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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 4858/2014 & conn.

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3rd March, 2015

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W.P.(C) No. 4858/2014 & CM No.9683/14 (Directions)

LALITA @ LALITA SHARMA

..... Petitioner

Through: Mr.Bhagbati Prasad Padhy, Advocate.
versus

THE DIRECTORATE OF EDUCATION & ORS.

..... Respondents

Through: Ms.Nikhita Khetrapal, Advocate for R- 1
& 2.
Mr.Arun Mehta and Mr.Naveen Sharma,
Advocates for R-3.

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W.P.(C) No. 5752/2014 & C.M.No.14185/2014 (Directions)

BRIJ MOHAN

..... Petitioner

Through: Mr.Bhagbati Prasad Padhy, Advocate.
versus

THE DIRECTORATE OF EDUCATION & ORS..... Respondents

Through: Ms.Nikhita Khetrapal, Advocate for R- 1
& 2.
MS.Purnima Maheshwari, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No. 4858/2014

1. It is not unknown that the indisciplined employees against whom departmental proceedings are commenced, misuse the judicial process to

somehow or the other keep on delaying the departmental proceedings. These actions are adopted by the employees in spite of the settled law that the merits of the matter have not to be gone into by the court but by the enquiry officer and a court does not decide the issues on merits. Also, self-serving averments of bias rarely persuade the courts to cause removal of an enquiry officer. There are three reliefs which are argued before this Court for being granted to the petitioner, and which are dealt with hereinafter.

2 (i) The petitioner's suspension brought about by the order dated 01.12.2013 is illegal and be set aside. The ground which is argued is that the management is biased against the petitioner and there is no strength in the allegations which have been made in the show cause notice.

(ii) The law with respect to suspension and the court's jurisdiction to interfere with the suspension order has been clarified by the Supreme Court in the judgment in the case of *State of Orissa Vs. Bimal Kumar Mohanty (1994) 4 SCC 126* wherein the Supreme Court has stated that one of the objects of suspension is that an employee should not feel that he can get away scot free though he has committed a misdemeanor, simply on the ground that departmental proceedings are pending. The relevant

observations of the Supreme Court are contained in para 13, and which read as under:-

“It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature

of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.” (underlining added)

(iii) Nothing has been shown to this Court why this Court should in any manner hold that the charges against the petitioner are totally baseless, and therefore the suspension order be quashed. As stated above, merits of the charges whether they are correct or not will be examined in the enquiry proceedings and today it cannot be said, merely because the petitioner says so, that the charges are baseless, and therefore suspension order be quashed. The first argument urged on behalf of the petitioner is therefore rejected.

3 (i) The second argument which is urged on behalf of the petitioner is that the enquiry officer is biased as he is the advocate of the school/employer, and therefore the enquiry officer be changed. This is stated in para 14 of the writ petition and which para reads as under:-

“ 14. It is submitted that the inquiry officer is an advocate and is a member and office bearer as Assistant Regional Grand Master of Northern Indian Masonic School (NIMCS) under which the school functions. The Enquiry Officer is conducting the

proceedings in the his office room of the NIMCS. The Petitioner vide its letter dated 13.4.2014 i.e immediately after the appointment, has objected to the said appointment of Shri Mahinder Singh, Advocate as the enquiry officer as he is an officer bearer of the NIMCS and also related to the Secretary of the School. The Petitioner requested for appointment of an impartial inquiry officer. The copy of the letter of the Petitioner dated 13.4.2014 is herein annexed as **ANNEXURE-P/6.**”

(ii) In my opinion, the aforesaid averments made are no averments in the eyes of law for changing of the enquiry officer because, in fact, an enquiry officer can in fact even be an employee of a school and departmental proceedings can be conducted in the School itself. Therefore, merely because the enquiry officer is an advocate of the School, does not mean that the enquiry officer will act in bias and in an illegal fashion. There is no presumption in law that merely because the enquiry officer is an advocate of the School, he will be biased, and hence the enquiry officer is bound to be changed. I may at this stage state that the respondent no.3/School in its counter-affidavit has taken up a categorical stand that in fact the enquiry officer has never been the advocate of the School in any of the matters of the School, and therefore, there is no substance in the second argument on behalf of the petitioner, and which is also rejected.

4 (i) The last argument on behalf of the petitioner is a general and a vague argument that the petitioner is not supplied with the documents, and this

argument can be disposed of by simply observing that the Management of the school will give whatever documents which it seeks to rely upon in the departmental proceedings to the petitioner sufficiently in advance, so that the petitioner can examine such documents and prepare his/her defence accordingly.

(ii) I may note that counsel appearing for the respondent no.3/School at this stage states that each and every document which has been relied upon by the Management of the school till date before the enquiry officer has already been supplied to the petitioner, and therefore I refuse to believe that the petitioner has not been supplied with the requisite documents, inasmuch as this argument is only based on a self-serving assertion of the petitioner.

5. Counsel for the petitioner finally asks for increase of subsistence allowance. I note that this relief is not one of the reliefs prayed in the writ petition, and therefore seeking of a relief in an interim application cannot be allowed to bring about extension of the scope of hearing of the writ petition. In case, the petitioner has any legal cause of action for increasing of the subsistence allowance, the petitioner is at liberty to file an appropriate independent proceeding with respect to claiming of increase of subsistence allowance.

6. The writ petition is accordingly dismissed in view of the aforesaid observations.

W.P.(C) No.5752/2014

This writ petition will also stand dismissed in terms of the observations made while disposing of W.P.(C) No.4858/2014.

**MARCH 03, 2015
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VALMIKI J. MEHTA, J