

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **WP(C) No.2431/2010 & CM Nos. 4863-4866/2010**  
% **Date of Decision: 04.05.2010**

MCD ..... Petitioner  
Through Mr.Himanshu Upadhyay, Advocate

Versus

Kanta Rani Kumar ..... Respondent  
Through Mr.H.D.Sharma, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE ANIL KUMAR**  
**HON'BLE MR. JUSTICE MOOL CHAND GARG**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 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.**  
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The petitioner/Municipal Corporation of Delhi has impugned the order dated 8<sup>th</sup> October, 2009 passed by the Central Administrative Tribunal, Principal Bench in TA 1196/2009 allowing the application of the respondent and quashing the charge sheet issued in 2006 by the petitioner and also quashing the order dated 20<sup>th</sup> February, 2006 passed against her and directing the petitioner to grant promotion to the respondent from the date her other juniors had been given promotions with all consequential benefits.

The case of the petitioner is that the Govt. of NCT of Delhi had initiated regular departmental inquiry for major penalty against the respondent who was working as an Assistant Education Officer with the petitioner. The allegation against the respondent was that while working as PGT in GGSSS, Nand Nagri, New Delhi, she had prepared a false transfer certificate of Class X on 13<sup>th</sup> August, 1991 in the name of Ms. Jyoti Rani, whereas Ms. Jyoti Rani, daughter of Smt. Jaisal Vijay, Principal had never studied in Class X of the said school.

The respondent had joined as an Assistant Education Officer with the petitioner on 19<sup>th</sup> May, 1992 and she had retained her lien for a period of two years in Directorate of Education. A charge sheet was issued to the respondent on 17<sup>th</sup> February, 1995 framing the following charge:-

**“STATEMENT OF CHARGE FRAMED AGAINST SMT.KANTA RANI KUMAR D/O SHRI BALWANT SINGH, THE THEN PGT, GGSSS, NAND NAGRI, DELHI (NOW AEO/CITY ZONE, MCD).**

Smt. Kanta Rani Kumar was functioning as PGT in Govt. Girls Sr.Sec.School, Nand Nagri, Delhi during the year 1991. She prepared a false transfer certificate on 13.8.1991 in the name of Ms.Jyoti Rani, whereas Ms.Jyoti Rani never studied in Class x of GGSSS, Nand Nagri.

She, thereby, contravened Rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964 as made applicable to the Govt. employees.”

The charge alleged against the respondent was denied by her. The respondent had challenged the departmental inquiry against her by the petitioner on the ground that she was no longer in the service of Delhi Government and consequently the proceedings against her were in violation of Rule 14 CCS (CCA) Rules. Pursuant to the objection by the respondent, the stand was taken that the charge sheet dated 17<sup>th</sup> February, 1995 was issued to the respondent in violation of Rule 14 of CCS (CCA) Rules and the competent authority to initiate disciplinary action was not Lieutenant Governor but the Commissioner, MCD after her joining MCD on 19<sup>th</sup> May, 1992. It was further asserted that the entire record has been preferred to the Commissioner/MCD for taking necessary action in accordance with the Government of India Instruction No. 1 under Rule 11 of the CCS(CCA) Rules, which is as under:-

“(1) Departmental action in respect of misconduct committed in earlier employment. It is clarified that the provision of Rule 11 of the CCS (CCA) Rules, 1965, which envisages the imposition of penalties on Government servant for good and sufficient reason is adequate authority for taking action against a Government servant **in respect of misconduct committed before his employment if the misconduct committed before his employment was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service.** When such action is taken, the charge should specifically state that the misconduct alleged is such that it renders him unfit and unsuitable for continuance in service.”

The respondent also claimed that if the inquiry is vitiated against her, she would also be entitled for the promotion and all the consequential benefits. The respondent had challenged the continuation of inquiry against her by filing a writ petition in the High Court which was transferred to the Central Administrative Tribunal and was numbered as TA 1196/2009.

The plea of the respondent was challenged by the MCD contending interalia that in consultation with Central Vigilance Commission, it has been stated that the charge sheet issued by Delhi Government is not by any competent person and only the Commissioner of MCD could initiate disciplinary proceedings and the same was justified under Rule 11, Instruction No. 1. Regarding the promotion of the respondent, it was pleaded that since the respondent is facing a disciplinary proceeding for major penalty, she is not entitled for promotion.

The Tribunal by considering Rule 11, Instruction No. 1 held that continuing with the inquiry with the new employer requires that the charge should specifically stipulate that the misconduct alleged is such that it renders the employee unfit and unsuitable for continuance in service with the new employer and there is a rational relation with the alleged misconduct.

Since the charge sheet did not stipulate that the continuance of the respondent with MCD renders her unfit and unsuitable on account of an act allegedly committed by her, when she was not employed with MCD, consequently, the condition precedent under Rule 11 instruction (1) are not met and consequently, the application of the respondent was allowed and the charge sheet issued in 2006 and the order passed on 20<sup>th</sup> February, 2006 was set aside and as the charge sheet/disciplinary proceedings were quashed, it was also held that the respondent shall be entitled for promotion with all consequential benefits.

The learned counsel for MCD has reiterated the pleas and contentions raised before the Tribunal. The learned counsel for the petitioner, however, has not been able to dispute that in order to continue the inquiry against the respondent, the petitioner had not only to frame the charge that there is a rational connection between the misconduct alleged by the petitioner, while the respondent was in the service of the earlier employer, but also had to allege and demonstrate that the alleged misconduct with the earlier employer renders her unfit and unsuitable for continuing in service.

This has not been disputed that the charge framed against the respondent does not incorporate the requirement of Rule-11 instruction (1) so as to sustain the disciplinary proceedings against her. In the circumstances, there is no cogent explanation given by the learned

counsel to hold that the order of the Tribunal suffers from any illegality or irregularity. On the basis of the charge framed by the petitioner, no disciplinary action can continue against the respondent.

In the facts and circumstances and for the foregoing reasons this Court, therefore, does not find any such perversity in the order of the Tribunal dated 8<sup>th</sup> October, 2009 which shall require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit, and it is, therefore, dismissed. All the pending applications are also disposed of. The Caveat filed by the respondent/caveator is also discharged.

**ANIL KUMAR, J.**

**MAY 04, 2010**

‘rs’

**MOOL CHAND GARG, J.**