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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27th April, 2010.

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W.P.(C) 7858/2004

SANTOSH KUMARI

.... Petitioner

Through: Mr. H.S. Thukral, Advocate.

versus

LT.GOVERNOR OF DELHI & ORS.

..... Respondents

Through: Mr. V.K. Tandon with Ms. Parul Sharma,
Advocate for R-1&2.

Mr. J.P. Sengh, Sr. Advocate with Mr. S.C.
Kalra, Advocate for R-3&4.

AND

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W.P.(C) 23122/2005

SANTOSH KUMARI

..... Petitioner

Through: Mr. H.S. Thukral, Advocate.

versus

LT.GOVERNOR OF DELHI & ORS.

..... Respondents

Through: Mr. Amiet Andlay, Advocate for R-1&2.

Mr. J.P. Sengh, Sr. Advocate with Mr. S.C.
Kalra, Advocate for R-3&4.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. W.P.(C) No.7858/2004 was preferred by the petitioner, then working as Principal of Mata Shiv Devi Public School managed by Tri Nagar Shiksha Pracharni Sabha, seeking quashing of the order dated 22nd April, 2004 dismissing her from the post of

Principal. It was the case of the school that the petitioner did not have the requisite qualifications for the post of Principal and was removed from the said post pursuant to the directions of the Director of Education, the school being a recognized unaided private school. This Court vide order dated 17th May, 2004 in W.P.(C) No.7858/2004 directed that during the pendency of the petition the petitioner would be permitted to continue as the Principal of the school. The said order continues till date.

2. However, subsequently the school charge sheeted the petitioner and initiated disciplinary proceedings against her. W.P.(C) No.23122/2005 has been filed seeking the reliefs of change of Inquiry Officer and venue of inquiry and other directions qua the conduct of the inquiry proceedings initiated against the petitioner. Vide interim order dated 7th December, 2005 in W.P.(C) No.23122/2005, the inquiry proceedings initiated against the petitioner were stayed and directions issued for payment of subsistence allowance to the petitioner who had since been placed under suspension. Vide subsequent order dated 16th March, 2009 in W.P.(C) No.23122/2005, inquiry proceedings were permitted to be continued with the change in venue, in the office of the Director of Education. However the Inquiry Officer was restrained from passing any final order without the leave of the court. On 17th February, 2010 the petitioner contended that the Inquiry Officer was not taking on record her representations. The counsel for the school informed that the inquiry had since been completed and thus the question of taking any representation from the petitioner then did not arise. This Court directed the petitioner to deliver her representation to the Inquiry Officer within one week and directed the Inquiry Officer to consider the said representation and even if he had already submitted the report to the Disciplinary Authority, to submit an additional report to the Disciplinary Authority dealing with the said representation of the petitioner.

3. The counsel for the petitioner states that the representation was accordingly delivered to the Inquiry Officer. A copy of the same has also been placed on the record of

this Court. The senior counsel for School and the Society managing the school states that as per the prescribed procedure, the earlier report had been submitted by the Inquiry Officer in a sealed cover to the Disciplinary Authority and additional report as directed by this Court on 17th February, 2010 dealing with the representation made by the petitioner has also been submitted by the Inquiry Officer to the Disciplinary Authority.

4. The senior counsel for the School and the Society managing the school further contends that the order of removal of the petitioner from the post of the Principal which is under challenge in W.P.(C) No.7858/2004 as well as the order if any imposing penalty, to be passed by the Disciplinary Authority pursuant to the inquiry proceedings aforesaid, are both appealable under Section 8(3) of The Delhi School Education Act, 1973 before the Delhi School Tribunal constituted under Section 11 of the Act. Attention is also invited to Rule 120 of The Delhi Education Rules, 1973 prescribing a procedure for imposing major penalty. Rule 120(3) also prescribes the remedy of appeal to the Tribunal for any employee of a recognized private school aggrieved by any order imposing on him any major penalty. It is thus contended that no purpose would be served in keeping the present petitions pending and the Disciplinary Authority be permitted to proceed on the basis of the inquiry report and the remedy, if any, of the petitioner, if aggrieved, is before the Tribunal. It is contended that even if the petitioner is exonerated or even if any major penalty is imposed on the petitioner and set aside by the Tribunal and as a result whereof the petitioner is restored to the position of the Principal of the school, and the need for adjudication of W.P.(C) No.7858/2004 arises, that question also has to be gone into by the Tribunal.

5. The counsel for the petitioner however contends that the inquiry has not been conducted in accordance with law. He contends that the petitioner has not been given any opportunity whatsoever to participate in the inquiry and neither the prescribed procedure nor the principles of natural justice have been followed. I have enquired from the counsel

for the petitioner whether all the said pleas also do not fall within the domain of the jurisdiction of the Tribunal, if the petitioner is aggrieved by the action of Disciplinary Authority. The counsel though confirms the said position but contends that why should the petitioner be made to go through the procedure of suffering a major penalty specially when she has only one year to attain the age of superannuation, if the inquiry is palpably illegal.

6. This Court does not agree with the aforesaid contention of the counsel for the petitioner. Though this Court had vide interim order earlier restrained the inquiry proceedings but subsequently permitted the inquiry proceedings to proceed and the same now stand concluded. Another chance was given to the petitioner vide order dated 17th February, 2010 (supra). What remains now to be adjudicated is whether in the inquiry as stands concluded, there is any violation of procedure/principles of natural justice. The said question would not arise for adjudication if the petitioner is exonerated. Even if the petitioner is punished by the Disciplinary Authority, the petitioner has the remedy of appeal before the Tribunal. The question as to whether the procedure/principles of natural justice have been followed or not may entail certain factual controversies also and which are left to be best considered and dealt with by the Tribunal rather than by this Court in the exercise of writ jurisdiction. It was a different matter, if during the pendency of the inquiry proceedings something was pointed out which required this Court to intervene at that stage; now nothing further remains to be done. The order dated 16th March, 2009 of this Court in W.P.(C) No.23122/2005 permitting the inquiry proceedings to go on has attained finality.

7. In the opinion of this Court, these petitions are for the reasons aforesaid not maintainable. The remedy, if any, of the petitioner is before the Tribunal. The interim order restraining the passing of final order by the Disciplinary Authority is vacated. The senior counsel for the school and the society managing the school states that the

Disciplinary Authority shall proceed further in the matter in accordance with the law/rules. It is further clarified that the disposal of these petitions shall not come in the way of the petitioner taking up any ground whatsoever challenging the disciplinary proceedings and/or any fault/flaw therein before the Tribunal. Nothing contained herein shall be deemed to be an expression on the merits or the legality or otherwise of the disciplinary proceedings. All the rights of the petitioner to challenge the actions of the respondents before the appropriate Forum/Tribunal are reserved.

The petitions are disposed of. All pending applications stand disposed of.

The parties to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

27th April, 2010
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