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

+ W.P.(C) 4679/2016

HIMANI MALHOTRA

..... Petitioner

Through: Mr. G. Tushar Rao, Advocate with
Mr. Mayank Sharma and Mr. Anshal Kulshrestha,
Advocates
versus

IP COLLEGE FOR WOMEN

..... Respondent

Through: Mr. Rajesh Gogna, CGSC

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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24.05.2016

1. The present petition has been filed by the petitioner praying *inter alia* for issuing a writ of mandamus, directing that the three CD's with the certificate of the petitioner under Section 65B of the Evidence Act, 1872 be sealed by the learned Inquiry Officer and sent to the FSL, Rohini, with further directions to the two employees of the respondent/College to give their voice samples to the FSL, Rohini, Delhi for comparison and scientific analysis. The second relief prayed for by the petitioner is for issuing directions to the Director, FSL, Rohini, to submit the report after testing and analysis of the voice recordings in a sealed cover to the Inquiry Officer. In the alternative, the petitioner seeks directions to the Inquiry Officer to consider the application dated 06.05.2015, filed by her and pending orders.
2. Mr. G. Tushar Rao, learned counsel for the petitioner submits that this is the second round of litigation that the petitioner has had to initiate during

the pendency of the enquiry proceedings being conducted against her by the respondent/College. He submits that prior hereto, aggrieved by the order dated 18.01.2016 passed by the Inquiry Officer, whereunder the petitioner's application for seeking permission to file CDs of voice recordings done on 21.03.2012 and 21.04.2012, allegedly recording the conversation between Dr. Seema Singh, the petitioner, the Principal of the College and the students, was dismissed. However, vide orders dated 18.01.2016 and 24.02.2016 passed in W.P.(C) 1101/2016, the order dated 18.1.2016 was set aside and the petitioner was directed to furnish a certificate under Section 65B of the Indian Evidence Act, 1872 within one week which the Inquiry Officer was directed to consider in accordance with law.

3. Learned counsel submits that pursuant to the aforesaid orders, the Inquiry Officer had recorded in the proceedings held on 04.04.2016 as follows:-

“During the course of the hearing of this application both the parties agreed that the said application on its merit can be decided by the Inquiry Officer at the stage of final decision of the inquiry and pending its decision, direction can be given to get the voices of the said two employees of the I.P. College recorded. To facilitate this process, the parties have also agreed to ascertain and find out any independent agency to record the voice samples of the said employees. The matter is accordingly adjourned for this purpose on 22 April 2016 at 04:00 p.m.”

4. On the next date fixed before the Inquiry Officer, i.e., on 22.04.2016, the Management had taken a stand that it was not prepared to get the voice

samples of the two employees recorded from any agency. Taking note of the said submission, the Inquiry Officer had observed that the said retraction on the part of the Management would be taken into consideration at the time of finally deciding the application dated 06.05.2015, filed by the petitioner.

5. The next relevant order referred to by learned counsel for the petitioner was passed by the learned Inquiry Officer on 06.05.2016, the date when he had stated that he will produce the mobile phone and laptop as also the master CD that was prepared from the laptop so that the same could be sent to the office of the FSL, Rohini for a scientific opinion. Permission, as prayed for, was granted by the learned Inquiry Officer and the proceedings were adjourned to 13.05.2016. On 13.05.2016, counsel for the petitioner had stated before the Inquiry Officer that the petitioner was unable to trace the original mobile phone and was therefore not in a position to produce the same.

6. Learned counsel states that he did produce the laptop and the master CD before the Inquiry Officer on 6.5.2016. He had also sought time to file an application for seeking leave to place on record the secondary evidence for the purpose of seeking an opinion of the FSL, in respect of the voices recorded by the petitioner in the CDs. Learned counsel had further sought time to verify as to whether the master CD contains any other recording, apart from the one placed on record.

7. In view of the said submission, the Inquiry Officer had directed the petitioner to file an application on the lines noted above, on or before 27.05.2016 and the proceedings were adjourned to 12.07.2016.

8. Now the present petition has been filed by the petitioner stating inter alia that the Inquiry Officer be directed to consider her pending application

dated 06.05.2015 in the changed circumstances, where the Management has refused to get the voice samples of the two employees recorded from any agency.

9. If that be the case, then it is for the petitioner to make such a request directly to the Inquiry Officer, instead of approaching the court for any orders.

10. The petition is accordingly disposed of with liberty granted to the petitioner to approach learned Inquiry Officer with a request to take up and decide her pending application dated 6.5.2015, before proceeding any further. If such a request is made, the same shall be considered and decided by the learned Inquiry Officer, as per law.

HIMA KOHLI, J

MAY 24, 2016
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