

Ramu Vs. Management of Bengal Educational and Cultural Asso

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Court : Delhi

Decided On : Apr-29-2013

Judge : Suresh Kait

Appellant : Ramu

Respondent : Management of Bengal Educational and Cultural Asso

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

5. h March, 2013 Judgment delivered on:

29. h April, 2013 % + W.P (C) No. 1709/2011 RAMU Through: Petitioner Mr. N.S. Dalal, Mr. D.P. Singh and Mr. Amit Rana, Advs. Versus MANAGEMENT OF BENGAL EDUCATIONAL AND CULTURAL ASSOCIATION AND ORS. Respondents Through: Mr. Vinay Sabharwal, Adv. for R1. Mr. Bhupesh Narula and Mr. Ashish Gupta, Advs. for R3. AND + W.P (C) No. 1710/2011 SHEELA Petitioner Through: Versus Mr. N.S. Dalal, Adv. THE MANAGEMENT OF BENGAL EDUCATIONAL AND CULTURAL ASSOCIATION AND ORS Respondents Through: Mr. Vinay Sabharwal, Adv. for R1. Mr. Bhupesh Narula and Mr. Ashish Gupta, Advs. for R3. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

1. In both the petitions, noted above, the facts and the impugned order are the same except the dates of termination of services, i.e., petitioner in W.P.(C) No.

1709/2011 was terminated on 15.05.2003 and petitioner in W.P.(C) No. 1710/2011 was terminated on 26.05.2003, therefore, this Court has decided to dispose of the same by this common judgment.

2. Facts of W.P.(C) No.1709/2011 are being discussed inter-alia.

3. Vide the instant petition, petitioner has prayed for issuance of direction for quashing the order dated 01.02.2011, passed by the Id. Delhi School Tribunal, whereby the petition filed by the petitioner for contempt regarding the implementation of the order dated 20.08.2009 has been dismissed.

4. The petitioner has also prayed that the respondents be directed to make payment of five months salary as per the scale which was prevalent in the year 2003 for IVth Class employees at par with the counter-parts of the employees in the Schools of Directorate of Education.

5. The petitioner was working as Class-IV employee with the respondent Nos. 1 & 2. However, he was removed from the service on 15.05.2003 without following the due process of law and all the actions on the part of the respondents and Management were illegal.

6. Being aggrieved, petitioner filed an Appeal before the School Tribunal, which was allowed vide order dated 20.08.2009, relevant part of which reads as under:Here is a case where a permanent employee of the School alleges that he had been illegally removed by the School on 15.05.2003, but the School takes the stand that the Appellant had abandoned the service on 07.05.2003, but thereafter no domestic inquiry was held. Under these circumstances, in view of the above mentioned law laid down by the Honble High Court it is crystal clear that the contention of the Management cannot be sustained that the Appellate had voluntarily abandoned the job. Hence, it is declared that the Appellant continuous to be in job w.e.f 15.05.2003 and it is not a case of voluntarily abandoning the job by Appellant.

7. On the back wages, School Management was directed to decide this question within two months from that date after hearing the petitioner as provided in Rule

121 of Delhi School Education Rules. It was further directed that since the School was de-recognized, the Managing Committee shall deal with the case of the appellant / petitioner on the same line as the cases of other employees, who were serving on the date when the School was de-recognized; provided the procedure adopted should be legal and fair.

8. Mr. N.S. Dalal, Id. Counsel appearing on behalf of the petitioner submitted that the direction issued by the Id. Tribunal was not complied with by the respondents. Therefore, he filed a Contempt Application No. 17/2010, which was listed on 01.02.2011 for final disposal. On that date, counsel for the respondent had tendered a cheque for an amount of Rs.10,555/- to the petitioner / appellant, who was present in person towards back wages for the period from the date of termination of service till the date of de-recognition of the School in terms of the order dated 20.08.2009 passed by the Id. Tribunal.

9. The petitioner / appellant refused to accept the aforementioned cheque of Rs.10,555/- on the pretext that the said amount was not the amount of back wages of the salary of five months from 15.05.2003 to 17.10.2003.

10. I note, though, the Id. Tribunal imposed a cost of Rs.20,000/- upon the respondent School for seeking unnecessary adjournments, however, the issue of back wages for the said period has not been decided by the Id. Tribunal.

11. I further note, as stated by the petitioner before the Tribunal that he was appointed with respondent Nos. 1 & 2 as class IV employee about 32 years back and was working as class IV employee. He was forced to do the manual work, i.e., work of Beldar and his last drawn salary was Rs.2,111/per month. Further agitated, that salary of the appellant was not being paid by the respondent Nos. 1 and 2, as per the provisions of Section 10 of Delhi School Education Act and its Rule 1973.

12. Id. Counsel further argued that the relief sought from this Court is as under: (i) Issue a writ of Certiorari or any other appropriate writ, order or direction thereby quashing the Order dated 01.02.2011 passed by the Id. Delhi School Tribunal whereby the petition so filed by the petitioner for contempt regarding

implementation of the order dated 20.08.2009 has been dismissed; (ii) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondents to make the payment of amount of five months salary as per scale which was prevalent in the year 2003 of 4th class employee with the counterparts of the employees in the Schools of Directorate of Education; (iii) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing the respondents to make the payment of the back wages from October 2003 to 20 th August, 2009 i.e. upto the date of the order passed by the Learned Tribunal and further direct the respondent to make the payment of salary and allowances as ordered by the Learned Tribunal; 13. Ld. Counsel further submitted that Rs.10,555/- was offered in the Contempt Application, which was not accepted by the petitioner for the reasons that said amount was not as per the order dated 20.08.2009.

14. He further submitted that Section 10 of the Act does not deal with the de-recognition of the School, however, if the School had been derecognised, then the petitioner is entitled for all the benefits, as given under the Industrial Disputes Act. Therefore, while adopting the procedure for retrenchment, the petitioners should have been compensated by the respondent School.

15. Moreover, while de-recognizing, Rule 121 of Delhi School Education Rules has not been complied with, therefore, the petitioners are entitled for the benefits. For convenience, Rule 121 of Delhi School Education Acts & Rules, 1973 is reproduced as under:

121. Payment of pay and allowances on reinstatement (1) When an employee who has been dismissed, removed or compulsorily retired from service is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, as the case may be, the managing committee shall consider and make a specified order:(a) with regard to the salary and allowances to be paid to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and (b) whether or not the said period shall be treated as the

period spent on duty. (2) Where the managing committee is of opinion that the employee who had been dismissed, removed or compulsorily retired from service had been fully exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service or suspended prior to such dismissal, or compulsory retirement from service, as the case may be: Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representations and after considering the representation, if any, made by the employee, direct, for reasons to be recorded by it in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowances as it may determine. (3) The payment of allowances shall be subject to all other conditions under which such allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances.

16. Ld. Counsel submitted that the benefits prescribed in the said Rule have not been given to the petitioners and they are entitled for the same.

17. He further submitted that by adopting the procedure of de-recognition, the petitioners will not lose their benefits for which they are entitled under the Delhi School Education Act.

18. The issue before the Id. Tribunal was whether the termination of the petitioners was valid or not. Therefore, the issue of de-recognition was not before the Id. Tribunal, therefore, at this stage, respondents cannot take the shelter of the same.

19. Ld. Counsel for the petitioners has clarified that the Provident Fund has been paid in favour of the petitioners by the Directorate of Education pursuant to order dated 22.11.2012. He has drawn the attention of this Court to the aforesaid order wherein it was recorded as under:

1. Learned counsel appearing proxy on behalf of respondents No. 1 and 2 submits that the main counsel is in some personal difficulty and requests for an adjournment.

2. Learned counsel appearing on behalf of the petitioner has submitted that since the respondents No.1 and 2 have been closed way back in the year 2003, therefore, vide the instant petition, the petitioner is seeking payment of five months salary as per scale which was prevalent in the year 2003 of 4 th class employee with the counterparts of the employees in the schools of Directorate of Education.

3. Further seeking the benefits under Section 10 of the Delhi School Education Act, 1973 with a direction to the respondents to make the payment of back wages from October, 2003 to 20.08.2009 i.e. upto the date of the order passed by the learned Tribunal.

4. Mr. Dalal, learned counsel has informed this Court that the provident fund of the petitioner has been withheld because of the fact that the respondents No. 1 and 2 have not issued any NOC to this effect.

5. Admitted fact in the instant case is that the respondents No. 1 and 2 have been closed way back in 2003, therefore, in the absence of the same, issuance of NOC by them is vague.

6. Consequently, I direct respondent No.3/Directorate of Education to release the provident fund of the petitioner within one week from the receipt of the copy of this order.

20. On the other hand, Id. Counsel appearing on behalf of the respondent / School submitted that School was closed on 01.04.2003 and to this effect Directorate of Education issued a Public Notice in the Newspaper, which is as under:It is notified for the information of the general public that recognition of Sister Nivedita School at Mata Sundri Road, New Delhi later shifted to Minto Road, New Delhi managed by the Bengal Education and Cultural Association has been withdrawn from the academic session 2003-2004. The parents are advised not to seek admission in this School.

21. Ld. Counsel further submitted that petitioners were terminated vide orders dated 15.05.2003 and 26.05.2003 and as per the order of the Id. Tribunal, they are entitled for monthly salary. In the contempt proceedings an amount of Rs.10,555/- each was offered to them, but the same was not accepted by the petitioners.

22. He further submitted that they are still ready to pay the said amount to the petitioners. However, they are claiming only final salary from 15.05.2003 to 17.10.2003 and after the amount got calculated, a cheque was prepared, which was brought during the contempt proceedings. If the amount was not correct, then the Id. Tribunal would have passed an adverse order against them. Therefore, the order dated 20.08.2009 passed by the Id. Tribunal has been complied with.

23. Ld. Counsel further submitted that as per the settled law, Management is the appropriate authority to calculate the compensation and disburse in favour of the workers / employees. Since the School had already been derecognized prior to termination, therefore, Section 10 of Delhi School Education Act is not applicable.

24. It is further submitted that petitioners were Beldars. As per their admitted salary, cheque of the same had been prepared, which they refused to accept. Therefore, in view of the above, instant petition be dismissed with heavy costs.

25. After hearing learned counsel for the parties, it has undisputedly emerged that the petitioners were removed by the respondent School vide orders dated 15.05.2003 and 26.05.2003, which were set aside by the learned Tribunal vide its judgment dated 20.08.2009 with a direction to decide the question of back wages within two months from the date of the order after hearing the petitioners, as provided under Rule 121 of the Delhi School Education Rules, 1973.

26. The learned Tribunal further directed the Management Committee to deal with the cases of the petitioners on the same lines as the cases of other employees, who were serving on the date when the school was derecognized. Also directed that the respondent School must adopt fair and legal procedure.

27. In my considered opinion, order dated 20.08.2009 passed by the learned Tribunal has not been complied with by the respondent Nos. 1 and 2 in letter and

spirit. The learned Tribunal also failed to get complied with its order and dismissed Contempt Application Nos. 17/2010 and 18/2010 vide its order dated 01.02.2011 by just imposing cost of Rs.20,000/- for seeking unnecessary adjournments.

28. As there is no mechanism under the Delhi School Education Act and Rules, 1973, in case a school is de-recognized and the employees are thrown out from the job. As the issue involved in both these petitions is of complex nature, hence, I expect from the Directorate of Education to look into the matter and provide appropriate mechanism to deal with the situation as has been arisen in the instant petitions.

29. However, I am of the opinion that the amount of Rs.10,555/- offered by the respondent Nos. 1 and 2 before the learned Tribunal is not the actual salary, as per Section 10 of the Delhi School Education Act, 1973 read with Rule 121 of the Delhi School Education Rules, 1973.

30. The petitioners were working on a meagre salary. They never approached this court for salary as applicable U/s 10 of the Act, therefore, I am not giving any opinion on this issue. As has been prayed regarding the salary of five months, I am of the considered view that they are entitled for the salary of five months, as provided U/s 10 of the Act.

31. Consequently, the respondent Nos. 1 and 2 are directed to pay the salaries to the petitioners as applicable U/s 10 of the Delhi School Education Act, 1973 read with Rule 121 of the Delhi School Education Rules, 1973 with interest @ 9% per annum from the date of their termination till the date of realization.

32. Apart from the aforesaid directions, the respondent nos. 1 and 2 are also directed to ensure that the petitioners should be provided similar benefits as that have been given to other employees, who were serving on the date when the school was de-recognized.

33. As far as the issue of the provident fund is concerned, respondent No. 3 is directed to release the provident funds due to them.

34. Since the school has been de-recognized, and the rights and liabilities of respective parties, arising out of de-recognition, are not provided under the Act, therefore, the petitioners are granted liberty to approach the appropriate Forum under the law.

35. The instant petitions are allowed in the above terms.

36. No order as to costs. SURESH KAIT, J.

APRIL 29 2013 Jg/ sb

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