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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 1130/2010

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6th February, 2017

MS. REKHA SABHARWAL

..... Petitioner

Through: Mr. Padma Priya, Advocate with
petitioner in person.

versus

MANAGEMENT OF SAAI MEMORIAL GIRLS SCHOOL & ANR.

.... Respondents

Through: Mr. Palak Rohmetra, Advocate for
respondent No.1.
Ms. Jyoti Taneja, Advocate for
respondent No.2.

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 and Article 227 of the Constitution of India, petitioner impugns the judgment of the Delhi School Tribunal (DST) dated 31.7.2009 by which the DST has dismissed the appeal filed by the present petitioner challenging the order of the disciplinary authority dated 7.11.2006 dismissing the appellant from the services as an Assistant Teacher with the respondent no.1/ Saai Memorial Girls School.

2. The facts of the case are that petitioner was served a charge sheet containing the following imputations of misconduct:-

“Statement of imputation of misconduct and misbehaviour in support of articles of charges framed against Smt. Rekha Sabharwal, Asstt. Teacher.

Article-I

Saai Memorial School is an English Medium School known for quality education in the locality. Smt. Rekha Sabharwal, Asstt. Teacher was asked to teach English and environmental studies to the students of Class-III. It was observed that She had willfully neglected in her performance of duties. A number of parents lodged complaints regarding her quality of teaching and behavior. Complaints of Parents further stand corroborated with the quality of checking of exercise books/note books of students by Smt. Rekha Sabharwal and performance report of Consultant (Primary Education) dated 7.8.06 shows that Smt. Rekha Sabharwal does not know basics of English language and is not fit for teaching the English Medium Students of Primary Class.

Article-II

On 10.8.06, when Principal of School, along with Consultant (Primary Education) checked her way of teaching. Smt. Rekha Sabharwal abused and misbehaved with the Principal of School.

Article-III

She is in habit of misbehaving with fellow teachers and other staff of School and Mrs. Jasvir Kaur on 1.07.05, Mrs. Vandana Nagi (TGT) on 14.08.06 and Mrs. Mithlesh, Class-IV on 21.3.06.

Article IV

School holds Parent Teachers meeting periodically to have interaction of parents with Teachers regarding performance of students. Smt. Rekha Sabharwal who was deputed to teach students of Class III-B, refused to attend the parents of Class III-B on Parent Teacher Meeting held on 26/8/06.

Sd/-
MANAGER
SAAI MEMORIAL SCHOOL
SAI BHAWAN”
(underlining added)

3. A reading of the aforesaid charges shows that the petitioner was charged not fit for teaching English language even to primary school students. There are also charges against the petitioner of misconduct not only with the Principal of the school but also with other teachers and staff

of the school. There are also charges with respect to petitioner not meeting the parents in the Parent Teacher Association meeting.

4. After the charge sheet was served upon the petitioner, petitioner denied the charges, and therefore, an Enquiry Officer was appointed. Before the Enquiry Officer, management/school led evidence of as many as eight witnesses. Most of the witnesses of the respondent no. 1/school were cross-examined at length by the petitioner who was assisted by her father in the disciplinary proceedings. Respondent no. 1/school also proved various documents from Ex. P/1 to Ex. P/15 including the complaints made by other teachers with respect to rude behavior of the petitioner. After the evidence of the respondent no. 1/school was completed, petitioner was asked as to whether petitioner wants to lead any evidence and in response to which query it is found recorded in the order sheet of the Enquiry Officer dated 20.12.2006 that petitioner stated that she has already submitted her defence reply to the charge sheet and she has nothing to say in her defence in writing or verbally. The Enquiry Officer has thereafter given his report dated 17.2.2007 holding that first three Articles of Charges has been proved and Articles of Charge IV has been partially proved. Petitioner was therefore held guilty with respect to neglect

of her duties, misbehavior with Principal and misbehavior with other teachers and employees of the school.

5. Before I turn to the arguments urged on behalf of the petitioner, I may note the fact that whereas the respondent no. 1/school during the course of enquiry proceedings led evidence of as many as eight witnesses, most of whom were cross-examined in detail by the petitioner, documents were proved by the respondent no. 1/school, yet, petitioner led no evidence whatsoever in support of her case. Merely replying to a show cause notice or filing written arguments will not mean that petitioner has led evidence in support of her case. Therefore, the present is a case of detailed evidence led by the respondent no. 1/school on the one hand with no evidence led on behalf of the petitioner on the other. This Court therefore, so far as merits is concerned, has to hold the charges against the petitioner to be otherwise proved as the petitioner having failed to rebut the case against her.

6. Learned counsel for the petitioner has argued the following aspects to challenge the impugned judgment of the DST dated 31.7.2009:-

(i) Constitution of the disciplinary authority was faulty because the Principal and Vice Principal Mrs. Jasvir Kaur since were the complainants against the petitioner, hence the impugned order of the disciplinary

authority is liable to be set aside on this ground itself inasmuch as the Principal and Vice Principal have deposed in the enquiry proceedings. Reliance is placed upon a Division Bench judgment of this Court in the case of *The Managing Committee Vidya Bhawan Mahavidyalaya (Secondary School) Vs. Directorate of Education and Ors. ILR (2006) I DELHI 403*.

(ii) The order which is passed by the disciplinary authority in this case as also the report of the Enquiry Officer dated 17.2.2007 are non-speaking, and therefore, for this reason itself the same are liable to be set aside.

(iii) There is violation of principles of natural justice because petitioner was not allowed to file documents and which has become clear from the note-sheets/order sheets of the Enquiry Officer dated 28.11.2006, 20.12.2006 and 26.12.2006. The impugned proceedings being in violation of principles of natural justice have therefore to be set aside.

(iv) The charge against the petitioner is factually incorrect that petitioner was not good at teaching and accordingly the petitioner ought not to have been held guilty in terms of the Enquiry Officer's Report and the order of the disciplinary authority.

(v) The order of the disciplinary authority removing the petitioner is hit by the doctrine of proportionality because petitioner has been imposed the

disproportionate punishment of removal from services and which could not have been even if all the Articles of Charges were proved against the petitioner.

(vi) The Articles of Charges against the petitioner are malicious and the entire disciplinary proceedings are vitiated because the disciplinary proceedings were initiated against the petitioner because petitioner had asked for her full salary which was not being paid to her.

7(i). Taking the first argument urged on behalf of the petitioner, no doubt, a person cannot be both a complainant as also a witness in the enquiry proceedings in view of the judgment of this Court in the case of *Vidya Bhawan Mahavidyalaya (supra)*, yet, it is seen that in the present case what will apply will be the doctrine of severance. Besides charge contained in Article II there were also other articles of charges against the petitioner and which have been reproduced above. Petitioner has been held guilty of all the Articles of Charges including Article II of misbehaving with the Principal. Even if however Article II is removed from the Articles of Charges and hence from the enquiry officer's report, yet, Articles I and III stand duly proved and which findings on Articles I and III are severable and not related to Article II, and therefore, applying the doctrine of severance the Enquiry Officer's report and the consequent disciplinary

order is justified on the basis of the Articles I and III and which articles have no connection to the Principal being the complainant and also the witness as regards these Articles of Charges I and III.

(ii) As regards the allegations that Vice Principal being Mrs. Jasvir Kaur, the teacher's representative was part of the disciplinary committee and also deposed in the enquiry proceedings, it is seen that Mrs. Jasvir Kaur had informed the Principal with respect to rudeness of the petitioner with other teachers and petitioner not performing the duties which were given to her. Both these aspects of rudeness and neglect in performing of duties have been independently proved against the petitioner i.e even without taking the complaint of Mrs. Jasvir Kaur, because in the enquiry proceedings various teachers deposed with respect to rudeness of behavior of the petitioner and of the petitioner not performing her duties. Also, the doctrine of severance again can be applied because even if Article III of charges is taken away, yet, Article I of charges, which was a very serious complaint against the petitioner was proved and which was as regards petitioner neglecting and being incompetent in performing her duties and that petitioner not having the requisite knowledge of English language for teaching the English medium students of primary classes in the subject school which was an English medium school. Therefore, for this reason of

the doctrine of severance and also the fact that Mrs. Jasvir Kaur only forwarded the complaints of other teachers and which complaints were proved independently before the Enquiry Officer by the respondent no. 1/school through witnesses and documents, the ratio of the judgment in the case of *Vidya Bhawan Mahavidyalaya (supra)* will not apply to the facts of the present case. The first argument urged on behalf of the petitioner is therefore rejected.

8. The second argument urged on behalf of the petitioner that the Enquiry Officer has passed a non-reasoned order and which non-reasoned order has been adopted by the disciplinary authority by passing an unreasoned order is an argument without merit inasmuch as the Enquiry Officer's report in the present case is a detailed report which discusses the evidence which was led by the respondent no. 1/school being the depositions of the witnesses as also the documentary evidence Ex. P/1 to Ex. P/15. Enquiry Officer in the report has referred to the contents of the depositions of the witnesses (who were cross-examined) as to how the same proved the case of the respondent no. 1/school and also as to how the documents proved the case of the respondent no. 1/school. There is no specific format of an Enquiry Officer's report and merely because the Enquiry Officer in the concluding paras of the report states that Articles of

Charges are proved without giving discussion would not mean that earlier detailed discussion showing the charges being proved cannot be looked into by this Court. The detailed Enquiry Officer's report in the present case therefore under no stretch of imagination can be said to be a non-speaking report. Also, the disciplinary authority need not pass a detailed order and once the Enquiry Officer's report is a detailed report discussing the articles of charges, and how the same are proved, what are the depositions of the witnesses, what are the documents etc etc, in such a scenario it cannot be held that Enquiry Officer's report and the disciplinary authority's order are non-speaking and therefore have to be set aside. This argument urged on behalf of the petitioner is therefore rejected.

9(i). The third argument of the petitioner is by placing reliance upon certain note sheets of the Enquiry Officer and thereby claiming that petitioner was denied the opportunity to file documents in support of her case. Nothing can be further from the truth and since the DST on this aspect has exhaustively given its discussion and which clearly shows that petitioner had complete opportunity and repeated opportunities to file documents and which she did not utilize, it cannot be held that the case against the petitioner was not proved. DST has therefore in the opinion of this Court rightly held that the case of the petitioner is incorrect and that she

was not given opportunity to file documents. The relevant observations in this regard of the DST, and which are adopted by this Court, read as under:-

“10(viii). Another allegation of the appellant is that Inquiry Officer had not allowed appellant to put her defence documents on record and she had specifically referred to the order sheets dated 28.11.2006 and 20.12.2006. In the order sheet dated 28.11.2006, it has been mentioned that Appellant would be afforded a fair chance for making her defence at the appropriate stage. In the order sheet dated 20.12.2006, it is mentioned that on 28.11.2006 CO was asked to give details of defence documents and defence witnesses if any, which she proposed to adduce before the Inquiry Officer in this case by 06.12.2006 but she had not been given any such list.

It is pertinent to mention here that after 28.11.2006 the matter was listed on 06.12.2006 when the Inquiry Officer was not well and the matter was again adjourned to 08.12.2006 and thereafter to 13.12.2006. Even on 13.12.2006, 15.12.2006 and 18.12.2006 the Appellant did not produce any list of witnesses or details of the defence documents. Even in the order sheet dated 20.12.2006 Appellant had been given another chance to submit her documents along with her defence brief at the appropriate time. The matter was adjourned to 26.12.2006. On this date, the remaining evidence of the witnesses of the Management was recorded. The Appellant informed that she had already submitted her defence reply to the charge-sheet and as such she had nothing more to say in her defence in writing or verbally. She made a request that she should be given a date for submitting defence brief and as per her request she had been given time till 27.01.2007 for submitting defence brief. Prior thereto, the Presenting Officer was directed to submit the prosecution brief. It is clear that the Appellant herself had foregone her right to put her defence in writing along with her documents and to call her defence witnesses as noted in the order sheet dated 26.12.2006. When the Appellant herself had chosen not to put her defence in writing and to call her defence witnesses and to file her defence documents, the Inquiry Officer was right in fixing the case for submission of prosecution brief as well as defence brief on 11.01.2007 and 27.01.2007 respectively and no fault can be found with the Inquiry Officer in this ground.” (underlining added)

(ii) In view of the above observations of the DST, the argument urged on behalf of the petitioner of her not being given adequate opportunities to file documents in support of her case is a misconceived argument and is therefore rejected.

10(i). Even the argument of the petitioner that she was good at teaching and the Enquiry Officer therefore should not have been held the petitioner guilty, the DST has in this regard given very pertinent observations to reject the case of the petitioner inasmuch as DST found that the school was an English medium school and petitioner was appointed as an Assistant Teacher and not as an Assistant Teacher (Nursery) as claimed by the petitioner. Petitioner therefore was found not to have the requisite knowledge of English and in fact there are complaints received from the parents of students who had appeared as witnesses before the Enquiry Officer and thus proving the case of the respondent no. 1/school. The relevant paras of the impugned judgment of the DST and which are adopted by this Court, read as under:-

“10(i) In the appeal Appellant has maintained the stand throughout that she was an Asstt. Teacher in the Respondent School since 01.04.2003 till her removal on 29.03.2007. But in the rejoinder the Appellant comes-up with a new contention that she was appointed as Nursery Teacher who was made to work as Asstt. Teacher and the inquiry was conducted against her as Asstt. Teacher; hence the whole inquiry process was void ab-initio. In support of this contention Appellant has filed an almost illegible copy of a document Annexure ‘R-1’ wherein the words ‘Asstt.’ ‘T’ were written in one ink but the word ‘Nursery’ was added in some other ink/pen later on. On the strength of this document dated 27.03.2003 the Appellant has tried to make a summersault and set up a new case at rejoinder stage without amending her appeal. The printed contents of this document R-1 are not legible. A new stand contrary to the stand taken in the appeal cannot be allowed to be taken in rejoinder. Hence the Appellant cannot agitate that she was only an Asstt. Teacher (Nursery) and not an Asstt. Teacher for the primary section as was her case in the appeal.

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10(ix) As far as the findings of the Inquiry Officer are concerned the Appellant had challenged the same on the ground that her performance for 7 days cannot be the basis for imposing penalty of removal upon her. As per the Respondents, it is an English medium School where teachers are required to teach the students in English and Appellant was given class III for teaching English and EVS but she was unable to teach students in English as is evident from her performance appraisal done by the Consultant Ms. Nisha Sharma who had prove documents exhibit P/12 to P/15. Moreover, number of complaints had been received from the parents of students of Class III who had appeared as witnesses before the Inquiry Officer. The contention of the Appellant that she was appointed for teaching all subjects of class I and to teach only Hindi to other primary classes is not tenable. The documents proved by Ms. Nisha Sharma Consultant clearly show that appellant did not have the basic knowledge of English grammar, composition and punctuation and she was unable to teach English and EVS to class III students. It has been detailed in the evidence of the parents who had appeared before the Inquiry Officer As PW-1 to PW-8.” (underlining added)

(ii) Accordingly, this argument urged on behalf of the petitioner that she ought not to have been guilty of being deficient in teaching, is an argument which cannot be accepted by this Court, and the same is therefore rejected.

11(i). The last argument urged on behalf of the petitioner was that petitioner has been proceeded against maliciously because petitioner had made complaints to the Director of Education with regard to the petitioner not receiving her complete salary.

(ii) In my opinion, this argument cannot help the petitioner in facts of the present case for two reasons. Firstly, even if assuming there is malice yet once the charges are otherwise proved, existence of malice cannot

exonerate the petitioner from the charges which have otherwise been proved in the disciplinary proceedings. The second reason is that petitioner had ample opportunities to lead evidence and give her statement/deposition to prove alleged malice and rebut the case of the respondent no. 1/school, but, petitioner did not step into the witness box and did not lead any evidence in support of her case. This is so noted by the Enquiry Officer in the note sheet dated 26.12.2006 and which reads as under:-

“Disciplinary Inquiry Proceedings into the charges made against Mrs. Rekha Sabharwal, Asst. Teacher, Saai Memorial School, Sai Bhawan, Delhi-31 held today 26.12.06

The following are present:

1. Mrs. Rekhas Sabharwal- C.O.
2. Mr. Kulwant Singh- Father of C.O. (Defence asstt.)
3. Mrs. Neena Sharma- P.O.

Dr.(Mrs.) Meenakshi Keswani, Mrs.Jasvir Kaur, Mrs. Vandana Nagi, Mrs. Nisha Sharma and Mrs. Mithlesh are present. Their statements have been recorded separately.

The C.O has informed that she has already submitted her defence reply to the charge sheet as such at this stage now she has nothing to say in her defence in writing or verbally. She has made a request that she should be given date for submitting her defence brief. She has opted for the purpose 27.1.07, when she will submit her defence brief, but prior to the defence brief the P.O. will submit the prosecution brief in writing which will be attached to the Inquiry officer and a copy thereof shall be endorsed to the charged officer under registered cover. The P.O. is granted date of 11.1.2007 for submitting the prosecution brief as stated above.

sd/-

R.K. BHARDWAJ
INQUIRY OFFICER

1. MRS. REKHA SABHARWAL-C.O. sd/-
2. MRS. NEENA SHARMA-P.O. sd/-
3. DISCIPLINARY AUTHORITY”

12. Once petitioner leads no evidence to prove her case, then, the case of the respondent no. 1/school which has been proved by the deposition of witnesses and proving of documents has to be believed, and therefore, petitioner has failed to prove that respondent no. 1/school had any malice as was alleged by the petitioner. The last argument urged on behalf of the petitioner is also therefore misconceived and is rejected.

13. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 06, 2017
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VALMIKI J. MEHTA, J