School, R.K. Puram, Sector-XII, New Delhi.

14. Thus it is contended that whatever money was with the erstwhile management of the School it was kept deposited in this Court during the pendency of the writ petition and the same has been remitted to the present management being run by Directorate of Education and there is no money

left with respondent No. 5 from which any payment could be made to these petitioners.

15. From the aforesaid facts following legal position would emerge :

(A) In so far as Group 'A' petitioners are concerned their suspension/ continued suspension from service was clearly illegal inasmuch as Directorate of Education refused to grant permission to such suspension. This is the inescapable consequence that flows from the statutory provision contained in Sections 8(4) and 8(5) and the same reads as under :

Section 8: Terms and conditions of service of employees of recognised private Schools :

(1) x x x (2) x x x (3) x x x (4) Where the Managing Committee of a recognised private School intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director :

Provided that the Managing Committee may suspend a employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under Section 2, of the employee :

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.

(5) Where the intention to suspend, or the immediate suspension of, and employee is communicated to the Director, he may if he is satisfied that there are adequate and reasonable ground for such suspension, accord his approval to such suspension.

16. As per Section 8(4) of the Delhi School Education Act, 1973, where the Managing Committee of recognised private School intends to suspend any of its employees, it has to communicate its intention to the Directorate of Education. Proviso to this sub-section further stipulates that Managing Committee may suspend the employee with immediate effect and without prior approval of the Directorate of Education if such immediate suspension is necessary by reason of gross misconduct but in that case no such immediate suspension remained in force for more than a period of 15 days from the date of suspension unless it has been communicated to Directorate of Education and approved by him before the expiry of the said period. Therefore, even if it is treated that Managing Committee thought that immediate suspension of the Group 'A' petitioners was necessary, admittedly no permission was given by the Directorate of Education within 15 days from the date of suspension. On the contrary Directorate of Education specifically refused this permission vide order dated 11th January, 1995. Therefore, once such suspension could not remain in force after

15 days, Group 'A' petitioners are deemed to be in service. However, they were not allowed to join duties in view of the injunction order passed against them in a suit filed by the management of the School. Group A petitioners are therefore entitled to the salary from the date of suspension till the date they were reinstated back and allowed to join the duties.

17. 'B'. In so far as Group 'B' petitioners are concerned Directorate of Education itself did not accept the action of the management of the School declaring them surplus. In fact action of the erstwhile management of the School in disbanding classes XIth and XIIth was not approved by Directorate of Education and after taking over of the management of the School, classes XIth and XIIth were restarted. It is clear that due to vendetta of the management of the School against Group 'B' petitioners they were intentionally declared surplus and forced out of the School amounting to illegal termination and therefore on their reinstatement they would be entitled to the salaries for the intervening period.

18. In view of my foregoing discussion all the petitioners are entitled to the salary for the intervening period as mentioned above. In fact their entitlement is not seriously disputed also at the time of hearing. The argument advanced by respondents 1 to 4 was that it is the liability of respondent No. 5 to pay the amount in question and per respondent No. 5 contended that it is liability of respondents 1 to 4 to pay this amount to the petitioners.

19. The question, therefore, which needs to be determined now, is as to who should pay back wages/salary for the period in question to these petitioners.

20. Since the management of the School with entire corpus including amount lying deposited in Court has been taken over by the Department/respondent Nos. 1 to 4 it would be the liability of respondents 1 to 4 to pay salary of the period in question to the petitioners. On the other hand the services of the petitioners were wrongly terminated by erstwhile management of the School/respondent No. 5 and therefore their liability to pay the salary in question to the petitioners is also there. Therefore I hold that both respondents 1 to 4 as well as respondent No. 5 are jointly and severally liable to pay the salary of the intervening period to these petitioners. In the first instance this amount should be paid to the petitioners by respondent Nos. 1 to 4 and this amount can be adjusted from the amount of Fixed Deposit Receipt which was encashed by the Union Bank of India and remitted to and credited to Account No. 30065 in Canara Bank, R.K. Puram, (Moti Bagh) New Delhi in the name of the School. If the said amount is not sufficient or is already exhausted respondents 1 to 4 shall have to pay the dues of the petitioners amount over and above the amount kept in Fixed Deposit Receipt together with interest accrued, and the excess amount paid by respondents 1 to 4 would be recoverable by them from respondent No. 5 for which respondent Nos. 1 to 4 shall have the right to take all appropriate steps against respondent No. 5.

21. This writ petition is accordingly allowed. Rule is made absolute. Petitioners are entitled to salary for the intervening period in question, i.e. Group A employees will get back wages from date of suspension i.e. 30th November, 1994 to date of reinstatement i.e. 1st April, 1997, and Group B employees will get back wages from date of declaration as surplus i.e. 12th February, 1996 to date of appointment as ad hoc on consolidated salary i.e. 7th August, 1996 to the petitioner No. 6 and from

29th August, 1996 to petitioner Nos. 4, 5 and 7. They are also entitled to the salary in the grades prescribed by Directorate of Education w.e.f. 1st April, 1997 (Group 'A' employees) and 7th August/29th August, 1996 (Group B employees) and as they were paid the salary after these dates only in consolidated basis, they would be entitled to get difference of salary admissible to them as per the grades prescribed by Directorate of Education minus the consolidated salary paid to them.

This payment shall be made by respondent Nos. 1 to 4 to these petitioners within a period of four weeks from the date of receipt of this order.

No order as to costs.