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

+ W.P.(C).1077 /2014

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Judgment dated 17th November, 2015

VINAY KUMAR

..... Petitioner

Through : Mr. Sudhir Kulshreshtha, Advocate

versus

THE COMMISSIONER KENDRIYA VIDYALAYA SANGATHAN &
ORS.

..... Respondents

Through : Mr. S. Rajappa, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, the writ petition is set down for final hearing and disposal.
2. This case has a long history inasmuch as that the petitioner who was working as a TGT Maths with the respondent School since the year 1984 was issued a charge sheet on 29.06.2001. The charge sheet contained five articles of charge. After the inquiry was conducted, the petitioner was exonerated by the Disciplinary Authority, a fresh inquiry was conducted at the instance of the Assistant Commissioner of the respondent. The inquiry report was submitted on 17.12.2003. Three out of five charges against the petitioner stood proved. Based on the inquiry report, on 19.04.2004 a major penalty of removal from service was imposed upon the petitioner. OA.2461/2005 was filed by the petitioner in the year 2005. The OA was allowed on 04.12.2006. The Tribunal had issued a direction to the respondent to supply documents to the petitioner and thereafter commenced the enquiry proceedings.

3. The order of the Tribunal was assailed by the respondent herein by filing a writ petition bearing W.P.(C).No.2296/2007. By an order dated 17.04.2007, the aforesaid writ petition was disposed of. However, the respondent assailed the order dated 17.4.2007 by filing a SLP before the Supreme Court of India which was dismissed on 03.11.2009. Meanwhile, during the pendency of the SLP, on 01.04.2009 the petitioner was reinstated and he joined his duty on 14.04.2009. The respondent decided to continue with the inquiry from the stage of supplying of documents to the petitioner. The inquiry was concluded on 29.01.2010. The Disciplinary Authority passed an order of removal against the petitioner. A departmental appeal was filed by the petitioner which was allowed on 31.03.2010 and the order of removal passed by the Disciplinary Authority was revoked.
4. The petitioner was posted at Assam. The petitioner made a representation on 17.04.2010 to the Commissioner for setting aside the memorandum of charges dated 29.06.2001. Another inquiry officer was appointed which led to the filing of an OA 164/2010 before the Tribunal at Guwahati on 30.06.2010. By an interim order, the enquiry proceedings were stayed. The Tribunal dismissed the OA on 10.08.2012 against which the petitioner filed a writ petition before the Guwahati High Court. During the pendency of this writ petition, another inquiry officer was appointed which led to the filing of yet another representation by the petitioner. Meanwhile, on 21.02.2013, the High Court at Guwahati set aside the order dated 10.08.2012 passed by the Tribunal at Guwahati and remanded the matter back for fresh hearing on the limited point with regard to delay.
5. During the pendency of the OA, yet another memorandum of charge was issued against the petitioner on 23.10.2013. The Tribunal dismissed the OA filed by the petitioner. The petitioner received yet another office order

which led to the filing of an OA before the Central Administrative Tribunal, Principal Bench. The Tribunal dismissed the OA.

6. Learned counsel for the petitioner has strongly urged before this Court that the petitioner has been put to great hardship and he has faced the inquiry for more than 13 years and during this period after his reinstatement, he continued to perform his duty diligently. The counsel further submits that the petitioner has since superannuated on 31.10.2013 and except for causing harassment to the petitioner, the inquiry would be a futile exercise. Counsel further submits that the respondent should reconsider the entire matter afresh in the light of various judicial orders which have been passed from time to time and drop the inquiry proceedings against him.
7. On the merits of the matter, learned counsel contends that on account of gross delay, the inquiry proceedings should be dropped. Reliance is placed in the cases of *Bishamber Nath v. Union of India & Anr.*, reported at 193 (2012) DLT 75(DB); *State of Madhya Pradesh v. Bani Singh and Another*, reported at 1990(Supp) SCC 738; *State of A.P. v. N. Radhakishan*, reported at (1998) 4 SCC 154; *P.V. Mahadevan v. Managing Director, Tamilnadu Housing Board*, reported at (2005) 6 SCC 636 and *Anant R. Kulkarni v. Y.P. Education Society and Others*, reported at (2013) 6 SCC 515.
8. The learned counsel for the respondent submits that the inquiry which was initiated on the basis of charge sheet of 2001 stood concluded, but the petitioner had approached the Central Administrative Tribunal and thereafter the matter was remanded back. Similar argument is raised with regard to the subsequent proceedings, which according to the learned counsel for the respondent caused delay in conclusion of the inquiry proceedings. The learned counsel for the respondent further contends that the judgments sought to be relied upon by the learned counsel for the

petitioner pertain to those cases where the inquiry was not concluded or where the inquiry officers were repeatedly changed which led to the delay in finalization of the inquiry proceedings, whereas in the present case the inquiry report was furnished twice, but since the orders were passed against the petitioner, the petitioner challenged those orders and by the judicial orders, the orders were set aside and the inquiry were to commence at different stages, which led to the delay.

9. During the hearing, the learned counsel for the respondent in response to the first submission made by the learned counsel for the petitioner submits that the Disciplinary Authority, in the case of the petitioner would be the Chairman of the Kendriya Vidyalaya Sangathan *i.e.* the concerned Minister in-charge and in case the inquiry proceedings are to be dropped, he/she alone would be competent to take a stand in the matter. Mr. Rajappa, learned counsel for the respondent further submits that the facts of the case would be brought to the notice of the Minister in accordance with law and it would be open for the Minister to take a decision in the matter.
10. Learned counsel for the petitioner submits that since the petitioner has superannuated, even in case the inquiry is continued, no order of dismissal can be passed and at best there would be a minor punishment. He further submits that the pension and retiral benefits should be released in favour of the petitioner. Mr. Rajappa, on the contrary, submits that the petitioner would be entitled to provisional pension and not regular pension till the conclusion of the inquiry.
11. At this stage, with the consent of both the parties, we dispose of the writ petition with the following directions:
 - (i) The case of the petitioner will be put up by the respondent to the Chairman of the Society, which in this case is the Minister with all relevant facts and papers to enable the Minister to take a decision as

to whether the inquiry should be dropped or not having regard to the fact that the charges pertain to the year 2001, the multiple litigation between the parties, and the fact that the petitioner was a school teacher and also continued to teach during the period of inquiry who has since superannuated;

- (ii) The case will be put up within two weeks. The Chairman is requested to take a final decision in the matter within six weeks thereafter;
- (iii) In case the decision is not favourable, the inquiry will be concluded within a period of three months thereafter; and
- (iv) Till the decision is taken or the inquiry is concluded, provisional pension and retiral benefits in accordance with law shall be released in favour of the petitioner within six weeks from the completion of all the paper work by the petitioner.

12. Needless to say, the parties have agreed that all legal issues and grounds should be kept open of both the parties.

13. The writ petition stands disposed of in above terms.

CM.APPL Nos.2235/2014, 2236/2014 & 2238/2014

14. Applications stand disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 17, 2015 pst