

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

+ WP (C) No. 2189/2004

Judgment reserved on: 14.02.2009

% Judgment delivered on: 23.03.2009

Ramesh Chander Dubey Petitioner
Through: Mr. Jayant Bhushan, Sr. Advocate with
Mr. Sanjay Dubey, Advocate.

versus

Director of Education & Anr.

..... Respondent
Through: Mr. Anil Kumar Gupta, Advocate with
Mr. Rajpal Singh and Mr. Vineet Jain, Advocate
for respondent Nos. 2 and 3.
Ms. Sujata Kashyap, Advocate for R-1.

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.

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1. By way of this writ petition filed under Article 226 of the Constitution of India the petitioner seeks direction for setting aside

his suspension order dated 31.07.2003 with further directions to reinstate him with full back wages with all consequential benefits.

2. The conspectus of facts relevant for deciding the present petition are that the petitioner was appointed as Principal of Geeta Bal Bharti, Senior Secondary School, Delhi vide appointment letter dated 24.04.1997 and his services on the said post were confirmed w.e.f. 15.05.1998. As per the petitioner, he was faithfully and diligently discharging his duties but still his services were illegally and arbitrarily terminated by the respondent No.2 vide termination letter dated 31.3.2003. The said order of termination was challenged by the petitioner before the Director of Education and vide orders dated 21.4.2003 the said order of termination was quashed by the Director of Education. Even after the quashing of the said order, the petitioner was not allowed to join his duties, as a result of which the petitioner challenged the termination order by filing a petition under Article 226 of the Constitution of India before this Court. Vide orders dated 22.4.2003 of this court, the petitioner was directed to make a fresh representation before the Director of Education. Pursuant to the said directions passed by this court in CW No. 2637/2003, the

petitioner made a fresh representation dated 2.6.2003 to the Director Education but since no action was taken by the Office of the Director of Education, the petitioner again approached this court to seek his redress by filing a fresh writ petition vide CW No. 3807/2003. The grievance raised by the petitioner in the said writ petition was that despite his termination order being quashed by the Director of Education and representations made by him he was not allowed to join his duties. The petitioner also averred that his services were terminated in a most arbitrary and malafide manner without holding any sort of enquiry or without granting any opportunity of hearing to him prior to his termination. The petitioner in the said writ petition prayed that necessary directions be given to the respondents to allow him to join his duties as Principal of Geeta Bal Bharti Senior Secondary School. Vide orders dated 31.07.2003, this Court gave direction to the respondent school to pay the salary of the petitioner from the date of termination till the date of the suspension order. School was also directed to give subsistence allowance to the petitioner as per law during the period of his suspension. Since the said order dated 31.7.2003 has been interpreted by both the counsels

to suit the interests of their respective parties, therefore, the same is reproduced as under:-

“It is contended by counsel for the petitioner that the petitioner’s services were first terminated without following the procedure of law and now he has been suspended. On the other hand, Mr. L.R. Gupta, counsel for respondent/school says tht the Director of Education has granted approval of suspension of the petitioner. Be that as it may, the respondent/school is directed to give subsistence allowance to the petitioner as per law. Counsel for the petitioner has contended that petitioner has not received any suspension order. Let suspension order be served on the petitioner today itself.

In view of the approval to termination of the petitioner having not been given by Director of Education, respondent/school is also directed to pay the salary for the period from the date of termination order till the date of suspension to the petitioner. It is contended by counsel for the respondent that the salary for the months of April, May and June, 2003 has already been paid to the petitioner. Let counsel for the petitioner check up and thereafter according to rules if anything has to be paid, the same be paid to the petitioner.

In view of the aforesaid order, writ petition stands disposed of. “

3. After the said order, the respondent No.2 vide office memorandum dated 31.7.2003 placed the petitioner under suspension w.e.f. 31.3.2003. In the said office memorandum respondent No.2 School also referred to the approval having been granted by the

Director of Education, Govt. of NCT of Delhi and the recommendations made by the Managing Committee of the School to suspend the petitioner from his service. It was also conveyed that during suspension period, the petitioner would be entitled for subsistence allowance as admissible under law. Along with the said office memorandum the respondents had also forwarded a copy of the resolution dated 27.05.2003 whereby decision to place the petitioner under suspension was taken by the Managing Committee of the School. In the said resolution it was clearly stated that the Managing Committee of the School had unanimously resolved to suspend the petitioner in accordance with Rule 115 (4) of the Delhi School Education Rules, 1973. This very suspension order is under challenge in the present writ petition which as per the petitioner is illegal, unjust, improper and contrary to the provisions of Delhi School Education Act, 1973 and the rules framed thereunder.

4. Mr. Jayant Bhushan, Senior Advocate appearing for the petitioner made a fervent attack on the decision of the respondents to invoke Rule 115 (4) of the Delhi School Education Rules, 1973 against the petitioner. The contention of the counsel for the

petitioner is that sub-rule (4) of Rule 115 of DSE Rules could not have been invoked by the school against the petitioner as the services of the petitioner were not terminated by the respondent school as a result of imposition of penalty or punishment. It is only in a case where penalty of dismissal, removal or compulsory retirement from the service, imposed upon an employee, is set aside or rendered void, as a result of decision of a court of law or of the Tribunal and where the disciplinary authority on consideration of the circumstances of the case decides to hold further inquiry against such employee based on the same allegations, then, in such a case an employee can be placed under suspension by the Managing Committee of the school from the date of the original order of dismissal, removal or compulsory retirement. The contention of the counsel for the petitioner is that admittedly the petitioner was relieved from his duties and responsibilities as a Principal of the school not as a result of imposition of any penalty or punishment but by a non-stigmatic order dated 31.3.2003. The relevant para of termination order dated 31.3.2003 is referred as under:-

“ It has been decided to relieve Shri R.C. Dubey of his duties and responsibilities as Principal of the

Geeta Bal Bharti Secondary School w.e.f. the end of the current session i.e. 31.03.2002 in terms of Clause 2 of the appointment letter dated 26.04.1997. As per clause 2 of the said appointment letter he is entitled to here months salary in lieu of three months period of notice. However, a sum of Rs.50,000.00 (Rupees Fifty Thousand only) is outstanding against him on account of loan obtained by him from the school.”

5. The counsel for the petitioner thus urged that no allegations or charges were leveled by the respondent school against the petitioner except invoking clause 2 of the appointment letter and therefore, such an order of termination could not have become the basis for the respondent school to have invoked Rule 115 (4) of DSE Rules, 1973. Counsel thus urged that the said order of suspension being ex facie illegal is liable to be set aside and the petitioner be granted full back wages from the date of his suspension till the date of his termination. In support of his argument the counsel for the petitioner placed reliance on the judgment of the Apex Court reported in **Mahender Singh Vs. UOI 1991 Supp (2) SCC 127** and the judgment of this court reported in **117 (2005) DLT 516 Ajay Singh Vs. Delhi Police Public School & Ors.**

6. Mr. Anil Kumar Gupta, learned counsel appearing for the respondent school refuted the said submissions of the counsel for the petitioner and contended that the present petition does not survive any more as the petitioner already stood terminated from his service. The contention of counsel for the respondent is that the suspension order, which is under challenge in the present petition already stands merged with the final order of termination. Counsel for the respondent further submitted that the issue with regard to the termination of the petitioner is already under challenge before the Apex Court and fate of the petitioner would be dependent on the final outcome of the decision of the Apex Court. Counsel for the respondent also challenged the maintainability of the present petition on the ground that already in a writ petition filed by the petitioner similar reliefs were sought and vide orders dated 31st July, 2003 in WP 3807/2003 this Court gave directions to the respondent school to give subsistence allowance to the petitioner as per law with further directions to the respondent to serve upon the petitioner the order of suspension and for payment of full salary with effect from the date of termination order till the date of the suspension order. Counsel for the

respondent urged that the petitioner cannot rake up the same pleas in the present petition as the said issues with regard to the legality of the suspension order and of subsistence allowance have already attained finality with the passing of the said order dated 31st July, 2003. Based on these submissions counsel for the respondent states that he has no quarrel as regards the decisions cited by the counsel for the petitioner which will be of no help to him in the facts of the present case.

7. I have heard learned counsel for the parties at a considerable length and gone through the record.

8. The core issue which requires consideration in the present case is as to whether the respondent school could have placed the petitioner under suspension by invoking Rule 115 (4) of the Delhi School Education Rules, 1973. For better appreciation of the above proposition it would be desirable to reproduce Section 115 (4) of the Delhi School Education Rules, 1973 as under:-

“115. Suspension –

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a employee is set aside or rendered void, in consequence

of or by, a decision of a court of law or of the Tribunal; and the disciplinary authority on a consideration of the circumstances of the case decides to hold further inquiry against such employee on the same allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such employee shall be deemed to have been placed under suspension by the managing committee from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.

9. The Apex Court in **Mahinder Singh (Supra)** had the occasion to deal with such similar issue wherein Rule 10 (4) of CCS (CCA) Rules, 1965 which is analogous to the said provision was in question and the Apex Court came to the conclusion that since the original order of termination was not passed as a measure of punishment and the termination being simplicitor under Service Rule 5 (1) of the CCS (Temporary Service) Rules, 1965, therefore, Rule 10 (4) would not apply in such a case. The position is no different as far as the facts of the present case are concerned, as in this case also the earlier termination of the petitioner was not based upon any order of punishment or penalty but was a termination in

terms of clause 2 of the appointment letter dated 26.4.1997. Rule 115 (3) of Delhi School Education Rules, 1973 deals with the suspension of any employee of a recognized school whether aided or not. Rule 115 (1) of the said DSE Rules comprehends various situations enumerated in sub clauses (a) to (f) of Rule (1) and sub Rule (4) of Rule 115 deals with a particular situation where already the decision to dismiss, remove or compulsory retire the employee was taken but was rendered void or set aside in consequence of any decision of the court of law or other tribunal and where in such a case the disciplinary authority decides to hold further inquiry against such an employee based on the same allegations, on which the penalty of dismissal, removal or compulsory retirement was originally imposed, in such cases the employee against whom further inquiry was directed, shall be deemed to have been placed under suspension by the Managing Committee from the date of the original order of dismissal, removal or compulsory retirement, which order of suspension shall continue to remain until further orders. The proviso of Sub Rule (4) of Rule 115 further restricts its scope to take such action only in those cases where the court has passed an order purely on technical grounds

without going into the merits of the case. As would be seen from a bare look at the aforesaid provision, the following essential requirements would make the said rule applicable to a given case (I) the employee was earlier awarded penalty of dismissal, removal or compulsory retirement from his service; (II) The said penalty of dismissal, removal or compulsory retirement of an employee has been set aside or rendered void in consequence of or by a decision of any court of law or of the Tribunal; (III) The disciplinary authority decides to hold further inquiry against such an employee on the same allegations on which the penalty of dismissal, removal or compulsory retirement was imposed; (IV) The court of the Tribunal has set aside the order of dismissal, removal or compulsory retirement purely on technical grounds without going into the merits of the case.

10. If the aforesaid requirements are satisfied in a given case then the employee concerned shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and which shall continue to remain in force until further orders. The

relevant observations of the Apex Court in **Mahender Singh's case** (**Supra**) are reproduced as under:

“6. There are three requirements for the application of Rule 10(4); (i) the government servant is dismissed, removed or compulsorily retired as a measure of penalty; (ii) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a court of law; (iii) the disciplinary authority, decides to hold a further inquiry against the government servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders.

7. The order of the Tribunal and the management as to the retrospective suspension of the appellant cannot be sustained under Rule 10(4) of the Rules. It may be relevant to remember that the original order of termination was not passed against the appellant as a measure of punishment. It was a ‘simpliciter termination’ of the appellants’ service under Rule 5(1) of the CCS (Temporary Service) Rules, 1965. The Tribunal has set aside that order on the ground that it amounts to punishment and the order of punishment could not have been made without holding an inquiry against the appellant. But that is not the same thing to state that the management made an order terminating the services of the appellant by way of penalty. The management treated the said order as a simpliciter discharge. Rule 10(4) therefore, has no application to the case of the appellant.

8. Secondly, it would be misnomer to call it a further inquiry as contemplated under Rule 10(4). There was no question of the management deciding to hold a further inquiry since there was no earlier inquiry against the appellant.

9. The power to place delinquent officer under suspension from the date of the original order of dismissal, removal or compulsory retirement from service would be available provided if the original order of dismissal, removal or compulsory retirement from service was made by way of penalty and that order has been set aside by a court of law. Since there was no inquiry leading to the removal of the appellant in the first instance, the decision to hold fresh inquiry does not attract Rule

10(4). The retrospective suspension of the appellant is therefore, unjustified and without authority of law.”

11. Let me now examine as to whether in facts of the present case the aforesaid essential requirements to take an action under Rule 115 (4) of the Delhi School Education Rules are satisfied or not. Indisputably, the termination of the petitioner was not stigmatic and was simplicitor in terms of his appointment letter which provides for a period of three months notice or salary in lieu thereof to terminate the services of the petitioner. Clearly the said order was not on account of imposition of any penalty, removal or compulsory retirement and therefore, the very first essential requirement to take decision under Rule 115 (4) of the Act is not satisfied in the present case. As per the second requirement, the Rule can be applicable only where further inquiry was directed by the disciplinary authority and in the present case when there was no inquiry held earlier there could not have been any question of holding a further inquiry. The second requirement of sub-rule 4 of Rule 115 is also not met in the present case as further enquiry can be held based on the same allegations but

in the present case no allegations were leveled earlier to terminate the petitioner from his service.

12. I, therefore, find considerable merit in the submission of Mr. Jayant Bhushan, learned Senior Advocate in the instant case that the respondent school could not have invoked Rule 115 (4) of the Delhi School Education Rules, 1973 as against the petitioner and the said decision of the respondent school is ex-facie illegal. There cannot be any dispute that appointing authority or the disciplinary authority of a school has every right to place any of their employees under suspension where disciplinary proceedings against such employee is contemplated or pending or where other circumstances as given in clauses (a) to (f) of Rule 115 (1) exists and in the present case as well, the respondent was well within its right to place the petitioner under suspension subject, however, to the fulfillment of the conditions laid down in Rule 115 of the Delhi School Education Rules and not otherwise. In the present case, the respondent school had invoked Rule 115 (4) of the Delhi School Education Rules, 1973 and as discussed above in the facts of the present case it was not open to the respondent school to invoke Sub-Rule 4 of Rule 115 of Delhi School

Education Rules for suspending the petitioner retrospectively from the date of his earlier termination. Respondent No. 1 in their counter affidavit has also taken a stand that Rule 115(4) of the DSEA &R, 1973 was not applicable as the services of the petitioner were terminated by the School without the mandate of Rule 120 of DSEA &R, 1973. Therefore, the suspension of the petitioner could have been only prospective that too after following the mandate of Rule 115 of Delhi School Education Rules.

13. The contention of the counsel for the respondent that the suspension order passed against the petitioner became final by the order dated 31.7.2003 passed by this court in CW 3807/2003 is devoid of any force as nowhere in the writ petition filed by the petitioner in the said case challenge was made to the suspension order and infact the suspension order came to the knowledge of the petitioner only after the passing of the said order dated 31.7.2003. I also do not find any merit in the submission of the counsel for the respondent that since the order of suspension has been merged with the order of termination, therefore the petitioner cannot challenge this order of suspension. The petitioner is well within his rights to

challenge the order of suspension which was not in accordance with the mandate of Rule 115 (4) of Delhi School Education Rules, 1973 and setting aside of the suspension order will have no ramification as far as the final order of the termination against the petitioner is concerned, as the same will be decided by the Apex Court on its own merits.

14. In view of the above discussion, the suspension order dated 31.7.2003 is hereby set aside. Resultantly, the directions are given to the respondent nos. 2 and 3 to pay full backwages to the petitioner w.e.f. 1.4.2003 till the date of termination after giving an adjustment of subsistence allowance, if any, paid by the respondent school, within a period of one month from the date of this order.

23rd March, 2009

KAILASH GAMBHIR, J.