

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 2063/2010**

Parimal Kumar Dutta Petitioner
Through: Mr. Bharat Bhushan, Adv.

Versus

Apeejay School and Ors. Respondent
Through: Mr. H.L. Tiku, Sr. Adv. with
Mr. Thakur Sumit Adv.

Judgment reserved on : April 15, 2010
Judgment pronounced on : April 20, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. By this writ petition filed under Article 226 of the Constitution of India the petitioner has prayed for the issuance of a writ/ order/ direction for quashing of the proceedings being held against the petitioner and direction to the respondents to review the order of suspension dated 01.06.2009 against the petitioner along with grant of consequential benefits.

2. The facts leading up to filing of the present writ are that the petitioner joined the Apeejay school as TGT Electronics in 1995. On 29.08.2008, the petitioner gave a letter to the respondent no. 1 i.e.

principal of the school which was allegedly written under her dictation, confessing that the petitioner had slapped some students of the school. As per the petitioner, he was thereafter made to submit his resignation letter on 09.09.2008 under duress as per which he was to be relieved of his services on 31.03.2009. The same was acknowledged and received by the respondent no. 1. Realising that he ought not have surrendered, the petitioner sought to withdraw his resignation vide letter dated 26.09.2008 sent to the Society of the school respondent no. 3 and respondent no. 1 wherein he stated in unambiguous terms that the resignation had been made under duress. The said letter was not acknowledged by respondent no. 1 but was acknowledged by the respondent no. 3.

3. After attempting to meet the Chairman of the school several times and being stopped by respondent no. 1, the petitioner filed a writ petition no. 7969/2009. In that matter, the respondent school offered the petitioner a chance to join the school services subject to the outcome of a disciplinary enquiry/action against him and moved an application stating that in view of the offer, nothing remained in the writ petition. The writ was dismissed in the petitioner's absence on the basis of the school's statement.

4. The petitioner then found out that the respondent no. 1 had issued the charge-sheet, appointed the Enquiry Officer and then appeared as witness without disclosing the list of witnesses to the petitioner. The petitioner sought change of Enquiry Officer and review of suspension order as the respondent no. 1 was a witness in the

proceedings which is not permissible as she is on the Disciplinary Committee of the school, indicating that having set up the Enquiry etc., she would not only appear before it as a witness but also and consider the petitioner's matter at the final stage. However, the Enquiry Officer prevailed upon the petitioner with the idea that the proceedings were fair and obtained his signatures on a document stating that the petitioner was satisfied with the opportunity made available to him. When the petitioner made known his grievance to the respondent no. 1 she told him that she would not be sitting at the time of decision making regarding the action to be taken against the petitioner as in his case she had been a witness. There is only one witness of the school i.e. the respondent no. 1 and as such, the enquiry cannot be unbiased.

5. The other grievance of the petitioner raised by him during the course of hearing is that the salary being given to him is not as per the latest Pay Commission and ought to be enhanced to meet the said amount. The third point raised by the petitioner is that continuation of the suspension order carried in letter dated 01.06.2009 is in violation of Rule 115 of the Delhi School Education Rules, 1973.

6. In reply to the above writ petition, learned counsel for the respondents has argued that the constitution of the Disciplinary Committee is beyond reproof as the same is as per statutory requirements laid down in Rule 118 of the Delhi School Education Rules, 1973. The said Rule 118 provides as under :

Section 118. Disciplinary authorities in respect of employees

The disciplinary committee in respect of every recognized private school, whether aided or not, shall consist of –

- (i) The Chairman of the managing committee of the school;
- (ii) The manager of the school;
- (iii) A nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;
- (iv) The head of the school, except where the disciplinary proceedings is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director;
- (v) A teacher who is a member of the managing committee of the school, nominated by the Chairman of such managing committee.

Clearly, sub-clause (iv) of the above-stated Rule requires the ‘head of the school’ to be a member of the disciplinary committee, who happens to be the respondent no. 1 principal of the school in this case and the requirement of the said statute cannot be evaded. Learned counsel for the respondents has relied upon ***Jitender Singh Aulakh, PPS & Anr. Vs. Union Public Services Commission & Anr., 2009 IX AD (Delhi) 532*** wherein several judgments have been referred to by the learned Division Bench while observing as under :

“28. The doctrine of necessity has been introduced as an exception to the principle of bias. It is the normal rule that a man cannot be a judge in his own cause. Therefore, if a person has some interest in a particular cause, he cannot decide the same and should recuse himself. However, in those cases where there is no authority except the persona designate who is to take decision, doctrine of necessity authorizes him to decide even if he has some interest in the matter.”

7. Despite the clear mandate of the above referred judgment, as far as the issue of the respondent no. 1 being a judge in her own cause is concerned i.e. being a witness in a case wherein she is also part of the

Committee which will preside over the matter, counsel for the respondent has submitted that respondent no. 1 has given a statement stating that since she is a witness in this particular matter she will not be involved with the discussions/ decision making procedure in the same.

8. As regards the contention that the petitioner is not being paid the enhanced salary as per the latest Pay Commission, learned counsel for the respondents has submitted a tabulated sheet recording the amount paid to the petitioner from 01.06.2009 to 23.03.2010.

9. I have heard the arguments of both parties. As regards the issue of respondent no.1 principal being an interested party and therefore not unprejudiced, being a witness on one hand and part of the deciding committee on the other hand in the same matter, the judgment of *Jitender Singh Aulakh* (supra) seems to prevail and it appears to me that considering Rule 118 of the Delhi School Education Rules, 1973 there can be no doubt that the principle of necessity applies to the present case. The principal of the school i.e. respondent no. 1 is statutorily required to be part of the Disciplinary Committee and cannot recuse herself of that responsibility. However, there is clearly no other witness in the present scenario and the respondent no. 1, having being personally aware of the alleged events, is the only witness. To ensure that justice is not only done but also seem to be done and also that the natural principle of *nemo judex in cause sua* is not violated, since respondent no.1 appeared as a witness in front of the Enquiry Officer she has submitted time and again that she will have no part in the presiding over/ deciding/ considering the petitioner's matter. Further, at

the time of her deposition, no objection was raised by the petitioner. I am of the considered opinion that there is no force in the petitioner's contentions vis-à-vis this issue especially in view of the respondent no. 1's statement that she will not be involved in the decision making procedure of the matter.

10. As regards the question of reduced salary, *prima facie* the petitioner's averments and version cannot be accepted as the records submitted by the respondents indicate that the petitioner was paid half salary for June, 2009 as per the Fifth Pay Commission. The salary for July, 2009 was paid as per the Sixth Pay Commission along with arrears as per the same for June, 2009 also. Since then i.e. from July, 2009 till October, 2009 the petitioner has been paid as per the latest Pay Commission. DA was increased from 22% to 27% w.e.f. 01.07.2009 and this increment was also paid to the petitioner in December. On 22.02.2010 the petitioner was paid arrears as per the Sixth Pay Commission for the period from 01.01.2006 till 31.05.2009 i.e. a total sum of Rs. 2, 24, 592/- after deducting taxes. Further arrears of transport allowance and subsistence allowance were also given on 26.02.2010. Salary as per the Sixth Pay Commission is being paid to the petitioner till date. Such being the case, I cannot accept the petitioner's grievance at this stage.

11. Insofar as the contention of violation of Rule 115 (2) of the Delhi School Education Rules, 1973 is concerned, the same is rejected in view of ***Kathuria Public School Vs. Director of Education & Anr., 123 (2005) DLT 89 (DB)*** wherein paragraph 44 states that "*provisions*

of Sections 8 (2) and 8 (4) of the said Act, Rules 115 (2) and (5) and 120 (1) (d) (iii) and (iv) and 120 (2) of the said Rules requiring prior and ex post facto approval for disciplinary proceedings would have no application to private unaided schools. ”

12. Reference be made to the petitioner’s letter dated 28.08.2008 wherein the petitioner has stated that he has had *“the honour to state that I have given punishment to three students of class VI A. I also slapped them as they were not going along with me to principal’s office.”* The petitioner then wrote a letter of resignation dated 09.09.2008 in which the petitioner has submitted his resignation thus :

“Respected Sir,

The unpleasant incident of 29th August, 2008 and consequent development, I felt very humiliated. Being a teacher do I have no rights to mend a child?.....I wanted them to be punished by the principal. But things gone against me.

Now I have no intention to malign the name of the education society or tarnishing the image. Please forgive me if any thing happened earlier. Hence I wanted to tender my resignation and get relieved from service.

..... ”

13. The petitioner admitted hitting the students of the respondent school. He has even tendered a resignation stating that he feels humiliated that he being a teacher was not allowed and was in fact reprimanded for ‘mending’ the students. The petitioner’s withdrawal of resignation dated 26.09.2008 stating that he was compelled to write the letter of confession and also the resignation letter under duress was not received by respondent no. 1. In light of all these facts and the verbiage of the petitioner’s various letters as stated above, the explanations given by the him vis-à-vis being compelled to write the confession as well as

resigning under duress etc. seem unconvincing at this stage. The explanation of the petitioner for appending his signatures on the document during the proceedings stating that he was satisfied with the enquiry due to the Enquiry Officer's "prevailing over" him also seems far fetched.

14. Counsel for the respondents relied upon ***Kanailal Bera Vs. Union of India & Ors., (2007) 11 SCC 517*** wherein the Supreme Court held in paragraph 6 that "*once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges leveled against him or not.*". As regards the present writ also, Rule 123 (xviii) of the Delhi Education School Education Rules, 1973 clearly states that slapping and such other corporal punishment meted out to students will constitute a grave misconduct for which disciplinary action will be liable. Statutorily therefore, the enquiry must be completed as the alleged act which has been admitted by the petitioner but is now being denied is a grave offence and is a malaise rooted in our education system, one that needs to be wrenched out from the roots in order to ensure a brighter future for our country.

15. Lastly, the Apex Court's decision in ***Union of India & Anr. Vs. Kunisetty Satyanarayana, (2006) 12 SCC 28*** may be referred to, the relevant portion of which reads as under :

"14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be

premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.”

The matter as it stands now is that the petitioner has been under suspension pending completion of the disciplinary enquiry being carried out. He is not being prejudiced by the suspension as a necessary and legal enquiry is on-going in a lawful manner and during its pendency, as per the respondents, the petitioner is receiving the salary due to him in accordance with the latest Pay Commission. If after completion of the Enquiry the petitioner believes that he has been prejudiced against or that respondent no. 1 principal has participated in the decision-making portion of the Enquiry as well or that he has received reduced salary which is not as per the latest pay commission, the petitioner is free to approach the Court or any other appropriate forum.

16. As for now, the charge-sheet or the on-going disciplinary enquiry do not give rise to any cause of action and the petitioner's rights are not infringed, therefore, there is no ground on the basis of which this Court can exercise the discretionary power vested in it by Article 226 of the Constitution of India. In view of the afore-mentioned observations,

nothing remains to be decided and the present writ is dismissed along with all pending applications.

MANMOHAN SINGH, J.

APRIL 20, 2010
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