

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

Judgment Reserved on: September 18, 2015

% *Judgment Delivered on: September 29, 2015*

+ **LPA 46/2015**

SUNIL SIKRI

..... Appellant

Represented by: Mr.Chetan Sharma,
Sr.Advocate instructed by
Mr.R.K.Saini, Mr.S.C.Pandey,
Mr.Ayush Arora, Advocates.

versus

THE MANAGEMENT COMMITTEE OF GURU
HARKISHAN PUBLIC SCHOOL & ORS.

..... Respondents

Represented by: Mr.A.P.S.Ahluwalia,
Sr.Advocate instructed by
Mr.S.S.Ahluwalia and Mr.Lalit
Vohra, Advocates for
Respondent Nos.1 and 2.
Ms.Nikhita Khetrapal,
Advocate for Ms.Nidhi Raman,
Advocate for Respondent No.3
with Mr.R.P.S. Yadav, DEO,
ZONE-26

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

CM 14834/2015

By this application the appellant seeks continuation of the interim order passed on March 23, 2015. Since arguments in the appeal have been heard and reserved for judgment, application is dismissed as infructuous.

CM 13909/2015

Learned counsel for the appellant does not press the application, the same is dismissed as not pressed.

LPA 46/2015

1. A chequered history of litigation between the appellant and the respondent before all forums right from the Education Tribunal to the various Benches of this Court including the full Bench; this is the third round of litigation between the parties. It all relates back to an alleged incident of January 22, 1994 regarding a complaint from a colleague of the appellant alleging molestation, which fact and complaint is disputed by the appellant, however undisputedly the appellant submitted his resignation on January 22, 1994 and he was issued a memo on the same day by the Principal of the respondent/ School relieving him from his duties as PGT Chemistry. On a second thought on January 23, 1994 i.e. the appellant withdrew his resignation dated January 22, 1994 telegraphically followed by a letter dated January 31, 1994. Aggrieved by the acceptance of the resignation before the expiry of period of three months from the date of tendering resignation contending that the relieving order amounts to termination, appellant preferred an appeal before the Delhi School Tribunal (in short the Tribunal).

2. The appeal travelled a journey of 17 years before the order dated August 18, 2011 was passed by the Tribunal realising that whether the appellant molested the female colleague or not was not the issue before it relevant in disposing of the appeal. The Tribunal held the fact that the appellant withdrew the resignation the very next date and by that time it was not accepted by his the competent authority, the relieving order amounted to

illegal termination of his service and thus directed reinstatement of service with 50% back wages. During the 16 year period a Local Commissioner was appointed for recording evidence on the various issues settled in the appeal before the Tribunal wherein the evidence went-on on the first plea of the appellant that he was a highly qualified married person living a happy married life with a nice and beautiful spouse, and thus could not have committed such alleged incident, which the Tribunal later realised was wholly irrelevant.

3. A writ petition was filed before the learned Single Judge by the School challenging the order of reinstatement with back wages wherein learned counsel for the management/ School on instructions stated that the appellant will be reinstated in service, however back wages could not be granted by the Tribunal. The issue whether under Rule 121 of the Delhi School Education Act and Rules, 1973 (in short DSEAR) the Tribunal could have awarded back wages was referred to the full Bench of this Court; and vide the judgment dated May 14, 2015 it was held that the Tribunal had no jurisdiction to grant back wages and in this regard power was vested with the Managing Committee of the recognised unaided school to consider and make specific orders. This is one limb of the litigation, the second being on the enquiry initiated by the Management vide memorandum and articles of charge dated December 17, 2013 issued by the Disciplinary Committee of the School to the appellant.

4. The appellant laid a challenge to the Resolution dated November 21, 2013 and the memorandum and article of charge dated December 17, 2013 by filing W.P.(C) No.191/2014. The said writ petition was disposed on January 10, 2014 itself. Two issues were raised in W.P.(C) No.191/2014

firstly that the resurrection of the complaint of alleged molestation dated January 22, 1994 after nearly two decades is uncalled for and illegal and secondly that the Committee constituted pursuant to the Resolution dated November 21, 2013 is not in accordance with the provisions of the DSEAR.

5. The learned Single Judge vide the order dated January 10, 2014 disposing of W.P.(C) No.191/2014 held that since these two contentions were raised in the reply to the show cause notice, the same need determination by the concerned Committee in the first instance and thus the Committee was directed to pass a reasoned order after giving due opportunity to the appellant. The Managing Committee of the School passed an order dated March 28, 2014 informing that the representation dated February 18, 2014 of the appellant was disposed of rejecting the two objections raised against the enquiry proceedings and it was decided to continue the enquiry against the appellant from the point where it was left.

6. The order dated March 28, 2014 was challenged by the appellant in W.P.(C) No.2696/2014 on the ground that an oral hearing was not granted to the appellant by the Managing Committee despite directions of this Court. Thus on consent of the parties order dated March 28, 2014 passed by the Managing Committee of the School was recalled and the matter was remitted back to the Managing Committee for a de-novo decision after giving an oral hearing to the appellant. The order further clarified that the recall of the order dated March 28, 2014 passed by the Managing Committee will not impact the final determination that may be made by it and the Managing Committee was free to come to its own conclusion after applying its mind objectively and independently. The appellant withdrew W.P.(C) No.2696/2014 as not pressed with the statement of the learned counsel for

the appellant being recorded that in case appellant was aggrieved he shall take recourse to an appropriate remedy albeit in accordance with law.

7. An oral hearing was afforded to the appellant by the Managing Committee and vide the order dated September 10, 2014 it held that the decision to constitute a Departmental Action Committee (DAC) was correct and both the objections raised by the appellant as noted above were devoid of merit and rejected. The enquiry proceedings that were kept in abeyance were directed to be continued.

8. Assailing the order dated September 10, 2014 appellant filed the third writ petition being W.P.(C) No.7744/2014 which was dismissed vide the impugned order dated November 20, 2014, hence the present appeal. The prayer in W.P.(C) No.7744/2014 was for quashing of the orders dated March 28, 2014 and September 10, 2014 and consequentially the Resolution dated November 21, 2013 of the Managing Committee of the School and the memorandum and articles of charge dated December 17, 2013 and restraining the respondent/ School from holding/ continuing any enquiry on the basis of Resolution dated November 21, 2013 and the memorandum and articles of charge dated December 17, 2013.

9. Before the learned Single Judge learned counsel for the appellant pleaded that the order dated September 10, 2014 suffers from non-application of mind, the alleged incident having occurred nearly two decades ago was sufficient to terminate the enquiry proceedings, and if the victim was really aggrieved she ought to have filed FIR. All these contentions of the learned counsel for the appellant were negated by the learned Single Judge and it was held that the delay in proceedings could not be a ground to defeat the right of dispensation of justice to the victim who happens to be a

lady staff member of the same School. Even filing of the FIR is no reason to drop the disciplinary proceedings and further the delay in conducting the enquiry is not attributable to the School or the victim. On the facts it was noted that on the same day of alleged incident i.e. January 22, 1994 the appellant submitted his resignation which was accepted and thus there was no cause for the School to have initiated an enquiry into the alleged incident. When on second thought the appellant withdrew the resignation, the relieving order was challenged before the Delhi School Tribunal which appeal remained pending till it was decided on August 18, 2011 explaining the passage of nearly 17 years. When the respondent/ School filed the writ petition though agreeing to reinstatement, liberty was granted to the School to conduct an enquiry against the petitioner for his alleged involvement in the incident dated January 22, 1994 and within four months thereupon the School passed the Resolution and issued the memorandum and articles of charge to the appellant.

10. The learned Single Judge vide the impugned order noted the observations of the Managing Committee disposing of the representation of the appellant after giving him an oral hearing that there was no delay in instituting the enquiry as per the Rules and in terms of the order dated August 06, 2013 passed by the High Court and in any case the Court had reserved the right of the School to hold an enquiry into the incident of November 22, 1994; if the enquiry was dropped as per the request of the appellant it would cause great injustice to a victim of the act of molestation allegedly committed to her in the year 1994 which was awaiting justice; in the oral hearing the appellant almost admitted the incident and contended that the same may have occurred due to his mental illness; the delay if any

could not be a reason not to enquire such serious charge and that the constitution of the DAC in terms of the Resolution dated January 21, 2013 was not illegal for the reason the Managing Committee was vested with sufficient powers to decide which rules and regulations would be followed for conducting the disciplinary proceedings and the rules and regulations stipulated in the DSEAR were uniformly being followed for all the employees of the School and no exception could be carved out for the appellant.

11. In regard to the second objection of Chapter 8 of DSEAR not being applicable, the School being a minority School, the learned Single Judge held that DSEAR does not debar a private minority School from adopting the rules prescribed under the Statute for conducting disciplinary proceedings against its teaching and non-teaching staff members and as noted vide the order of Managing Committee dated September 10, 2014 the said rules for disciplinary proceedings provided under the DSEAR were being uniformly applied to all the employees of the school and the appellant was no exception. Thus the writ petition was thus dismissed.

12. Before this Court learned counsel for the appellant urges that no liberty was granted to the management of the School vide the order dated August 06, 2013 in W.P.(C) No.8058/2011. Further, the complaint dated January 22, 1994 is an ante-dated complaint; there is no reference of any act of molestation, in the reply filed to the appeal before the Tribunal and the delay in conducting the enquiry was sufficient ground to quash the same.

13. As regards the first issue that no liberty was granted to the Management of the School to conduct the disciplinary enquiry vide the order dated August 06, 2013 in W.P.(C) No.8058/2011, it may be noted that the

said writ petition was filed by the management challenging the order of the Delhi School Tribunal dated August 18, 2011 directing reinstatement in service with 50% back wages. In the appeal filed before the Tribunal wherein the order dated August 18, 2011 was passed the appellant had challenged the relieving order stating that the same amounted to termination as the resignation was accepted before the expiry of three months and having withdrawn the same immediately before acceptance by the competent authority appellant could not be relieved. Thus the issue before the Delhi School Appellate Tribunal was not whether enquiry was required to be conducted or not. The Tribunal held that the note of the Chairman of the Management dated January 23, 1994 would reveal that the Chairman accepted the resignation in his individual capacity only and the resignation was never placed before the Management Committee as no meeting of the Management Committee took place on this issue nor was it circulated to each member. Thus there was no valid acceptance of the resignation by the competent authority. Hence whether an enquiry was required to be conducted or not was not an issue before the Tribunal or before the learned Single Judge in W.P.(C) No.8058/2011. Despite this fact the learned Single Judge vide the order dated August 06, 2013 in W.P.(C) No.8058/2011 noted the statement of the learned counsel for the management/ School and we reproduce:

“10. That leaves us with the issue of compliance of the order of the Tribunal with respect to reinstatement of respondent No.2 and learned counsel for respondent No.2 states that without prejudice to the rights of the petitioner-school to take action against the respondent No.2 in accordance with the provisions of the Delhi School Education Act and Rules, 1973, the petitioner-school will reinstate the respondent No.2 within a

period of two weeks from today. Let that be done.”

14. It is thus apparent that a composite statement was made by the learned counsel giving no objection to the reinstatement and at the same time without prejudice to the rights of the School to take action against the appellant in accordance with the provisions of DSEAR. As a matter of fact no liberty was required by the respondent/ management to conduct an enquiry, however still this liberty was noted in the form of the statement of the learned counsel for the respondent in W.P.(C) No.8058/2011. The challenge of the appellant to the enquiry not being with liberty from the learned Single Judge of this Court thus fails.

15. As regards the contention that the written complaint dated January 22, 1994 was an after-thought, though, it would be inappropriate to express any opinion thereon since the matter is pending consideration in the disciplinary enquiry, however it would be relevant to note certain facts. The appeal filed by the appellant before the Tribunal against his relieving order contains the pleadings *“that the appellant is a married man and leads a happy married life with his nice and beautiful spouse coupled..... on January 22, 1994 the appellant was compelled to submit his resignation or he be ready to face arrest by Local Police on the charge of some false criminal allegation..... He was therefore forced to submit his resignation allegedly “due to better prospects and unavoidable circumstances”*. These averments in the appeal itself indicate the allegations against the appellant on January 22, 1994. Though in the reply filed by the School the incident of January 22, 1994 was not highlighted, however in a subsequent application seeking immediate rejection of the appeal filed before the Delhi School Education Tribunal on

March 02, 1995 it was clearly stated that the appellant committed a very serious act of moral turpitude (molested a lady member of School staff) and then resigned on his own and left the School, therefore he had no right to approach any legal authority for his reinstatement. We have looked into the records only to ascertain whether this plea is an after-thought or not and from the application of the respondent seeking rejection of the appeal filed before the Tribunal the allegations on which the enquiry is being conducted cannot be held to be after-thought.

16. Though unaided minority Schools are free to adopt their own rules, however there is no bar on such a School adopting the rules under the DSEAR which have been uniformly applied to all its employees. The contention that the rules under DSEAR are not applicable to the employees of the School being a minority unaided school thus deserves to be rejected.

17. We find from the order of the Managing Committee that after granting an oral hearing to the appellant, his contentions have duly been considered and thus there is no reason whatsoever to interfere in the impugned order passed by the learned Single Judge or the order dated September 10, 2014 passed by the Managing Committee or the memorandum and articles of charge at this stage.

18. The appeal is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 29, 2015/‘ga’