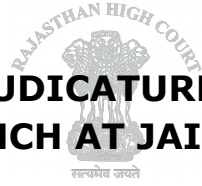




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 18478/2011

Maheshwari Public School through Its Honorary Secretary Kishan Das Maheswari S/o Shri Gopal Das Jhanwar, aged about 50 years, Presently Working As Honorary Secretary, Managing Committee of Maheshwari Public School, Jawahar Nagar, Jaipur (Raj.)

----Petitioner

Versus

1. Rajasthan Non-Government Educational Tribunal, Jaipur Rajasthan, Mini Secretariat, Banipark, Jaipur (Raj.)
2. Ms. Madhu Soni D/o Shri B.K. Soni, aged 42 years, R/o J-25, Shyam Bhawan, Shanti Marg, Adarsh Nagar, Jaipur, (Raj.)
3. Central Board Of Secondary Education, through its Chariman, Center-2, Community Centre, Preet Vihar, Delhi - 110092

----Respondents

For Petitioner(s) : Mr. A.K. Sharma, Sr. Advocate, with
Mr. Shailesh Prakash Sharma
Mr. Vishwash Sharma

For Respondent(s) : Mr. D.P. Sharma

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : **21/04/2023**
Pronounced on : **03/05/2023**

Reportable

Judgment

(1) Present petition arises out of the impugned judgment dated 10.8.2011 passed by Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (for short "the Tribunal") in Appeal No. 01/2005, by which the appeal filed by respondent no. 2 under Section 19 of the Rajasthan Non-Government Educational Institutions Act, 1989 (for short "Act of 1989") has



been allowed and her termination order dated 27.9.2004 has been quashed and the petitioner Institution has been directed to reinstate the respondent back in service with all consequential benefits.

(2) Facts of the case in brief, are that respondent no.2 was appointed on the post of Primary Teacher in Maths on 4.4.1996 w.e.f. 2.4.1996 by the petitioner Institution and she was removed from service vide order dated 27.9.2004 and six months salary of Rs. 62,394/- was paid to her in lieu of six months notice.

(3) Feeling aggrieved by the impugned order of her removal, the respondent submitted an appeal before the Tribunal on the ground that she was removed from service in violation of the provisions contained under Section 18 of the Act of 1989 and Rule 39 of the Rajasthan Non-Government Educational Institutions Rules, 1993 (for short "Rules of 1993"). It was pleaded before the Tribunal that without holding any enquiry and without giving any opportunity of hearing, she was removed from service with various allegations of beating students of her class. It was pleaded that her removal order was stigmatic and without seeking consent or approval of the Director of Education the impugned order dated 27.9.2004 was passed. It was also pleaded that full salary of six months was not paid to her and the impugned order was passed against the mandatory provisions of law.

(4) Per contra, the stand of petitioner in the reply was that the respondent beated a student of class Ist brutally and the news was published in newspaper. The respondent was in the habit of



beating students of her class and she was earlier warned for such acts. Thereafter the school management took decision to remove her from service in the interest of students and school. In compliance of the provisions of the Act of 1989, six months salary was paid to her in lieu of notice.

(5) After hearing the arguments of both sides, the Tribunal held that the removal order was stigmatic and no opportunity of hearing was given to her and no enquiry was conducted against her and full salary of six months was not given to her and the removal order was passed in violation of Section 18(iii) of the Act of 1989 and Rules 39(2)(h)(iii) of the Rules of 1993. The Tribunal quashed the impugned removal order dated 27.9.2004 and directed the petitioner Institution to take back the respondent in service with all consequential benefits vide judgment dated 10.8.2011.

(6) Feeling aggrieved and dissatisfied by the impugned judgment dated 10.8.2011, the petitioner has approached this court by way of filing this petition.

(7) Learned Senior Counsel for the petitioner submitted that after following the provisions of Section 18 of the Act of 1989, removal order of the respondent was passed. Counsel submits that the respondent was in the habit of beating students and she was warned on number of occasions, but her behaviour did not change and her such act affected the reputation of the school, hence the school management took the decision to remove her from service after making payment of six months salary in lieu of



the notice. Counsel submits that the removal order was not stigmatic, hence no enquiry was required to be conducted after issuing notice to her. Counsel submits that full salary was paid to the respondent as defined under Section 2(r) of the Act of 1989. Counsel submits that consent or prior approval of the Director of Education was not required and the removal order dated 27.9.2004 was communicated to the competent authority i.e. District Education Officer, on the next date i.e. 28.9.2004. Hence, the provisions contained under Section 18 of the Act of 1989 were duly complied, but ignoring these aspects, the Tribunal has allowed the appeal filed by the respondent and quashed the removal order. Counsel submits that after removal from service the respondent got appointment in Jaipur School, Jaipur on 11.9.2006 and she was given compulsory retirement on 2.4.2022, hence she was in employment because her removal order was not stigmatic. Counsel submits that impugned judgment was passed by the Tribunal on 10.8.2011 and there was no interim order passed by this court and even then the respondent did not file any application for execution of the judgment dated 10.8.2011, which indicates that the respondent was working in another School. Counsel submits that prior approval or consent of the Director of Education was not required. Only intimation was required to be given and the same was given to the District Education Officer on 28.9.2004. Counsel submits that in view of the submissions made herein above, the impugned judgment dated 10.8.2011 be quashed and set aside.





(8) Per contra, the learned counsel for respondent opposed the arguments raised by the counsel for petitioner and submitted that without conducting any enquiry and without giving any opportunity of hearing, stigmatic removal order was passed without seeking prior approval or consent of the Director of Education. Counsel submits that the impugned removal order was passed by the petitioner Institution in violation of Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993. Counsel submits that full salary of six months was not paid to her. Counsel submits that no documentary evidence has been produced on the record of Tribunal and before this court to show that the respondent was engaged elsewhere. In support of his contentions he has placed reliance on the following judgments :-

- (i) Gajanand Sharma v. Adarsh Siksha Parisad Samiti
AIR 2023 SC 539
- (ii) Marwari Balika Vidyalaya v. Asha Srivastava
(2020) 14 SCC 449
- (iii) Raj Kumar v. Director of Education (2016) 6 SCC 541
- (iv) Management Committee of Montfort Senior Secondary School v. Shri Vijay Kumar (2005) 7 SCC 472
- (v) Dipti Prakash Banerjee v. Satvendra Nath Bose National Center For Basic Sciences, Calcutta (1999) 3 SCC 60
- (vi) Management Committee v. Asman Rathore
D.B. Special Appeal (Writ) 644/2019 decided on 30.5.2019
- (vii) Central Academy Society v. Rajasthan Non-Government Educational Institutions Tribunal (2010) 3 WLC 21.
- (viii) Managing Committee v. Smt. Pushpa Sharma
(2006) 3 WLC 504

Counsel submits that in view of the submissions made herein above, interference of this court is not warranted.

(9) Heard and considered the submissions made at the Bar and perused the material available on record.



(10) Before proceeding further to decide the issue "whether the provisions under Section 18(iii) of the Act of 1989 and Rule 39(2)(h)(iii) of the Rules of 1993 were followed by the petitioner Institution or not", it would be gainful to quote the provisions here, which reads as under :-

"Section 18 of the Act of 1989.

Removal, dismissal or reduction in rank of employees – Subject to any rules that may be made in this behalf, no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken :

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained:

- (i) xxx xxx xxx xxx
(ii) xxx xxx xxx xxx

(iii) Where the managing committee is of unanimous opinion that the services of an employee can not be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing."

"Rule 39 of the Rules of 1993.

Removal or Dismissal from Service-

- (1) xxx xxx xxx xxx

(2) An employee, other than the employee referred to in sub-rule (1), may be removed or dismissed from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds which makes the employee unsuitable for further retention in service. But the following procedure shall be adopted for the removal or dismissal of an employee:-

- (a) to (g) xxx xxx xxx

(h) On receipt of the approval as mentioned in sub-clause)g) above, the managing committee may issue appropriate order of removal or dismissal as the case may be and forward a copy of such order to the employee concerned and also to the Director of Education or the officer authorised by him in this behalf:

Provided that the provisions of this rule shall not apply:-

- (i) xxx xxx xxx xxx
(ii) xxx xxx xxx xxx

(iii) Where the managing committee is of unanimous opinion that, the services of an employee cannot be





continued without prejudice to the interest of the institution, the service of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing..”

(11) Perusal of Section 18(iii) of the Act of 1989 and Rule 39(2)(h)(iii) of the Rules of 1993 clearly indicates that before removal of an employee, the managing committee is supposed to give six months notice or salary in lieu thereof and the consent of the Director of Education is required to be obtained in writing. But, here in the instant case the petitioner Institution removed the respondent on 27.9.2004 and sent this intimation to the District Education Officer, who returned it back to the petitioner vide letter dated 15.12.2004 by observing that the petitioner Institution is affiliated to Central Board of School Education.

(12) Now the question before this court is “whether mere sending intimation/information to the District Education Officer about termination of the respondent, is sufficient compliance of Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993”?

(13) At the outset, it is required to be noted here that it is an admitted position that the parties are governed by the Act of 1989. Section 18 of the Act of 1989 provides that no employee of a recognized institute shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of hearing against the action proposed to be taken and no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained. The Tribunal has set aside the order of termination for want of compliance of Section 18 of





the Act of 1989 and Rule 39 of the Rules of 1993 inasmuch as that before terminating the services of the respondent, prior approval of the Director of Education was not obtained.

(14) Hon'ble Apex Court in the case of Raj Kumar v. Director of Education (supra), while dealing with *pari materia* provision under Section 8 of the Delhi School Education Act, 1973 (for short "DSE Act"), and after considering the judgment of Hon'ble Supreme Court in the case of TMA Pai Foundation v. State of Karnataka (2002) 8 SCC 481, held that in case of a recognized institution, before terminating the services of an employee, prior approval of the Director of Education is required. It is worthy to note here that the judgment [Raj Kumar v. Director of Education (supra)] was considered by the Hon'ble Apex Court in the case of Marwari Balika Vidyalaya v. Asha Srivastava (supra), and the scope and object of Section 8 of DSE Act were discussed in paras 13 and 14 as under :-

"13. In Raj Kumar v. Director of Education and Ors. (supra) this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed:

45. We are unable to agree with the contention advanced by the learned Counsel appearing on behalf of the Respondent School. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.





14. This Court has laid down in *Raj Kumar v. Director of Education and Ors.* (supra) that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short, 'the DSE') was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary Governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management."

(14.1) Giving correct interpretation to Section 18 of the Act of 1989, recently the Hon'ble Apex Court in the case of Gajanand Sharma v. Adarsh Siksha Parisad Samiti (supra) has held in paras 5.5, 5.6 and 6, as under :-

"5.5. Even on fair reading of Section 18 of the Act, 1989, we are of the opinion that in case of termination of an employee of a recognized institution prior approval of the Director of Education or an officer authorised by him in this behalf has to be obtained. In Section 18, there is no distinction between the termination, removal, or reduction in rank after the disciplinary proceedings/enquiry or even without disciplinary proceedings/enquiry. As per the settled position of law the provisions of the statute are to be read as they are. Nothing to be added and or taken away. The words used are "no employee of a recognized institution shall be removed without holding any enquiry and it further provides that no final order in this regard shall be passed unless prior approval of the Director of Education has been obtained." The first part of Section 18 is to be read along with first proviso. Under the circumstances, taking a contrary view that in case of dismissal/removal of an employee of a recognized institution which is after holding the departmental enquiry the prior approval of the Director of Education is not required is unsustainable and to that extent the judgment of the Larger Bench of the Rajasthan High Court in the case of *Central Academy Society* (supra) is not a good law.

5.6. Therefore, on true interpretation of Section 18 of the Act, 1989, it is specifically observed and held that even in case of termination/removal of an employee of a recognized institution after holding departmental enquiry/proceedings prior approval of the Director of Education has to be obtained as per first proviso to Section 18 of the Act, 1989.

6. In view of the above and for the reasons stated hereinabove, the impugned judgment and order passed by the Division Bench of the High Court restoring the order of termination which as such was without obtaining



the prior approval of the Director of Education deserves to be quashed and set aside and is accordingly quashed and set aside. The order of learned Tribunal setting aside the order of termination confirmed by the learned Single Judge is hereby restored..."

(14.2) Here it is clear from the authoritative pronouncement of judgments of the Hon'ble Apex Court in the above series of cases, that in case of termination of an employee of a recognized institution, prior approval of the Director of Education or an officer authorised by him, has to be obtained. As per the settled position of law, the provisions of the statute are to be read as they are. Nothing is required to be added or taken away. Here in the instant case, it is clear that consent of the Director of Education or the person authorised on his behalf, was not taken at the time of passing of the termination/removal order of the respondent. The petitioner institution passed the impugned order of removal on 27.9.2004 and sent this information to the District Education officer on 28.9.2004, and till date no consent has been given by the competent authority as per the mandate of Section 18 clause (iii) of the Act of 1989 and Rule 39 of the Rules of 1993. Mere sending of intimation/information is not sufficient compliance of the mandate of the above provisions. Hence, the Tribunal has not committed any error in quashing the termination order dated 27.9.2004.

(15) Since this court is of the view that the termination order of the respondent is not passed as per the mandate of above provisions, the court is not deciding the other objections and issues raised by either of the parties.



(16) In view of the discussion made herein above, this petition fails and the same is hereby dismissed.

(17) Stay application and all application(s), pending if any, also stands dismissed.

(18) No order as to costs.

(ANOOP KUMAR DHAND), J.

db/

