

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

+ **W.P.(C) No. 1654/2002**

% **21st December, 2016**

SH. SURJAN SINGH Petitioner

Through: Mr. Anil Mittal, Advocate.

versus

PRESIDING OFFICER,
DELHI SCHOOL TRIBUNAL AND ORS. Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 and Article 227 of the Constitution of India the petitioner impugns the judgment of the Delhi School Tribunal dated 18.10.2001 whereby Delhi School Tribunal has dismissed the appeal of the petitioner and has held that petitioner, who was working as a driver with the respondent no. 2/Tagore School, had abandoned the services with the said School.

2. The issue in the present case is that whether petitioner had abandoned his services or the respondent no. 2/School did not allow the

petitioner to perform his services. The Delhi School Tribunal has held that the petitioner had abandoned his services with effect from 6.1.1992 and for which the Delhi School Tribunal gave the following reasoning:-

(i) Petitioner was asked by the respondent no. 2/School vide letter dated 30.12.1991 a photocopy of his driving license bearing no. C-87054735 because it was found that the driving license of the petitioner had already expired on 19.5.1990. Petitioner is found not to have responded to the letter of respondent no. 2/School by furnishing the valid driving license as on 6.1.1992, and which was because the license had already expired from 19.5.1990. Accordingly, the petitioner had abandoned his job with the respondent no. 2/School because he had no valid driving license.

(ii) Petitioner was, in fact, having his own private taxi business and he owned a taxi bearing no. DLT 2154 whose permit was in the name of the petitioner and the permit was renewed up to 17.6.1997. The petitioner was, therefore, interested in his own private taxi business and, in fact, even his earlier services with the respondent no. 2/School were abandoned by him for different periods because the petitioner only worked for certain periods and had huge gaps thereafter before commencing the next service period with the respondent no. 2/School.

3. The relevant observations of the Tribunal in this regard are contained in paragraphs 12 to 15 of the impugned judgment and which paragraphs read as under:-

“12. The Respondents have alleged that the Appellant has a permit for the taxi. He has filed affidavit with the Transport Department stating that he would be plying the taxi himself. These affidavits were filed at the time of obtaining the permit as well as at the time of its renewal. The Respondent No. 1 has given the exact number of the taxi being DLT 2154. They have also given the number of the permit issued to the Appellant for plying the taxi. They have filed the photocopies which the Appellant had filed before the Transport Department. A simple denial by the Appellant that he is not having any other business is not sufficient to rebut these allegations. He has stated that he has no concern with the business activities of his brothers. He has not stated that the taxi belongs to his brothers. He has not rebutted the allegations that the permit for the taxi stands in his name. He has not rebutted the allegations that he had given an affidavit before the Transport Department stating that he would be running the taxi himself.

13. In the face of these allegations referred to above, we have to see the conduct of the Appellant. Admittedly, the Appellant joined the services of the Respondents School in 1985. He admits that there was break in his service in 1986 and 1987. He admits that he did not take any action at that time. Respondent no. 1 has categorically stated that on both these occasions, the Appellant had left the services of the Respondents once on the pretext of going to Punjab. These facts have also not been rebutted by the Appellant. The incidence of 1990 can not be commented upon because the parties settled their dispute. The Respondent agreed to reinstate the Appellant. The Appellant agreed to accept a part of the wages due to him for the period he did not work.

14. In case the Respondents wanted to take action against the Appellant, they would have acted immediately after he joined the services again in September 1991. It appears that the Respondent no. 1 did not take any action against the Appellant at that time. On 6.1.1992, the Appellant absented himself. The Respondents, who had become wiser because of the previous incident, immediately sent him a notice to join the services. This notice was repeated on 8.1.1992 and 21.1.1992. It appears that the Appellant was not really interested in joining the service. He wrote letters to Respondent School as well as the Director of Education. He even met the Education Officer, but

was perhaps not able to convince the Education Officer about his sincerity. The reason for the Appellant's abandoning his service appears to be the fact that the driving license, he had submitted to the Respondent No. 1, had actually expired. When this fact was detected and pointed out to the Appellant, he took recourse to absenting himself from duty and making representations against the school.

15. The Appellant has placed on record a certificate to show that his license was valid upto 19.5.1993. This certificate was issued on 11.3.1992. However, the School had verified the fact about the validity of his license in December 1990, when they were informed by the Motor Licensing Officer, Under Hill Road that the license of Surjan Singh, son of Shri Rekha Singh, resident of 20/250, Kalyanpuri, Delhi was valid upto 19.5.1990."

(underlining added)

4. I completely agree with the aforesaid observations and conclusions of the Delhi School Tribunal because if the petitioner did not have a taxi bearing no. DLT 2154 in his own name then it was very easy for the petitioner to have obtained copies of the registration papers of this taxi from his brother so as to show that the taxi was not owned by the petitioner, however, the petitioner failed to do the same. In fact, the respondent no.2/School had filed photocopy of the affidavit of the petitioner before the Motor Licensing Authority for renewal of his license with respect to private taxi and a simple denial by the petitioner was not enough because the petitioner could have got a certificate from the Motor Licensing Officer that the license/permit of the taxi bearing no. DLT 2154 was not in the name of the petitioner, but this, obviously, the petitioner did not do because he knew

the fact that the taxi was owned by him and the license/permit was also in the name of the petitioner.

5. Further, it is seen that the petitioner tried to illegally cover up the issue with respect to motor driving license being not valid as on 6.1.1992 as it had expired on 19.5.1990, inasmuch as, the certificate which was filed by the petitioner from the Motor Licensing Authority of the license being valid up to 19.5.1993 was dated 11.3.1992 i.e. much after 6.1.1992, and which certificate dated 11.3.1992 did not show that the driving license was duly renewed after 19.5.1990 and was valid on 6.1.1992 when the petitioner abandoned his services from the respondent no. 2/School.

6. The Delhi School Tribunal has rightly held that the respondent no. 2/School would have no reason for issuing of notices dated 6.1.1992, 8.1.1992 and 21.1.1992 in case the petitioner had not abandoned his services, and to which aspect it has to be added that the petitioner may have thereafter wrote to the Education Officer that he had not abandoned his services, but, writing of letters would not mean that the petitioner had joined his services with respondent no. 2/School, inasmuch as, petitioner could have joined the services of the respondent no. 2/School as a driver only if he had a valid driving license, and since the petitioner did not have a valid

driving license hence the petitioner instead of providing a valid driving license which was valid as on 6.1.1992 instead indulged in correspondence with the respondent no. 2/School and the Education Officer.

7. Finally, counsel for the petitioner argued that if the petitioner was an employee of the respondent no. 2/School then his services should not have been terminated without inquiry, and in this regard the Tribunal has, in my opinion, rightly relied upon the judgment of the learned Single Judge of this Court in the case of *Rajni Gupta Vs. The Mother's International School and Ors.*, 34 (1988) DLT 262, wherein it is held that there is no need of enquiry proceedings being conducted with respect to an employee who has abandoned his services with the school.

8. Learned counsel for the petitioner finally relied upon the Division Bench judgment of the Punjab High Court in the case of *Som Nath Vs. Presiding Officer and others*, 2000 (7) SLR 346, to argue that it should be held that the petitioner had not abandoned his services, however, whether or not there is abandonment is not an issue of law but is an issue of fact and whether or not there is abandonment depends on facts of each case. There is no quarrel to the ratio of the judgment in the case of *Som Nath (supra)* that abandonment has to be found as a fact, but the facts of the present case

show, in view of the above discussion, that the petitioner had in fact, abandoned the services with the respondent no. 2/School.

9. The writ petition is accordingly dismissed.

DECEMBER 21, 2016

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VALMIKI J. MEHTA, J

