



2023:DHC:9445



IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of order : 19th December, 2023

+ W.P.(C) 15572/2023, CM APPL. 62357/2023 & CM APPL. 62358/2023

BHUWAN KANSAL

..... Petitioner

Through: Mr. Chirag Jamwal, Adv.

versus

APEEJAY SCHOOL ANR.

..... Respondents

Through: Mr. Sanjeev Ralli, Sr. Advocate with
Mr. M.P Sahay, Ms. Awanitika,
Mr.Sachin Kharb, Mr. Shubham
Yadav and Mr. Chetanya Baweja,
Advs for R-1.
Mr. Yeeshu Jain, Addl standing
Counsel for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

W.P. (C) 15572-2023

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

a) *“Set aside/quash the letter(s) dated 30.07.2018, 28.08.2018
& 09.03.2019 issued b the Respondent No.1 to the*



Petitioner, declining his request/for grant of full back wages.

- b) Direct the Respondent No.1 to grant full Backwages, pending salary and consequential benefits to the Petitioner.*
- c) Pass any other order(s) deemed just, fit and proper in the facts and circumstances of the case.”*

Factual Matrix

2. The respondent No.1 is an educational institute i.e. a private school. The respondent No.2 is the Department of Education, Government of NCT of Delhi, which is the governing and supervisory authority, under whose control the respondent No.1 operates. The petitioner was appointed on the post of Accounts Officer vide letter dated 5th June 2004 at a salary of Rs. 8000/- per month along with other allowances.

3. Thereafter, vide letter dated 6th June 2005, the services of the petitioner was further extended, on contractual basis, for a period of one year. The petitioner successfully completed the period of probation of one year on 6th June 2005 and his employment was confirmed w.e.f. 6th June 2006 at the pay scale of Rs. 6500-200-10,500/- along with other allowances and benefits.

4. The petitioner was also given an additional authority to operate the bank account in the name of the respondent No.1 and the said authority was provided to the Principal of the School as well.

5. After sometime, the petitioner raised the issue that he was entitled to higher scale of Rs. 7500-250-12000/- w.e.f. 6th June 2005, with the



Management of the respondent No.1 several times during his services in the School.

6. On 23rd June 2012, the petitioner reported for his duty, he was not allowed to enter in the premises of the School and was informed that his services have been dispensed. The salary for the month of June 2012 and various other dues were also withheld.

7. Aggrieved by the action of the respondent No.1, he Appeal No. 43/2012 under section 8 (3) of the Delhi School Education Act, 1973 before the Delhi School Tribunal (hereinafter "DST"). The DST allowed the said appeal Vide order dated 3rd September 2015 and held that the petitioner herein was a regular employee of the School and directed the School to reinstate the petitioner with immediate effect, along with all consequential benefits.

8. In compliance with the said order passed by the DST, the petitioner presented his Claim for Back wages before the respondent No.1 along with detailed calculation vide letter dated 21st September 2015, however, he was informed vide letter dated 26th September 2015 that his representation regarding back wages is kept in abeyance as the school has decided to prefer Writ Petition before this Court.

9. Accordingly, the respondent No.1 preferred W.P. (C) No. 9390/2015, before this Court against the order dated 3rd September 2015 passed by the DST. During the pendency of the said Writ Petition, the order of the DST was stayed by this Court, however, the writ was dismissed later on, vide judgment dated 25th April 2017.



2023:DHC:9445



10. Pursuant to the dismissal of the said writ petition, the petitioner yet again presented his supplementary Claim for Back wages vide letter dated 19th May 2017.

11. Thereafter, respondent No.1 preferred appeal bearing L.P.A no. 388/2017 against the order dated 25th April 2017 passed by this Court. The said L.P.A was again dismissed by the Division Bench of this Court vide judgment dated 10th November 2017. Pursuant to the dismissal of the L.P.A No. 388/2017, the petitioner again presented his supplementary Claim for Back wages vide letter dated 22nd November 2017 and send another letter dated 12th December 2017 seeking joining orders and arrears of pay from the respondent No.1.

12. The respondent No.1 refused to address the grievance of the petitioner. Thus, the petitioner approached the respondent No. 2 vide letter dated 19th December 2017.

13. Thereafter, the petitioner also wrote a letter dated 4th January 2018 to the Education Minister, Government of NCT of Delhi regarding his grievances.

14. Pursuant to dismissal of the writ and the LPA, the respondent No.1 preferred special leave petition before the Hon'ble Supreme Court and the SLP was dismissed vide order dated 2nd July 2018 whereby the Hon'ble Court directed the respondent to comply with the order of the DST with immediate basis, and therefore, pay all the matters accrued to the petitioner.



15. The petitioner wrote a letter dated 26th July 2018 to the respondent no. 1 seeking issuance of Joining Orders, however, the same was declined vide letter dated 30th July 2018.
16. Thereafter, the respondent No.1, issued a Suspension letter dated 3rd August 2018 against the petitioner.
17. Upon suspension, the petitioner sent Demand Notice dated 16th August 2018 to the respondent No.1 and vide letter dated 28th August 2018, the respondent No.1 sent a reply to the aforementioned demand notice sent by the petitioner.
18. The respondent No. 1 vide letter dated 25th September 2018 recalled and revoked the suspension letter dated 3rd August 2018 and directed the petitioner to join the duty, however, issued another suspension order dated 13th October 2018.
19. Aggrieved by the said action of the respondent No.1, the petitioner preferred contempt case bearing Cont. Cas (C) No. 834/2018.
20. During the pendency of the aforesaid contempt petition, the respondent No. 1 started enquiry against the petitioner and accordingly issued a Chargesheet dated 26th December 2018. The petitioner preferred an application seeking stay on the disciplinary proceedings against the petitioner, and the same was allowed by this Court.
21. The Petitioner vide letter dated 2nd March 2019 wrote to the respondent regarding payment of back wages, however, the respondent No.1 denied grant of any back wages vide letter dated 9th March 2019.



22. Vide order dated 27th September 2023, this Court disposed of the said Contempt Petition, whilst granting liberty to the petitioner to challenge the disciplinary proceedings and back wages in separate proceedings.

23. In the instant petition, the petitioner is challenging the Letter dated 30th July 2018, 28th August 2018 & 9th March 2019 issued by the respondent No.1, declining petitioner's request for grant of back which is in contravention to the order passed by the DST.

24. Learned counsel appearing on behalf of the petitioner submits that the non-grant of backwages, consequential benefits, & pay scale as per 7th pay commission is violative of the principles of natural justice and fair play as well as in violation of the Constitution of India.

25. It is submitted that the respondent No.1 was duty bound to reinstate the petitioner, along with all consequential benefit, however, the respondent School is engaging in foul tactics firstly by fighting in the Court for numerous years and then engaging in illegal acts to avoid the actual reinstatement and payment of back wages & consequential benefits.

26. It is submitted that the respondent No.1 is unnecessarily delaying the justice by undue litigation and the same has resulted in serious financial burden on the petitioner and therefore, he is unable to maintain himself and is totally dependent on his old parents.

27. It is submitted that the *mala fide* intention of the respondent No.1 is apparent from the letter dated 30th July 2018 which was sent to the petitioner even before the receipt of his representation by the school whereby his representation was rejected.



28. In view of the foregoing submissions, the learned counsel for the petitioner prayed that the petition may be allowed, and the reliefs may be granted by this Court.

29. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the present petition submitting to the effect that the DST vide its order dated 3rd September 2015 obliged the petitioner herein to make exhaustive representation as to how and in what manner he will be entitled to complete back wages with direction to the school to decide the representation, to be given by him and pass a speaking order. However, in the said representation, the petitioner did not give any cogent reasons for the same, leading to denial of the backwages.

30. It is submitted that the petitioner herein filed a contempt petition against the school before this Court making false and frivolous allegations despite due compliance with the DST order.

31. It is further submitted that the order passed by the DST attained finality only on 2nd July 2018 and immediately thereafter appropriate steps were taken in the matter, however, the same were kept in abeyance because the petitioner was an employee of the Society and not that of the School.

32. It is also submitted that the respondent no. 1 acted in due compliance with its statutory mandates and the allegations by the petitioner regarding callous or arbitrary conduct of respondents are motivated and without any semblance of truth.

33. It is submitted that the response was duly given to the representation dated 21st September 2015 and also the reminders dated 19th May 2017, 22nd



November 2017, 12th December 2017 and 26th July 2018. Hence, respondents had duly addressed all the concerns of the petitioner.

34. In light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, being devoid of any merits, may be dismissed.

35. Heard the learned counsel for the parties and perused the records.

36. Before adjudicating the instant petition on merit, this Court will reiterate the principle laid down with regards to the power of this Court under Article 226 of the Constitution of India.

37. Under Article 226 of the Constitution of India, this Court has a very limited power to intervene into the working of the executive. It is a settled principle that the High Courts, under its writ jurisdiction shall not intervene with the working of the executive unless there is a prejudice caused to any party by the executive authority or any decision is illegal in nature.

38. Therefore, it is clear that the writ jurisdiction is supervisory and the Court exercising it is not to act as an appellate authority over the executive. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a Court or a Tribunal. A finding of fact, howsoever erroneous, recorded by a Court or a Tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the Court or the Tribunal was insufficient or inadequate to sustain the impugned finding.



39. This Court will now discuss the impugned orders which have been challenged before this Court

40. The impugned letter dated 30th July 2018 has been reproduced herein below:

“This has reference to the order dated 3.9.2015 passed by the Hon'ble Delhi School Tribunal wherein it framed for the first time the only question as under:

“the only question left to be decided by this Tribunal is whether the Appellant is a regular and confirmed employee of R2 School or R3 Society.”

and answered the same holding that you are an employee of the School.

The said finding of the Tribunal was challenged by filing writ petition before Hon'ble Single Judge and subsequently before the Hon'ble Division Bench in Appeal of the High Court of Delhi, wherein the Order of Hon'ble Tribunal were upheld. The order of the Hon'ble Division Bench in LPA was carried to Hon'ble Supreme Court. Finally, the Hon'ble Supreme Court on 02.07.2018 while upholding the order of Tribunal observed as under:

“In that view of the matter we do not think any substantial injustice has been caused to the Petitioner though technically there may be some force in the contention that the initial appointment was not made as per the procedure contemplated in the Rules...”

Having regard to the backwages, the Tribunal vide its order dated 03.09.2015 directed as under:



“With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the Appellant is directed to make exhaustive representation to the R2 School within a period of 4 weeks from the date of this order, as to how and in what manner he will be entitled to complete wages. The Respondent No.2 school is directed to decide the representation given by the Appellant within 4 weeks of receiving the same by a speaking order and to communicate the order along with the copy of the same to the Appellant Order accordingly.”

By your representation dated 21.09.2015, you, stated as under:

“I have prepared the detailed calculation in a simplified manner and present the same before you for your perusal and settlement. I would bring to you attention that as applicable to the post of Accounts officer, I was entitled to Scale of 7500-250-12000 which was revised to Pay Band PB-2 in the Scale 9300-34800 with a Grade Pay of 5400 on the recommendations of Vth Pay Commission. A copy of circular No. 204 dated 23.09.2008 issued by the Govt of India, Ministry of Finance, Deptt. Of Expenditure, Controller General of Accounts clearly states the Pay Scale as applicable to the Accounts Officer and others is enclosed for your ready reference. I was wrongly paid the scale of 6500-200-10500 which was revised to PB -2 in the scale 9300-34800 with Grade Pay of 4800. The impact on account of the revision of Grade Pay from 4800 to 5400 has been taken in the Grand Total to maintain parity of Scale of pay applicable to the post.

The fixation of pay along with total arrears of pay has been made separately as attached. Now I request your goodself to release these dues as per the Orders of the Hon'ble Tribunal dated 03.09.2015 within a period of 4 weeks. I am facing lot of financial hardship since June 2012...”



This representation was followed by your reminders dated 09.05.2017, 22.11.2017 and 12.12.2017. Having regard to aforesaid factual background, from the time the Hon'ble Tribunal's order was passed and challenged before the Hon'ble Higher Courts, your sketchy representation was on hold.

Rule 121 of the Delhi School Education Act and Rules 1973 reads as under:

121. Payment of pay and allowances on reinstatement

(1) When an employee who has been dismissed, removed or compulsorily retired from service is reinstated as a result of appeal or would have been so reinstated but for his: retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, as the case may be, the managing committee shall consider and make a specified order:-

(a) with regard to the salary and allowances to be paid to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as the period spent on duty.

(2) Where the managing committee is of opinion that the employee who had been dismissed, removed or compulsorily retired from service had been fully exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service or suspended prior to such dismissal, or compulsory retirement from service, as the case may be:



Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representations and after considering the representation, if any, made by the employee, direct, for reasons to be recorded by it in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowances as it may determine.

(3) The payment of allowances shall be subject to all other conditions under which Midi allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances.

Pursuant to the decision of the Hon'ble Supreme Court on 02.07.2018, we have considered your representation dated 21.09.2015 followed by reminders – dated 09.05.2017, 22.11.2017 and 12.12.2017 in terms of Rule 121 of the Delhi School Education Act and Rules 1973.

At the very outset, the Tribunal had specifically directed you to make exhaustive representation explaining as to how and in what manner you are entitled to complete wages, however, your representation lacked compliance of the directions referred to above.

You have not stated any cogent reasons as to why should the period w.e.f. 23.6.2012 be treated as the period spent on duty and full wages/ remuneration be paid to you. You have also not stated nor placed any proof with your representation as to extent of the income, if any, earned by you elsewhere during the interim period of litigation.



Further, you have also not stated nor placed any proof with your representation as to the nature of the efforts made by you to secure alternative gainful employment or the circumstances which prevented you from making such efforts. This is de hors the fact that on various occasions, you were even offered during the proceedings by Apeejay Education Society to join the Society at the last drawn scale and post. The said offer was made by the Society without prejudice to all rights and matters in the appeal, which offer was declined by you. This offer was specifically made to keep you financially gained. However, you declined the offer, it is too obvious that you were gainfully employed and continued to remain so.

This is further fortified from the fact that you have deliberately not stated any facts about the employment or non-employment and/or the efforts made or not made to secure an alternative employment during the interregnum period. It is, thus, fair to conclude that you have not discharged the burden. You have also not placed any material in terms of your representation that you were not working for all those years.

You have referred to Office Memorandum of Controller General of accounts but we are unable to understand as to how the same is applicable to you.

In view of above and in particular your representation dated 21.09.2015 followed by your letter dated 09.05.2017, 22.11.2017 and last letter received by the School being 12.12.2017 not being in compliance with the order of the Hon'ble Tribunal as such there is no material before us to accept your demand."

41. Upon perusal of the impugned order it is evident that the respondent rejected the claim of the petitioner on the ground that the petitioner did not provide any cogent reasons as to why should the period w.e.f. 23.6.2012



be treated as the period spent on duty and full wages/remuneration be paid to him. The petitioner has neither stated, nor placed any proof with his representation as to extent of the income, if any, earned by him elsewhere during the interim period of litigation.

42. Furthermore, he has also not stated or placed any proof as to the nature of the efforts made by him to get an alternative gainful employment or the circumstances which prevented him from making such efforts. Despite the fact, on various occasions, petitioner was offered job to join the respondent's Society at the last drawn scale and post. Since petitioner declined the said offer, hence the respondent was under the assumption that the petitioner was gainfully employed.

43. In light of the foregoing discussion, this Court is of the view that the aforesaid order does not suffer from any illegality as the respondent has duly assigned the reason for rejecting the petitioner's claim.

44. Thereafter, the respondent had issued impugned letter dated 28th August 2018 and the same is as under:

"We are in receipt of your notice, referred to above, stated to have been issued under instructions from you client, Shri Bhuwan Kansal.

1. With respect to the contents of paragraph no. 1 of your letter, we fail to understand as to why you client is restrained to send the notice under reply. The issuance of the letter dated 30.07.2018 and suspension dated 03.08.2018 is admitted and is acknowledged to have been received by your client.



2. With respect to the contents of paragraph no. 2 of your letter, your client is well aware that the directions contained in the order dated 03.09.2015, passed by the Hon'ble Delhi School Tribunal in Appeal No. 43 of 2012 stands duly complied with immediately upon the final decision in the matter by the Hon'ble Supreme Court on 02.07.2018. We specifically deny that we have intentionally and/or otherwise flouted any directions. It is equally denied that we have committed contempt of the order dated 03.09.2015 as falsely imputed by you. There are no basis for your client to attribute motives to us. The representation made by your client followed by reminder have been duly responded by us.

3. With respect to the contents of paragraph no. 3 of your letter, your client is well aware that the directions contained in the order dated 03.09.2015, passed by the Hon'ble Delhi School Tribunal in Appeal No. 43 of 2012 were subject matter of challenge by us by way of Writ Petition before the Learned Single Judge of the Hon'ble High Court of Delhi. Since the Learned Single Judge did not accept the plea of the school and dismissed the writ petition, as such, the School challenged the said order before the Division Bench of the Delhi High Court, who dismissed the appeal. The order of the Hon'ble Division Bench was challenged by way of Special Leave to Petition before the Hon'ble Supreme Court and the said petition was finally dismissed on 02.07.2018. Thus, the order dated 03.09.2015, passed by the Hon'ble Delhi School Tribunal attained finality only on 02.07.2018 and immediately thereafter we have taken appropriate steps in the matter, which were kept in abeyance because of one of the main ground being urged by us that your client was an employee of the Society and not that of the School. We categorically deny that we exhibited callous or arbitrary conduct as is wrongly imputed upon us. Your clients such allegations are motivated and without any semblance of truth.

4. With respect to the contents of paragraph no. 4 of your letter, the representation dated 21.09.2015 made by your client was neither in accordance with the directions of the Learned Tribunal dated 03.09.2015 nor otherwise did justify. The calculations made therein.



We have duly responded to your client's representation dated 21.09.2015 and also the reminders dated 19.05.2017, 22.11.2017, 12.12.2017 and 26.07.2018. We reiterate the contents of our letter dated 30.7.2018 which are not being reproduced herein. Your client is not honest with you when you allege that "Nefraiously, the said representation has not been considered till date" as the Managing Committee has duly considered your client's representation which was responded vide communication dated 30.7.2018 acknowledged by your client in notice under reference. You have referred to a reminder letter dated 27.3.2018 stated to have been written by your client, however, the same was not received by the School. We take strong objection to your contention the reminders were whimsically shunned.

5. With respect to the contents of paragraph no. 5 of your letter, your client is well aware that the directions contained in the order dated 03.09.2015, passed by the Hon'ble Delhi School Tribunal in Appeal No. 43 of 2012 were subject matter of challenge before the Hon'ble High Court of Delhi and then Hon'ble Supreme Court and during the pendency of the same, your client's representation was kept in abeyance as the main question involved was whether your client was an employee pf Apeejay Education Society or of School. Immediately when the said issue attained finality on 02.07.2018, your clients representation was decided by the Managing Committee of the School. Your client was kept duly informed of the pendency of litigation either directly or through Directorate of Education and was infact your client was duly represented by lawyer before the Hon'ble High Court and contesting the litigation. Further, your client in his letter dated 26.07.2018 has acknowledged that the representation was on hold, because the matter was pending before the Courts of law.

As such now it does not seem appropriate for you to allege that either we "did not judiciously & timely decide the representations" of your client or we "merely kept silent" or we "procrastinate the issue" as these are quite contrary to actual and factual position. We specifically deny that vide our letter dated 30.07.2018, we have pointed out any anomalies in the representation dated 21.9.2015 made by your client.



We also deny that we raised objections to the representation dated 21.9.2015 made by your client or they are moonshine or sham as stated or otherwise. Rather, the Managing Committee has dealt with the representation purely on merits. We specifically deny that we have resorted to any retributive measure as is falsely being contended. We take strong objection to your client's allegation that we are harassing your client. We have simply dealt with the representation of your client strictly in accordance with Tribunal's order and Rule 121 of Delhi School Education Rules 1973. We treat your client's allegation with contempt as it deserves.

6. With respect to the contents of paragraph no. 6 of your letter, we specifically deny that any protracted litigation with us, since the year 2012, has been a major deterrent for your client to secure another viable job as falsely contended. It is matter of record that all that we did was ask to your client to report to Apeejay Education Society's office-which your client even did. Thus, we fail to understand as to on what basis your client is making allegations. We also fail to understand as to why client was under great mental tension since his. services was not terminated at all. Rather your client by the reasons of his own choice infringed the service terms and conditions thereby exposed himself. We are not aware that your client was advised bed rest due to hypertension or remained on bed rest for the month of July in his hometown Rohtak. The issuance of legal notice on 14.08.2012, filing of appeal before the Hon'ble Delhi School Tribunal, filing of Writ Petitions, Letter Patent Appeal,

Review Petition and Special Leave Petitions are all matter of record and does not need recounting. However, it is equally correct that it is not mandate of law that your client should personally appear on all dates of hearing in Civil Cases as your client had already engaged a lawyer for handling the matter and your client was not appearing in person. Further, the appearance or non appearance of your client on any of dates of hearing is not a valid ground for not securing alternate job rather is a weak frail attempt to cover up the fact that he was already gainfully employed. Besides, a perusal of dates listed out by



2023:DHC:9445



you itself shows that your client had enough time to secure job which can be seen that your client is stated to have appeared:

In the month of November 2012: once.

Next date after a gap of 2 months.

In the month of January 2013 :once.

Next date after a gap of 2 months.

In the month of March 2013 once.

Next date after a gap of 4 months.

In the month of July 2013 once.

Next date after a gap of 2 months.

*In the month of September 2013 once.
Next date after a gap of 2 months.*

*In the month of December 2013 once.
Next date after a gap of 3. months.*

*In the month of February 2014 once.
Next date after a gap of 2 months.*

*In the month of April 2014 once.
Next date after a gap of 2 months.*

*In the month of July 2014 once.
Next date after a gap of 3 months.*

*In the month of August 2014 once.
Next date after a gap of 1month.*



2023:DHC:9445



In the month of September 2014 once.
Next date after a gap of 3 month.

In the month of December 2014 twice
Next date after a gap of 5 month.

In the month of May 2015 once.
Next date after a gap of 2 months.

In the month of July 2015 once. ;
Next date after a gap of 1 month.

In the month of August 2015 once.
Next date after a gap of 1 month.

7. With respect to the contents of paragraph no. 7 of your letter, as your client never approached us anytime for, issuance of experience Certificate; relieving Certificate; Last Pay Certificate; no Objection Certificate that he could work elsewhere and character certificate, thus, now to urge that your client could not apply for a job because of the said lacking certificate is on the face of it after thought and false. Besides, even now your client has not disclosed as to at which places he applied for job and he was asked to produce the said document. We specifically deny that there was any illegal or arbitrary termination. We deny that at the time of applying for a job these documents are compulsorily required or needs to be attached with the application form. Admittedly, your client did not furnish even a single document out of said documents as listed out by you to Apeejay Education Society either at the time of applying or after even securing the job. Your client's statement that he made best possible efforts and applied to work at some other organizations, but due to non availability of the above mentioned documents, is made up and equally vague.

8. With respect to the contents of paragraph no. 8 of your letter read with paragraph 6 and 7, shows that your client has chosen to list out all the excuses as to why he did not even make an effort to apply and secure a



job only with a view to cover up the fact that he was already employed and at the same time he wants to unjustly enrich himself by claiming huge sums of money from us without even working for a single day for us. In view of the fact that your client has not mentioned even single instance, where he actually applied for a job, but was not successful, itself shows that your clients has been gainfully employed all throughout.

9. With respect to the contents of paragraph no.9 of your letter, again your client has not apprised you of actual fact. The offer repeatedly made to your client was a without prejudice offer duly recorded in the order sheet of Tribunal. The fact that your client vehemently denied the offer itself proves that he was gainfully employed. We deny that any offer made before Court of Law was to gain sympathy or a feeble attempt to misled the Hon'ble Tribunal /Court as had your client accepted the offer then he would have been paid the salary by Apeejay Education Society every month, thus, the question of gaining any sympathy or a mseneInng the Hon'ble Tribunal /Court does not arise.

10. The contents of paragraph no. 10 of your letter, itself shows and proves that your client was gainfully employed since July 2012 as admittedly your client got married in the year 2015 and in Indian culture no parent will marry their daughter to an unemployed person. It itself proves that the made up reasons listed out at paragraph no. 6 to 9 hereinabove are of no avail to your client. We are unable to accept that a young man of 38 years will be dependent on his retired father pension instead of supporting him and will marry despite being unemployed and then despite an offer to report for duty at same scale, will deny such an offer of job. These statements of your client does not inspire any confidence.

11. With respect to the contents of paragraph no. 11 of your letter, your client is from finance background and was in litigation with us and at the same time had been sending us calculation of huge amounts as such he would disclosed only such income as he deems fit and to the extent that he did not have to pay any tax. The said return chart is made up as your client is projecting that whatever income your client was generating from



sources other than salary, he was investing the entire sum to avail benefit under Section 80 C of Income Tax Act and was not even withdrawing a single penny for his own expenditure. This on the face of it also shows that your client was earning salary in cash and utilizing it but at the same time was showing only limited income to avail Section 80 C benefit. Further the income from other sources increased immediately from F.Y 2013-2014. We specifically deny that there has been any abrupt or arbitrary or illegal or whimsical termination or your client has been subjected to any immense mental or financial or social or physical distress. Rather your client got married in the year 2015 while the matter was el pending before the Delhi School Tribunal.

12. With respect to the contents of paragraph no. 12 of your letter, we deny that trauma was caused to your client as alleged or otherwise. It is denied that the alleged trauma as pretended effected your client's marital life as alleged. Besides your client's allegation is otherwise also false as your client has himself disclosed that he got married on 19.4.2015 while as your client was asked to report back at the Society's office in June 2012 and your client's litigation with his spouse is stated to be since October 2015 at Faridabad. Thus, by what stretch of imagination your client's marital life been effected or could have brought a social stigma being attributed to us by asking your client to report at Society's office in the year 2012 is not understood. It is apparent that your client has decided to level all kinds of allegations against us which are without any nor have any nexus to your client's representation dated 21.9.2015. We are quite baffled at the excuse trotted out by your client for extorting huge sums of money from us is that /invariably every week, your client has to travel to Faridabad and spend entire day in the Courts, seeking any new employment had further become very difficult for your client.

13. With respect to the contents of paragraph no. 13 of your letter, the suspension order dated 03.08.2018 is in accordance with the Delhi School Education Act and Rules framed thereunder. We deny that the suspension order is vague or bogus or arbitrary.



14. With respect to the contents of paragraph no. 14 of your letter, we specifically deny that we have misled the Hon'ble Tribunal/Courts by stating that your client was an employee of the society and merely sent on deputation to the school. We specifically deny that any false case was set up before the Hon'ble Tribunal to defend any alleged illegal action of termination. Rather, the issue framed and decided by the Tribunal was whether your client was an employee of the School or Society. Your client has been held to be employee of the School an order of the court of law. Since your client has been so declared to be an employee of the School as such he has to be referred to be the accounts officer of the school, unless your client wants to urge to the contrary that he was not an accounts officer of the School.

15. With respect to the contents of paragraph no. 15 of your letter, 'we have confirmed from our counsel who has confirmed to us that there was never any direction by any. Court of law to provide the details of the financial irregularities committed by your-client. Your client is called upon to disclose the said direction issued by the Hon'ble Court and finding/rejection of the same as is being contended in the paragraph under reply and thereafter we will respond to your contention. Since the main contention was that your client is not employee of the School as such disciplinary action was kept in abeyance. In fact the misconduct is accepted by your client in his notice dated 14.8.2012 itself when your client tried to wriggle out of the same and create a pre-emptory defence. We have no ill intention and take strong objection to any such allegation.

16. With respect to the contents of paragraph no. 16 of your letter, your client is well aware that your client was asked to report for duty at Apeejay Education Society at Apeejay Stya House, 14 Commercial Complex, Masjid Moth, Greater Kailash-II, New Delhi-48 w.e.f. 23.06.2012 because of financial irregularities noticed by the school. You client was specifically informed that the accounts for the past years will be investigated and your client was asked to co-operate in the preliminary investigations before any charge sheet was issued. Your client thereafter reported for duty at aforementioned office of the Society on 25.06.2012, 27.06.2012 & 29.06.2012. Your client was asked as to



whether he had any other bank accounts in his name or in joint account with someone else to which he stated that he would reply after checking the same. However, from 30.06.2012 your client stopped reporting for duty and absented unauthorisedly. Thereafter, your client raised dispute that he was an employee of the School and his services were terminated by the School. Since your client was employed by the Society and sent on deputation to the School as such Society intervened in the proceedings. Since the issue was pending adjudication whether your client was employee of School or that of the Society as such investigation was kept in abeyance since the Disciplinary action could have been taken only by the employer. Besides, the procedure of holding Disciplinary action by School of its employee and investigation by Society of its employee is totally different. If the preliminary investigation would have proceeded with by the Society then as of now entire exercise would have been infructuous as your client is held to be an employee of the School. The question of taking disciplinary action, issuance of show cause notice and/or suspension order from 23.06.2012 to 14.08.2012 or from 14.08.2012 to 17.10.2012 or 18.10.2012 to 02.07.2018 by the School did not arise as your client was not an employee of the School till so declared by the Court of law. We deny that there were no financial irregularities, as the same was the cause for your client having been asked to report for duty at Society's office which led to your client of having taken the stand that he was an employee of the School. We deny that anything has been cooked up or concocted by us or we had taken any illegal action.

17. With respect to the contents of paragraph no. 17 of your letter, the direction of the Hon'ble Tribunal is self explanatory and we have not disregarded any orders. We have sought legal advice and been informed that since now your client is declared to be employee of the School as such we can proceed with the disciplinary action which was not taken as your client was employee of the Society and Society was going to investigate and since your client urged that he was an employee of School and alleged termination, as such the same was kept in abeyance during the period of litigation. The suspension order, is neither frivolous nor malafide. We deny that we are engaged in any foul tactics. Your



client was well aware that he was appointed by Apeejay Education Society and was only sent on deputation to School. Your client had accessed internal communication between the Society and School and also made copies and retained for himself the copies of Board Resolution. pass: by the Society for operation of Bank accounts of the school which documents were property of the School. Your client had no business to access the internal communication of the School and Society even if it pertained to him as the same was neither issued to him nor a copy was marked to him, nor the Principal of the School or Managing Committee of the Society had handed over the same to your client. Nor your client was within his rights to keep with himself board resolution passed by the Society which resolution were for Banks and copy would have been retained by the school and were not for your client's benefit. Your client's conduct speaks for itself. We have been advised to refrain ourselves from commenting on the conduct of your client, as the matter is pending disciplinary action, as such we leave it at that. We deny that we are engaged in any illegal acts much less to avoid the reinstatement as is falsely alleged by you against us. So far as back wages are concerned, the Managing Committee has decided your clients representation dated. 21.9.2015 vide its order dated 30.7.2018.

18. With respect to the contents of paragraph no. 18 of your letter, despite your letter your client has still not shown that he was neither employed-all the while nor has shown. That he made any effort to secure alternate job but could not get one. Rather through your letter your client has sought to project too many excuses in paragraph nos. 6 to 12, which brings out only conclusion that your client was gainfully employed throughout. So far as the disciplinary action is concerned the same will have to continue till conclusion.

We have taken note of the threat contained in your letter under reply.”

45. In the aforesaid letter, the respondent strongly denied the allegations made by the petitioner. They further stated that the representation of the



petitioner has been dealt in accordance with Tribunal's order and Rule 121 of Delhi School Education Rules 1973.

46. Therefore, this Court is of the view that the aforesaid letter does not suffer from any illegality which goes to the root of the matter and it is apparent that the respondent acted in accordance with the statutory mandates applicable to them.

47. The impugned letter dated 9th March 2019, has been reproduced herein below:

"You are well aware that Delhi School Tribunal vide its order dated 3.9.2015 obliged you to make exhaustive representation as to how and in what manner you will be entitled to complete back wages with direction to the School to decide the representation, to be given by you, by a speaking order and to communicate the same to you. The directions contained in the order dated 03.09.2015, passed by the Hon'ble Delhi School Tribunal in Appeal No. 43 of 2012 were subject matter of challenge before the Courts of Law and attained finality by an order dated 02.07.2018 whereby you were held to be an employee of our School by the Hon'ble Supreme Court.

Immediately thereafter, your representation and its reminders were duly considered by us and decided strictly in accordance with Delhi School Education Rules and order passed by the Delhi School Tribunal and the decision on the same was duly communicated to you by the school's letter dated July 30, 2018. Upon receipt of the decision of the school, you vide your lawyer's letter dated August 16, 2018 issued notice which was also duly considered by the School and was accordingly responded by the School vide its letter dated August 28, 2018 addressed to your lawyer, which was duly received by your lawyer.



You are well aware that you have filed a contempt petition against the undersigned making false and frivolous allegations therein against the undersigned, though being well aware that the undersigned had not even addressed a single communication to you in her personal capacity but were addressed to you only as a Principal of the School. In any event, the same allegations are being repeated in your letter dated March 2, 2019.

The undersigned is unable to comprehend the reason and rational of your letter dated March 02, 2019, at this stage. The undersigned has already filed the reply to the contempt petition. The documents on record unequivocally establish that neither there is any disobedience of the order passed by Hon'ble Court on the part of the school. In view of the foregoing, you are hereby called upon to refrain from issuing any further false and frivolous letters, emails, and communications to the undersigned."

48. As per the said order the respondent stated that the documents which have been filed on record clearly state that there is no disobedience of the order passed by this Court. Upon perusal of the aforesaid order, this Court is of the view that aforesaid order does not merit any interference and the respondent has not acted in violation of any rights of the petitioner.

49. In view of the foregoing discussion, the rejection of the claim of the petitioner is on the ground that he failed in providing a cogent reason as to why his claim should be allowed. Moreover, the respondent offered a position to the petitioner at his last pay scale.



50. This Court is of the view that the respondent acted in accordance with the order of DST as well as the other courts and there is no illegality or irregularity in the working of the respondent.

51. The writ of certiorari cannot be issued in the present matter since for the issue of such a writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in the instant petition.

52. The instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the impugned letters despite the fact that there are no such special circumstances that require the interference of this Court. The petitioner is not aggrieved by any such violation of the rights of the petitioner, which merits interference .

53. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and is liable to be dismissed.

54. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

55. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 19, 2023
A/DB/AV

Click here to check corrigendum, if any