

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

Date of decision: 29th April, 2011.

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W.P.(C) 462/2011

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V.K. MATTA

.... Petitioner

Through: Dr. J.C. Madan, Adv.

Versus

**CHIEF SECRETARY, GOVT. OF NCT OF DELHI
& ORS.**

....Respondents

Through: Ms. Megha Bharara, Adv. for Ms.
Ruchi Sindhwani, Adv. for R-1 & 2.

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. The writ petition impugns the order dated 12th November, 2010 of the Delhi School Tribunal dismissing the appeals of the petitioner against the orders of suspension and removal from service of the petitioner,

employed as a Cricket Coach-cum-Office Assistant in the respondent no.3 Modern Public School, Shalimar Bagh, Delhi.

2. The petitioner was appointed to the respondent no.3 School vide appointment letter dated 18th June, 1996 and his services were confirmed vide letter dated 1st July, 2000. The respondent no.3 School planned an excursion to Kullu-Manali and Rohtang Pass for the students of Class IX to Class XII from 26th May, 2007 to 31st May, 2007. The petitioner was one of the five teachers who accompanied the students on the said excursion. A show cause notice dated 28th June, 2007 was issued to the petitioner stating, that one of the female teachers accompanying the students had complained against the petitioner of non-cooperation and of non-performance of duty as teacher-cum-guardian to the students and of behaviour unacceptable to a female colleague; that an anonymous fax was also received by the respondent no.3 School complaining of misconduct involving moral turpitude by the petitioner during the said excursion; it had also been noticed that the students had taken/purchased/collected CDs of pornographic movies and viewed the same during the excursion and the

petitioner rather than discouraging the students had encouraged them and joined them in the same. The female colleague of the petitioner also complained of sexual harassment and misbehaviour on the part of the petitioner and a Preliminary Inquiry Committee and a Sexual Harassment Committee had been constituted which had investigated the matter and had found the petitioner from dereliction in performance of duty, negligence as a teacher-cum-guardian and having committed misconduct, moral turpitude having caused sexual harassment and indulged in indecent behavior towards female colleague. The petitioner was accordingly asked to show cause.

3. The petitioner was subsequently served a charge sheet and an Inquiry Officer appointed. The Inquiry Officer held the charges aforesaid to have been made out and the Disciplinary Authority proposed imposition of major penalty i.e. of removal from service which shall not be disqualification for future employment in any other recognized private school, on the petitioner and after considering the representation of the petitioner, confirmed the said punishment.

4. The School Tribunal negated the contention of the petitioner of the constitution of the Preliminary Inquiry Committee being illegal. It was held that a Preliminary Inquiry Committee is only a fact finding Committee and preceding the Disciplinary Committee constituted under Rule 118 of the Delhi School Education Rules, 1973. The contention of the petitioner that charges were vague and unspecific was also found to be without any merit. The Tribunal also found that the case of the petitioner making sexually coloured remarks and of having caused sexual harassment to the female colleagues was sufficiently established. The other contention of the petitioner of his being the non-teaching staff and having been wrongly taken on the excursion was also found to hold no water. Similarly, no basis was found for the claim of the petitioner of his request for change of the Presenting Officer having not been allowed and of the Inquiry Officer having held certain documents to be irrelevant and of the necessary witnesses having not been examined. It was also held that though as per the judgment dated 27th August, 2010 of the Full Bench of this Court in O.Ref.1/2010 titled ***Presiding Officer, Delhi School Tribunal Vs. GNCTD*** the appeal against suspension was not maintainable but the

same had in any case become infructuous upon the removal order having been made.

5. The counsel for the petitioner has at the outset argued that the petitioner was being prosecuted for union activities in the respondent no.3 School. It is argued that on the complaint of the Union, the Directorate of Education had found the Principal of the respondent no.3 School to have been not duly appointed and for the said reason the respondent no.3 School Management was vindictive towards him and had sent him on the excursion with the motive of framing him.

6. Not finding any such plea to have been taken in the reply to the show cause notice or during the course of enquiry/disciplinary proceedings, it was enquired from the counsel for the petitioner as to how the same could be permitted to be taken now. The counsel for the petitioner has fairly admitted that no such plea was taken at any time till in the appeal to the Tribunal. A perusal of the documents filed shows that the complaint against the Principal was by the Staff Association of the

respondent no.3 School. There is no document whatsoever to show that the petitioner was an office bearer of the Staff Association or was the moving force thereof. Merely because the Staff Association had taken up cudgels against the Principal and/or the Management of the respondent no.3 School, would not entitle the petitioner to vitiate the disciplinary proceedings against him especially when the complaints against the petitioner were *inter alia* from other members of the Staff Association and when the petitioner did not choose to take the said plea during the disciplinary proceedings. The normal course of human behavior required the petitioner, if of the opinion that he was being victimized, to immediately take the said ground.

7. The counsel for the petitioner has otherwise argued the writ petition as an appeal and did not make any argument whatsoever as to any defect in the enquiry proceedings. It is the settled principle of law that interference by this Court in the exercise of powers under Article 226 of the Constitution of India is limited to overseeing that the enquiry into the misconduct is fair and sufficient opportunity has been given to the

delinquent to defend himself. Else, this Court is not to sit in appeal over the findings of the Disciplinary Committees. Significantly, the constitution of the Disciplinary Committee itself is provided for under the Rules and is to comprise of the nominees of the Directorate of Education also.

8. The Eleven Judges Bench of the Supreme Court in ***T.M.A. Pai Foundation Vs. State of Karnataka*** (2002) 8 SCC 481 observed that such disputes relating to Schools ought not to come before the Courts and suggested the constitution of a Tribunal. It was in pursuance to the said suggestion that the School Tribunal came to be constituted. The Legislature has not provided for any appeal against the order of the School Tribunal, findings of which are intended to be final subject of course to the powers of this Court under Article 226 of the Constitution. However, in garb thereof this Court cannot enter into the same exercise to avoid which the constitution of the School Tribunals was suggested by the Apex Court.

9. The counsel for the petitioner has also argued that no disciplinary proceedings could have been initiated against the petitioner on an anonymous complaint. No merit is found in the same inasmuch as during the inquiry not only the colleagues of the petitioner but also the students deposed against the petitioner.

10. Though the counsel for the petitioner upon being told that the challenge could only be on the basis of the error if any in the procedure followed made a faint attempt to challenge the same also but there is no basis therefor in the writ petition also, save for averring that inspite of his having expressed apprehension of bias against the Inquiry Officer and the Presenting Officer, the same were not changed (however the reason for bias on the part of the Inquiry Officer is not stated); inspection of certain documents having not been given for the reason of the same being irrelevant (it is however not the case that the said documents were otherwise relied upon by the Inquiry Officer or the Disciplinary Authority); of the proceedings having been conducted under influence of the Disciplinary Authority; of the witnesses being tendered for cross-

examination after their previous statements had been read over to them and having been permitted to improve upon their previous statements. However, no arguments as aforesaid on the said pleas were raised.

11. There is no merit in the writ petition; the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

APRIL 29, 2011

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(Corrected and released on 11th May, 2011)