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

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CONT.CAS(C) 741/2012 & CM.18896/2012

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*Judgment Reserved on : April 05, 2013*  
*Judgment Pronounced on : June 21, 2013*

YASHODA SHARMA

..... Petitioner

Through: Ms.Maninder Acharya, Sr. Advocate with  
Mr.Gaurav Duggal, Mr.Shyam Sunder  
Sharma and Mr.Gauhar Mirza, Advocates

versus

P.K. SRIVASTAVA & ANR

..... Respondents

Through: Mr.Mukesh Kher, Ms.Priyank Kher &  
Mr.N.K. Mishra, Advs for respondents

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**G.S.SISTANI, J**

1. By the present petition, the petitioner has prayed that contempt proceedings be initiated against the respondents for deliberate and intentional violation of the order dated 3.10.2012 passed in the Writ Petition No.6288/2012. By an order of 26.9.2012 passed by the Director (Education) under Section 20 of the Delhi School Education Act, the school was taken over for a period of three years. The aforesaid order was challenged by the management by filing a Writ Petition No.6288/2012. While staying the order of the Director of Education the following conditions were imposed on the management:

“(i) No payments will be released by the present managing committee except those payments which are necessary for the day-to-day functioning of the school and as directed by the Director (Education) as per the order dated 12<sup>th</sup> July, 2012 and the orders passed by the Court on 20<sup>th</sup> July, 2012 and 22<sup>nd</sup> August, 2012 to protect the funds of the school.

(ii) The petitioner will not take any disciplinary proceedings

against any member of the staff including teacher without prior approval of the concerned Deputy Director.”

2. As per the present contempt petition, the petitioner has been working as the Vice-Principal of the School with effect from 2.3.2009; she was appointed to the said post on ad-hoc basis as per the decision of the Managing Committee of the school. On 9.7.2012 when the petitioner returned for her duties to the school after the summer break, she was not allowed to enter the school. She reported the matter to the Directorate of Education as well as to the Police. The petitioner was served with a letter of suspension on 10.7.2012. The petitioner was also informed that show cause notices dated 28.6.2012 and 3.7.2012 had been issued to her and the Managing Committee had decided to suspend her till a detailed enquiry was completed. Petitioner was also informed that her entering in the school had been banned to facilitate the smooth enquiry proceedings.
3. It is the case of the petitioner that no show cause notice was served upon her initially, though a copy was served upon her on 11.7.2012. It is also the case of the petitioner that vide letter dated 1.8.2012, the Directorate of Education communicated to the Principal / Manager of the School that the order dated 6.7.2012 passed by the respondent was illegal, as no proper procedure had been followed. The school was directed to cancel the suspension of the petitioner and take her back into service. The school, however, did not comply with the directions of the Directorate of Education and she was not allowed to enter the school or resume her services. Another representation was made by the petitioner to the Directorate of Education which led to issuance of communication dated 28.9.2012 addressed to the school calling upon the school to allow the petitioner to resume her duty immediately. On 26.9.2012 the Director of Education passed an order by which the school was taken over for a

period of three years. The petitioner reported for duty, as the order of suspension was illegal and the petitioner was permitted to join her duties on taking over of the school by the Directorate of Education on 28.9.2012. A copy of the joining report has also been placed on record.

4. It is also the case of the petitioner that she continued to attend her duties from 28.9.2012 till 3.10.2012. The petitioner has also stated in the contempt petition that on the intervening days between 28.9.2012 and 3.10.2012 the petitioner was stopped from entering the school by security guards Mr.S.R. Upadhyay, Mr.Hari Lal and his wife Ms.Rita. The petitioner submitted representations and complaints to the Directorate of Education and to the Police station on 29.9.2012. She also prepared a note which had been witnessed by other members of the staff to show that she was prevented from entering the school and discharging her duties on 3.10.2012 also. The petitioner has also relied upon a report dated 1.10.2012 submitted by the examination department to her to show her presence on 1.10.2012. It is stated that on 4.10.2012 the petitioner was again prevented from entering the school, upon which petitioner made representations.
5. Ms.Acharya, learned senior counsel for the petitioner submits that by communication dated 1.8.2012 the Director of Education had held the suspension of the petitioner illegal and a direction had been issued to the respondents to take the petitioner back on duty, accordingly after taking over of the school on 28.9.2012, the Director of Education immediately took the petitioner back on duty on the same date and thereafter she continued to discharge her duties till 3.10.2012.
6. It is submitted that despite the petitioner reporting for duty she has not been allowed to enter the school and discharge her duties by the respondents and the security guards of the respondents under instructions

of the respondents. It is submitted that by the order dated 3.10.2012 taking over of the school under Section 20 of the Delhi School Education Act vide order of 26.9.2012, was stayed but the stay so granted by this court was conditional and not absolute.

7. It is submitted that as per the stay granted and the conditions laid down by the court, the school authorities were directed not to take any disciplinary proceedings against any members of the staff including teachers, without prior approval of the concerned Deputy Director.
8. Ms.Acharya, further contends that the petitioner was discharging her duties as Vice Principal of the school on 3.10.2012 when the order staying the taking over was passed and in view of the conditions laid down the respondents cannot prevent the petitioner from attending her duties. Ms.Acharya, has strenuously urged before this court that since the respondents were restrained from taking any disciplinary proceedings against any of the staff members, including the teachers and no permission was sought from the Deputy Director before preventing the petitioner from entering the school and discharging her duties, thus the respondents have intentionally and deliberately violated the order dated 3.10.2012 and thus liable to be punished for Contempt of Court.
9. Counsel for the petitioner in support of her arguments that in contempt proceedings the court cannot examine the rightness or wrongness of the order of which contempt is averred, has relied upon **Prithawi Nath Ram Vs. State of Jharkhand & Ors.** reported at (2004) 7 SCC 261; **T.R. Dhananjaya Vs. J. Vasudevan** reported at (1995) 5 SCC 619; **Director of Education, Uttaranchal & Ors. Vs. Ved Prakash Joshi & Ors.** reported at (2005) 6 SCC 98; and **K.G. Derasari & Anr. Vs. UOI & Ors.** reported at (2001) 10 SCC 496. Relevant paragraph of **Prithawi Nath Ram (Supra)** reads as under:

“5. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in *K.G. Derasari v. Union of India* (2001) 10 SCC 496. The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in *Niaz Mohd. v. State of Haryana* (1994) 6 SCC 332 we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher court. The State took diametrically opposite stands before this Court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.”

10. Reply to this contempt petition has been filed. It is stated that the respondents have not committed any contempt and the allegations made in the petition are false and misleading. It is stated that the Writ Petition No.6288/2012 was listed on 1.10.2012 and heard at length and at the request of the counsel for the respondent at 4:10 p.m. the matter was adjourned to the next working day which was 3.10.2012 as 2.10.2012 was a National holiday. The request for adjournment was opposed by the

counsel for the petitioner on the ground that the respondents may create some kind of mischief, however, the counsel had given an assurance that no coercive steps would be taken till the next date of hearing.

11. It is pointed out by Mr.Kher, counsel for the respondents that petitioner was suspended on 6.7.2012 and she is facing an enquiry on account of serious financial irregularities committed by her. Serious allegations have been levelled by counsel for the respondents with respect to the keen interest being taken by the Directorate of Education because of influence subjected on them by the Ex-Director of Education, who is also the Ex-Chairman of the school and at whose behest the orders are being passed by the Director of Education. Reliance is placed by counsel for the respondents on a hand written note of Director of Education, South West dated 1.10.2012 on a plain piece of paper, which reads as under:

“Mrs.Yashoda Sharma is the vice Principal and is to look after the school, Upras Vidyalaya as the school has been taken over by the D.O.E.

Sd/-  
1.10.12  
D.D.E. (S.W.A.)”

12. It is contended that although the officials of the Directorate of Education were present in court when the matter was taken up for hearing, there was no occasion for the Deputy Director to have issued such a note which would show that the petitioner and the officials of the Director of Education are hand in glove and this note was written to over-reach the order likely to be passed when the matter was partly heard on 1.10.2012. It is stated that this hand written note was written after the case was adjourned on 1.10.2012 at 4:10 p.m.. On the basis of the hand written note the petitioner with the help of the police entered the school and carried away various records including the attendance register of the

teaching staff. The petitioner entered the school on 1.10.2012 at 4:39 p.m. Reliance is placed on the dated photographs from the CCTV camera which have been placed on record, to show that the petitioner entered the school in the presence of the Police.

13. Copies of dated photographs have been placed on record. It is contended that the petitioner entered the school forcibly and in collusion with the officials of the Directorate of Education and Ex-Chairman of the school. It is submitted that the report sought to be relied upon by the petitioner dated 1.10.2012 has been clarified by the concerned teacher vide letter dated 20.11.2012. As per this communication the teachers have stated that on the last day of the examinations when they were winding up the examination procedure, the petitioner entered the school premises along with one constable and asked to give a day-to-day report to be submitted in the Education office. Initially they had refused to give any such report, but the petitioner made them talk to a lady on telephone, who claimed to be from the Education Office and under pressure the report was given. It is contended that the entire effort was made by the petitioner to show that she had joined the school prior to the order passed by this Court dated 3.10.2012. It is further contended that there was no occasion for the petitioner to have entered the school at 4:39 PM after the working hours along with a policeman and remove the important records. It is also pointed out that on 3.10.2012 when the matter was being heard and orders were being passed a grievance was made before the Court that the petitioner was not being allowed to join her duty although the suspension order had been revoked. It is further submitted by Mr.Kher that one of the charges framed against the petitioner is that she declared herself as Vice Principal of the school while she was not entitle to the post as she was not the senior-most teacher. Counsel further submits that since the

respondent is an unaided school no power is vested in the Directorate of Education to revoke the order of suspension and any letter including letter dated 1.8.2012 issued by the Directorate of Education was in contravention of the Delhi School Education Act and the Rules framed. It is also vehemently denied that the petitioner was discharging her duties till 3.10.2012. It is further clarified that the petitioner was placed under suspension and was facing an inquiry prior to the order dated 3.10.2012 and the condition imposed by the Court by order of 3.10.2012 was in respect of other employees against whom the management was likely to take fresh disciplinary action and the order was passed by way of an abundant precaution keeping in view the nature of dispute pending between the present management and the earlier management and to safeguard the interest of the staff so that the staff should not be unnecessarily harassed by the present management.

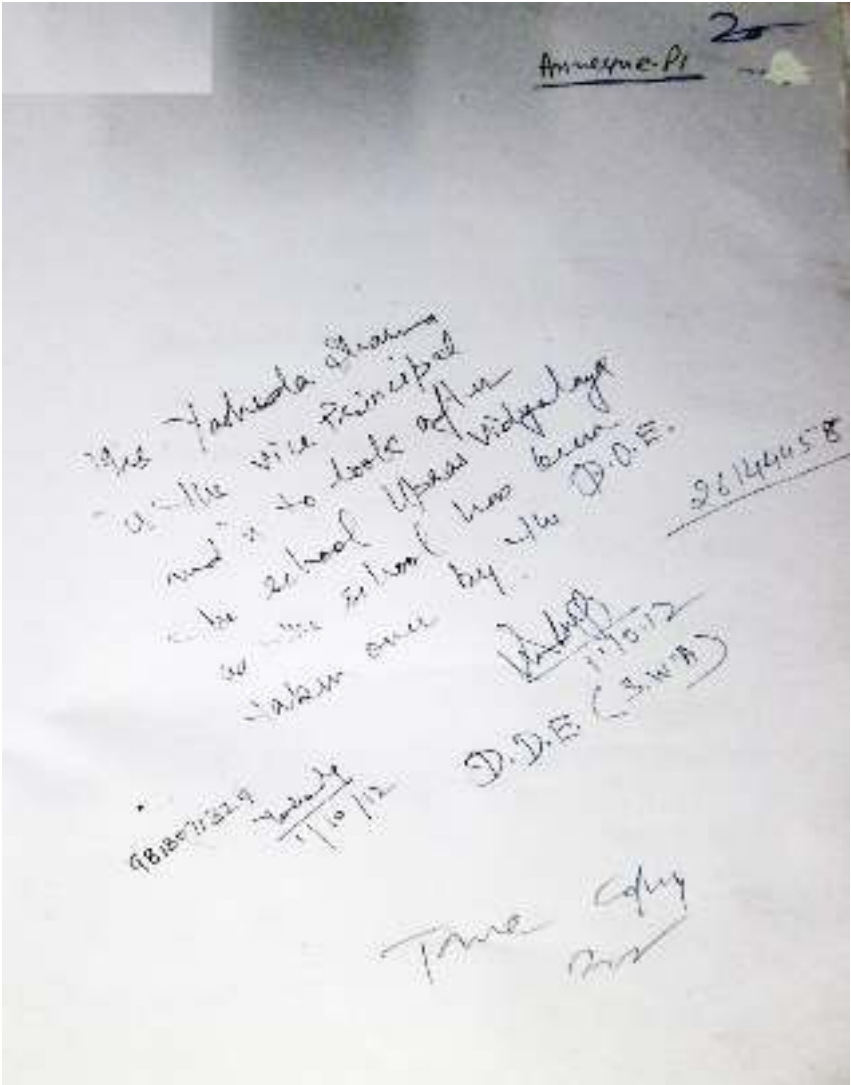
14. I have heard the learned counsel for the parties and considered their rival contentions. It may be noticed that two writ petitions are pending before this Court which have been filed by the respondent and contempt petitions are also pending which have been filed by the respondent against the officials of the Directorate of Education.
15. The undisputed facts which emerge upon perusal of the pleadings are that prior to the order dated 3.10.2012 the petitioner was placed under suspension by the respondents. It is also not in dispute that till the date the school was taken over the petitioner was not permitted by the respondents to enter the school. According to the petition as also the photographs placed along with the reply would show that the petitioner entered the school on 1.10.2012 at 4:39 in the evening. Photographs also show that she was accompanied by a police officer. The petitioner has placed reliance on a communication dated 28.9.2012 to show that she was

allowed to attend the duties with effect from 28.9.2012 which is two days after the Director of Education has passed an order for taking over the school. Another communication which was addressed by the petitioner to the Director of Education dated 29.9.2012 would show that she was not permitted to enter the school on 29.9.2012 as she was stopped by the gate keepers of the school. Similar communication was addressed to the SHO by the petitioner herein. Reliance is also placed by the petitioner on a note signed by some of the parents to show that even on 3.10.2012 she was not allowed to enter the school. Reliance is also placed on the report of the Examination Department dated 1.10.2012 duly signed by her which reads as under:-

“Report of Examination Department  
Today the examination of classes 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> was held in 17 rooms with 17 invigilators on duty. Rest of the teachers did relieving (sic) duty. Students left the school at 11:30 AM after the examination. Teachers are now busy in checking the answer sheets.”

16. The sum and substance of the argument of learned senior counsel for the petitioner is that her order of suspension stood revoked by the Directorate of Education and the Education Department directed the school to allow her to resume her duties. It is thus contended that once the order of taking over of the school was passed she was permitted to join the school by the Deputy Director of Education and thus once she had joined the school on 28.09.2012 she could not have been restrained from entering the school and carrying on her duties in view of the order passed by this Court on 03.10.2012. The writ petitions are pending wherein the order of taking over of the school has been challenged and arguments have been heard in part, thus, it would not be appropriate to make any observations on the merits of the dispute which is pending between the school and the

Directorate of Education wherein serious allegations have been made against the officials of the Directorate of Education by the Management of the School. It is however strange that a Deputy Director of the Education Department has made a note on a plain piece of paper declaring that the petitioner is the Vice Principal of the school and look after the school, as the school has been taken over by the Directorate of Education.



17. This note has been scanned to show the casual manner in which the same has been written. It is neither on the letter head, does not contain any official stamp, nor there is any explanation as to what was the occasion to issue such a note. In the present proceeding it cannot be decided as to

why, how and on whose request such a note has been written. Thus it cannot be said that the petitioner joined the school on 28.9.2012 or 1.12.2012 on the basis of the note so issued. Moreover, as per the own showing of the petitioner in terms of the averments made in the petition and documents placed on record, her entry between 28.9.2012 to 4.10.2012 was being resisted by the respondents. ‘Civil contempt’ has been defined under Section 2(b) of the Contempt of Courts Act, 1971, as under:-

“‘Civil Contempt’ means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;”

18. The Black’s Law Dictionary (8<sup>th</sup> Edn., 1999) defines ‘Contempt’ as “Conduct that defies the authority or dignity of a Court or legislature.” It also adds that “Because such conduct interferes with the administration of justice, it is punishable.”
19. Lord Diplock in Attorney General v. Times Newspapers Ltd. (1973) 3 All England Reporter 54 (HL) has said that there is also “an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any Court of law could be disregarded with impunity.”
20. Reading of the definition would show that a person guilty of civil contempt should have disobeyed any judgment, decree, direction, order, writ or other process of a Court and the violation should be wilful. Any infraction of the Court’s order does not amount to contempt of Court. Violation should be wilful, deliberate and intentional and before contempt proceedings can be initiated, the Court must be satisfied that the act of the alleged contemnor is of such a nature that it substantially interferes or tends to interfere in the due course of justice and on due satisfaction

should contempt proceedings be initiated.

21. The facts of the present case reveal that a dispute between the petitioner and the management was pending prior to the passing of the order dated 3.10.2012. Admittedly, the petitioner was suspended on 6.7.2012 and was not permitted to enter the school. The condition which was imposed in the order of 3.10.2012 was with a view to avoid any further harassment to either the teacher or any other staff on account of the disputes pending between the present management and the outgoing management. The petitioner admittedly was suspended much prior to the order of 3.10.2012 and she had been restrained from entering the school. Even if it is assumed that the order of suspension was illegal, the said order was yet to be formally revoked either by the management or by the Directorate of Education or any court of law. The Court cannot lose track of the fact that the respondent is an unaided school and the management has the power to suspend any employee.
22. In the Case of **Kalayneshwari (Supra)**, the Court took notice of the fact that the rule of law has to be maintained at all costs. Paragraph 7 of the judgments read as under:

“7. The rule of law has to be maintained whatever be the consequences. The `welfare of people' is the supreme law and this enunciates adequately the ideal of `law'. This could only be achieved when justice is administered lawfully, judiciously, without any fear and without being hampered or throttled by unscrupulous elements. The administration of justice is dependent upon obedience or execution of the orders of the Court. The contemptuous act which interfered with administration of justice on one hand and impinge upon the dignity of institution of justice on the other, bringing down its respect in the eye of the commoner, are acts which may not fall in the category of cases where the Court can accept the apology of the contemner even if it is tendered at the threshold of the proceedings.”

23. It has however also repeatedly been held by the Apex Court that the power of punishment for contempt is a special power [See *Jhareswar Prasad Paul and Another Versus Tarak Nath Ganguly and Others*, reported at 2002 CrL.L.J. 2935].
24. In the case of *Patel Rajnikant Dhulabhai & Anr. Vs. Patel Chandrakant Dhulabhai & Ors.* (2008) 14 SCC 561, the Supreme Court had observed that punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the Court to uphold and maintain the dignity of courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt.
25. It has also been repeatedly held by the Supreme Court of India that Courts should be slow in exercising the power of punishing a person for guilty of contempt, unless the act is deliberate and intentional.
26. The judgments sought to be relied upon by counsel for the petitioner are not applicable to the facts of the present case.
27. Having regard to the facts of this case it cannot be said that the respondents have wilfully violated the order dated 3.10.2012. The petitioner was suspended prior to the passing of the order dated 3.10.2012. The petitioner, it seems, wanted to take advantage of the orders passed by the Directorate of Education dated 26.9.2012 of taking over of the school and the petitioner forcibly entered the school and thereafter has tried to take advantage of the order dated 3.10.2012. No case is made out to initiate contempt proceedings. The contempt petition and application are accordingly dismissed.
28. It is made clear that any observation made in this order is only for the

purpose of adjudicating the present contempt petition and the same will not have any bearing on the merits of the inter-se dispute pending between the petitioner and the respondent.

**(G.S.SISTANI)**  
**JUDGE**

JUNE 21, 2013 ssn/dk