



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25th September, 2023
Pronounced on: 6th November, 2023

+ LPA 114/2018

MANGEMENT OF RAO MOHAR Appellant

Through: Mr. A.K. Singla, Senior Advocate
with Mr. HD Sharma and Mr. Akshit
Sachde, Advocates.

versus

SUMIT TANDON & ANR Respondents

Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti
Tyagi and Ms. Manisha, Advocates
for R-2/DOE.
Mr. Ankit Gupta, Mr. Anmol Gupta
and Mr. Mithil Malhotra, Advocates
for R-1.

+ LPA 119/2018

MANAGEMENT OF RAO MOHAR Appellant

Through: Mr. A.K. Singla, Senior Advocate
with Mr. HD Sharma and Mr. Akshit
Sachde, Advocates.

versus

BRIJESH UPADHAYAY & ANR Respondents

Through: Mr. Sujeet Kr. Mishra, Mr. Pankaj
Balwan and Mr. Utkarsh, Advocates
for R-2.
Mr. Gaurav Dhingra, Advocate for
DOE.
Mr. Ankit Gupta, Mr. Anmol Gupta
and Mr. Mithil Malhotra, Advocates
for R-1.



+ LPA 125/2018

MANAGEMENT OF RAO MOHAR Appellant

Through: Mr. A.K. Singla, Senior Advocate
with Mr. HD Sharma and Mr. Akshit
Sachde, Advocates.

versus

GAURAV SHARMA & ANR Respondents

Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti
Tyagi and Ms. Manisha, Advocates
for R-2/DOE.
Mr. Ankit Gupta, Mr. Anmol Gupta
and Mr. Mithil Malhotra, Advocates
for R-1.

+ LPA 126/2018

MANAGEMENT OF RAO MOHAR SINGH MEMORIAL SR. SEC.
SCHOOL Appellant

Through: Mr. A.K. Singla, Senior Advocate
with Mr. HD Sharma and Mr. Akshit
Sachde, Advocates.

versus

CHIRANJEEV SARKAR & ANR Respondents

Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti
Tyagi and Ms. Manisha, Advocates
for R-2/DOE.
Mr. Sujeet Kr. Mishra, Mr. Pankaj
Balwan and Mr. Utkarsh, Advocates.
Mr. Rohit Bhagat, Advocate for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T



SANJEEV NARULA, J.

1. The Respondents were engaged as Trained-Graduate and Post-Graduate Teachers with the Appellant – Rao Manohar Singh Memorial Sr. Secondary School [“*School*”], but were later relieved from service on account of a composite resignation letter, supposedly signed by them and addressed to the School’s management. Challenging their termination, Respondents approached the Delhi School Tribunal [“*Tribunal*”], whereby they were directed to be reinstated in service. In a writ petition filed by the School, learned Single Judge of this Court reaffirmed the Tribunal’s findings, which has impelled the filing of present intra-court appeals.

2. Given the similarity in the factual backdrop and contentions urged, we consider it apposite to dispose the instant appeals *via* a common judgement.

FACTS IN BRIEF

3. The Respondents were employed as teachers at the School. Allegedly, no appointment letters were ever issued in their name, although Respondents continued to draw salary from the School. On 11th October, 2012, when they reported for duty, the Respondents were intimated that the School had accepted their resignation letters and are thus, no longer authorized to enter the premises. The disgruntled teachers thereafter filed a writ petition [W.P.(C) 7931/2012] before Single Bench of this Court, wherein, on 20th February, 2013, the parties were relegated to Delhi School Tribunal, an authority specially constituted to adjudicate matters pertaining to dismissal of employees of a recognized private school.

Proceedings before the Tribunal

4. Before the Tribunal, the Respondents asserted that during the course



of their engagement, they had uncovered certain illegal activities being carried out by the School's management *vis-à-vis* disbursement of salaries. When they protested against the same and demanded their dues, the School mistreated them, and on 29th September, 2012, the School's Chairman compelled them to sign on a blank paper. Later, on the basis of a composite resignation letter dated 30th September, 2012, purportedly written by the Respondents, the School had terminated their services. Thus, in the proceedings before the Tribunal, the Respondents challenged the veracity of the resignation letter as well as their termination for being contrary to the Delhi School Education Act and Rules, 1973 ["DSEAR"].

5. After hearing the parties, the Tribunal disposed of the matters on 15th September, 2015, ruling in favour of the Respondents. The Tribunal observed that the letter allegedly issued by the Respondents does not qualify as a 'resignation', as it fails to convey an intention to conclude the employer-employee relationship. Further, contrary to School's stand, no acceptance of the alleged resignation letter was discernible from the minutes of the meeting convened by the School's management on 10th October, 2012. In these circumstances, the Tribunal opined that the acceptance of Respondents' resignation letter and their subsequent termination violated the provisions of DSEAR. Accordingly, Respondents were directed to be reinstated in service along with all consequential benefits. Insofar as entitlement to back wages was concerned, the School was permitted to decide the matter on the basis of Respondents' representation.

Findings of the learned Single Judge

6. Dissatisfied with the outcome, the School filed writ petitions assailing



the Tribunal's directions contained in order dated 15th September, 2015.¹ Reiterating their stand before the Tribunal, the School additionally argued that as the Respondents are operating their personal coaching centres and are gainfully employed elsewhere, they can be adequately compensated in lieu of reinstatement, particularly as vacancies arising from Respondents' resignations had already been filled. Reliance was placed upon the judgement in *Deepshikha Saxena v. Management Committee of Shiksha Bharti Senior Secondary Public School and Anr.*² The learned Single Judge, *vide* common judgement dated 16th January, 2018 [*"impugned order"*], rejected School's contentions, holding that in absence of original resignation letter of the Respondents, no error is evident in the Tribunal's order. Further, nothing was shown to indicate that the Respondents were gainfully employed with another educational institution. On the aspect of vacancies, learned Single Judge issued directives to the Directorate of Education [*"DoE"*] to ensure that Respondents are reinstated against the existing or next available vacancies arising in the School.

CONTENTIONS

On behalf of the School

7. The School's version of the facts, as presented by Mr. A.K. Singla, Senior Counsel, is as follows:

7.1. Whilst Respondents were employed with the School, they also established private coaching institutes for imparting education. The School started receiving multiple complaints from parents regarding Respondents

¹ W.P.(C) 9392/2015, W.P.(C) 9410/2015, W.P.(C) 9413/2015, W.P.(C) 9425/2015, and W.P.(C) 9445/2015.

² 2011 SCC OnLine Del 4962.



compelling students to join their private tuition classes for better scores. Apprehending disciplinary action, the Respondents submitted their resignations on 30th September, 2010, stating that they had unanimously decided to pursue private coaching classes, and the School shall make necessary arrangements for employment of other teachers. Thereafter, they stopped attending to their duties at the School. On 11th October, 2012, a meeting was convened wherein the resignation letters were accepted, and the Respondents were discharged from service, having effect from the same date. This was communicated to Respondents on 12th October, 2012, and their names were removed from the School's rolls on 15th October, 2012.

7.2. Orders of the Tribunal and learned Single Judge are premised on the minutes of meeting held on 10th October, 2012 not revealing any approval of Respondents' resignations by the School. However, a crucial fact has been overlooked – the letters were accepted by the School in their meeting held on 11th October, 2012.

7.3. Respondents – Mr. Sumit Tandon and Mr. Brijesh Upadhyay,³ were on probation at the time of cessation of their employment on 30th September, 2012. As per Rule 105 of Delhi School Education Rules, 1973 [“DSER”], every teacher appointed in a private unaided recognized school, shall be on probation for a period of one year or such other extended period, unless they are confirmed. During this term, the employee can be terminated without notice if their work and conduct is found unsatisfactory. Moreover, there is no concept of deemed confirmation of a probationer and thus, the said Respondents cannot assume the status of a permanent employee, who ought to be reinstated in service.



7.4. The record indicates that formal appointment letters were issued to Respondents, informing that their employment shall be governed by the provisions of DSEAR. Observations in the impugned order to this extent are erroneous.

7.5. Learned Single Judge's holding that that the judgement in *Deepshikha Saxena (Supra)* is inapplicable to the cases at hand as there is no evidence of the Respondents being gainfully employed, stands controverted in light of Respondents running own private tuition centres and drawing income therefrom.

7.6. Notwithstanding the above, in view of the misconduct and wilful disobedience of the applicable Code of Conduct, Respondents are not liable to be reinstated in service. The direction to accommodate the Respondents against existing vacancies, or the ones that may arise in the future, is unfounded in law.

On behalf of Respondents

8. Mr. Ankit Gupta, counsel representing the Respondents, as mentioned in the appearance, vehemently countered the afore-noted contentions advanced by Mr. Singla. He argued that School has fabricated the Respondents' resignation letters to expel the Respondents from service without following the procedure mandated by DSEAR and other applicable laws. He further contended that the meeting of the School's management held on 10th October, 2012 was not convened in accordance with applicable laws.

³ Respondent No. 1 in LPA 114/2018 and LPA 119/2018.



ANALYSIS AND FINDINGS

9. Respondents' dismissal from service is founded on a resignation letter dated 30th September, 2012. The Respondents fervently refute the same, maintaining that this is a ploy, contrived by the School to validate their illegal termination. Thus, this Court's deliberation shall centre around the issue of legitimacy of Respondents' resignation letter dated 30th September, 2012, as also its purported acceptance by the School on 11th October, 2012.

10. The translated copy of the resignation letter, as presented before the Tribunal, reads as under:⁴

*“To
The Chairman,
It is humbly submitted that we all the teachers, teaching higher classes of your school, have decided to inform you before one month that we would not able to teach students sincerely, therefore, appointments be made in our place.
(1) Chiranjeev Sarkar
(2) Avinash Kumar
(3) Gaurav Sharma
(4) Sumit
(5) Kamal Nayn Rishi
(6) Neeraj Trivedi
(7) Briesh Upadhyay”*

11. Notably, as was the case before the learned Single Judge, the alleged mass resignation letter tendered by the Respondents, has not been presented before us. This omission has not been convincingly explained by the School. Further, on the basis of complaints so received, the DoE initiated an inquiry concerning Respondents' dismissal from service. The report of the Inquiry Committee dated 29th December, 2012 has also been noticed by the Tribunal in their order.⁵ Pertinently, despite opportunity, the School failed to furnish

⁴ Reproduced at page No. 77 of the appeal.

⁵ At paragraph 22.



even a photocopy of the resignation letters to the Committee. The School's failure to present the resignation letter potentially debilitates their claims and bolsters the Respondents' objections to the legitimacy of suspected resignation letter. In absence of the original or even duplicate copies of said resignation letter, we do not find discern any error in the view taken by learned Single Judge in the impugned order.

12. Moving to the second facet – the acceptance of resignation letter. Rule 114A of the DSER mandates that every resignation tendered by an employee of a recognized private school must be accepted by the Managing Committee, within thirty days of its receipt, with the approval of the Director of Education. Mr. Singla strenuously asserted that in its order, the Tribunal has overlooked the fact that the above resignation was approved by School in the meeting convoked on 11th October, 2012. We note that the record of the meeting of 11th October, 2012 was never placed before the Tribunal. This position has also been acknowledged by the School in their averments in the writ petitions, of which W.P.(C) 9392/2015 is referenced below:

“12. That though minutes of meeting of Managing Committee dated 11.10.2012 pleaded in the reply were not disputed in pleadings filed before Ld. Tribunal, the Ld. Tribunal without requiring school to provide the same however, by referring Managing Committee meeting dated 10.10.2012 dealing with engagement of new teachers in place, as Managing Committee's decision for acceptance of resignation, has passed in the impugned order, without considering the material issues vide order dated 15.09.2015...”

13. After a thorough and expansive evaluation of material produced by the parties, the Tribunal observed that the School's assertion that a meeting was held on 11th October, 2012 to approve the alleged resignation letter, bore no merit. The Tribunal found that the School's meeting of 11th October,



2012, which was allegedly organized specifically for consideration of Respondents' resignation, made no reference to the meeting convened on 10th October, 2012. Further, the communication dated 12th October, 2012 whereby Respondents were intimated of their resignation's acceptance, did not record the date of its approval. In the context of these observations of the Tribunal, the School produced minutes of meeting held on 11th October, 2012 for the first time before the learned Single Judge.

14. We, too, have examined the record of proceedings professedly held on 11th October, 2012, which, for the sake of convenience, is reproduced below:

“

Minutes of meeting

Chairman Sh. Pradeep Yadav told all the members that some of the teachers had stopped coming to school and had given notice for discontinuation of their job. So he put up the matter of acceptance of resignation. The Managing Committee has earlier passed the resolution for appointment of new teachers to fill up vacant post. All the members gave their acceptance to accept the resignations.

Chairman Sh, Pradeep Yadav asked each member to have breakfast and thanked all members for coming.

So, it was resolved by the managing committee that the resignations of 5 teachers may please be accepted with immediate effect.

Pradeep Yadav

Sd/-

Chairman

Rao Mohar Singh Memorial Public School”

15. The above excerpt, in this Court's opinion, does not qualify as an acceptance of the Respondents' resignation letter. The resolution lacks specificity inasmuch as the names of incumbent employees, date and other particulars of the resignation letter have not been disclosed. These specifics are of paramount significance in matters of resignation. Just as is the case with a resignation letter, a school's sanction to the resignation letter must also be unambiguous and unequivocal, signifying their approval to cessation



of employer-employee relationship. This assumes greater importance in cases such as present, where the employees allege fabrication of the resignation by the School, with an aim to circumvent the mandate of law pertaining to removal from services. Further, the record reveals that the School initiated the process of appointment of substitute teachers to the positions created from Respondents' resignations on 10th October, 2012, which is prior to the professed date of acceptance of the resignations (11th October, 2012).

16. Additionally, the proceedings held on 11th October, 2012 also contravene the provisions of DSER. Rule 59 of DSER, which prescribes the constitution of managing committee of recognized schools, specifies that two members deputed by the Director of Education shall also partake in the committee's meetings. A review of the signatories to minutes of meeting dated 11th October, 2012 reveals that the Director's nominees did not attend the meeting. This defect in the quorum of the meeting dated 11th October, 2012 invalidates the decision to accept Respondents' resignation letter. Moreover, the consent of Director of Education to Respondents' resignation, as stipulated in Rule 114A of DSER, has also not been demonstrated by the School. Mr. Singla urged that in view of the judgement of this Court in *Kathuria Public School v. Director of Education and Anr.*,⁶ private unaided schools such as the Appellant, were not required to obtain approval for terminating Respondents' services. We do not agree. The ruling in *Kathuria Public School (Supra)* concerned Section 8(2) of the Delhi School Education Act, 1973, which proscribes dismissal, removal, or demotion of any employee without the prior approval of the Director. The matters of



acceptance of resignation of an employee are expressly governed by Rule 114A of DSEA. This provision, enforceable at the time of termination of Respondents, obliged the school to seek approval of the Director. Admittedly, this was not done.

17. The intimation of acceptance of resignation by the School also intensifies the concerns surrounding veracity of the resignation letter's acceptance. This communication, dated 12th October, 2012, records that the Respondents' composite resignation has been accepted *w.e.f.* 11th October, 2012. The courier receipt annexed with the record however reflects the date of dispatch to be 11th October, 2012. Given the afore-noted inconsistencies, the alleged acceptance of the resignation letter does not inspire this Court's confidence. As rightly noted by the Tribunal, the record of School's meeting of 10th October, 2012 does not signify that Respondents' resignation letter has been accepted. It appears that the minutes of meeting dated 11th October, 2012, presented only before the learned Single Judge, have been engineered by the School, only to overcome the Tribunal's findings.

18. In view of the foregoing discussion, we do not find any merit in the grounds urged by the School, which would call for our intervention. On the aspect of relief granted by learned Single Judge, the School urged that as the Respondents have established private tuition centres, considering the judgement in *Deepshikha Saxena (Supra)*, they must not be reinstated in service. In the cited precedent, the teacher had obtained employment in another school while judicial proceedings *qua* her termination were pending, which fact had been concealed by the teacher. In the matters before us, the School has not furnished any proof of Respondents' alternative employment,

⁶ 113 (2004) DLT 703 (DB).



and banking on the fact that they are offering private coaching to students, contested the relief awarded to them. Additionally, on a specific query of the Court, Mr. Gupta confirmed that Respondents – Mr. Sumit Tandon, Mr. Gaurav Sharma, and Mr. Brijesh Upadhyay, are not engaged as permanent employees with any other institution. Therefore, the judgement in *Deepshikha Saxena (Supra)*, does not aid the School.

19. We therefore uphold the impugned order and direct reinstatement of Respondents against existing vacancies, if any, within a period of six weeks from today. In the event no vacancies subsist, the Respondents shall be accommodated against the immediate next available slot of vacancies. The DoE is directed to oversee this process and ensure that the Respondents are duly reinstated in service. Insofar as back wages are concerned, the Respondents are permitted to approach the School in terms of Rule 121 of the DSER, which shall be decided by the School *via* a speaking order.

20. With the above directions, the present appeals are dismissed.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

NOVEMBER 6, 2023

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