

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

*Judgment Reserved on: October 12, 2015*

% *Judgment Delivered on: October 15, 2015*

+ **LPA 220/2012**

RAJENDRA SINGH

..... Appellant

Represented by: Mr.R.K.Saini and Mr.Atul  
Guglani, Advocates.

versus

DIRECTOR OF EDUCATION AND ORS.

..... Respondents

Represented by: Mr.Sachin Netia, Advocate for  
respondent Nos.1 to 3.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J.**

1. Rajendra Singh joined D.C.Arya Senior Secondary School, Lodhi Road, (in short 'the school') on August 20, 1964 as Grade-II teacher for teaching drawing subject. In the course of his employment he also completed his post-graduation in Sociology. On February 07, 1990 a charge sheet was served on him pursuant to which he was compulsorily retired from service under Rule 117 (b)(ii) of Delhi School Education Rules, 1973 (in short 'DSER'). After charge sheet was served a writ petition was filed by Rajendra Singh being W.P.(C) No.1679/1990 which was dismissed being premature. Pursuant to the penalty of compulsory retirement was imposed vide order dated March 09, 1994 Rajendra Singh preferred a writ petition being W.P.(C) No.2869/1994 which was dismissed vide the impugned order dated September 05, 2011. Hence the present appeal.

2. Initially Shri R.G.Gupta was appointed as Inquiry Officer who after

some time expressed his inability to continue and thus Mrs.K.Upadhyaya was appointed as Inquiry Officer. Rajendra Singh did not participate in the inquiry proceedings and thus the Inquiry Officer held him guilty of each article of charge. The nine articles of charge against Rajendra Singh were:

“Article I.

*That Sh.Rajendra Singh while functioning as the teacher in the school has been wilfully neglecting his duties (123)(a)(i).*

Article II

*That while functioning as a teacher in the school, Sh.Rajendra Singh while being present in the school, has been absenting himself from the class/place of duty, which he is required to attend. (123)(a)(vi).*

Article III

*That while functioning as a teacher in the school, Sh.Rajendra Singh has been absent from the school without leave or without the previous permission of the head of the school. (123)(a)(vii). He has not been complying with the leave Rules 1972.*

Article IV

*That while functioning as a teacher in the school, Sh.Rajendra Singh has been encouraging students as well as other employees to behave in a rowdy or disorderly manner in the school premises. (123)(a)(xvi).*

Article V

*That while functioning as a teacher in the school, Sh.Rajendra Singh has been guilty of and encourages*

*violence and of code of conduct which involves moral turpitude. (123)(a)(XVII)*

Article VI

*That while functioning as a teacher in the school, Sh.Rajendra Singh has not been punctual in attendance and also for other works connected with his duties in respect of his classes assigned to him by the head of the school.*

Article VII

*That while functioning as a teacher in the school, Sh.Rajendra Singh has not been abiding by the rules and regulations of the school and has not been showing due respect to the authority (123)(c)(ii).*

Article VIII

*That while functioning as a teacher in the school, Sh.Rajendra Singh has been making representations for claims by passing the proper channel and in rude and indecorous language direct to the higher authorities in deliberate disregard of the Code of Conduct, with the avowed object of bringing his superiors into disrepute and of misleading those authorities (123)(2)(c).*

Article IX

*That while functioning as a teacher in the school, Sh.Rajendra Singh has been neglecting correction of home work done by his students and refusing to evaluate the answer book of the students.(123)(a)(v). ”*

3. In W.P.(C) No.2869/1994 Rajendra Singh challenged the inquiry report *inter alia* on the grounds that the entire inquiry was vitiated in law as he was not served with any notice of the inquiry proceedings and was thus

denied opportunity of participating in the inquiry; the teacher representative did not participate in the proceedings of the Disciplinary Committee which vitiated entire inquiry; there was procedural irregularity in conducting the inquiry proceedings and awarding the punishment and Rajendra Singh was victim of harassment by the management of the school.

4. The learned Single Judge vide the impugned order noted that though when departmental committee met on December 23, 1993 the teacher representative was not present however, vide a separate letter dated December 24, 1993 the staff representative gave approval to the decision of the departmental committee and imposition of punishment of compulsory retirement. As regards the issue that no notice was served on Rajendra Singh qua the inquiry proceedings the learned Single Judge noted the entire sequence of events showing that Rajendra Singh shifted his residence and even when on the shifted residence notices of inquiry proceedings were sought to be served he refused to accept the same. Again fresh notice was issued by the Inquiry Officer on December 10, 1992 which was also refused to be accepted. Thus the documents on record showed that every attempt was made to serve Rajendra Singh with the notice of hearing of the inquiry however, he avoided it. No illegality was found in the change of the Inquiry Officer. The learned Single Judge also noted that though it was correct that some of the articles of charge related to the year 1968 however, many were of the year 1982 as well and it cannot be held that the findings, on the articles, were based on no evidence. The Court found no harassment on account of the earlier writ petition filed by Rajendra Singh. The learned Single Judge also noted that there was due approval not only by the

Directorate of Education but also from Ministry of Education before punishment of compulsory retirement was imposed.

5. Before this Court learned counsel for the appellant agitates violation of Rule 118 of DSER, that the charge sheet and imputation of charge are mala fide, motivated and concocted, inquiry report is based on no evidence and there was no approval of the Director of Education before the penalty was imposed.

6. As regards violation of Rule 118 DSER, that is, non-participation of the teacher members in the disciplinary committee, the proceedings of the disciplinary committee of October 18, 1993 which accepted the report of the Inquiry Officer and proposed to award a major penalty of dismissal was attended by the teacher representative and the minutes were duly signed by him. Though the teacher representative was not present in the subsequent meeting of the departmental committee held on December 23, 1993 which confirmed the decision dated October 18, 1993 however, the teacher representative granted his approval on the next date, that is, December 24, 1993 thus ratifying the decision. Thus there is no merit in the contention of the learned counsel for the appellant that there is a violation of Rule 118 of DSER while granting punishment to Rajendra Singh.

7. In the writ petition Rajendra Singh pleaded that the charge sheet was a gross contempt of this Court as the same was initiated after the writ petition filed by Rajendra Singh, that is, W.P.(C) No.2121/1981 seeking selection grade was decided in his favour. Though no such ground has been taken in the LPA with regard to the charge sheet being mala fide on the ground that he succeeded in the earlier writ petition being W.P.(C) No.2121/1986 in the

course of arguments this ground has been urged. It is well settled that it is easy to allege mala fide but difficult to prove. In the present case since Rajendra Singh did not participate in the inquiry proceedings he had not been able to prove that the action of the school was malafide due to his having succeeded in the earlier writ petition granting him a selection grade. The allegation of malafide cannot be levelled in the air and Rajinder Singh ought to have brought out the same from the evidence of the witnesses. The contention that the inquiry report is based on no evidence as no witnesses were examined is contrary to the record which shows that material witnesses i.e. Vineet Virmani, Manager, B.L. Singal, Principal, P.S. Negi, Head Clerk, Hari Prasad, Peon, Hari Chand, Sweeper, Laxmi Devi, Water Woman, P.L. Sood, President of Managing Committee and H.R. Chopra, Vice President of Managing Committee have been examined.

8. As regards the issue of no approval of the Director of Education having been sought before penalty was imposed the learned Single Judge noted, which facts have not been refuted, that in the original file sought by the Court a detailed note dated January 03, 1994 was placed before the Director of Education who then sent the same to the OSD who prepared a further detailed note dated February 07, 1994 raising certain queries. The replies to those queries were answered and on the basis thereof the Director of Education approved the penalty and the approval was communicated to the School on March 09, 1994. Thereafter a telephonic message was received on March 11, 1994 from the Director of Education withdrawing the approval granted on March 09, 1994 regarding the award of major penalty and an inquiry was made whether the copy of the inquiry report had been

furnished to Rajendra Singh or not and legal notice had been sent about the proposed action calling him to submit his response. A response was again sent demonstrating notices sent through registered letters and under certificate of postal authorities which was placed before the Director of Education when the Director of Education finally concluded that the penalty of compulsory retirement would stand. Hence the present is not a case of no approval of the penalty sought to be imposed by the Director of Education.

9. This takes us to the last issue as to whether witnesses in the proceedings were members of the disciplinary committee. By CM No.5320/2012 which was allowed by this Court vide order dated August 07, 2012 Rajendra Singh sought to urge an additional ground that Shri B.L.Singhal, the principal of the school, Shri Vineet Nirmani, Manager of the School, Shri P.L.Sood, Chairman of the Management of the School were complainants and also the members of the disciplinary committee, hence any decision taken by them would be tainted and biased.

10. It may be noted that Rajendra Singh challenged the charge sheet and the consequential penalty of compulsory retirement directly by way of writ petition being WP(C) No.2869/1994 without availing the right of appeal available against the order before the Delhi School Tribunal which objection was duly taken in the counter affidavit to the writ petition. Be that as it may, the writ petition was entertained and this ground which is a ground on facts that three members of the disciplinary committee were witnesses as well was not taken in the writ petition. Thus, respondent No.2 has been prejudiced in not being able to counter the said ground. It is well settled that a mixed question of fact and law cannot be raised for the first time in appeal. (See

*AIR 1964 SC 907 Ittyavira Mathai Vs. Varkey Varkey* and *AIR 1965 SC 1325 Chittoori Subbanna Vs. Kudappa Subbanna & Ors.*

11. In view of the discussion aforesaid, we find no merit in the appeal. Appeal is accordingly dismissed.

**(MUKTA GUPTA)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**OCTOBER 15, 2015**  
**‘vn’**