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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 49/2016, C.M. APPL.2466-2467/2016**

RYAN INTERNATIONAL SCHOOL & ANR. Appellants
Through: Sh. Romy Chacko and Sh. Varun
Mudgal, Advocates.

Versus

HEMLATA & ANR. Respondents
Through : Sh. Satyakam, Addl. Standing Counsel,
GNCTD, for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

% **ORDER**
25.01.2016

1. The appellants are aggrieved by the judgement dated 03.11.2015 of the learned Single Judge dismissing the writ petition filed by the appellants.
2. The brief facts are that the respondent (hereafter “the claimant”) was working as an Ayah (helper/maid) in the Appellant No.1 school and cared for small children. She was issued a Charge Sheet in respect of an incident which allegedly occurred on 07.05.2012, whereby she is said to have slapped one young boy who was the son of the claimant’s co-employee. An enquiry was instituted during the course of which it transpired that the child’s father [hereafter “the complainant”] had withdrawn the complaint on 06.06.2012 itself. During the course of enquiry, two witnesses [Sh. Puran Singh Bisht (MW-2) and Ms. Anshu Kukreja (MW-3)] stated

that the child had confirmed on the relevant date that the claimant had slapped him. MW-2 stated that he had confronted the claimant and that the latter had confirmed the incident. MW-3 deposed on similar lines. Basing itself on these materials, the disciplinary authority imposed the penalty of dismissal.

3. The claimant approached the Delhi School Tribunal [hereafter “the Tribunal”] under Section 8 of the Delhi School Education Act, 1973, [hereafter “1973 Act”], contending that the proceedings could not have resulted in a finding of guilt and that the punishment imposed was excessive. The Tribunal set-aside the order of dismissal. The appellant in its writ petition, complained that the appreciation of evidence by the Tribunal was not justified and that there was sufficient material on record to justify dismissal. In the impugned judgment, the learned Single Judge, after considering the submissions and materials, was of the opinion that the Tribunal’s power to re-appreciate evidence was limited and it could certainly go into question as to whether they were perverse or otherwise. The learned Single Judge relied on two decisions of the Supreme Court in this regard. After considering entirety of circumstances, the learned Single Judge was of the opinion that since the child’s father had not deposed in the proceedings and had actually withdrawn the complaint soon after making it, the evidence of guilt could not have been arrived at and consequently that the penalty was unjustified. Learned counsel for the appellant urged that the learned Single Judge fell into error in upholding the Tribunal’s determination. He argued that it is unnecessary in a departmental proceeding to insist that a fact has to be

proved “beyond reasonable doubt” and that in these circumstances, depositions of MWs-2 and 3 were sufficient to implicate the delinquent claimant and justify her dismissal. Learned counsel relied upon the decisions of the Supreme Court in *Anjanappa v. State of Karnataka* 2014 (2) SCC 776, where even though the parents of the deceased had not supported prosecution case against the accused, who was charged with having committed an offence punishable under Section 304B IPC, the Court nevertheless held that guilt stood proved and confirmed the High Court’s judgment. It is contended that likewise even though the complainant withdrew the charge, there was sufficient material to warrant the finding of guilty and consequently the claimant’s dismissal.

4. Learned counsel also emphasized that in the past as well, several complaints with respect to the claimant’s misbehaviour had been made by parents of the children and that she had been warned repeatedly.

5. The Court has considered the materials on record. These show that the claimant was working with the appellant for about 18 years prior to her dismissal in 2012 on the charge levelled against her with respect to the incident alleged. This Court, in appeal, as it were (over the judgment of the learned Single Judge), exercising discretion under Article 226 of the Constitution, has an extremely limited and circumspect role. It is only in egregious and facially untenable cases that the Court would be compelled to intervene with the findings of the learned Single Judge (in the present instance virtually acting as a third Court and an appellate Court over the final Court of facts).

6. The materials on record, according to the learned Single Judge, justified the Tribunal's conclusion that the findings recorded by the disciplinary authority were perverse. A strong circumstance which cannot be ignored is that the complainant himself was a co-employee of the delinquent claimant. He withdrew the complaint barely a month after it was made. No doubt, MWs-2 and 3 deposed the way they did as to what they saw and enquired from the child. Nevertheless, the fact remains that they were not witnesses to the incident itself but witnesses as to what they were told. It passes one's comprehension that a school where the complainant was an employee, could not record his statement though the school could have compelled him to do so in the course of the enquiry. This singular omission, in the opinion of the Court, was correctly seen as fatal to the appellant's case against the claimant. As observed by the learned Single Judge, fact appreciation by the Tribunal may be limited but if its exercise is in respect of what falls within its bounds of its jurisdiction, the Court, in exercise of its writ jurisdiction under Article 226 of the Constitution would not intervene with the Tribunal's finding. Having regard to these and the other circumstances, this Court holds that the appeal is unmerited. It is accordingly dismissed along with the pending applications.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 25, 2016

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