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

+ **W.P.(C) 7790/2015**

A.A. VETAL

..... Petitioner

Through: **Mr. Rajesh Goswami, Adv.**

versus

SAMARTH SHIKSHA SAMITI (REGD.) AND ANR.

..... Respondent

Through: **Mr. Rajesh Gupta, Adv. with Mr.
Harpreet Singh, Adv. for R-1**

**Mr. Anuj Aggarwal, ASC with Mr.
Shubhanshu Gupta, Adv. for R-2**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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20.07.2016

1. The present petition has been filed by the petitioner with the following reliefs:-

*“a) issue a writ in the nature of mandamus or any other order(s) or direction(s), directing the respondent no.1 school to pay a sum of Rs.4,07,125/- (Rupees Four lacs seven thousand one hundred and twenty five only) along with interest @ 12% p.a from date of order dated 15.03.2012 passed in Letter Patent Appeal No.21/2012;
b) Allow the cost of the litigation”*

2. It is noted that the petitioner, pursuant to an departmental enquiry initiated by the respondent No.1 Society, was dismissed from service on February 27, 2001. The said order of dismissal was challenged by the petitioner before Delhi School Tribunal, whereby the Tribunal allowed the appeal of the petitioner vide order dated 30th April, 2009. The order of the Tribunal was challenged by the respondent No.1 before this Court, which set

aside the order of the Tribunal vide order dated 26th April, 2011. The order dated 26th April, 2011 was taken in an appeal by the petitioner, the appeal being LPA No.21/2012.

3. It is stated by Mr. Rajesh Gupta, learned counsel for the respondent No.1 that during the course of hearing, the respondent No.1 had agreed to convert the penalty of dismissal to that of a compulsory retirement, which would entitle the petitioner to such terminal benefits as would be payable reckoning the qualifying service rendered up to February 27, 2001. In fact, Mr. Rajesh Gupta states that a brief note was filed by the respondent No.1 before the Appellate Court detailing the benefits to be given to the petitioner. It is his submission in view of the stand of the respondent No.1, the LPA was disposed of.

4. It is noted from the order dated March 15, 2012 of the Appellate Court, the learned counsel for the petitioner, on instructions from the petitioner accepted the stand of the respondent No.1 that the petitioner would be entitled to terminal benefits as would be payable reckoning the qualifying service rendered up to February 27, 2001.

5. The Appellate Court vide para 4 (page 12A) had disposed of the appeal on the following terms:-

“4. The appeal accordingly stands disposed of quashing the order dated February 27, 2001 under which the appellant was dismissed from service and it is ordered that with effect from said date i.e. February 27, 2001, the appellant shall be treated as having been compulsorily retired with all terminal benefits payable calculated with reference to the qualifying service rendered upto February 27, 2001. Requiring respondent No.1 to pay the terminal dues which have accumulated till date within a period of eight weeks from today.”

6. From the note filed by the respondent No.1 and the order passed by the Appellate Court in LPA No.21/2012, it is clear that the petitioner was entitled to the terminal benefits with effect from February 27, 2001 and no other benefits. In view of the note filed by the respondent No.1, as accepted by the petitioner and the order of the Appellate Court, the present claim of the petitioner, if granted would have the effect of superseding the order of the Appellate Court dated 15th March, 2012, which was based on an understanding between the parties.

7. As the petition is not maintainable at the first instance, it is a fit case where this Court should impose cost on the petitioner for filing such a petition. Noting the medical condition, as canvassed by the learned counsel for the petitioner, the Court restrain itself from imposing cost. The petition is dismissed.

V. KAMESWAR RAO, J

JULY 20, 2016/ak