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

% *Judgment delivered on: 15th May, 2012*

+ **W.P.(C) No.6076/2002**

MGT. COMMT. RAMJAS FOUNDATION & ORS. Petitioner
Through : Mr.M.M.Kalra, Mr.Kunal Kalra &
Ms.Sushma, Advs.

versus

S.K.AGGARWAL & ANR. Respondents
Through : Mr.Pramod Gupta, Adv for R-1.
Ms.Shubham Mahajan & Ms.Avnish Ahlawat,
Advs for respondent No.2 with Ms.Kamla,
Director of Edn in person.

With

+ **W.P.(C) No.6077/2002**

MGT. COMMT. RAMJAS FOUNDATION & ORS. Petitioner
Through : Mr.M.M.Kalra, Mr.Kunal Kalra &
Ms.Sushma, Advs.

versus

C.P.GAUTAM & ANR. Respondents
Through : Ms.Shubham Mahajan & Ms.Avnish
Ahlawat, Advs for respondent No.2 with
Ms.Kamla, Director of Edn in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Since, vide both the petitions i.e. W.P.(C) No.6076/2002 and W.P.(C) No.6077/2002 petitioners have impugned the judgment dated 09.07.2002 passed by Delhi School Tribunal in favour of respondent No.1 respectively, hence, both the aforementioned petitions are taken up for disposal by this common judgment.

2. It is pertinent to mention here that notice in the instant petitions were issued on 24.09.2002 and thereafter vide order dated 03.02.2003, operation of the impugned judgment was stayed on the submission of the petitioner that the petitioner and Director of Education were willing to accept the offer of respondent No.1 for voluntary retirement, matter can be settled. It is further stated that this will be without prejudice to the rights of respondent No.1, in case no settlement arrived at.

3. Order sheets reveals that and in the order dated 05.03.2003 it is noted that Mr.V.P.Choudhary, learned Senior Advocate appearing on behalf of petitioner submitted that the request of respondent No.1 for voluntary retirement was considered by the managing committee of the petitioner school, but the same has been rejected.

4. I note, none appeared on behalf of petitioner on 16.01.2006, 17.03.2009, 10.08.2009, 04.09.2009 and same position remained on 07.09.2009 also. Having no option, this Court dismissed the instant petition.

5. On moving the application for restoration of the petitions, same were directed to be restored vide order dated 18.03.2010.
6. Before proceeding further, it is noted that vide order dated 10.09.2010 in W.P.(C) No.6077/2002, it was directed to list this writ petition for hearing alongwith connected writ petition being W.P.(C) No.6076/2002 in the category of 'Regular Matters' on its turn. Hence, thereafter, no orders are being passed in the W.P.(C) No.6077/2002; however, same is listed alongwith first petition for hearing.
7. It is also in place to mention here that as per order dated 18.01.2012, Mr.Nitinjya Choudhary, proxy counsel for petitioners appeared and stated that main counsel was not available and at his request, the instant petitions were adjourned for today. However, it was made clear in the said order that no further adjournment shall be granted in the matter.
8. Today, instant petition was taken up, at first call Ms. Sushma Sachdeva, learned counsel appeared and sought adjournment. This Court declined the same and directed the petitioner to argue the matter in the after lunch session at 02:15PM.
9. Accordingly, matter taken up at 02:20PM, said learned counsel again stated that 'Advocate on Record' is on the way.
10. Meanwhile, Mr. M.M.Kalra, learned counsel appeared and submitted that matter may be adjourned for tomorrow. His request has been turn down by this Court. However, learned counsel agreed to argue the matter.
11. The main grounds taken in the instant petitions are that the Tribunal

has failed to appreciate that the respondent No.1 was not working in the school for more than ten years since 1992, and he was under suspension. As such he was not entitled for any pay for the said period on the principle of 'No work – no pay'.

12. Further ground taken is that the Tribunal failed to appreciate the gravity of charges against the respondent No.1, a teacher who is mentor of a child's future, cannot play with it. In the present case, respondent No.1 had indulged in heinous type of crime. No amount of justification, sought to be tendered by him for his admitted irregularities in awarding the marks, can be accepted.

13. It is also the ground that records of the case clearly show that the delinquent employees i.e. respondent No.1 were given ample opportunity to defend the cases and lead evidence in their support. In fact, the records of the proceedings of the Disciplinary Authority clearly show that the respondent No.1 were given and had availed all the opportunities to defend their cases right from the stage of issuance of preliminary show cause notice to the stage the order of dismissal from service.

14. Mr. Kalra, learned counsel appearing for petitioners submitted that the Tribunal has gone wrong while recording the opinion that the enquiry was held in breach of principles of natural justice.

15. He further submitted that the Tribunal has failed to appreciate the settled law that rules of procedures are meant for guidance of conduct of a domestic enquiry. It is equally well settled that domestic enquiries are not strictly bound by rules of or procedures. Moreover, mere violation of

principles of natural justice, are not sufficient and does not entitle anyone to claim that same vitiates the entire enquiry. Mere breach of principles of natural justice, are not sufficient.

16. It is further submitted that the Tribunal failed to appreciate that the enquiry against the respondent No.1 were conducted in accordance with the provisions of Delhi School Education Rules, 1973 and also in compliance of the principles of natural justice. Rule 120 governs the procedure for imposing major penalty itself and the order imposing any major penalty on any employee shall be made after an enquiry held 'as far as may be' in the manner specified. Therefore, even the Delhi School Education Act and Rules itself contemplates that the rules enumerated for holding a disciplinary enquiry needs to be substantially complied with and that the disciplinary authority has been given some flexibility in the manner in which the same ought to be followed.

17. Learned counsel has relied upon ***State Bank of Patiala & Ors v. K.S. Sharma : 1996 (3) SCC 364*** wherein the Apex Court held that:

“It would not be correct to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet the order passed is altogether void and ought to be set aside without further enquiry. The approach and test adopted in B.Karunakar should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e. adequate or a full hearing) or of violation of a procedural rule or a requirement governing the enquiry; the complaint should be examined on the touch stone of prejudice.

The test is; all things taken together whether the delinquent officer/employee had or did not have a fair hearing. Justice means justice between both the parties. The interest of justice, equally demand that the guilty should be punished that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the aims of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise. There principles cannot be put in a straight jacket. Their applicability depends upon the context and the facts and circumstances of each case. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or other passed. Except cases falling under – no notice, no opportunity and no hearing categories, the complaint of violation of procedural provision should be examined from the point of view of justice, viz, whether such violation has prejudiced the delinquent officer / employee in defending himself properly and effectively.”

18. Learned counsel has also relied upon the ***Aligarh Muslim University and Ors v. Mansoor Ali Khan: AIR 2000 SC 2783*** wherein the Apex Court in para Nos.20, 22, & 24 observed as under:-

20. As pointed recently in M.C. Mehta v. Union of India (1999) 6 SCC 237, there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself

illegal as in Gadde Venkateswara Rao v. Government of Andhra Pradesh (1966)2SCR172 , it is not necessary to quash the order merely because of violation of principles of natural justice.

22. Chinnappa Reddy, J. in S.L. Kapoor's case, laid two exceptions (at p.395)namely," if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above,- there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J, and Straughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise, the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do

not think it necessary, in this case, to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

19. I note, in Para Nos.12 & 13, the Tribunal has recorded in the impugned judgment as under:-

12. The relevant meeting of the Disciplinary Committee in the case of Shri C.P. Gautam was held on 22.12.1992. In the first instance, the Disciplinary Committee noted that the Appellant was shown the 10 original answer books and he stated that the evaluation of the answer books was not in his handwriting. Shri Inder Prakash, the then officiating Principal of the Respondent School, who was also present before the Disciplinary Committee asserted that the answer books of Chemistry of 11th class were checked by Shri C.P.Gautam in his presence and in the presence of other examiner teachers in the office of the Principal. Shri Inder Parkash also drew the attention of the Disciplinary Committee to the reply dated 13.5.91 sent by Shri C.P.Gautam in pursuance of the memo dated 22.4.91 wherein the Appellant had nowhere disputed the having checked the Chemistry answer books. It is also mentioned in the minutes of this meeting (which are at page 79 of the relevant file) that Shri Inder Parkash also submitted that in the staff meeting held on 14.03.91, it was decided to take a lenient view in valuating the answer books on account of disturbances in functioning of the School because of the agitation on account of Mandal Commission Report. However, Shri Inder Prakash submitted that he had never agreed to treat any question in the question paper as uncovered and he had never asked Shri C.P. Gautam to allot marks on the question itself. Shri Inder Parkash also

denied that he had agreed to res-scheduling of the marks allotted to the questions. He had also never approved for awarding marks to wrong answers where only questions were written or were half attempted by the students.

13. Certain other discussions follow the above observations of Disciplinary Committee which ultimately reserved the case for decision. The final decision was given by the Disciplinary Authority on 23.5.93 in a meeting in which the Appellant was not called.

20. Further, the Tribunal after referring to Rule 120 of the Delhi School Education Rules, 1973 and Rule 14 of the CCS (CCA) Rules held in para Nos.20 & 21 as under:-

“20. The proceedings in both these cases clearly reveal that no evidence was recorded at any time. The respective Disciplinary Authorities took upon themselves the tasks of being prosecutors and the judges. No opportunity was given to the Appellants to cross-examine any witnesses in the contest of their defence. They were never asked if they would like to give any defence. They were not given any opportunity to lead evidence in defence.

21. The failure of the Disciplinary Authority to follow the aforesaid procedure resulted in denial of an opportunity to the Appellants. It is apparent that principles of natural justice have not been followed.”

21. After considering the submissions of the rival parties and on perusal of the impugned judgment, it is emerged that no evidence was recorded at any time. No opportunity was given to respondents to cross-examine any

witn3ess and opportunity to lead evidence in their defence not accorded.

22. Therefore, for the reasons discussed above, I find no discrepancy in the impugned judgment. I concur with the findings of the Tribunal.

23. Consequently, both the petitions are hereby dismissed.

24. No order as to costs.

SURESH KAIT, J

MAY 15, 2012

Mk/jg