

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

% **Date of Decision: 30.05.2008**

+ **W.P(C) No.4090/2008**

Mr.M.P. Yadav Petitioner
Through: Mr.Aagney Sail, Advocate.

Versus

NCT of Delhi & Others Respondents
Through : Mr.Chandermani Bhardwaj,
Advocate for the respondent
Nos.1 to 5.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioner has sought quashing of inquiry proceedings initiated under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rule, 1965 and a direction to respondent Nos.4, 6 and 8 to relieve the petitioner on two years lien so as to enable him to join the post of lecturer in the Department of English at Laxmibai College and to compensate the petitioner in the form of damages for denial of better prospect and for loss of higher remuneration due to inaction on the part of the authorities in regard to the false and frivolous complaint dated 5th September, 2005.

2. The petitioner is a Teacher who alleged that he has been victimized by the school. The allegation of the petitioner is that an inquiry was conducted on 22nd December, 2005 based on the counter complaint dated 5th September, 2005 without framing any charges against him and without filing a charge sheet. The petitioner contends that he was not intimated about the said inquiry and, therefore, he was not given an opportunity to defend himself and he was not aware of the said inquiry and his statement was not recorded. The contention of the petitioner is that the investigation officer had filed a report. And that the Deputy Director, Education (North East Zone) therefore, issued a show cause notice dated 7th February, 2006 which was served on the petitioner when he came to know that a counter complaint had been filed against him. A memo was sent to the petitioner on 15th February, 2006 seeking his reply on the charges leveled against him and the charge sheet was filed five months thereafter.

3. The petitioner's assertion is that he replied to the show cause notice dated 7th February, 2005 and a memo was received by him on 15th February, 2006 whereby the Deputy Director was made aware of the discrepancies in the way the investigation was conducted and that as per vigilance rules the maximum period of three to six months is provided to complete the entire disciplinary proceedings.

4. The grievance of the petitioner is that on 20th March, 2006, he requested for a personal probe by the Director of Education and Secretary of Education as he was victimized, however, the inquiry proceedings have not proceeded on one or other ground. The petitioner's plea is that on 10th March, 2007, the Presenting Officer, Jagdish Kumar, expired and proceedings were still incomplete and no steps have been taken after his demise to appoint another presenting officer and no proceedings had ever been conducted by Shri Jagdish Kumar.

5. Further grievance of the petitioner is that though he was granted an NOC to enable him to apply for the post of Lecturer with Delhi University and a request had also been made by him by letter dated 9th May, 2008 for grant of lien and for relieving him by the Lt. Governor of Delhi, however, no response has been received by the petitioner till the filing of the present petition.

6 A Division Bench of this Court in Kathuria Public School and Ors Vs. Director of Education and Anr, 2005 VI AD (Delhi) 893 relying on T.M.A.Pai Foundation Vs. State of Karnataka, AIR 2003 SC 345 had held that it is advisable that the specialized Tribunal constituted should look after the **legal matters relating to hearing of grievances of teachers and employees**. The Division Bench relying on T.M.A.Pai Foundation (Supra) had held that specialized Tribunal should hear **any** W.P(C) No.4090/2008

grievance of the teacher. It was further held that no restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal and consequently the Tribunal should be able to hear all the grievances including in respect of suspension of a teacher or an employee and, therefore, the Tribunal constituted under the Delhi School Education Act should be able to hear all the grievances of the staff and teachers and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act. The Division Bench in para 42 at page 910 had held as under:-

“42. No restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal. Under the said Act in question, the Tribunal is already constituted. Thus, all that is to be done is that the Tribunal should be able to hear all grievances including in respect of suspension by a teacher or an employee. Taking into consideration the observations made by the Apex Court in T.M.A.Pai Foundation case (supra), we are of the considered view that pending necessary legislative action by the State, **the Tribunal constituted should be able to hear all grievances of the staff and teacher and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act.** The result would be that if a teacher is aggrieved by a suspension order or its prolongation, the grievance can be made before

the Tribunal depending upon the fact and circumstances of the case.”

7. Considering the facts and circumstances, the petitioner has an alternative remedy to approach Delhi School Tribunal constituted under Delhi School Education Act, 1973 for consideration of his grievances. The learned counsel for the petitioner, however, has relied on (1998) 8 SCC 1, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others to contend that alternate remedy is not to operate as a bar specially in three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Admittedly no orders have been passed in the case of the petitioner and so it cannot be held that the order or proceedings are without jurisdiction nor the petitioner has challenged the vires of any of the provisions of Delhi Schools Education Act, 1973. The petition is not filed for enforcement of the Fundamental Rights nor there has been any such violation of principle of natural justice which will entail interference by this Court in the facts and circumstances. Contention of the petitioner is that though he had been given ‘no objection’ certificate, however, on account of an inquiry pending against him, he has not been relieved and consequently the petitioner is not entitled for the various benefits. The petitioner, in the circumstances, is

not entitled for invocation of the jurisdiction of this Court under Article 226 of the Constitution of India.

8. Therefore, in the facts and circumstances there are no grounds for this Court to exercise its jurisdiction under Article 226 of the Constitution of India. It is for the petitioner to exhaust his alternative remedy available to him under the Delhi School Education Act, 1973 and Rules framed there under and to approach Delhi School Tribunal.

9. In the circumstances, the writ petition is disposed of. The Petitioner shall be entitled to approach Delhi School Tribunal under the Delhi School Education Act, 1973 or to invoke any other remedy, if available to him. With these directions the writ petition and all pending applications are disposed of.

Dasti to the counsel for the Petitioner.

May 30, 2008
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ANIL KUMAR, J.