
(2010) 09 DEL CK 0440

Delhi High Court

Case No: CM (M) No. 1112 of 2010 and CM No. 15603 of 2010

Jain Happy School

APPELLANT

Vs

Urmila Jain and
Director of Education,
Govt. of NCT of Delhi

RESPONDENT

Date of Decision: Sept. 6, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Constitution of India, 1950 - Article 227

Citation: (2010) 09 DEL CK 0440

Hon'ble Judges: Vidya Bhushan Gupta, J

Bench: Single Bench

Advocate: Puneet Taneja, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

V.B. Gupta, J.

Present petition has been filed under Article 227 of the Constitution of India, vide which petitioner has challenged order dated 22nd February, 2010 passed by Presiding Officer, Delhi School Tribunal (for short as "Tribunal") allowing application of respondent No. 1, for impleadment of Sh. Prem Kumar Jain and Sh. V.P. Jain as respondents, in this case.

2. Brief facts of this case are that, respondent No. 1 (Appellant before Tribunal) joined petitioner's school in 1991 as Primary Teacher. Thereafter, she was promoted to higher posts from time to time and was officiating as Vice-Principal. In 2009, she was reverted back to her original position of TGT.

3. Respondent No. 1 challenged the order of her reversion before the Tribunal. In appeal, petitioner filed its written statement.

4. During the course of appeal, respondent No. 1, filed an application for impleadment of Sh. Prem Kumar Jain and Sh. V.P. Jain, as respondents stating that in counter-affidavit/reply, petitioner has made serious allegations against them. Relevant portion of para 2(i) and 2(ii) of the written statement read as under;

2(i) However, appellant in connivance with the then Manager Sh. Prem Kumar Jain made an entry in her service book where she was illegally and without any authority or approval was shown as officiating Principal instead of Vice-Principal.

2(ii) The appellant always remained as officiating Vice Principal though the appellant has been illegally showing herself to be the officiating Principal/Principal in collusion with ex-chairman V.P. Jain.

5. It is contended by learned Counsel that there is no provision under Delhi School Education Act to implead any individual who is not part of the management of the School and as such no private individual can be impleaded as a party to the appeal.

6. It is also contended that persons sought to be impleaded, are neither necessary nor proper party, since no relief has been sought against them. Thus, there was no occasion for the Tribunal to implead ex-Chairman and ex-Manager of the school as party to the proceedings.

7. Relevant provision of Order 1 Rule 10 of CPC reads as under:

10. Suit in name of wrong plaintiff- (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3)	XXX	XXX	XXX
(4)	XXX	XXX	XXX
(5)	XXX	XXX	XXX

8. As per above provisions, the court can implead any party whose presence is necessary for just decision of the case.

9. Petitioner itself has made allegations against respondent No. 1, as well as persons sought to be impleaded, that respondent No. 1 in connivance with the then Manager Sh. Prem Kumar Jain has made an entry in her service book where she was illegally and without any authority or approval was shown as officiating Principal instead of Vice-Principal.

10. Petitioner also alleged in its written statement that respondent No. 1 always remained as officiating Vice- Principal though she has been illegally showing herself to be the officiating Principal/Principal in collusion with ex-Chairman Sh. V.P. Jain.

11. In view of these averments made by petitioner in its written statement, trial court rightly allowed application of respondent No. 1, observing;

Under these circumstances, where serious allegations have been leveled against the ex-Manager and ex-Chairman of the school, the truthfulness/falsehood of these allegations cannot be decided in the absence of the said persons and the documents questioned by the Respondent No. 1 are material for deciding the dispute in hand.

I find force in the plea of the appellant to implead Sh. Prem Kumar Jain and Sh. V.P. Jain as necessary parties in this matter. The Application for impleadment is accordingly allowed.

12. Thus, there is no illegality, infirmity or irregularity in the impugned order passed by the trial court.

13. Present petition under Article 227 of the Constitution of India is devoid of any merits and the same is hereby dismissed.

CM No. 15603/2010 (stay)

14. Dismissed.

15. Copy of this order be sent to the Tribunal.