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

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Judgment delivered on: 11.03.2014

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W.P.(C) 445/2014

TABITA CHAND

..... Petitioner

versus

MANAGING COMMITTEE, B.M. GANGE
GIRLS SR. SECONDARY SCHOOL & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners: Mr Romy Chacko, Advocate.

For the Respondents: Mr Feroz Ahmad, Adv. for R- 1 & 2.

Ms Purnima Maheshwari, Adv. for R-3.

Mr Manoj V. George & Mr Aakarsh Kamra, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

W.P.(C) 445/2014 & CM No. 874/2014 (Stay)

1. The present writ petition has been filed by the petitioner assailing the show cause notice dated 06.11.2013, issued by respondent no.2. The petitioner has also sought a direction qua respondent no.3 for fixation of pay scale of the petitioner as principal and for release of arrears of salary accordingly. Directions have also been sought for payment of subsistence allowance to the petitioner.

2. Ordinarily this court would not have entertained the writ petition against a show cause notice qua which an inquiry has already commenced. However, in the present case certain peculiar circumstances have arisen, which are broadly as follows:

2.1 The petitioner was appointed as a trained graduate teacher (TGT) with respondent no.1 school on 27.08.1979. On 25.07.1994, the petitioner was promoted as a post graduate teacher (PGT). Pursuant to a DPC held on 01.07.2008, the petitioner was selected as a principal. Accordingly, the managing committee of respondent no.1 school on 03.07.2008, passed a resolution appointing the petitioner as a principal w.e.f. 01.07.2008.

2.2 Unfortunately for the petitioner, on 15.07.2008, respondent no.3, i.e., the Director of Education, passed an order disapproving the appointment of the petitioner as a principal. In this background on 26.07.2008, respondent no.4 was appointed as an officiating principal.

2.3 Aggrieved by this, the petitioner filed a writ petition in this court which was numbered as WP(C) No. 7085/2008. The Single Judge, however, disposed of the writ petition on the ground that the petitioner had to seek recourse to an appropriate remedy, albeit before the tribunal.

2.4 The petitioner did not rest there and, accordingly, preferred an appeal before the Division bench, which was numbered as LPA No. 165/2013. The Division Bench by a detailed and a reasoned order reversed the order of the Single Judge and set aside the impugned decision of the Director of Education dated 15.07.2008. While doing so, it observed that the petitioner will not only be entitled to discharge the functions of the principal but also exercise the powers of the principal and draw salary in the pay scale applicable to the said post.

2.5 The matter was, however, carried in appeal to the Supreme Court. The Supreme Court vide order dated 29.07.2013, dismissed the SLP in limine. As a matter of fact a review was preferred, which was also dismissed by the Supreme Court.

2.6 Consequently, respondent no.1 having been left with virtually no

choice in the matter, on 05.11.2013, passed an order appointing the petitioner as the principal and discharging respondent no.4 as the officiating principal. Both orders were to take effect from the date of the order, i.e., 05.11.2013.

3. What queered the pitch for the petitioner was the show cause notice, which was issued to her immediately the next date, which is, 06.11.2013. In the said show cause notice, several allegations have been levelled against the petitioner. The allegations, broadly, pertain to: the petitioner obtaining a No Objection Certificate (NOC) from teachers, who were senior to her by applying duress and manipulation; that she had misrepresented that she was a Baptist; that the petitioner had failed to submit original certificates and marks obtained in M.A., for verification, despite letters issued in that behalf, on 02.08.2013, 20.08.2013, 24.08.2013 and 29.08.2013; that she had incorrectly claimed that she had completed her post-graduation prior to her initial appointment as TGT; and lastly, that she had removed “documents” and “important papers” pertaining to her service record.

3.1 The show cause notice concluded with granting an opportunity to the petitioner to file a reply to the same, though, while doing so it proceeded to suspend the petitioner with effect from the date of show cause notice, i.e., 06.11.2013.

3.2 It was also indicated in the said show cause notice that the petitioner would get subsistence allowance equivalent to 50% of her salary during the period of suspension.

3.3 The petitioner, thereupon, filed a reply to the show cause notice, on 11.11.2013.

4. I am also informed that the petitioner has filed contempt petition in this court, which is, numbered as: Cont Case No. 876/2013, in which notice

has been issued.

4.1 I am also informed by the learned counsel for the petitioner that the contempt petition is pending adjudication in this court.

4.2. Learned counsel for the petitioner says that the petitioner has been constrained to move the present petition despite pendency of the contempt petition as, effective orders can only be passed in a substantive petition such as the present petition and not, while this court is exercising contempt jurisdiction.

5. In the background of the aforesaid facts, learned counsel for the petitioner has contended before me that respondent no.1 has virtually re-written the judgment of this court which, has been confirmed right uptill the Supreme Court. Learned counsel submits that while, the Division Bench had issued a specific direction for continuation of the petitioner as the principal, it had only granted liberty to the respondents to take recourse to relevant provisions of law upon a fresh cause of action arising for her removal. In these circumstances, it is his contention that, in any event, even if show cause notice was issued, no suspension was called for.

5.1 According to learned counsel for the petitioner, the suspension is contrary to the provisions of Section 8(4) of the Delhi School Education Act, 1973 (in short DSE Act). He submits that any order of suspension ought to have had the prior approval of the Director of Education which, admittedly, in this case was not obtained; therefore, in any event the order of suspension is bad in law.

5.2 In this regard, it is Mr Chacko's contention that the first proviso to Section 8(4) of the DSE Act would not apply because there was no cause for immediate suspension. It is Mr Chacko's contention that even if respondent no.1 triggered the first proviso, in accordance with the provisions of the

second proviso to the very same section, respondent no.1 was required to communicate the order of suspension to the Director of Education and obtain the necessary approval before the expiry of period of fifteen (15) days. Therefore, it is Mr Chacko's contention that the show cause notice, which directs petitioner's suspension, is, on the face of it, bad in law.

6. Mr Ahmad, who appears for respondent nos. 1 and 2, relies upon that part of the observation of the Division Bench whereby the said respondents were given liberty to initiate action against the petitioner; albeit in accordance with law. Mr Ahmad says that since the inquiry has commenced in the matter, this court ought not to interdict the same. It is his contention that respondent no.4 is, presently acting as an officiating principal and, any interim order, at this stage, would disrupt the functioning of the school. It is also his contention that there is every likelihood, if the petitioner is put back as the principal, she would tamper with the records, which would ultimately affect the conduct of the inquiry.

7. Learned counsel for respondent no.4 supports the contention raised by Mr Ahmad, learned counsel for respondent nos. 1 & 2. He submits that respondent no.4 was acting as an officiating principal between 26.07.2008 till 05.11.2013. He says that any interim order, at this stage, will effect respondent no.4's interest.

8. I have heard the learned counsels for the parties. What is required to be noticed is that the captioned writ petition was moved before this court on 21.01.2014. The matter was stood over to the next date, i.e., 22.01.2014 to enable the counsel for the petitioner to at least demonstrate prima facie that she possessed the necessary qualifications. It is in the background of this, that the learned counsel for the petitioner brought to the court, the original certificates, pertaining to the petitioner's qualification.

8.1 Notice to the respondents was issued only, thereafter, on 22.01.2014. To be noted, on 22.01.2014 only respondent no.3, was represented.

8.2 On the returnable date, i.e., 28.02.2014, despite service being effected on respondent nos. 1 and 2, there was no representation made on behalf of the said respondents. Respondent no.4 was, however, represented. I deferred any adverse orders against respondent nos. 1 and 2, in view of the fact that time was being granted to respondent no.4, to file a counter affidavit. Accordingly, respondent nos. 1 and 2 were also given a week's time to file a counter affidavit. In addition, court notice through special messenger was issued qua respondent nos. 1 and 2.

9. While respondent nos. 1 and 2 have filed a counter affidavit, no counter affidavit has been filed on behalf of respondent no.4. Learned counsel for respondent no.4 says that the counter affidavit is ready and that he would file the same in the shortest possible time. The difficulty, with this request is that, the petitioner is pressing for an interim order, and I see no reason to delay the proceedings only because respondent no.4 has, despite having been given an opportunity and time, failed to do the needful within the time allocated in that regard. Apart from the above, in my view, the petitioner has set up a prima facie case that respondent nos. 1 and 2 have virtually whittled down the judgment passed by this court in the first round. As noticed above, the judgment of this court has been sustained by the Supreme Court.

10. I am also presently persuaded by the submission of the learned counsel for the petitioner that the provisions of Section 8(4) of the DSE Act have not been complied with, in as much as, no prior approval of the Director of Education was taken before directing suspension of the petitioner. In my view, prima facie, this was not the case of the gross

misconduct, which called for immediate suspension subject to approval of Director of Education.

10.1 Mr Ahmad, however, interjects to point out that, after issuance of the show cause notice, a communication was sent to the Director of Education seeking his approval.

10.2 Ms Maheshwari, learned counsel for respondent no.3, i.e., the Director of Education, on instructions says that while, there is an intimation to the effect that suspension of the petitioner has been ordered, no approval has been sought.

11. Having regard to the aforesaid circumstances, in my view, the direction issued to suspend the petition is, *prima facie*, passed, in violation of the provisions of Section 8(4) of the DSE Act. Moreover, the balance of convenience, presently, also appears to be in favour of the petitioner on account of the fact that while, an order was passed in her favour on 05.11.2013, reinstating her as the principal, the very next date, i.e., on 06.11.2013, that order was, in a sense, snatched away from her without following the due process of law.

12. Having regard to the above, the direction contained in the show cause notice, directing the petitioner's suspension, is stayed. The inquiry will, however, continue in which the petitioner will participate. In the meanwhile, respondent no.4 will be at liberty to place her counter affidavit on record, within two days from today. The petitioner, will be at liberty to file rejoinders to the counter affidavits of the respondents, within three weeks from today.

13. Needless to say, not only the petitioner will co-operate in the inquiry proceedings, but she shall ensure that she gives no cause for concern with regard to the allegations levelled against her qua tampering of records.

14. At this stage, during the course of my dictation, learned counsels for respondent nos. 1, 2 & 4 interject and submit that the writ petition be disposed of with liberty to the petitioner to assail the final order passed in enquiry conducted against her; albeit in accordance with law, accompanied by a direction that pending the decision in the enquiry, petitioner's suspension, will remain stayed.

15. In view of the above the writ petition is disposed of with a direction that that the suspension of the petitioner will stand stayed during the conduct of the inquiry and, for a period of two weeks thereafter, to enable the petitioner to take recourse to an appropriate remedy, if necessary; though in accordance with law. It is made clear that the petitioner will be entitled to raise all contentions necessary, which have been raised in the present writ petition, in the subsequent action, which she may wish to file, in case the enquiry results in a decision which is adverse to her interests.

16. In view of the aforesaid submissions learned counsel for respondent no.4 is given liberty to file the counter affidavit only for the purpose of record, after serving the petitioner with a copy of the same. The petitioner therefore need not file a rejoinder in this court. Directions contained in paragraph 12 hereinabove, are modified to that extent.

17. The writ petition and the application is disposed of with the aforesaid directions.

18. Dasti.

RAJIV SHAKDHER, J

MARCH 11, 2014

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