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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 432/2010

PARIMAL KUMAR DUTTA Appellant
Through: Mr. Bharat Bhushan, Advocate.

versus

APPEJAY SCHOOL & ORS Respondents
Through: Ms. Purnima Maheshwari, Advocate
for respondent No.2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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Date of Decision: 05th July, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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

DIPAK MISRA, CJ

Questioning the defensibility of the order dated 20th April, 2010
passed by the learned Single Judge in W.P.(C) 2063/2010, the present
appeal has been preferred under Clause 10 of the Letters Patent.

2. The facts which are requisite to be adumbrated for the purpose of adjudication of this appeal are that the appellant, a teacher in APJ Public School, was proceeded in a disciplinary proceeding on the ground that he had imposed corporal punishment. Be it noted, the disciplinary proceeding was initiated by the Principal of the school and thereafter charges were framed and an enquiry officer was appointed.

3. It is evincible from the factual expose' that during course of enquiry, the Principal was examined as a witness since a confessional letter was submitted by the delinquent teacher before her.

4. Being aggrieved by the same, the petitioner invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to quash the entire proceeding and as well as the participation of the Principal in the enquiry proceeding.

5. It was contended before the learned Single Judge that the Principal being a part of the disciplinary committee, could not have examined herself as a witness and further her participation in the ultimate determination of penalty would cause immense prejudice to the petitioner. It was also contended that the order of suspension has paled into insignificance inasmuch as after the expiration of six months as engrafted under Rule 115(2) of the Delhi School Education Rules, 1973, no steps have been taken.

6. The stand and stance put forth by the petitioner was combatted by the answering respondent contending, inter alia, that the Principal was required to be examined before the enquiry officer as the confession was made before her; that the doctrine of necessity in a case of this nature would substantially come into play; and further the reliance on Rule 115(2) for the purpose of revocation of the order of suspension has no legs to stand upon.

7. The learned Single Judge referred to the factum of revocation of suspension and after dwelling upon Rule 115, expressed the view as the proviso to sub-rule 2 of Rule 115 has been declared ultra vires in *Kathuria Public School vs. Director of Education & Anr., 123 (2005) DLT 89 (DB)*, the same has no relevance to the case at hand and in any case the said provision does not render any assistance to the petitioner.

8. Mr. Bharat Bhushan, learned counsel for the appellant has submitted that the learned Single Judge has not addressed himself to the issue that the Managing Committee had not extended the continuance of the order of suspension beyond the period of six months and, therefore, the appellant could be automatically reinstated. In this context, we may refer with profit to Rule 115(2) of the Delhi School Education Rules, 1973:-

“115. Suspension –

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(2) No order for suspension shall remain in force for more than six months unless the managing committee, for reasons to be recorded by it in writing, directs the continuation of the suspension beyond the period of six months.”

9. Ordinarily, we would have proceeded to interpret the provision as regards the effect of the provision when the Managing Committee does not direct for the continuance of suspension beyond the period of six months, but, a pregnant one, on a query being made whether such a stand was taken in the pleadings, the learned counsel laboured hard to point out from many a paragraph but unfortunately despite applying the conceptual x-ray to the pleadings, we could not notice such an assertion or any averment remotely made in that regard. In the absence of any pleading in the writ petition and, further, as is evident, such a contention was not canvassed before the learned Single Judge, it would be extremely difficult at this juncture to hold that the Managing Committee had not extended the period of suspension. Thus, the plea raised having no infrastructure or base has to be repelled and we accordingly so do.

10. The second limb of submission of the learned counsel for the appellant is that the Principal being a head of the school is a part of the Disciplinary Committee and, therefore, could not have examined herself as a witness and by such an act, the entire enquiry proceeding

is vitiated being hit by doctrine of prejudice.

11. Resisting the aforesaid contentions it is submitted by Mr.Maheshwari, learned counsel for the second respondent that the Principal had received the letter of confession and the said letter was required to be proven by adducing cogent evidence before the Inquiry Officer.

12. In this context, we may fruitfully refer to Rule 118 of the 1973 Rules which deals with disciplinary authorities in respect of employees. The said Rule reads as under:-

“118. Disciplinary authorities in respect of employees—

The disciplinary committee in respect of every recognised 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 proceeding 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.”

From the aforesaid, it is clear as crystal that the principal is a part of disciplinary committee. The issue that emanates for

consideration is whether she could have examined herself in the enquiry proceeding as a witness.

13. It is worth noting that the letter of confession as a document has to be tendered in evidence and then only it would become a piece of evidence and the weightage that is to be given to the same would depend upon various facts and circumstances. In this regard, we may refer with profit to the decision in ***Nagubai Ammal and others Vs. B.Sharma Rao and others, AIR 1956 SC 593*** wherein it has been held as follows:-

“(18). An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppels.....”

14. In ***K.S. Vs. Union of India, AIR 1958 SC 419*** the Apex Court has observed that an admission is not conclusive proof of the matter admitted, though it may in circumstances operate as estoppel.

15. In ***Janki Singh and Ors. Vs Basant Singh, AIR 1967 SC 341*** a three-Judge Bench of the Apex Court referred to the decision of Bombay High Court in ***D.S. Mohite v. S.I. Mohite, AIR 1960 Bombay 153*** and expressed the view thus:-

“(5)..... Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by

a party in a pleading and other admissions. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that is not true.”

16. In ***Prem Ex-servicemen Co-op. Tenant Farming Society Ltd. and Ors. Vs. State of Haryana and Ors.*** (1974) 2 SCC 319 their Lordships while dealing with the effect of admission have opined thus:-

“3..... It may be that the members of the Co-operative Societies had made some admissions the nature and effect of which require examination. It is well settled that the effect of an alleged admission depends upon the circumstances in which it was made. We are unable to go into these questions until they have been fully and properly investigated by an authority empowered to consider them.”

17. We have referred to the aforesaid decisions to highlight that though confession is not defined in the Indian Evidence Act, ordinarily it is understood as an admission. The value of the confession has to be adjudged regard being had to the facts and circumstances, but, all steps are required to be taken to prove the confession as per law. The Principal concerned though a member of the Disciplinary Committee, yet in the obtaining factual matrix, was entitled under law to adduce evidence and hence, we do not perceive any error in the same.

18. The controversy can be looked from another angle. The confession, whatever would have its acceptance in law, was made

before the Principal. The submission of learned counsel for the appellant is that she being a member of the Disciplinary Committee should not have become a witness. Learned counsel for the respondent No.2, per contra, would contend that she being the sole person before whom the confession was made the doctrine of necessity would also get attracted subject to certain riders. It is urged by him that as she shall not participate and recuse from the stage she has deposed before the Inquiry Officer the question of any kind of bias does not arise. In this context, we may profitably refer to the decision in ***Badrinath Vs. Government of Tamil Nadu and Ors.* AIR 2000 SC 3243**. In the said case the third respondent therein who had earlier recorded adverse remarks against the appellant was the Chairman of the Joint Screening Committee which had found the appellant not fit for selection to the selection grade. The question that arose before the Apex Court related to bias and doctrine of necessity in the administrative law and the plea of malafide as against the said respondent. Their Lordships while dealing with the said facet have ruled as follows:-

“68. This contention raised by Sri C.S.Vaidyanathan for the respondents is well founded. This Court has held that, in such situations, no question of bias can be raised. In State of M.P. v. Ganekar Motghare, 1989 Suppl.(2) SCC 703, a Deputy Director was compulsorily retired on the recommendations of the Screening Committee. The Director, being head of the Department, had earlier awarded adverse remarks to the officer and later he also sat in the Screening Committee. It was held that there was nothing wrong with the presence in the Committee and neither bias nor malice in law could be imputed to him. The High Court’s reliance on A.K.Kriapak vs. Union of

India, (1968) 2 SCC 262 : (AIR 1970 SC 150) was not accepted. Similarly, in State of Uttar Pradesh v. Raj Kishore Bhargava, 1992 Suppl. (2) SCC 92, the Chief Engineer who had given adverse entries against the officer in one year was appointed a member of the Screening Committee for deciding about the compulsory retirement of the officer. It was held that no allegation of bias can be made against the Chief Engineer.

69. In the light of the two precedents, we hold that from the mere fact that the Chief Secretary who had earlier made certain adverse remarks against the appellant was the Chairman of the Screening Committee, no bias can be imputed from that fact alone.

19. In the case at hand when the Principal herself has given in writing that she would not be participating when there would be discussion of the Disciplinary Authority with regard to delinquent employee, we are of the considered opinion, there is no violation of principles of natural justice and the doctrine of bias is not attracted.

20. We would be failing in our duty if we do not note that Mr. Bharat Bhushan has brought to our notice certain observations in paragraph 13 of the order passed by the learned Single Judge wherein he has in a way observed that the letter of confession was written under no duress. We are of the considered view that the said observation was not necessary and accordingly, the same stands deleted. It is open to the enquiry officer to deal with the statement of the Principal as well as the documentary evidence which have brought by way of the confessional statement as per law.

21. At this juncture, we may hasten to add that when the disciplinary proceedings have been initiated and the inquiry is in progress, it must come to a logical end and the said proceeding would not be allowed to continue ad infinitum and accordingly it is directed that the disciplinary authority would be well advised to conclude the same as expeditiously as possible, preferably, within a period of three months from today. Ms. Purnima Maheshwari, learned counsel appearing for second respondent/Director of Education shall communicate to the disciplinary authority as well as to the Managing Committee of the School so that the order can be complied with.

22. With the aforesaid modification in the order of the learned Single Judge the appeal stands disposed of without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J

JULY 05, 2010

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