

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

Date of decision: 3rd October, 2011.

+ **W.P.(C) 8594/2009 & CM No.16609/2011 (for direction)**

% **PARUL BHARTI** **..... Petitioner**

Through: Ms. Arati Mahajan Shedha, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS. **..... Respondents**

Through: Ms. Bandana Shukla for Ms. Ruchi
Sindhwani, Adv. for R-1&2.
Mr. Anil Sehgal, Adv. for R-3 to 6.
Mr. Anil Kumar, DEO, Zone-16.

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? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petitioner was employed as a Laboratory Assistant with the respondent no.3 S.D. Secondary School (Gujarat), an aided school. This petition was filed for setting aside of the order dated 31st August, 2006 of the

respondent no.3 School placing the petitioner under suspension and impugning the charge sheets dated 7th December, 2005 and 27th November, 2006 and the inquiry proceedings in pursuance thereto. Though the interim relief of stay of the inquiry proceedings was sought but not granted. The counsels have been heard.

2. It emerges, that the charge sheets aforesaid with which the petitioner was served and in pursuance to which the petitioner was placed under suspension did not culminate in any disciplinary action against the petitioner in as much as the said proceedings were not approved of by the respondent no.2 Directorate of Education (DOE). The respondent no.3 School thereafter commenced a fresh inquiry against the petitioner and the disciplinary authority of respondent no.3 School punished the petitioner with dismissal of service from the employment of the respondent no.3 School but which punishment was modified to that of compulsory retirement, by the respondent no.2 DOE.

3. The contention of the counsel for the respondent no.3 School thus is that the present writ petition has become infructuous and is liable to be disposed of as such as neither the suspension nor the charge sheets or the inquiry in pursuance thereto challenged in this petition survive and stood substituted by a fresh inquiry and which is not under challenge.

4. It has been enquired from the counsel for the petitioner whether the petitioner has impugned the order of compulsory retirement. The counsel for the petitioner states that the same has not been challenged because the petitioner on the one hand and the Society under aegis of which the respondent no.3 School functions on the other hand arrived at a settlement and whereunder it was agreed that the petitioner shall be taken back into employment. It is further stated that the matter is pending before the respondent no.2 DOE in this regard. CM No.16609/2011 seeking direction to the respondent no.2 DOE to permit the Society running the school to take back the petitioner and her husband (who was also in employment of the respondent no.3 School and who also as per the settlement is to be taken

back into service) into service and to keep the present writ petition pending till the final decision of the respondent no.2 DOE.

5. The counsel for the respondent no.3 School states that though the petitioner on approaching the President of the Society had prevailed upon him to agree to the aforesaid but the Managing Committee of the respondent no.3 School has not agreed to the said proposal and as such the question of the respondent no.2 DOE issuing any directions in this regard does not arise.

6. The counsel for the petitioner in response to the query as to why the petition has not become infructuous has given two reasons. Firstly, it is stated that the claims of the petitioner for salary upon the relief with respect to suspension being granted can be agitated only in this writ petition and not before the Delhi School Tribunal. Secondly, it is contended that the petitioner having impugned the very initiation of the inquiry in this petition, even if the same has culminated in a disciplinary action aforesaid against the petitioner, the petitioner is entitled to continue the present proceedings and if

succeeds in the same, the final disciplinary action against the petitioner would also stand set aside.

7. I am unable to agree with the latter of the aforesaid contention of the counsel for the petitioner. The inquiry which was challenged in this petition already stands substituted by a fresh inquiry. The petitioner did not challenge the fresh inquiry in this petition. The fresh inquiry having resulted in an order of compulsory retirement of the petitioner, the challenge if any has to be thereto and not by way of the present writ petition. The argument of the counsel for the petitioner if accepted would lead to multiplicity of litigations with a challenge being first made to the initiation of the inquiry and thereafter to the culmination thereof. Merely because the petitioner has kept this petition pending, would not entitle the petitioner to the relief as claimed. The counsel for the respondent no.3 School in this regard has also invited attention to the order dated 21st April, 2010 in the present proceedings whereunder the petitioner had agreed to appear before the Inquiry Officer and to raise all objections before the said Inquiry Officer.

Attention is also invited to the order dated 8th July, 2010 whereby the respondent no.2 DOE was directed to take a decision on the inquiry report within three months from that date and in pursuance to which direction the respondent no.2 DOE has taken a decision of imposition of penalty of compulsory retirement. Moreover the Delhi School Education Act, 1971 provides for the remedy of appeal before the Tribunal against the order of compulsory retirement and the remedy of the petitioner is before the Tribunal.

8. Thus the only question which remains to be adjudicated is as to the effect of the challenge to the order of suspension. In this regard, it may be noticed that the suspension order dated 31st August, 2006 of the petitioner was approved by the respondent no.2 DOE on 13th September, 2006. However the respondent no.2 DOE on 27th July, 2007 revoked the suspension of the petitioner. On 11th November, 2009, a fresh inquiry as aforesaid, was sanctioned against the petitioner and on 24th February, 2010 DOE approved the continuation of the petitioner on suspension during the

pendency thereof. However such continuation of suspension can date back maximum to the commencement of fresh inquiry i.e. 11th November, 2009 and cannot relate back to any date prior thereto. It is however the admitted position that the petitioner remained under suspension, throughout from 31st August, 2006 till compulsory retirement.

9. Thus the question is as to the entitlement of the petitioner during the period 27th July, 2007 to 11th November, 2009 i.e. whether the suspension of the petitioner during the said period is valid or not and whether the petitioner, for the said period, is entitled only to suspension allowance in accordance with provisions of the Delhi Education School Rules 1973 or is entitled to full emoluments.

10. The counsel for the respondent no.3 School states that the said question would be beyond the scope of the present petition. Even though strictly so but I am of the opinion that the matter being before this Court, the same should not be left adjudicated particularly when Section 8(3) of the

Act as now interpreted by the Full Bench in O.Ref.1/2010 titled ***Presiding Officer, Delhi School Tribunal Vs. GNCTD*** decided on 27th August, 2010 does not permit the said question to be agitated before the Delhi School Tribunal.

11. The counsel for the respondent no.3 School has also contended that the approval on 24th February, 2010 to the suspension should be construed as an approval of suspension from the date of revocation i.e. 27th July, 2007. However I am unable to agree. There is nothing to show that the decision of the respondent no.2 DOE of not granting approval to the earlier inquiry against the petitioner or of the revocation dated 27th July, 2007 of suspension was at any time recalled. The only conclusion thus can be that the suspension of the petitioner between 27th July, 2007 and 11th November, 2008 was without authority of law and the petitioner for the said period would be entitled to full wages and not merely suspension allowance.

12. As far as the relief claimed in CM No.16609/2011 is concerned, the

Act and the Rules do not recognize the Society and recognize only the Managing Committee of a recognized School and in the absence of any compromise between the Managing Committee of the respondent no.3 School and the petitioner, no direction as sought to the respondent no.2 DOE, can be given.

13. The petition is therefore disposed of with a direction to the respondents to pay, the differential between the suspension allowance already paid and the full wages for the period 27th July, 2007 to 11th November, 2009, to the petitioner within three months of today. Else, the petition is infructuous and is disposed of with liberty to the petitioner to take appropriate remedy against the order of compulsory retirement.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

OCTOBER 03 2011
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