

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

+ **W.P.(C) 7744/2014 and CM APPL. 18228-18229/2014**

Decided on : 20.11.2014

IN THE MATTER OF:

SUNIL SIKRI

..... Petitioner

Through: Mr. T.N. Tripathi, Advocate

versus

THE MANAGEMENT COMMITTEE OF GURU HARKRISHAN PUBLIC SCHOOL
& ORS

..... Respondents

Through: Mr. A.P.S. Ahluwalia, Sr. Advocate
with Mr. S.S. Ahluwalia, Advocate for R-1 and
R-2/School.

Mr. Sumit Chander, Advocate for R-3/GNCTD.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

1. The present petition has been filed by the petitioner praying *inter alia* for quashing/setting aside the orders dated 28.03.2014 and 10.09.2014 passed by the respondent No.1/School and the Memorandum and Articles of Charge dated 17.12.2013 issued by the respondent No.2/Disciplinary Committee of the respondent No.1/School. The petitioner also seeks orders to restrain the respondent No.2/School and respondent No.3/DOE from continuing with the enquiry against him,

on the basis of the Resolution dated 21.11.2013 and the Memorandum and Articles of Charge dated 17.12.2013.

2. As counsels for the respondents state that they are ready with their arguments and do not wish to file replies, with the consent of the parties, the petition is being heard and disposed of at the stage of admission.

3. This is the third round of litigation initiated by the petitioner against the respondents. Prior hereto, the petitioner had filed W.P.(C) 191/2014, wherein he had laid a challenge to the Resolution dated 21.11.2013 passed by the respondent No.1/School and to the Memorandum and Articles of Charge dated 17.12.2013 issued by the respondent No.2/Disciplinary Committee. The aforesaid writ petition was disposed of on the very first date, i.e., on 10.01.2014, with an observation that the contentions raised by the petitioner in the reply submitted to the show cause notice issued to him required to be determined by the concerned committee, i.e., the Managing Committee. Accordingly, the Managing Committee of the respondent No.1/School was directed to hear and decide the two preliminary objections raised by the petitioner, namely, the resurrection of the complaint of alleged molestation dated 22.01.1994 after two decades being uncalled for and

illegal and secondly, that the Committee constituted pursuant to the Resolution dated 21.11.2013, not being in accordance with the provisions of the Delhi School Education Act and Rules, 1973 (in short '**DSEAR**').

4. Pursuant to the aforesaid order, the Managing Committee of the respondent No.1/School had passed an order dated 28.03.2014, whereunder the petitioner was informed that as per the Resolution of the School Management Committee dated 10.03.2013, his representation dated 18.02.2014 was disposed of by rejecting the two objections raised by him against the inquiry proceedings initiated on the basis of an earlier Resolution dated 21.11.2013 and it was decided to continue the inquiry against him at the point, where it was left.

5. Aggrieved by the aforesaid order dated 28.03.2014, the petitioner had filed W.P.(C) 2696/2014 raising a grievance that he had not been granted an oral hearing by the Managing Committee despite earlier orders passed by the court in that regard. During the course of hearing of the aforecited petition, it was agreed on 27.5.2014 that the order dated 28.03.2014 passed by the Managing Committee of the respondent No.1/School be recalled and the matter be remitted back to the Managing Committee for a *de novo* hearing. Accordingly, the order dated

28.03.2014 was recalled and it was directed that after giving oral hearing to the petitioner, the Managing Committee of the respondent No.1/School would decide the matter in terms of the directions issued on 10.01.2014 in W.P.(C) 191/2014. It was further clarified that the recall of the order dated 28.03.2014 passed by the Managing Committee will not impact the final determination that may be made by it and the Managing Committee will be free to come to its own conclusion after applying its mind objectively and independently.

6. In view of the aforesaid order, learned counsel for the petitioner had agreed to withdraw the aforesaid petition while reserving his right to seek legal recourse in case a grievance would arise in future. Resultantly, the order dated 28.03.2014 was recalled and it was observed that the inquiry proceedings will not continue till a decision is taken in the matter by the Managing Committee.

7. Thereafter, the petitioner was given a fresh hearing by the Managing Committee and the impugned order dated 10.09.2014 came to be passed by the Managing Committee holding *inter alia* that the decision taken to constitute a Departmental Action Committee is correct and it was noted that both the objections raised by the petitioner and mentioned in para 2 hereinabove, were devoid of merits and were

rejected. Consequently, the inquiry proceedings that had been kept in abeyance were directed to be continued against the petitioner. Aggrieved by the said decision, the petitioner has filed the present petition.

8. Learned counsel for the petitioner assails the order dated 10.09.2014 passed by the respondent No.1/School and submits that the said order reveals that the respondent No.1/School has not applied its mind and has not taken an objective decision on the two objections raised by him.

9. The first objection taken by the petitioner is to the effect that resurrection of the complaint of alleged molestation dated 22.01.1994, after almost two decades is uncalled for and illegal. A perusal of the impugned order reveals that the Managing Committee had considered the said objection and observed that the petitioner had tendered his resignation to the respondent No.1/School on 22.01.1994, which was duly accepted and as a result, no inquiry was called for by the School. Later on, when he had approached the school for withdrawal of his resignation and the said request was turned down, he had filed an appeal against the said decision which had remained pending for seven years before the Delhi School Tribunal, till August 2011. On 18.08.2011,

the said appeal was allowed by the Tribunal and the petitioner was directed to be reinstated with 50% back wages. The respondent No.1/School challenged the order dated 18.08.2011 passed by the Delhi School Tribunal by filing a petition in this Court, registered as WP(C) No.8058/2011. The said petition was disposed of vide order dated 06.08.2013, wherein the School had agreed to reinstate the petitioner but it was granted liberty to conduct an inquiry against him for his involvement in the incident of 22.01.1994. Immediately thereafter, steps were taken by the respondent No.1/School to hold an inquiry against the petitioner and after Resolutions were passed in that regard, a Memorandum was issued and Articles of Charge were framed against the petitioner on 17.12.2013.

10. Thereafter, the petitioner had filed two writ petitions, the first one being W.P.(C) 191/2014 and the second one being W.P.(C) 2696/2014 which were disposed of vide order dated 27.05.2014 by issuing directions to the School to pass a speaking order on the two objections taken by the petitioner after giving him an oral hearing. The Managing Committee of the respondent No.1/School observed in its order dated 10.9.2014 that there was no delay in instituting the inquiry as per the rules and in terms of the order dated 06.08.2013 passed by the High

Court and in any case, the Court had reserved the right of the School to hold an inquiry into the incident of 22.01.1994 (Annexure P-8). The Managing Committee has further observed that if the petitioner's request is acceded to and the inquiry is dropped, it would cause great injustice to the staff member, who was a victim of the act of molestation allegedly committed by the petitioner in the year 1994 and is waiting for justice. It has also been observed in the order that during the oral hearing granted to him, the petitioner had almost admitted that the aforesaid incident may have occurred due to his mental illness.

11. Having regard to the nature of the allegations levelled against the petitioner, the Managing Committee was of the opinion that they were grave and involved the modesty of a woman and could not be left uninquired only on the ground of delay. On merit also, the reply furnished by the petitioner to the Managing Committee was found to be unsatisfactory and therefore, the Committee was unanimous in its decision that an inquiry was called for and ought to be held against the petitioner in connection with the incident in question with a caveat that he would have a full and fair opportunity to explain his stand and take all the defences that may be available to him before the Inquiry Officer.

12. Coming to the second objection taken by the petitioner with regard to constitution of the Departmental Action Committee in terms of the Resolution dated 21.01.2013, learned counsel for the petitioner states that the respondent No.1/School overlooked the fact that the Delhi School Education Act and Rules are not applicable to unaided minority schools and therefore, the said Committee should not have been constituted in consonance with the said Rules. The aforesaid submission was duly taken note of by the Managing Committee and rejected with the observation that sufficient powers vest in the Committee to decide as to which rules and regulations would be followed by it for conducting the disciplinary proceedings and the rules and as the regulations stipulated in the DSEAR were uniformly being followed for all the employees of the School, an exception could not be made for the petitioner.

13. The Court has carefully perused the impugned order dated 10.09.2014 and finds that the submission made by learned counsel for the petitioner that the respondent No.1/School has not applied its mind and not taken an objective decision on the objections raised by the petitioner, is not borne out from a perusal of the said order. Instead, the said order reveals that the Managing Committee of the School has taken into consideration both the objections raised by the petitioner, the

first one being belated and uncalled for resurrection of the incident that relates back to the year 1994 and the second objection being that the DAC constituted by the Managing Committee in terms of the Resolution dated 21.11.2013 is against the provisions of the DSEAR and returned its findings.

14. The plea of the counsel for the petitioner that the alleged incident in question having occurred nearly two decades ago is a sufficient ground to terminate the inquiry proceedings, is found to be unjustified. Any such view would tantamount to defeating the right to dispensation of justice to the victim, who happens to be a lady staff member of the very same School and this is all more relevant, when she has been vigorously pursuing her complaint and the inquiry is stated to be pending at the stage of recording her cross-examination.

15. The submission made by learned counsel for the petitioner that if the victim was really aggrieved, she ought to have filed a FIR against the petitioner, does not hold any water. Assuming that the victim had not filed a FIR in respect of the alleged incident, it would certainly not be a ground for the respondent No.1/School to drop the disciplinary proceedings initiated against the petitioner on the complaint submitted by her to the school management.

16. Furthermore, it is not as if the delay in conducting the inquiry is attributable either to the respondents No.1 and 2/School or to the victim. The facts narrated in the impugned order reveals that the alleged incident of molestation had taken place on 22.01.1994 and on the very same date, the petitioner had tender his resignation to the respondents No.1 and 2/School, which was duly accepted. Resultantly, the School did not initiate any inquiry into his alleged conduct. However, the petitioner had second thoughts about the resignation tendered by him and when he sought to withdraw the same and his request was turned down by the School, he challenged the said decision before the Delhi School Tribunal. Thereafter, the petitioner's appeal had remained pending before the Tribunal till it was finally decided on 18.08.2011. This explains the passage of over seven years between 21.01.1994 to 18.08.2011.

17. Aggrieved by the decision of the Tribunal, the respondent No.1/School had filed a writ petition in this Court, which was disposed of vide order dated 06.08.2013, wherein the School had agreed to reinstate the petitioner, but at the same time, liberty was granted to the School to conduct an inquiry against the petitioner for his alleged involvement in the incident of 21.01.1994. Within four months therefrom, the

respondents No.1 and 2/School had taken steps to pass a Resolution and issue a Memorandum against the petitioner, whereafter Articles of Charge were framed on 17.12.2013. This was followed by the petitioner filing two petitions before this Court, which were disposed of vide order dated 27.05.2014, with directions issued to the School to pass a speaking order on the twin objections taken by the petitioner with regard to resurrection of the complaint of alleged molestation against him after two decades and the invalid constitution of the DAC. A speaking order has now been passed and is assailed by the petitioner in the present proceedings.

18. It is apparent from the sequence of events narrated above that neither the respondents No.1 and 2/School, nor the victim had any role to play in the delay in initiation of the departmental proceedings against the petitioner.

19. As regards the second objection taken by the counsel for the petitioner that Chapter VIII of the DSEAR is inapplicable to the respondents No.1 and 2/School, it being a minority school and the School cannot invoke the said provision to constitute the DAC or initiate disciplinary inquiry against the petitioner, the same is untenable and taken note of only to be rejected. The DSEAR does not debar a private

minority school from adopting the Rules prescribed under the Statute for conducting disciplinary proceedings against its teaching and non-teaching staff members and nor does it mandate that in the absence of rules framed by a school like the respondent No.1, it cannot adopt the procedure laid down in the Act and follow the Rules meant for conducting an inquiry against a delinquent employee. Moreover, as has been noted in the impugned order, the said rules for disciplinary proceedings as provided in the Act have been uniformly applied to all the employees of the School and therefore, no exception can be made in the case of the petitioner.

20. Given the aforesaid facts and circumstances, this Court is of the opinion that the impugned order dated 10.09.2014 passed by the Managing Committee of the respondents No.1 and 2/School does not deserve to be interfered with in view of the fact that the same is backed by valid and cogent reasons for turning down both the objections raised by the petitioner for the continuation of the inquiry proceedings and the procedure prescribed for conducting the disciplinary proceedings against him.

21. As for the merits of the case which learned counsel for the petitioner has sought to argue by pointing out the fallacies in the Articles

of Charge framed against his client, this Court declines to tread that path for the simple reason that after the respondent No.1/School had passed the order dated 10.09.2014, the parties were directed to appear before the Inquiry Officer for completion of the departmental proceedings. Now that the inquiry has finally commenced after passing of the impugned order dated 10.09.2014, there is no good reason to stall it once again on the aforesaid plea taken by the petitioner. Instead, given the time lag, the disciplinary proceedings ought to be taken to their logical conclusion at the earliest.

22. The Court has been informed that the matter is at an advanced stage of cross-examining the victim (a colleague staffer of the School) and is listed for the said purpose on 24.11.2014. All the pleas that the petitioner has taken in the present petition with regard to the merits of the case have admittedly been taken by him before the Inquiry Officer. In these circumstances, the Court refrains from making any observations on the merits of the case. After conclusion of the evidence, parties shall be at liberty to address arguments and the petitioner shall have ample opportunity to make his submissions and take all the pleas available to him at that stage.

23. As a result, without making any observations on the merits of the case, the present petition assailing the order dated 10.9.2014 passed by the Managing Committee of the respondent No.1/School proposing to constitute a DAC, is dismissed as being devoid of merits. Liberty is granted to the Inquiry Officer to conduct the inquiry proceedings in accordance with law. After a report is submitted by the Inquiry Officer to the Disciplinary Committee, the petitioner shall be furnished a copy thereof and afforded an opportunity to respond thereto. Thereafter, the disciplinary proceedings shall be taken to its logical conclusion.

24. At this stage, learned counsel for the respondents No.1 and 2/School states that the enquiry proceedings did commence on 4.10.2014 and on the last date of hearing fixed before the Inquiry Officer, i.e, on 18.11.2014, the petitioner had sought an adjournment and he was duly accommodated and the next date of hearing is for the cross-examination of the victim on 24.11.2014. He submits that as the petitioner has been creating hurdles in the inquiry proceedings by adopting dilatory tactics and failing to co-operate, appropriate directions be issued to him to cooperate for an expeditious conclusion of the inquiry.

25. Having regard to the fact that the incident in question, which is the subject matter of the inquiry, relates back to the year 1994, which is almost two decades ago, it is deemed appropriate to direct the Inquiry Officer not to accommodate either party by giving unnecessary adjournments. The Inquiry Officer shall proceed with the inquiry with reasonable dispatch and make an endeavour to conclude the same as expeditiously as is possible.

26. With the above orders, the petition is dismissed in *limine*, along with the pending applications.

NOVEMBER 20, 2014
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(HIMA KOHLI)
JUDGE