

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

Date of decision: 3rd February, 2015

+ LPA No.706/2014

SHASHI BALA

..... Appellant

Through: Mr. Ashok Agarwal and Ms. Nisha
Tomar, Advs.

Versus

SBM SR. SECONDARY SCHOOL & ORS

..... Respondents

Through: Ms. Sanjoy Ghosh & Mohd. Farookh,
Advs. for R-1.
Ms. Purnima Maheshwari, Adv. for R-
5&6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the order dated 26th August, 2014 of the learned Single Judge, of dismissal of W.P.(C) No.5299/2014 preferred by the appellant and thereby, though refusing to quash the disciplinary proceedings initiated against the appellant but with liberty to the appellant to persuade the Inquiry Committee constituted, to stay the inquiry proceedings till the complaint filed by the appellant with respect to the same incident before the Criminal Court, is decided and with further liberty to the appellant to challenge the report of the inquiry, if any adverse finding to the appellant

is returned therein.

2. The appeal came up before us for admission on 13th January, 2015, when after hearing the counsel for the appellant, and the counsel for the respondent No.1 SBM Sr. Secondary School and the counsel for the respondents No.5&6 i.e. Directorate of Education (DoE) and Govt. of NCT of Delhi (GNCTD) appearing on advance notice, we reserved judgment. The respondent No.2 is Capital Greens Educational Society owning the respondent No.1 School and the respondents No.3&4 are the Internal Complaints Committee and the Inquiry Officer and the respondent No.7 is the Presiding Officer of the Internal Complaints Committee of the respondent No.1 School. Need for issuing notice thereto was / is not felt.

3. The appellant filed the writ petition from which this appeal arises, pleading:

- (i) that the respondent No.1 School is a Government aided recognised private school run by the respondent No.2 Society;
- (ii) that the appellant has been employed in the respondent No.1 School since 5th March, 1980, initially as a TGT, promoted on 16th April, 1993 to PGT and on 1st July, 2008 as the Vice-Principal;
- (iii) that the appellant on 5th July, 2013 found that her attendance

record for the period from 1st July, 2013 to 4th July, 2013 had been tampered with;

(iv) that when the appellant in this regard went to the office of the Principal of the School, the Principal, who has since retired, passed obscene remarks, abused her and also attempted to slap her; the Physical Education Teacher also made shameful gestures with obscene remarks and the TGT Maths also present abused the appellant using shameful language. In the meantime, PGT History also joined them; the appellant called the police by dialling 100 and whereon all the said persons approached threateningly to her; that the appellant ran out and narrated the whole incident to the Police Officer;

(v) that an FIR No.259/2013 dated 21st July, 2013 under Section 509 IPC was registered against all the aforesaid persons and on 9th January, 2014 charge sheet has been filed in the Court of Metropolitan Magistrate, Delhi against the said persons and trial is pending;

(vi) that the Manager of the School on learning of the incident, on 5th July, 2013 itself approached the appellant and asked the appellant to submit a complaint in writing and the appellant submitted such a complaint;

(vii) that a three members Committee conducted so called inquiry, without the consent of the appellant and in utter violation of the principles of natural justice submitted a report dated 15th July, 2013 that the Principal was not to be blamed for harassment, use of abusive language or making threatening gestures and on the contrary the appellant had levelled false allegations and had behaved disrespectfully with the Principal and had engaged in direct correspondence with the Department of Education and other higher authorities in violation of the code of conduct and thereby caused irreparable harm and tarnished the image of the School;

(viii) that the Manager of the School issued a show cause notice dated 16th July, 2013 constituting a Six Members Internal Complaints Committee under Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;

(ix) that though the appellant along with some other teachers sought *inter alia* the criteria adopted for nominating the members to the Committee and to ensure transparency and neutrality of the Committee, but the same were not furnished;

(x) that the said Committee submitted a report dated 12th August,

2013, also to the effect that the appellant could not substantiate any allegations against the aforesaid persons and that the allegations levied by her were false and recommending action against the appellant for levelling false allegations;

(xi) that the appellant had never approached the Internal Complaints Committee to investigate into her complaint dated 5th July, 2013 which was addressed to the Manager of the respondent No.1 School and the said Manager was not authorized, without the written consent of the appellant, to approach the Internal Complaints Committee to investigate into the complaint;

(xii) that the proceedings conducted by the Internal Complaints Committee are a sham;

(xiii) that the Internal Complaints Committee had no jurisdiction to investigate into the complaint;

(xiv) that the appellant was vide order dated 14th August, 2013 placed under suspension; however since the DoE, GNCTD did not approve of the order of the suspension, the same was revoked on 4th September, 2013 and the appellant re-joined duty with effect from 5th September, 2013;

(xv) that the respondent No.1 School served a notice dated 18th September, 2013 to the appellant asking the appellant to show cause as to why she should not be proceeded against for levelling false allegations against the Principal and the Staff of the School, causing irreparable harm and tarnishing the image of the School and which was in violation of Rule 123 of the Delhi School Education Rules, 1973;

(xvi) that thereafter Memorandum / Charge Sheet dated 19th March, 2014 was served on the appellant;

(xvii) that the appellant submitted her reply dated 3rd April, 2014;

(xviii) that the respondent No.1 School vide letter dated 22nd May, 2014 informed the appellant that inquiry under Rule 14 of Central Civil Service (CCS) Rules, 1965 read with Rule 120 of the Delhi School Education Rules was being held against her; vide subsequent letter dated 23rd May, 2014, the appellant was informed of the appointment of a Presenting Officer;

(xix) that the appellant received notice dated 23rd May, 2014 of the Inquiry Officer of the hearing scheduled on 11th June, 2014;

(xx) that the appellant vide communication dated 18th June, 2014

represented to the respondent No.1 School to stay the disciplinary proceedings awaiting decision of the Criminal Court; however the said representation was rejected vide communications dated 23rd June, 2014 and 27th June, 2014;

(xxi) that the appellant on 12th August, 2014 represented to the DoE but to no avail.

4. The appellant, in the writ petition filed on or about 13th August, 2014, sought the reliefs of:

- (a) Quashing of the Memorandum / Charge Sheet dated 19th March, 2014;
- (b) quashing of the report / recommendations dated 12th August, 2013 of the Internal Complaints Committee;
- (c) quashing of the report of the Inquiry Committee.

5. When the writ petition came up before the learned Single Judge on 26th August, 2014, the counsel for the respondent No.1 School stated that the inquiry shall proceed uninfluenced by any finding of the Internal Complaints Committee. The learned Single Judge, in the impugned order, observed that upon such statement, the grievance of the appellant on the basis of the

challenge of the Internal Complaints Committee disappeared and held that he was not inclined to interdict the inquiry proceeding at that stage and disposed of the writ petition observing that it will be open to the appellant to raise all objections before the Inquiry Committee and to also persuade the Inquiry Committee to stay proceedings till the complaint before the Criminal Court, is decided. Liberty was also given to the appellant to challenge the report of the inquiry, if any adverse finding was returned therein by the Inquiry Committee, in accordance with law including by way of a writ petition.

6. The counsel for the appellant before us contended that the departmental inquiry against the appellant on the allegations of misconduct should not be allowed to continue, when the Criminal Court also is seized of inquiry into the same incident.

7. We invited the attention of the counsel for the appellant to the various judgments holding that the two i.e. the departmental proceedings and the prosecution proceedings into the same incident can go on simultaneously.

8. Reference in this regard can be made to:-

- (i) *State of Rajasthan Vs. B.K. Meena* (1996) 6 SCC 417
reiterating that principles of natural justice do not require that
the employer should wait for the decision of the Criminal Court

before taking disciplinary action against the employee and holding that it is not in the interest of the administration that persons accused of serious misdemeanour should be continued in office indefinitely and for long period awaiting the result of criminal proceedings. Such a situation was held to be serving the interest of the guilty and the dishonest only.

- (ii) ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.*** (1999) 3 SCC 679 where the precise question for adjudication was whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously. It was held that there is a consensus of judicial opinion amongst the High Courts and the various pronouncements of the Supreme Court on the basic principle that the proceeding in a criminal case and the departmental proceeding can proceed simultaneously and that the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas; whereas in the departmental proceedings, where a charge relating to misconduct is being

investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff; the standard of proof required in the those proceedings is also different than that required in a criminal case; while in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The Supreme Court further held that there is nothing wrong in conducting two parallel proceedings, one by way of disciplinary action and the other in the criminal Court and that there is no legal bar for both proceedings to go on simultaneously.

- (iii) *Noida Entrepreneurs Association Vs. Noida* (2007) 10 SCC 385 where the State Government had dropped departmental inquiry against an officer for the reason of the same having been initiated on the basis of report of an Inquiry Commission and on the basis of which report, the officer was also being prosecuted. The Supreme Court held the order of the State Government to be

not based on any rational foundation and observed that the conceptual difference between a departmental inquiry and criminal proceedings had not been kept in view. It was further held that the purpose of departmental inquiry and of prosecution is different; the criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. It was held that the crime is an act of commission in violation of law or of omission of public duty. Per contra, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held that it is expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. The judgments of the Supreme Court holding departmental proceedings to be maintainable even after acquittal in prosecution were cited with approval.

9. The counsel for the appellant is unable to contest the said position in law.
10. We may further record that the aforesaid judgments do carve out an

exception in a situation where the simultaneous pursuing of the departmental and criminal proceedings may result in the accused being required to disclose his defence before the stage therefor in the prosecution. However that is not the situation here. In the present case, in the prosecution, the appellant is the complainant and not the accused. Thus the present case does not fall in the said exception.

11. The counsel for the appellant then contended that the Internal Complaints Committee constituted under the Sexual Harassment Act was not in accordance therewith. It was contended that the appellant had chosen to lodge an FIR and did not want to adopt the route of the Sexual Harassment Act.

12. However, we reminded the counsel for the appellant that the counsel for the respondent No.1 School has already, before the learned Single Judge, made a statement that the inquiry now underway will be uninfluenced by the findings of the Internal Complaints Committee and in the light of the said statement, the learned Single Judge observed that the said findings did not survive. That being the position, it is now not open to the appellant to raise the said ground.

13. We may also note that the appellant in this proceeding is not entitled

to, on the one hand state that she did not want to proceed under the Sexual Harassment Act and on the other hand, challenge the findings of the Internal Complaints Committee constituted under the said Act. The counsel for the appellant agreed that for such challenge to the findings of the Internal Complaints Committee under the said Act, the remedy of appeal was / is available and which had not been availed. Moreover, now the respondent No.1 School itself has stated that the inquiry now initiated against the appellant shall be uninfluenced by the findings of the said Committee.

14. The counsel for the appellant then sought to make vague allegations about the inquiry now underway being biased. Not only is that not the case of the appellant but even otherwise, we may record that in accordance with Rule 118 (iii) of the Delhi School Education Rules framed under the Delhi School Education Act, 1973, one of the members of the Disciplinary Committee of the school is a nominee of the Directorate of Education in case of aided school as the respondent No.1 is. The vague allegations made as a last resort, are thus unbelievable. It is not the case that the DoE has any animosity with the appellant. It cannot also be lost sight of that, even if the report of the inquiry now underway is against the appellant and the said report is accepted by the Disciplinary Authority of the respondent No.1

School, the appellant, against that also will have the remedy of appeal to the Delhi School Tribunal constituted under Section 11 of the Act supra and which is presided over by an equivalent of District Judge or Judicial Officer. The allegations of bias made are thus not only misfounded but without any merit.

15. Moreover, the Supreme Court in:

- (i) ***D.P. Maheshwari Vs. Delhi Administration*** (1983) 4 SCC 293;
- (ii) ***National Council for Cement and Building Materials Vs. State of Haryana*** (1996) 3 SCC 206; and,
- (iii) ***Avtar Singh Hit Vs. Delhi Sikh Gurudwara Committee*** (2006) 8 SCC 487

has deprecated the practice of challenge to proceedings being made before conclusion, at interim stage, and which results in derailing and delaying of the original proceedings. To the same effect are the judgments of the Division Bench of this Court in ***Maruti Suzuki India Ltd. Vs. Tourism Development Corporation Ltd.*** (2013) IV AD (Del) 615 followed in ***Eastern Economist Ltd. Vs. Union of India*** MANU/DE/0090/2015. On this ground also, the challenge to the disciplinary proceedings, at this stage is not found maintainable.

16. We therefore do not find any merit in the appeal and dismiss the same.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 3, 2015

‘bs/gsr’..