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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**W.P.(C) No.2854/2016 and C.M. Nos.11955/2016 (stay),
29740/2016 (under Order 39 Rule 4 by respondent No.1) &
43238/2016 (for directions by petitioner)**

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5th December, 2016

MRS. PAWAN JASHIAL

..... Petitioner

Through: Mr. Nikilesh R. Advocate with Mr.
Saurabh Mishra, Advocate.

versus

KHALSA MIDDLE SCHOOL & ORS.

..... Respondents

Through: Mr. Puneet Sharma, Advocate for
respondent No.1.
Ms. Swaty Singh Malik, Advocate for
respondent Nos.4 and 7.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed under Article 226 of the Constitution of India by the petitioner, and who is a teacher in the respondent no.1/school, impugning the show cause notice dated 14.3.2016 by which it is proposed that disciplinary proceedings be taken against the petitioner for having obtained her employment with the respondent no.1/school by fraud because petitioner had represented that she had a diploma in Yoga and Naturopathy from the Gujarat Ayurved University, but, on verification from

Gujarat Ayurved University, it was found that the name of the petitioner was not found to be enrolled for the course of diploma in Yoga and Naturopathy run by the Bapu Nature Cure Hospital & Yogashram, Gandhi Nidhi, Patparganj, New Delhi recognized by the Gujarat Ayurved University.

2. On behalf of the petitioner, to question the disciplinary proceedings it is argued that the impugned show cause notice dated 14.3.2016 is without jurisdiction because it is signed by the Manager of the school without their having been constituted a proper disciplinary committee under Rule 118 of the Delhi School Education Rules, 1973 (hereafter referred to as 'the Rules'). It is argued that there is a requirement as per Rule 118 of the Rules that in the disciplinary committee, there must exist the nominee of the Director of Education as also the staff representatives, but, not only these persons are not found in the meetings of the managing committee of the respondent no.1/school dated 12.3.2016 as per which it was decided to initiate disciplinary proceedings, in fact the managing committee is not authorized to take disciplinary action as it is only the disciplinary committee under Rule 118 which is authorized to take disciplinary action.

3. For the sake of convenience, Rule 118 of the Rules is referred to as below:-

“Rule 118. Disciplinary authorities in respect of employees.-The disciplinary committee in respect of every recognized private school, whether aided or not, shall consist of-

- (i) the Chairman of the managing committee of the school;
- (ii) the manager of the school;
- (iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;
- (iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director;
- (v) a teacher who is a member of the managing committee of the school, nominated by the Chairman of such managing committee.”

4. Since the issue is that whether certain requirements as alleged/argued by counsel for the petitioner of the provision of Rule 118 of the Rules have been complied with or not, let me reproduce the minutes of the meeting of the managing committee dated 12.3.2016 of the respondent no.1/school and these minutes of the meeting of the managing committee read as under:-

“The meeting of the managing committee of Khalsa Middle School, Sarojini Nagar, New Delhi-110023, held on 12-03-2016 at 12.30 PM under the Presidentship of S. Sucha Singh in the school. The members who have signed against their name are present.

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| 1. <u>S. Sucha Singh (President)</u> | sd/- |
| 2. S. Pritpal Singh(V. President) | |
| 3. <u>S. Jaspal Singh (Manager)</u> | sd/- |
| 4. S. Balvinder Singh (Asstt. Manager) | sd/- |

5. S. Charanjit Singh (Accountant) sd/-
6. Smt. Jasbir Kaur (Member) sd/-
7. S. Manjit Singh (Member)
8. S. S.P. Singh (Headmaster) sd/-
9. Principal S.K.V. No.1 (Ad. Board Nominee)
10. Smt. Sumanjit Kaur (Staff Representative) sd/-
11. Smt. Sukhjeevan Kaur (Staff Representative) sd/-
12. S. Hukam Singh (Parent Member)
13. Principal GGSSS No.3 (D.E's Nominee)
14. Vice Principal G.B.S.S. No.3(D.E's Nominee) sd/-
- J.S Dhama-
15. Vice Principal G.B.S.S. No.4 (Adv. B. Nominee) sd/-
- Dr. Hitender Yadav.

Minutes of the Last meeting held on 26-12-2015 are confirmed unanimously. It was decided that in the previous meeting S. Jaspal Singh should obtain the copy of letter written by the Education Department, Govt of NCT of Delhi to Gujarat Ayurvedic University for verification of Diploma and mark sheet submitted by Mrs. Pawan Jashial (Yoga teacher) at the time of her appointment and also obtain a copy of letter received by the Education Department from Gujarat Ayurvedic University, which were mentioned by the Deputy Education Officer Zone (19), South West (A), in her letter dated 05/19-12-2015 because in the absence of the Letters dated 05/19-12-2005 the Letter is incomplete. Accordingly S. Jaspal Singh (Manager) written a letter dated 31-12-2005 to Deputy Education Officer to send copies of the aforesaid Letter along with enclosure.

The Deputy Director sent the copies of both the above letters vide F.No.- 2.19/DDE (SW) A 2016/08 dated 2/5-1-2016. S. Jaspal Singh placed both the above Letter before the Managing Committee.

The Managing Committee unanimous resolved and authorized S. Jaspal Singh (Manager) to issue a charge sheet to Mrs. Pawan Jashial (Yoga teacher) for submitting a false Diploma in Naturopathy and false mark sheet on which it is written Recognized by Gujarat Ayurvedic University. But on verification from the above said University verified that Mrs. Pawan Jashial was not enrolled for the course of Diploma in Yoga and Naturopathy by Baput Nature

Cure Hospital And Yogashram Gandhi Nidhi, Patparganj Delhi-91 recognized by Gujarat Ayurvedic University for the said year.

The Managing Committee further authorized the Manager S. Jaspal Singh to appoint Shri B.S. Kapoor as enquiry officer to conduct enquiry on above charges against Mrs. Pawan Jashial (Yoga Teacher).

The Managing Committee also authorized S. Jaspal Singh Manager to award punishment if enquiry officer in his enquiry report found that the charges are proved or otherwise as per the findings of enquiry officer.

After thanks to the Chairman

The meeting disbursed.”

Sd/-

(underlining added)

5. A reference to the minutes of the meeting dated 12.3.2016 of the managing committee of the respondent no.1/school shows that the said meeting comprised of Chairman of the school, the Manager of the school, nominee of the Director of Education and the staff representatives of the school and which are the relevant four requirements of the Rule 118 of the Rules and hence it cannot be argued that Rule 118 is not complied with. At serial no.1 of the meeting dated 12.3.2016 is S. Sucha Singh, the President and Chairman of the respondent no.1/school. At serial no.3 is S. Jaspal Singh who is the Manager of the school. The nominee of the Director is Sh. J.S. Dhama who is at serial no.14 of the list of persons and the staff representatives are found at serial nos.10 and 11 of the minutes of the meeting dated 12.3.2016. All these persons are signatories to the minutes of meetings dated 12.3.2016. Therefore, the minutes of the meeting dated

12.3.2016 show that all persons who ought to be part of the disciplinary committee under Rule 118 of the Rules were very much part of the meeting/resolution dated 12.3.2016 and who authorized taking of disciplinary action against the petitioner and for the Manager of the school to issue the show cause notice dated 14.3.2016.

6. Therefore, in my opinion, it is incorrect for the petitioner to contend and argue that Rule 118 of the Rules has been violated, because, it is found that in fact the minutes of the meeting dated 12.3.2016 show that the meeting/committee comprised of persons who are to be the members of the disciplinary committee as per Rule 118 of the Rules.

7. Learned counsel for the petitioner argues that it is only the disciplinary committee properly constituted as per Rule 118 of the Rules which is authorized to take action, and action cannot be taken by the managing committee of the respondent no.1/school, however, this argument urged is an argument of desperation because the managing committee is a larger and higher body than the disciplinary committee and once the necessary members of the disciplinary committee are a part of the members of the managing committee in the meeting dated 12.3.2016, it cannot be argued that disciplinary proceedings against the petitioner are liable to be faulted with because of the violation of Rule 118 of the Rules. Obviously, a

larger and higher body will have all the powers of a smaller body which is constituted, and which is all the more so when the larger and higher body is found to have the necessary members who are to be comprised in the smaller body being the disciplinary committee as per Rule 118 of the Rules.

8. Learned counsel for the petitioner then sought to draw attention of this Court to the counter affidavit filed by the Director of Education, and in which the Director of Education has stated that it has taken action against the respondent no.1/school because the proceedings initiated against the petitioner are by the managing committee and not the disciplinary committee, however, this argument and the relevant part of the counter affidavit of the respondent no.4 is without any substance for the reason that the counter affidavit cannot be final so far as the legal position is concerned, and the legal position which has to be examined has to be examined by this Court on the basis of facts as to whether the managing committee can or cannot issue a show cause notice for the disciplinary committee when the managing committee comprises of members who ought to form part of the disciplinary committee. The Director of Education in law therefore is incorrect in taking its view that the managing committee could not have taken steps as per its minutes of meeting dated 12.3.2016 for initiating disciplinary proceedings against the petitioner. In fact, I must note at this

stage that the aforesaid last contention urged on behalf of the petitioner is only on convenient reading of the counter affidavit of the respondent no.4 because respondent no.4 in the same counter affidavit in para 6 of the preliminary submission has mentioned the fact that the respondent no. 4 had issued direction to the respondent no.2/Manager of the school in terms of respondent no.4's letter dated 19.12.2015 to initiate action against the petitioner because petitioner was found to have taken the employment by perpetuating fraud and by giving a false certificate. Also, in the counter affidavit of the respondent no.4 it has stated as per the paragraphs in reply to the grounds that even if the managing committee does not have the requisite powers, this technical objection should not allow the disciplinary proceedings against the petitioner to fail because of the petitioner in fact being guilty of perpetuating fraud upon the school by filing a false certificate of qualification.

9. In view of the above, there is no merit in this writ petition, and the same is therefore dismissed. Parties are left to bear their own costs. All aspects of merits will be decided in the disciplinary proceedings initiated against the petitioner, in accordance with law.

DECEMBER 05, 2016
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VALMIKI J. MEHTA, J