

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

+ W.P.(C) No.435/2009 & CM. Nos. 3140/2009 &1572/2009

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% Judgment delivered on: 21.5.2009

Mr. R.A. Sharma Petitioner

Through: Mr. R.K. Saini for the petitioner.

versus

R.B. Ram Roop Vidya Respondent
Mandir Sr. Secondary School & Anr.

Through: Mr. Anil Sehgal for respondent no.1.
Ms. Poornima Maheshwari for the
respondent no.2/GNCT.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (Oral)

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1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner seeks direction to quash the illegal, unjust and without jurisdiction action of the respondent no.1 school in not reinstating the petitioner and not allowing him

to join duties as Vice-Principal even after the order for the same by the Director of Education and to forthwith reinstate the petitioner and allow him to join duties pursuant to order of Director of Education dated 11.11.2008.

2. On the last date directions were given to the respondent no.2 to clarify the entire position as to under what circumstances they had given directions for the reinstatement of the petitioner vide their order dated 11.11.2008, when already serious allegations of misconduct were existing on record before them and then why the need arose to review the said order dated 11.11.2008 through a subsequent order dated 25.2.2009, according approval to the suspension of the petitioner w.e.f. 11.11.2008 up to 30.3.2009 and for completion of re-enquiry within the said time frame.

3. Pursuant to the said directions records have been produced by the respondent no.2. Counsel for the respondent no.2 submits that since more than six months time had elapsed and due to certain procedural lapses on the part of the disciplinary committee in conducting the disciplinary proceedings against the petitioner, directions vide order dated 11.11.2008 were given to the school to reinstate the petitioner. Counsel thus submits that it

was not that any observations were made by the respondent no.2 exonerating the petitioner from the serious charges of misconduct leveled against him but primarily it was due to some technical reasons, said direction for the reinstatement of the petitioner was passed by the respondent no.2. Counsel further submits that the said order dated 11.11.2008 was reviewed by the respondent no.2/DOE on the representation dated 20.11.2008 made by the school to the respondent no. 2 for reconsideration of the said order dated 11.11.2008. Counsel states that after taking into consideration the representation of the respondent school and reply to the show cause notice dated 11.12.2008 and also considering the representation of the Delhi Women Commission, directions were given vide order dated 25.2.2009 for placing the petitioner under suspension from 11.11.2008 till 30.3.2009 and to complete the enquiry against him within the said period.

4. Mr. Sehgal counsel appearing for respondent no.1/school submits that the enquiry against the petitioner was held on account of very serious charges of misconduct. Mr. Sehgal counsel for respondent school has drawn attention of this court to the letter of the DCP dated 3.4.2007 informing the respondent DOE with regard to the arrest of the petitioner under

Sections 107 and 151 Cr.P.C. Counsel for the school has also drawn attention of this court to the two sample character certificates issued by the petitioner in favour of the girl students certifying that they do not possess good moral character. Counsel for the respondent no.1 has also drawn attention of the court to the recommendations made by Delhi Women Commission due to serious allegations of misconduct against the petitioner. One of the serious objections taken by the counsel for the respondent no.1 is that the counsel for the petitioner did not apprise this court that order dated 5.3.2009 was challenged by the petitioner by filing LPA bearing no.116/2009 before the Division Bench of this court and the said LPA was dismissed by the Division Bench vide order dated 20.3.2009. Counsel for the respondent school further submits that even the counsel for the petitioner has not apprised this court that the petitioner has already challenged the order dated 25.2.2009 by filing a separate writ petition bearing W.P.(C) No. 8248/2009 before the Co-ordinate Bench and the said petition was listed for 28.5.2009. Counsel for the respondent no.1 also submits that in the C.M. No. 5020/2009 filed by the petitioner in W.P.(C) No. 8248/2009, directions were given by said Bench that the enquiry against the petitioner be

completed and the punishment, if any, imposed upon the petitioner, shall not be given effect to without the leave of the court. Counsel thus contends that the petitioner is totally unfair in his approach as the present application is still being pressed for quashing of the very same order dated 25.2.2009 which is now a subject matter of substantive writ petition (W.P.(C) No. 8248/2009) filed by the petitioner.

5. Mr. R.K.Saini counsel for the petitioner refutes the said submissions made by the counsel for the respondents. Mr. Saini submits that conduct of the petitioner cannot be considered as unfair. Counsel submits that since no stay against the said impugned order dated 25.2.2009, was granted when C.M. No. 3140/2009 was moved by the petitioner and even no stay was granted by the Division Bench of this court in LPA, thereby the same resulted into service of show cause notice upon the petitioner imposing major penalty of compulsory retirement, then no option was left to the petitioner but to challenge the said show cause notice and also to seek quashing of order dated 25.2.2009. Counsel states that said writ petition (W.P.(C) no. 8248/2009 was filed on 15.4.2009. Counsel further states that in fact the respondents have tried to overreach the orders passed by this

court in the present petition by starting a fresh enquiry against the petitioner without allowing him to join his duties in terms of the directions given by the Director of Education vide their order dated 11.11.2008. Counsel thus submits that the petitioner had approached this court at the earliest opportune time so as to seek enforcement of order dated 11.11.2008 whereby directions were given by none else but the Director of Education for reinstatement of the petitioner and order dated 25.2.2009 was passed by the respondent Director of Education without seeking leave of the court or informing this court. Counsel thus submits that the petitioner is still within his rights to seek enforcement of order dated 11.11.2008 in terms of the prayer made in the writ petition and also to insist upon the prayer made in the stay applications bearing C.M. No. 966/2009 and C.M. Nos. 1572/2009 and 3140/2009.

6. I have heard learned counsel for the parties at great length and gone through the record.

7. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks directions against the alleged illegal and arbitrary action of the respondent school in not reinstating the petitioner and not allowing him to join his duties as

Vice Principal, even after passing of the order dated 11.11.2008 by the respondent/DOE. The petitioner also seeks directions in the nature of mandamus to direct the respondent school to forthwith reinstate the petitioner and to allow him to join his duties as Vice-Principal. Along with the present writ petition, the petitioner also moved an application bearing C.M.No. 966/2009 seeking directions to maintain the status quo pending disposal of the writ petition. Notice of this writ petition was directed vide order dated 23.1.2009. On advance notice, counsel for the Director of Education appeared and the matter was adjourned for the service of the respondent school for 5.3.2009. In the intervening period the petitioner moved an application bearing C.M. No. 1572/2009 seeking directions for staying the enquiry proceedings already initiated against the petitioner by the school vide their letter dated 27.2.2009 and 31.1.2009 till the next date of hearing fixed before the court i.e. 5.3.2009. Notice of the said application was directed for 18.2.2009 and on appearance of the counsel for the respondents No. 1 and 2, directions were given for filing the reply to the said C.M. In the meanwhile, the petitioner, yet preferred, another application bearing C.M. No. 3140/2009 seeking directions for quashing the order dated 25.2.2009 passed by the

Director of Education and for staying the operation thereof in the meanwhile. The said prayer of the petitioner in C.M. No. 3140/2009 is reproduced as under:

“(a) Appropriate orders/directions quashing the order dated 25.2.2009 passed by the Directorate of Education (Annexure P-11) and/or in the meanwhile stay the operation thereof till the disposal of this application.

(b) Such other or further order as maybe deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

8. On 5.3.2009, when notice on the said application was directed, the directions were given to the respondent no.2 to apprise this court as to why they have given directions for reinstatement of the petitioner in the face of serious allegations leveled against him and why need arose to review the said order to direct a fresh enquiry with suspension effective from 11.11.2008. The original record produced by the respondent no.2 reveals that the said order dated 11.11.2008 was passed by the respondent no.2 not on merits but after finding some technical and procedural irregularities committed by the respondent no.2 in holding the enquiry proceedings and also considering the fact that the petitioner was under suspension for a very long period. The

respondent school had made a representation dated 20.11.2008 and also submitted a reply to the show cause notice sent by the Director of Education. Perusal of the record thus reveals that said directions were given by the Director of Education based on the representation of the respondent school and also considering the recommendations made by Delhi Commission for Women. It is worth pointing out here that the petitioner had even challenged the earlier order of the Delhi Commission for Women by filing a separate writ petition, which was later on withdrawn by the petitioner. Since serious allegations of misconduct were leveled by the respondent school against the petitioner and the enquiry already now stands completed and substantive writ petition against the show cause notice sent by the school proposing punishment of compulsory retirement is under challenge before the Co-ordinate Bench therefore, the relief now being sought by the petitioner in the present petition practically has become infructuous. It is not in dispute that vide order dated 17.4.2009, V.K. Shali, J., has given directions that the punishment to be imposed upon the petitioner shall not be given effect to without the leave of the court. In the present case the petitioner is seeking his reinstatement in terms of the directions dated

11.11.2008 passed by respondent no.2/DOE and since already on review of the said order, not only the enquiry was held against the petitioner but the same already stands completed, therefore, the reliefs claimed in the present petition are no more available to the petitioner in the present petition. The contention of the counsel for the petitioner that the respondents have tried to overreach this court and have flouted the directions given by the Director of Education, although impressed this court at the first blush, but after perusing the record and after hearing the counsel for the respondents, the same does not hold much water. The respondent school has already made representation against the order dated 11.11.2008 and even submitted reply to the show cause notice of the Director of Education. In any case this court must deprecate the conduct of the petitioner who was expected to have fairly disclosed that already the petitioner has made a challenge to the order dated 25.2.2009 and show cause notice dated 20.3.2009 in the other writ petition filed by him. The prayer paras of the said writ petition are reproduced as under.

“(a) A Writ of Certiorari calling for the records of the case for perusal;

(b) A writ order or direction in the nature of certiorari quashing the illegal arbitrary, malafide, unjust and without jurisdiction re-inquiry conducted by

the respondent no.1 school ex-parte against the petitioner being in violation of the principles of equity, justice and good conscience and also in violation of the rules and regulations and consequently the letter dated 20.3.2009 and the inquiry report (Annexure P-23)

(c) A writ, order or direction in the nature of certiorari quashing the order dated 25.2.2009(Annexure P-19) passed by respondent no.2, Director of Education, reviewing its earlier order dated 11.11.2008 approving the suspension of the petitioner w.e.f from 11.11.2008 to 30.3.2009.

(d) Any other Writ, Order or Direction, which this Hon'ble court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

9. It is a cardinal principle of law that every litigant is expected to not only state the entire gamut of facts before the Court but state such facts truthfully.

10. In this regard, the Hon'ble Apex Court has in **Raj Kumar Soni vs State of U.P. (2007)10 SCC 635** observed as under:-

"It is a fundamental principle of law that a person invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the Court. Parties are not entitled to choose their own facts to put forward before the Court. The foundational facts are required to be pleaded enabling the Court to scrutinise the nature and content of the right alleged to have been violated by the authority."

11. The Advocates who are primarily the officers of the Court have more onerous responsibility to remain fair in their approach so as to properly assist the Court in dispensation of justice. The Court would have appreciated, had the counsel for the petitioner before arguing the matter would have stated that he does not wish to press the CM. bearing No. 3140/2009 as already the order dated 25.2.2009 is under challenge in the substantive writ petition. Considering the fact that the petitioner through his counsel kept insisting on the prayers made in the C.M. bearing No. 3140/2009, without apprising the Court about the substantive writ petition filed by the petitioner, and it is only when, the counsel appearing for the respondents apprised this Court of the said fact, counsel for the petitioner still insisted that the relief as sought in the present application is available to the petitioner. In view of the wastage of more than one hour of precious judicial time in a case which has already become infructuous and for which already the petitioner has filed a substantive writ petition, I impose costs of Rs.25,000/- upon the petitioner to be deposited by him with the Advocates Welfare

Fund within a period of four weeks. The Registrar General of this Court shall ensure compliance of this order.

12. The petition stands dismissed as having become infructuous.

May 21 2009
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KAILASH GAMBHIR, J.