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

% *Judgment delivered on: 06th July, 2012*

+ **W.P.(C) 3903/2012**

BISHAN GUPTA Petitioner

Through : Mr.Shankar Raju, Adv.

versus

MEENA SHARMA AND ORS Respondents

Through : Mr. Rajiv Aneja, Adv. for R1.

Ms. Shobhana Takiar, Adv. for R2.

+ **W.P.(C) 3904/2012**

BISHAN GUPTA Petitioner

Through : Mr.Shankar Raju, Adv.

versus

ABHA GUPTA AND ORS Respondents

Through : Mr. Rajiv Aneja, Adv. for R1.

Ms. Shobhana Takiar, Adv. for R2.

+ **W.P.(C) 3905/2012**

BISHAN GUPTA Petitioner

Through : Mr.Shankar Raju, Adv.

versus

URMIL SAXENA AND ORS Respondents

Through : Mr. Rajiv Aneja, Adv. for R1.

Ms. Shobhana Takiar, Adv. for R2.

+ **W.P.(C) 3906/2012**

BISHAN GUPTA Petitioner

Through : Mr.Shankar Raju, Adv.

versus

USHA KIRAN VERMA AND ORS Respondents

Through : Mr. Rajiv Aneja, Adv. for R1.

Ms. Shobhana Takiar, Adv. for R2.

- + **W.P.(C) 3907/2012**
 BISHAN GUPTA Petitioner
 Through : Mr.Shankar Raju, Adv.
- versus
- SONIA SHARMA AND ORS Respondent
 Through : Mr. Rajiv Aneja, Adv. for R1.
 Ms. Shobhana Takiar, Adv. for R2.
- + **W.P.(C) 3909/2012**
 BISHAN GUPTA Petitioner
 Through : Mr.Shankar Raju, Adv.
- versus
- SUSHMA VERMA AND ORS Respondent
 Through : Mr. Rajiv Aneja, Adv. for R1.
 Ms. Shobhana Takiar, Adv. for R2.
- + **W.P.(C) 3911/2012**
 BISHAN GUPTA Petitioner
 Through : Mr.Shankar Raju, Adv.
- versus
- MEENAKSHI TEWARI AND ORS Respondent
 Through : Mr. Rajiv Aneja, Adv. for R1.
 Ms. Shobhana Takiar, Adv. for R2.
- + **W.P.(C) 3913/2012**
 BISHAN GUPTA Petitioner
 Through : Mr.Shankar Raju, Adv.
- versus
- SONICA JAGGI AND ORS Respondent
 Through : Mr. Rajiv Aneja, Adv. for R1.
 Ms. Shobhana Takiar, Adv. for R2.

SURESH KAIT, J. (Oral)

CM Nos.8165/2012, 8167/2012, 8169/2012, 8171/2012,8173/2012, 8177/2012, 8182/2012, 8185/2012 (Exemption)

Allowed subject to all just exceptions.

The applications stand disposed of.

+ **W.P.(C) Nos 3903-07/2012, 3909/2012, 3911/2012, 3913/2012**

1. These petitions have been filed for setting aside the impugned order dated 11.05.2112, whereby the respondents were directed to be reinstated in service with 50% back wages and other consequential benefits with full salary w.e.f. 11.05.2005 and an interest @ 12% per annum on arrears of back wages. The reasons recorded by the Presiding Officer of the Tribunal are that respondent school had not appointed any inquiry officer and no proceedings of the disciplinary authority have been placed on record. No notice in writing was ever issued to the respondents conveying the proposed action to be taken by the disciplinary authority. No representation was called for from them. Major penalty was imposed upon the respondents without following the procedure or holding a domestic inquiry. Not only that the disciplinary authority failed to observe the principles of natural justice but it also failed to adopt the substantive procedure prescribed for holding a departmental inquiry.

2. The Ld. Tribunal opined that the orders of dismissal of the respondents were illegal and unsustainable in the eyes of law.

3. Vide this common order, I intend to dispose of all the eight petitions preferred by the petitioner against the impugned judgment dated 11.05.2012,

passed by the Ld. Tribunal by disposing of eight appeals by common judgment.

4. All the respondents were working as teachers for different subjects in the respondent school except Ms. Meena Sharma at the time of her removal from service of respondent school. The facts of all the petitions are common. I find that Ld. Tribunal has recorded the Articles of charges of all the respondents teachers and came to the conclusion that Sub Rule 1 & 2 of Rule 20 of the Rules of Delhi School Education Act, 1973 have not been complied with.

5. It is recorded in the impugned judgment that this court while deciding a case of ***Kathuria Public School V. Directorate of Education, 113 (2004) DLT 703*** has held that the prior or ex-post facto approval of the Directorate of Education is not required for imposing any penalty on an employee in case of private unaided recognized school. Admittedly the respondent school is an unaided one. The respondent school was required to follow the whole of the procedure as contained in sub-Rule (1) of Rule 120 of the Rules for imposing the major penalty except that the approval of the Directorate of Education for imposing any penalty was not required.

6. It is further recorded that not only the Disciplinary Authority failed to observe the principle of Natural justice but it also failed to adopt the substantive procedure prescribed for holding a departmental inquiry.

7. While allowing the appeal of the respondents, the Tribunal has come to the conclusion that the impugned order passed against the appellants were

illegal and without any justification. Therefore, the orders passed by the petitioner were set aside and all the respondents / appellants were reinstated in service with 50% back wages and other consequential benefits with full salary w.e.f. 11.05.2005 and an interest @ 12% per annum on arrears of back wages.

8. Mr. Shanker Raju, Ld. Counsel for the petitioner has fairly conceded that Rule 120 of the Delhi School Education Act has not been complied with, however, the Tribunal should have given an opportunity at least to hold a proper inquiry afresh against the teachers who had committed misdemeanour as mentioned in the Articles charge issued to them. As back wages are concerned, that is in domain of the disciplinary authority at the time of final disposal of the departmental enquiry. The Id. Tribunal has wrongly allowed to back wages.

9. Ld. counsel has relied upon a case of ***Manager, Arya Samaj, Girls Higher Secondary School V. Sunrita Thakur, 1991 (43) DLT 139***, passed by Division Bench of this court, wherein, it was held that payment of pay and allowances on reinstatement into service is regulated by Rule 121. Sub-rule (1) comes into play, among other circumstances, when an employee, while under suspension, has been compulsorily retired from service is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation.

10. Ld. counsel has further relied upon a case of ***State of Punjab and others v. Dr. Harbhajan Singh Greasy (1996) 9 SCC 322***, wherein, it was held as under:-

“It is seen that the Enquiry Officer's report is based on the alleged admission made by the respondent. But, unfortunately, the Enquiry Officer has not taken his admission in writing . Subsequently, the respondent has denied having made any admission . As against the denial of the delinquent, we have only the statement of the Enquiry Officer which is not supported by any statement in writing taken from the respondent. Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he voided responsibility as a Doctor to treat on flood victims and that was cause for the suspension The appeal is accordingly allowed. No costs. Disallowance of the back wages would not stand in the way of computation of the pensionary benefits as if he had continued in service.”

11. None of the cases before the Tribunal were of suspension, therefore, in my opinion, the cases cited above would not play a positive role.

12. On other hand, ld. counsel for the respondents appeared as Caveator has relied upon a case of ***Ajay Singh v. Delhi Police Public School & Ors. 117(2005) DLT 516***, wherein, it was held as under:-

“8. I find considerable merit in the submission of Mr.Sethi. In the instant case, the Delhi School Tribunal set aside the order of termination in appeal, holding that no inquiry had been held and there was a violation of the Delhi School Education Act and the Rules there under and approval, as required of the Directorate of Education, had not been sought. It was a case, where no inquiry had been held and the termination order had been passed based on an internal report. It was not a case, where an inquiry had been made and for good reasons further inquiry was called for and the deeming provision Sub-Rule (4) of Rule 115 had to be viewed in the context of Rule 120, which prescribed the procedure for imposition of a major penalty. It stipulated that no order imposing a major penalty shall be made except after an inquiry. It was only after such inquiry was made that the stage for application of Sub-Rule (4) of Rule 115 could come. This also received support from the use of the expression "decides to hold further inquiry" as well as 1st line of the proviso, which provided that "further inquiry was not to be ordered except to meet a situation, where the order had been passed purely on technical grounds without going into merits." The Managing Committee of respondent No. 1/School dispensed with the services by simply referring to the report of the Principal. Such a

report cannot be equated with an inquiry envisaged under Rule 120. The Delhi School Tribunal held that the School had not followed the procedure laid down under Delhi Education Rules and the Act while imposing major penalty, specifically Rules 119 and 120 had not been followed. No Disciplinary Committee had been constituted and no inquiry was held. This order was challenged by the respondent in a writ petition bearing No. 1509/2003. The said writ petition was withdrawn and the order has become final. It is no longer open to the respondent to canvass that an inquiry had been held. Reference may also be usefully made to the decision of Mahender Singh v. Union of India and anr., reported at 1991 Supp (2) Supreme Court Cases 127. The said judgment while dealing with an analogous provision under C.C.A. Rules, 1965 Rule 10(4) held as follows:-

"There are three requirements for the application of Rule 10(4) (i) the government servant is dismissed, removed or compulsory retired as a measure of penalty; (ii) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a court of law; (iii) the disciplinary authority, decided to hold a further inquiry against the government servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of penalty of dismissal, removal or compulsory retirement and he shall

continue to remain under suspension until further orders.

In the present case the original order of termination was not passed against the appellant as a measure of punishment. It was a 'simpliciter termination' of the appellant's service and the Tribunal has set aside that order on the ground that it amounts to punishment and the order of punishment could not have been made without holding an inquiry against the appellant. But that is not the same thing to state that the management made an order terminating the services of the applicant by way of the penalty. Therefore, Rule 10(4) has no application to the case of the appellant. Moreover, since there was no inquiry leading to the removal of the appellant in the first instance, the decision to hold fresh inquiry does not attract Rule 10(4). The retrospective suspension of the appellant is therefore unjustified and without authority of law.

However, the fresh order of suspension after the termination order was set aside would operate prospectively and the appellant would be entitled to reinstatement with all back wages till that day since the original order of termination has been set aside by the Tribunal."

13. In view of above observations, learned counsel for the petitioner submits that the above mentioned case of **Ajay Singh(supra)** is not applicable to the instant appeals as no proper inquiry was conducted nor Rule 120 of Delhi Education Rules have been complied with.

14. In my opinion, it will not make any difference. Natural justice has been denied by the petitioner by passing the termination order of the respondents/teachers and accordingly, the order passed by the Tribunal on 11.05.2012 is upheld.

15. Accordingly, all these petitions are dismissed with no order as to costs.

CM Nos 8164/2012, 8166/2012, 8168/2012, 8170/2012, 8172/2012, 8176/2012, 8181/2012, 8184/2012 (Stay)

In view of above, these applications are disposed of being infructuous.

CAV No.650-657/2012

The Caveat in these petitions stand discharged.

SURESH KAIT, J

JULY 06, 2012

j/jg