

Smt. Leela Sharma Vs GNCT of Delhi and Others

Court: Delhi High Court

Date of Decision: Feb. 3, 2012

Citation: (2012) 128 DRJ 132

Hon'ble Judges: Pratibha Rani, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Vinay Kumar Garg, for the Appellant; Aditya Madan, for R-1, Mr. K.C. Mittal with Mr. Puneet Mittal, Advocates for R-2, for the Respondent

Final Decision: Allowed

Judgement

Year,"No. of

students

appearing","No. of

students

passing","Ist

Divn.,"IInd

Divn.,"IIIRD

Divn.,"Distinction

1999,03,03,01,1,1,--

2000,10,10,09,1,Nil,2

2001,12,12,10,2,Nil,3

2002,14,14,11,3,Nil,6

be extended to the teachers of a recognized school also? (refer para 15 of the impugned decision). Learned Single Judge has further held : ""Once a",,,,,,

recognized school is entitled under the Rules to remove an employee prior to the age prescribed for superannuation, on the grounds of misconduct," ,,,,,,

it defies logic as to why the power of compulsory retirement is not to be read therein. After all, compulsory retirement is provided as a penalty" ,,,,,,

under the Rules.? Accordingly, the learned Single Judge has dismissed the writ petition directing the appellant to challenge the order of compulsory" ,,,,,,

retirement by way of appeal before the school tribunal on the merits of her being compulsorily retired.,,,,,,

11. Since the issue whether at all there exists a power, not by way of penalty, but by way of an administrative decision, to compulsorily retire a" ,,,,,,

teacher of a recognized school would relate to the very power of the management of the school, and since the learned Single Judge has held that" ,,,,,,

such a power exists by necessary implication, it is apparent that the appellant cannot question said power before the Appellate Tribunal constituted" ,,,,,,

under the Act and thus the issue has to be settled by us.,,,,,,

12. The principal issue that arises for determination before us is as follows:-,,,,,

Whether FR 56(j) is applicable to the teachers of a school recognized under the Act and governed by the provisions thereof.,,,,,,

13. Implicit within the question would be, whether the Court can read applicability of Fundamental Rules into the conditions of service of a teacher" ,,,,,,

of a recognized school governed by the Act and the Rules.,,,,,,

THE ACT & RULES:,,,,,

14. The Act defines, u/s 2(d) Aided School; u/s 2(r) Private School; u/s 2(t) Recognized School and u/s 2(u) School. Though, Unaided" ,,,,,,

Recognized Private School has not been separately defined, but a conjoint reading of clauses (d), (r) and (t) of Section 2 would make it clear that" ,,,,,,

a school, not run by the Central Government, the Administrator, a Local Authority or any other Authority designated or sponsored by the Central" ,,,,,,

Government, the Administrator or a Local Authority, recognized by the appropriate authority not receiving aid in the form of maintenance grant" ,,,,,,

from the Central Government, Administrator, a Local Authority or any other Authority designated or sponsored by the Central Government," ,,,,,,

Administrator or a Local Authority, is an Unaided Recognized Private School. The school, in the present case, undisputedly, is an Unaided" ,,,,,,

Recognized Private School.,,,,,,

15. Chapter-III of the Act deals with establishment recognition and management of aid to school. Section 3 empowers the administrator to,,,,,

regulate education in all the schools in Delhi and Section 4 deals with recognition of schools. The terms and conditions of service of employees of,,,,,

Recognized Private Schools are governed by Chapter-IV of the Act, which as per Section 8, provides that the Administrator may make Rules" ,,,,,,

regulating the minimum qualifications for recruitment, and the conditions of service, of employees (including the teachers) of Recognized Private" ,,,,,,

Schools. The proviso to Section 8(1), relevant for the present purposes, provides that neither the salary nor the rights in respect of leave of" ,,,,,,

absence, age of retirement and pension of an employee in the employment of an existing school shall be varied to the disadvantage of such" ,,,,,,

employee. Sub-Section (2) of Section 8 provides that no employee of a Recognized 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.,,,,,,

16. Section 28 of the Act deals with the power to make Rules and sub-Section (2) thereof lists the various subjects relating to which the Rules may ,,,,,,

be made. The Administrator in exercise of this power had made the Rules.,,,,,,

17. The Rules, under Chapter-VIII, deal with the recruitment and terms and conditions of service of employees of the private schools, other than" ,,,,,,

Unaided Minority Schools. Rule 110 prescribes the retirement age of the employees of a Recognized Private School, whether aided or not, as 58" ,,,,,,

years; whereas per sub Rule (2) the age of retirement for the teachers has been prescribed as 60 years. Rule 117 lists the penalties and the ,,,,,,

disciplinary authorities. Sub-para (b) of Rule 117 prescribes compulsory retirement as a major penalty. However, the procedure for imposing" ,,,,,,

major penalty has been laid down under Rule 120. Sub-Rule (2) of Rule 120 provides that no order of imposition of major penalty can be made ,,,,,,

by the disciplinary authority except after receipt of approval of the Director, sub- Rule (3) clearly prescribes that an order imposing penalty of" ,,,,,,

compulsory retirement or any minor penalty may be challenged by way of an appeal to the Tribunal.,,,,,,

18. Thus, from a reading of the Scheme of the Act and the Rules made there-under, it is manifest that the age of retirement of a teacher of" ,,,,,,

recognized school is statutorily protected under proviso to Section 8(1) read with Rule 117 and cannot be curtailed or reduced to her ,,,,,,

disadvantage, except by way of imposition of a penalty in accordance with Rule 120 of the Rules. Compulsory retirement is a major penalty under" ,,,,,,

the Rules and there is no provision either in the Act or the Rules to curtail tenure of service of a teacher by an administrative order of compulsory ,,,,,,

retirement other than by way of a penalty.,,,,,,

19. FR 2 provides that Fundamental Rules apply to all government servants whose pay is debitable to civil estimates and to any other class of ,,,,,,

government servants to which the President may by general or special order declare them (FR) to be applicable. Undeniably, the teachers of an" ,,,,,,

Unaided Recognized Private School are neither government servants nor their pay is debitable to civil estimates. They are also not the employees ,,,,,,

for whom the President, by any general or special order, has declared the Fundamental Rules applicable. Hence Fundamental Rules cannot be held" ,,,,,,

applicable to the teachers of an Unaided Recognized Private School.,,,,,,

20. In the decision reported as Jai Prakash Wadhwa and Others Vs. Lt. Governor, Delhi Admn. and Another, (para 4) it has clearly been held" ,,,,,,

that unless adopted in exercise of a power conferred, Fundamental Rules would not be applicable to persons other than those listed in FR 2. The" ,,,,,,

same view has been reiterated by Supreme Court of India in the decision reported as Union of India and Others Vs. M. Aslam and Others etc, in" ,,,,,,

the following words:-,,,,,,

...Notwithstanding the fact that we have recorded the conclusion that the employees serving under the Unit-run Canteens could be treated as,,,,,,

government servants, but that does not necessarily mean that the service conditions of such employees are governed by the Fundamental Rules. It" ,,,,,,

would be open for the employer to frame separate conditions of service of the employees or to adopt the Fundamental Rules. There is no decision,,,,,,

of the employer that Fundamental Rules would be applicable to such employees and in the absence of such decision the Tribunal was not justified,,,,,,

to direct that the question of payment of subsistence allowance should be reviewed in accordance with the provisions contained in the Fundamental,,,,,,

Rules.,,,,,,

21. Respondents No. 2 and 3 have urged that Rule 43 of the Rules empowers the Administrator to issue instructions, in the interest of School" ,,,,,,

Education in Delhi, in relation to any matter not covered by the Rules. Accordingly, respondents No. 2 and 3 have pleaded that the Administrator," ,,,,,,

in exercise of this power, has issued a letter dated 25.03.1991 where-under, guidelines relating to service conditions of employees in" ,,,,,,

aided/unaided schools have been laid down. To urge applicability of FR 56(j) to the teachers of an unaided school, reliance has been placed on" ,,,,,,

para 3 of this letter, which reads as under:-" ,,,,,,

3. In the matter of discipline/leave: There is a provision in the Delhi School Education Act and Rules, 1973 and rules made thereunder, the" ,,,,,,

applicability of rules governing government employees will be applicable to the employees of aided/unaided schools where the Act and Rules made,,,,,,

thereunder is silent.,,,,,,

22. Appellant submitted in rebuttal that letter dated 25.03.1991 does not make any provision for applicability of FR 56(j) to recognized School.,,,,,,

Para 3 too, as is clear from the heading of the para itself, operates only in the matter of discipline or leave. We agree. In the decision reported as" ,,,,,,

Eastern Coalfields Ltd. Vs. Sanjay Transport Agency and Another, the Supreme Court held that section heading can be relied upon to clear any" ,,,,,,

doubt or ambiguity in the interpretation of provision and to discern the legislative intent. The heading constitutes an important part of the Act and,,,,,,

may be read not only as explaining the provision of the Section but also it affords a better key to the construction of the provision. Thus, the said" ,,,,,,

paragraph, with reference to the heading thereof, makes it clear that it applies to matter of discipline and leave and no more." ,,,,,,

23. Compulsory retirement by way of executive order would not mean disciplinary action against the employee. The Constitution Bench of the ,,,,,,

Supreme Court in the decision reported as Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), held that ""a compulsory" ,,,,,,

retirement has no stigma or implication of misbehaviour or incapacity. It does not amount to a dismissal or removal, hence provisions of Art.311" ,,,,,,

are not attracted.? The view was reiterated in the decision reported as Mayongbam Radhamohan Singh Vs. The Chief Commissioner ,,,,,,

(Administrator), Manipur and Others, where the Supreme Court held that compulsory retirement is not a punishment and there is no stigma in the" ,,,,,,

order of compulsory retirement. Same view has been reiterated in the decisions reported as Union of India (UOI) Vs. M.E. Reddy and Another, ;" ,,,,,,

Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, ; Bishwanath Prasad Singh Vs. State of Bihar and Others, and" ,,,,,,

National Aviation Company of India Ltd. Vs. S.M.K. Khan, . Therefore, para 3 of the letter cannot be relied upon as the source to invoke FR" ,,,,,,

56(j) to pass an order of compulsory retirement.,,,,,,

24. The learned Single Judge, in the judgment impugned has proceeded on the basis that since there is an element of public interest in teaching, the" ,,,,,,

concept of compulsory retirement which has been found to be in public interest, can be extended to the teachers of recognized schools." ,,,,,,

25. There is an inherent fallacy in the principle adopted by the learned Single Judge to hold on the applicability of Fundamental Rules to the ,,,,,,

teachers of a recognized school, so as to invoke FR 56(j); to weed out the inefficient, dead wood etc. on the ground of there being an element of" ,,,,,,

public interest in the subject of teaching.,,,,,,

26. The two concepts cannot be intertwined. The learned Single Judge has ignored the distinction that remains in the functions of a teacher," ,,,,,,

considering the importance of schools in view of the Constitutional mandate of Right to Education having a bearing of a public interest element and ,,,,,,

pertaining to the management of the school, in matters of conditions of service of teachers being engaged in a purely private activity which is" ,,,,,,

regulated by statute and hence the private action being amenable to a writ challenge if it is contrary to a statute. As held in the decision reported as ,,,,,,

Miss Raj Soni Vs. Air Officer in Charge Administration and another, the functions of a school are governed by the provisions of the Act and the" ,,,,,,

Rules and the management is under statutory obligation not to contravene the same.,,,,,,

27. That apart, it is by now well settled that the Courts are empowered to enforce the law as it stands and not the law what the Courts may think it" ,,,,,,

should be. A Court cannot presume omisus in the language of a statute unless the plain grammatical meaning given to the language, leads to" ,,,,,,

absurdity. In the decision reported as ILR (1974) 1 Del 311 Indore Malwa United Mills v. Union of India this Court held that Courts must,,,,,

proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phrase used by the legislature, the Court" ,,,,,,

cannot add to or amend or by construction, make up the deficiency. Similar is the view taken by the Supreme Court in the decisions reported as" ,,,,,,

Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, and UCO Bank and Another Vs. Rajinder Lal Capoor, Court" ,,,,,,

has no power to re-write, re-cast or re-frame the legislation because it has no power to do so [Satheedevi Vs. Prasanna and Another,]." ,,,,,,

28. Therefore, the Courts cannot permit the invocation of the provisions of FR 56(j) to a teacher of an Unaided Recognised Private School." ,,,,,,

29. Before parting we would note that on 05.01.2012, we had directed learned counsel for respondent No. 1 to obtain instructions upon the" ,,,,,,

question of law viz. the stand of Director of Education as to the applicability of FR 56(j) to a teacher of an Unaided Recognised Private School.,,,,,,

On 23.01.2012, the learned counsel for respondent No. 1 had informed the Court that according to respondent No. 1 also, FR 56(j) does not" ,,,,,,

apply to a teacher of an Unaided Recognised Private School.,,,,,,

30. The appeal is accordingly allowed. The impugned judgment and order dated June 02, 2010 is set aside. WP(C) No. 4164/2002 is allowed." ,,,,,,

The order dated April 02, 2002/March 30, 2002 intimating the decision of the Managing Committee taken on March 27, 2002 is quashed. The" ,,,,,,

decision taken by the Managing Committee on March 27, 2002 is quashed. It is declared that the appellant would be entitled to all benefits which" ,,,,,,

she would have got if she had served till the age of 60 years i.e. the date of her retirement. We are not directing reinstatement since in the,,,,,

interregnum the appellant has already crossed the age of 60 years. Respondents No. 2 and 3 are directed to pay the salary which the appellant has,,,,,

lost and other benefits which she has lost within a period of six weeks from today.,,,,,,

31. No costs.,,,,,,