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

Reserved on: 24.01.2019

Date of decision: 30 .01.2019

+ W.P.(C) No.7509/2002

THE BIRLA SR. SECONDARY SCHOOL Petitioner

Through Dr.M.Y. Khan, Adv.

versus

P.O., INDUSTRIAL TRIBUNAL-III & ANR ... Respondents

Through None.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. Vide the present petition under Articles 226/227 of the Constitution of India, the petitioner has challenged the Award dated 16th April, 2002 passed by the learned Industrial Tribunal III, in ID No.20 of 1989. At the outset, it may be noted that none has been appearing on behalf of the respondent nos.2 & 3 for the last many dates despite being served by publication also. Even at the time of final hearing, despite a pass over, none had appeared on behalf of respondent nos.2 & 3 and in these circumstances, learned counsel for the petitioner had addressed arguments on the basis of the record.

2. The relevant facts emerging from the record are as follows.

The petitioner is a recognized School getting 95% aid from the Directorate of Education, which amount is used for payment of salary to its teaching and other staff, who are all appointed only in accordance with the procedure laid down under the Delhi School Education Act, 1973.

3. The respondent no.2, claiming to have been engaged as a Chowkidar in the petitioner/School at a salary of Rs.350/- per month from 1st May, 1985 till 10th November, 1987, raised an industrial dispute on the plea that he had been illegally terminated by the petitioner/School without following the procedure prescribed under the Industrial Disputes Act.

4. Similarly, respondent no.3's late husband Sh. Shyam Singh claiming to have been engaged as a Peon at the salary of Rs.350/- per month from 15th November, 1986 to 14th October, 1987, also raised an industrial dispute alleging that he had been illegally terminated. The disputes raised by both respondent no.2 and late Sh. Shyam Singh were referred for adjudication to the Labour Court-III by way of ID No.20 of 1989 and have been decided vide the impugned Award dated 16th April, 2002 holding that the termination of both respondent no.2 and respondent no.3's late husband Sh. Shyam Singh was illegal while respondent no.2 was held entitled to reinstatement with continuity of service and full back wages, since respondent no.3's husband had already expired during the pendency of the proceedings before the Labour Court, the petitioner was directed to pay to respondent no.3 an amount equal to arrears of wages payable to him from the date of his

termination till the date of his death, i.e., from 10th November, 1987 to 2nd February, 1996.

5. Impugning the aforesaid award, learned counsel for the petitioner states that the respondent no.2 & late Sh. Shyam Singh were never appointed by the petitioner/School and were merely engaged by the principal on his own. He states that the petitioner/School is not only governed by the provisions of the Delhi School Education Act, 1973, which mandates that appointment of every employee has to be done by following the procedure prescribed in the Act, but it is also an aided school where every appointment has to be made on the basis of the recommendations of the Selection Committee constituted by the Directorate of Education. He further states that neither the respondent nos.2 nor the late husband of the respondent no.3 possessed even the minimum qualifications prescribed under the Act and merely because they were engaged by the Principal in his personal capacity and were being paid a lump sum amount by way of salary from the funds of the Parent-Teachers Association, they cannot claim to be employees of the school.

6. Learned counsel for the petitioner further states that the learned Labour Court has ignored the vital fact that the School being governed by the provisions of the Delhi School Education Act, 1973 could not appoint anybody without following the procedure prescribed in the Delhi School Education Act which makes it mandatory for all appointments to be made on the recommendations of the Selection Committee constituted in

accordance with the provisions of the Act.

7. He states that the preliminary objection of the petitioner/School regarding non-impleadment of the Directorate of Education as a necessary party, has been erroneously rejected by the learned Tribunal without any cogent reasons. He further states that the Tribunal has also failed to consider the fact that the respondent no.2 & respondent no.3's late husband Sh. Shyam Singh, as per their own showing, were receiving payments through cheques issued by the Principal after intervals of 2-3 months whereas all the regular employees of the Schools were receiving cheques towards their salary directly from the Directorate of Education as the Principal was not authorised to issue any cheques towards the salary of the regular employees. He, therefore, prays that the impugned award being wholly perverse be quashed.

8. I have considered the submissions of the learned counsel for the petitioner and with his assistance perused the record.

9. What emerges from the record is that the petitioner/School is an aided and recognised school which is governed by the provisions of the Delhi School Education Act and is therefore receiving 95% aid from the Directorate of Education. It is also evident from the record that neither the respondent no.2 nor late Sh. Shyam Singh had placed any appointment letter on record and merely on the basis of payments received by them from the Principal, the learned Tribunal has arrived at the conclusion that they were employees of the school without even considering the fact that even in their claim petition, both the respondents had categorically stated that they

were appointed by the Principal on a monthly lump sum payment of Rs.350/-. Thus, even the respondents' had not claimed that they had been appointed by following the procedure prescribed in the Delhi School Education Act or on the basis of the recommendations of the Selection Committee. In fact, the claim statement is also silent on the aspect as to whether the respondents had ever applied for appointment to the School.

10. The facts themselves as set out in the claim petition, show that both the respondent no.2 & late husband of the respondent no.3 had been appointed by the Principal in his private capacity, may be for the smooth and efficient functioning of the School. Their engagement by the Principal cannot, by itself, make them employees of the petitioner/School especially in the light of the statement of the management witness no.1, namely, Shri R.D. Gupta, who during his cross-examination stated that the Principal in its discretion could use the funds of the Parent-Teacher Association for limited purposes. There is absolutely nothing on the record to show that the respondent no.2 or late Sh. Shyam Singh had ever been appointed by the petitioner/School by following the procedure prescribed under the Delhi School Education Act, 1973.

11. It is, thus, evident that the learned Tribunal has not only failed to consider the aforesaid mandatory provisions of the Delhi School Education Act, 1973 as applicable to the petitioner/School but has on the other hand got unduly swayed by the fact that the respondent no.2 & late Sh. Shyam Singh were being permitted to stay in the School quarters along with other Peons/Chowkidars which finding,

in my view, is wholly unsustainable.

12. For the aforesaid reasons, the finding of the Tribunal that the respondent nos.2 & Sh. Shyam Singh, late husband of the respondent no.3 were employees of the petitioner/School, is wholly unsustainable and is accordingly set aside. The consequential finding that their services were terminated by the petitioner/School without following the procedure prescribed under Sections 25-F and 25-G of the Industrial Disputes Act, cannot also be sustained.

13. In view of my above findings, the direction to re-instate the respondent no.2 with full back wages as also the direction to pay arrears of wages from the date of termination of late Sh. Shyam Singh till the date of his death to the respondent no.3, i.e, legal heir of late Sh.Shyam Singh, is also not sustainable and is hereby quashed.

14. The petition is allowed in the aforesaid terms with no order as to costs.

(REKHA PALLI)
JUDGE

JANUARY 30 , 2019

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