

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

+ **W.P.(C) No.12511/2009**

% **22nd December, 2016**

PREM MALHOTRA

..... Petitioner

Through: Mr. C.S. Parashar, Advocate with Mr.
Mohit Kumar, Advocate and Mr. S.K.
Badal, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Anuj Aggarwal, ASC for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner impugns the order passed by the disciplinary authority dated 7.3.2008 whereby the petitioner has been imposed the penalty of withholding of three increments with cumulative effect.

2. Learned counsel for the petitioner, after arguing the case on merits, confines his arguments to challenge the impugned order dated 7.3.2008 on the ground of doctrine of proportionality pleading that merely because on one day petitioner accompanied the Head of the School to the

police station by leaving the school and classes unattended and secondly that certain representations were made directly to the Chairman instead of through proper channel, these two lapses are not such lapses which could invite such stringent penalty of withholding of three increments with cumulative effect, and which has severe consequences upon the petitioner not only during the service period of the petitioner but also towards the terminal benefits which the petitioner will receive on retirement.

3. In order to appreciate the arguments of the doctrine of proportionality urged on behalf of the petitioner, it is necessary to reproduce the entire impugned order dated 7.3.2008. This order dated 7.3.2008 reads as under:-

“

**Vidya Bhawan Girls' Sr. Sec. School
(Govt. Aided & Recognised)**

New Rajinder Nagar,
New Delhi-110060

Dated: 7/3/08

Ref. No.62/398

Memorandum

Mrs. Prem Malhotra, PGT (Physics) was absent from school on 21-11-2006 to accompany Mrs. Iti Ganguly, the then Vice-Principal and HOS to the Police Station, Rajinder Nagar, thus leaving her classes unattended. A memo calling her explanation was issued to her which she refused to accept. A copy thereof was sent to her on 27-6-07 and again on 4-7-07, both through UPC but she did not give any reply thereto. Finally, a Show Cause Notice was issued to her on 21-11-2007. Her reply dated 1-12-2007 in this regard to the effect that she carried out the orders of the then HOS for a common cause has been considered but rejected in the absence of any corroborative evidence. Besides the act of the then HOS going to the Police Station, leaving the School unattended was itself an act of indiscipline. Mrs. Malhotra, in her reply, has not addressed the issue of why she did not reply to the Memos issued to her

subsequently. The reply of Mrs. Malhotra on this count is also held to be unsatisfactory and the charge of disobedience established.

2. Mrs. Prem Malhotra has been indulging in groupism. Instances of her joining hand with other teachers in giving joint representations were given in the Show Cause Notice dated 21-11-2007 (as many as seven). In her reply dated 1-12-2007, Mrs. Prem Malhotra has defended the giving of joint representations on the plea that any request made to the Head of the Institution does not amount to groupism. While seeking redressal of an individual grievance could be a legitimate activity, but not doing joint agitations through group representations/group meetings which amounts to groupism. The reply of Mrs. Prem Malhotra is rejected and the charged of her indulging in groupism is upheld.

3. In regard to incidents of indiscipline in the School involving Mrs. Iti Ganguly, the then Vice-Principal and Head of the School on 21-11-06 some teachers had given joint representations addressed to the Chairman. It was stated in the representations that Mrs. Prem Malhotra had herself personally witnessed the incidents involving Principal's Room on 21-11-06. It was clear from the representations that instead of taking the class assigned to her, she was standing outside the Principal's Room.

A Show Cause Notice dated 12-7-07 directing her to explain why Disciplinary Action should not be taken against her for knowingly and willfully neglecting her duties by not attending to her class, submission of representations direct to the Chairman instead of through proper channel, with the teachers during School hours, thereby violating various sub rules of Rule 123 of the Delhi State Education Act and Rules 1973 was issued to Ms. Prem Malhotra 'Under Postal Certificate' on 13-7-07 with instructions to submit a reply through the HOS within 3 days. Mrs. Malhotra ignored the Show Cause Notice by not giving any reply thereto, thereby warranting Disciplinary Action against her.

4. For the above charges of disobedience and misconduct, Ms. Prem Malhotra is imposed the penalty of withholding of three increments with cumulative effect under Rule 119 read with Rule 117(a)(iii) of DSERs 1973.

Ms. Prem Malhotra
P.G.T. (Physics) (through the HOS)

Sd/-
MANAGER

Copy for:

(i) Confidential Report file

(ii) Ms. Nandita Bhattacharya, UDC for personal file.” (underlining added)

3. A reading of the aforesaid impugned order dated 7.3.2008 shows that the first charge against the petitioner is with respect to events

dated 21.11.2006 when the petitioner accompanied Mrs. Iti Ganguly, the then Vice Principal and Head of the School to the police station and thereby leaving her classes unattended. This is stated in the first para of the impugned order. The second charge is contained in the second para of the impugned order with respect to 'groupism' indulged in by the petitioner. The third charge is with respect to petitioner not giving representations through proper channel but sending the same directly to the Chairman.

4. All the aforesaid lapses of the petitioner neither relate to any financial irregularities, or consistent misconduct or issue of any physical assault or inflicting of capital punishment on a student or of abuse of office or any such serious offences. Admittedly, the penalty also imposed upon the petitioner falls in the category of minor penalty as per Rule 117(a)(iii) of the Delhi School Education Rules, 1973. In fact, even out of the three lapses alleged against the petitioner, the second lapse of groupism is in fact no charge in law at all because this Court fails to understand as to how the 'groupism' in which the petitioner was indulged in is at all an illegality. Surely, teachers can always file a joint representation or joint representations and merely because joint representations are submitted, petitioner cannot be held guilty of 'groupism' more so because groupism is not an illegality under any law whatsoever and nor so is specified under the

Delhi School Education Act and Rules as a misconduct on the part of the employee/teacher.

5. As regards the first charge against the petitioner, the petitioner is in a way justified in arguing that she was asked by the Head of the School Mrs. Iti Ganguly to accompany her, and the petitioner as a teacher of the school could not disobey the Head of the School, and, in such circumstances, it cannot be that there is corroborating evidence including documentary evidence that the petitioner had taken written permission from the Head of the School to go with the Head of the School to the police station. All in all it is seen that the charges against the petitioner are minor and even if the two charges are taken to be proved which are of accompanying the Head of the School on 21.11.2006 to the police station by leaving the classes unattended and by sending representations to the Chairman directly instead of through proper channel, the same cannot mean that an employee can be imposed the severe punishment which will take away as many as three increments and that too with cumulative effect. The punishment imposed upon the petitioner therefore shocks the judicial conscience of this Court and the punishment imposed is therefore held to be against the doctrine of proportionality.

6. Ordinarily, after finding the punishment to be disproportionate, this Court would have remitted the matter to the departmental authorities to take a fresh decision, however, noticing the old nature of the present case being

of the year 2009; impugned order being dated 7.3.2008, and the fact that the writ petition has remained pending in this Court for more than seven years, I find it fit that instead of remanding the matter back to the departmental authorities, that this Court should itself substitute the punishment imposed upon the petitioner by the impugned order dated 7.3.2008 to a lesser penalty/punishment.

7. Accordingly, instead of the petitioner being imposed of the penalty of withdrawing of three increments with cumulative effect, petitioner will only be imposed the penalty of withholding two increments but there will not be any cumulative effect on the withholding of two increments. Writ petition is accordingly allowed and disposed of to the limited extent of reducing the punishment imposed upon the petitioner, as stated above. Now, the respondents will act pursuant to the present order and accordingly if any monetary dues of the petitioner including the terminal benefits remain to be paid, then, necessary action will be taken and the monetary benefits with terminal dues of the petitioner be paid to the petitioner as expeditiously as possible.

8. Writ petition is disposed of accordingly.

DECEMBER 22, 2016/ Ne

VALMIKI J. MEHTA, J