

(2013) 04 DEL CK 0353

Delhi High Court

Case No: Writ Petition (C) 2454 of 2012

Govt. of NCT of Delhi and Others

APPELLANT

Vs

Naresh Kumar Kataria

RESPONDENT

Date of Decision: April 17, 2013

Citation: (2013) 199 DLT 613 : (2014) 3 SCT 590

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Avnish Ahlawat and Mr. Vibhav Misra, for the Appellant; Anuj Aggarwal, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Heard learned counsel for the parties. Record perused.

2. Respondent was a part time vocational teacher (Stenography) appointed by the Directorate of Education and was posted at Updesh Kaur Sarvodaya Kanya Vidyalaya, Daryapur Kalan. His services were terminated vide order dated December 17, 2009, which reads as under:-

To,

Shri Naresh Kataria,

Part-time Vocational teacher,

(Stenography, English),

S/o. Sh. Pokar Das,

H. No.-1072, V & P.O.-Bawana,

Delhi - 110 039.

Sir,

I am directed to convey that the competent authority has terminated your part-time appointment on contingent basis in Vocational Education Branch with immediate effect.

Sd/

(Abha Joshi)

Dy. Director of Education (Voc.)

3. The order has been quashed by the Tribunal.

4. The reasoning of the Tribunal is in para 10 of the opinion of the Tribunal, which reads as under:-

10. In our considered opinion, even if the appellant is a part time teacher, his services can be terminated only after duly complying with the basic requirements of the principles of natural justice as laid down by the Apex Court in Babban Prasad Yadav's case (supra) and Rathin Pal's case (supra). The applicant's contention is that it was due to the enmity of the Principal of the school with him, the allegations of sexual harassment of the girl students was made against him. His aforesaid contention is fortified by the fact that the Principal of the school has already made up her mind to terminate his services as seen from her Annexure A-2 letter dated 25.11.2009. She has stated clearly in the said letter that his services were no more required in the school and he has been asked to contact the Dy. Director of Education (Vocational). The Principal has not fixed any date or time limit for the applicant to meet the Dy. Director of Education (Vocational). After two days, i.e. 27.11.2009, the Principal has issued the relieving order of the applicant referring to her earlier letter dated 25.11.2009. The said letter says that the applicant was relieved from his duty from the school with immediate effect. But he was again asked to contact the Dy. Director of Education (Vocational) immediately. On the very same date, the Dy. Director of Education (Vocational) issued him a show cause notice stating that he did not report to him on 26.11.2009 or on 27.11.2009. He was also given time of 24 hours to explain as to why his services should not be terminated with immediate effect. However, it is seen from the record that on 9.11.2009 he was given the last opportunity to appear before Dy. Director of Education (Vocational) on 11.11.2009. He appeared before the Dy. Director of Education (Vocational) on 15.11.2009 and the Dy. Director of Education (Vocational) asked him 26 questions. Applicant sought a copy of the statements made during enquiry held by the Dy. Director of Education (Vocational). Thereafter nothing more had happened. By letter dated 28.11.2009, the applicant informed the Dy. Director of Education (Vocational) that he could not report to him on 26.11.2009 or 27.11.2009 as he was down with fever. He has also enclosed a medical certificate. He sought further time to report to him on 30.11.2009. Accordingly, he presented

himself before Dy. Director of Education (Vocational) on 30.11.2009. Again vide another show cause notice dated 7.12.2009, the Dy. Director of Education again asked the applicant to show cause within 24 hours as to why his service should not be terminated with immediate effect. No reason for his proposed termination from service was mentioned in the show cause notice. It is not understood as to how the applicant could make any representation against the proposed termination of service, where he was informed about the reasons for doing so. Again vide letter dated 9.12.2009, the applicant was asked to appear before the Dy. Director of Education (Vocational) on 11.12.2009. Later, vide the impugned order dated 17.12.2009 Dy. Director of Education (Vocational) informed the applicant that the competent authority has terminated his part time appointment with immediate effect. In our considered opinion, applicant was terminated from service without following any procedure which has got semblance of natural justice. When the Principal has already decided and held that his services were no more required in the school on 15.11.2009, all the subsequent show cause notices and questioning him were all false.

5. Since we concur with the reasoning of the Tribunal we pen a short opinion.

6. The record would reveal that on November 25, 2009 the Principal of the school informed petitioner as under:-

Mr. Naresh Kataria

Voc.-Tr.

C/o U.K.S.K.V. Daryapur Kalan,

Delhi.

Sir,

As per the written complaint filed by all the students of class 11th A + 12th A (Voc. Stream) regarding your unethical and obscene behaviour with them, your services are no more required in this school.

You may contact the DDE (Voc.) in this regard. This report is submitted to both DDEs (Voc. as well as DDE NWA) for their knowledge and further action.

Sd/

(Saraswati Arya)

7. Suffice would it be to state that a Government servant has to be relieved under a proper authorization requiring him to report to such place where he has to report for duty. Regretfully, the Principal of the school did not do so. It was only on November 27, 2009 that the Principal of the school relieved the respondent. It was only then that he could report to the DDE (Voc.).

8. On November 27, 2009 a show cause notice was issued to the respondent as under:-

SHOW CAUSE NOTICE

Whereas Sh. Naresh Kataria is a part-time Teacher (Voc) in Updesh Kaur Sarvodaya Kanya Vidyalaya Daryapur Kalan Delhi.

And whereas vide letter dated 25.11.2009 of Principal Updesh Kaur Sarvodaya Kanya Vidyalaya Daryapur Kalan, Delhi he was directed to report to the office of DDE (Vocational) Plot No. 5 Jhandewalan Karol Bagh, New Delhi - 110005 immediately.

And whereas Mr. Naresh Kataria did not report to DDE (Voc.) on 26.11.2009 nor on 27.11.2009.

Now, therefore Mr. Naresh Kataria is directed to show-cause within 24 hrs why his appointment purely on contingent basis as part-time Teacher (Voc.) may not be terminated with immediate effect. In case no reply is received within 24 hrs, it would be presumed that he has nothing to say and his contingent appointment would stand terminated/cancelled with immediate effect.

Sh. Naresh Kataria

Part-time Teacher (Voc.)

Updesh Kaur SKV Daryapur Kalan

Delhi

SD/xxx

(Abha Joshi)

Dy. Director of Education (Voc.)

9. We only need to highlight that the gravamen of the show cause notice is that the respondent defied the letter dated November 25, 2009 by not reporting to the DDE (Voc.). It was not the gravamen that the respondent had acted in a manner which was unbecoming of a teacher vis-à-vis girl students.

10. On December 07, 2009 another show cause notice was issued to the respondent which reads as under:-

Show-Cause Notice

Whereas, Sh. Naresh Kataria has a Part-time Vocational Teacher in Updesh Kaur Sarvodaya Kanya Vidyalaya, Daryapur Kalan Delhi.

And whereas vide letter dated 25/11/2009 of Principal, Updesh Kaur Sarvodaya Kanya Vidyalaya, Daryapur Kalan, Delhi, he was directed to report to the office of DDE (Vocational) Plot No. 5: Jhandewalan: Karol Bagh: New Delhi-110 005

immediately.

And whereas, since Sh. Naresh Kataria did not report in the Office of the Deputy Director of Education (Vocational) on 26/11/2009 nor on 27/11/2009, a show cause notice was issued vide letter No. F.DE-45/(Misc.)/VE/2009/1039 dated 27/11/2009.

And whereas, subsequently Sh. Naresh Kataria presented himself in the Office of the Deputy Director of Education (Vocational) on 30/11/2009.

And whereas, Sh. Naresh Kataria didn't report in the Office of the Deputy Director of Education (Vocational) since 01/12/2009.

Now, therefore, Sh. Naresh Kataria is once again required to show-cause for non-compliance of the orders within 24 hrs. why his appointment purely on contingent basis as Part-time (Teacher) (Voc.) may not be terminated with immediate effect. In case no reply is received within 24 hrs, it would be presumed that he has nothing to say and his contingent appointment would stand terminated/cancelled with immediate effect.

Sh. Naresh Kataria,

(Part-time Vocational Teacher)

S/o. Sh. Pokar Das,

H. No. 1072, V & P.O.-Bawana,

Delhi - 110 039

Sd/

(ABHA JOSHI)

Dy. Director of Education (Voc.)

11. And suffice would it be to state that even therein not even a whisper is to be found that the respondent is required to respond to some complaints made by girl students qua respondent's conduct which was objectionable.

12. The record would reveal that on December 15, 2009, the DDE (Voc.) had quizzed the respondent with respect to some complaints made by girl students. The respondent was not confronted with the contents of the complaints.

13. We could have understood that to preserve the anonymity of the girl students their names could be withheld or such particulars could be withheld which would have exposed the identity of the girls, but in the core contents of the complaints, the respondents had to be confronted therewith.

14. But what we find to be more objectionable is that the Principal of the school had already prepared an opinion, with a conclusion, on December 01, 2009, which was blindly signed by the DDE (Voc.) on December 15, 2009. The conclusion is that the

respondent is guilty of misbehaviour with girl students. Thus the hearing held on December 15, 2009, was a farce.

15. Order terminating services was issued on December 17, 2009.

16. From the facts noted hereinabove it is apparent, and we hold that the Tribunal has rightly concluded, that the Department has acted with a pre-determined mind against the respondent.

17. We find total violation of principles of natural justice.

18. It may be true that where complaints are made by girl students against a male teacher, while conducting an inquiry, the identity and honour of the girls has to be preserved, but at the same time minimum requirement of natural justice has to be complied with. This would mean that without disclosing the name of the girls, contents of the complaints have to be put to the person charged of misconduct. For example a girl student may allege that on December 01, 2012 the teacher had called her to the staff room after school time was over. This has to be confronted to the teacher charged of, for the reason the teacher may have evidence that on that particular day he was absent or that at the given time he was in a committee meeting.

19. We have only recorded by way of illustration.

20. We note that the Tribunal has relied upon the law declared by the Supreme Court on the subject of minimum compliance with principle of natural justice where complaints of sexual harassment are made by girl students against a male teacher. We concur with the view taken by the Tribunal that in the instant case said minimum compliance has not been made.

21. The contention of learned counsel for the petitioner that the respondent was a part time temporary employee and thus services could be terminated without any inquiry is noted and rejected for the reason the action has been taken against the respondent founded on a misconduct after an inquiry, which was a farce. Noting finally that the Tribunal has permitted the Department to take action as per law by even holding a summary inquiry as envisaged by the decision of the Supreme Court, we dismiss the writ petition.

CM No. 5269/2012

Since the writ petition stands disposed of, instant application seeking ad-interim relief till disposal of the writ petition stands disposed of as infructuous.