

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

+ **W.P.(C) No. 2506/2004**

% **1st March, 2017**

DHARAMBIR SINGH

..... Petitioner

Through Mr. Dinesh Agnani, Sr.
Advocate with Mr. Jitender Verma,
Advocate.

versus

DIRECTOR OF EDUCATION AND ANR.

..... Respondents

Through Mr. Siddhartha Shankar
Ray, Advocate for R-1.

Mr. Mayank Yadav, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. By this writ petition under Article 226 of the Constitution of India, the petitioner, a teacher in respondent no. 2/Dhanpatmal Virmani Senior Secondary School, impugns the order of the respondent no. 1/Director of Education (DOE) dated 5.2.2004 whereby the respondent no. 1/ DOE has stopped with immediate effect grant-in-aid for payment of salary to the petitioner. Respondent no. 2/school is an aided school, i.e 95% of the funds for the respondent no. 2/school are provided by the Government of National Capital Territory of Delhi (GNCTD) through respondent no. 1/DOE. Hence, by the impugned order it is this 95% of the grant-in-aid for payment of monetary emoluments of the petitioner have been stopped by the respondent no.

1/DOE. The impugned order passed by the respondent no.1/DOE reads as under:-

No.2162-65

Dated:5-2-2004

ORDER

WHEREAS, Dhanpatmal Virmani Sr. Sec. School, Roop Nagar, Delhi-7, is a school recognized and aided by the Directorate of Education Delhi under the provisions of Delhi School Education Act, 1973 (hereinafter "Act") and Delhi School Education Rules (hereinafter "Rules");

AND WHEREAS, it is specifically mentioned in the recognition letter that the school shall abide by the provisions of DSEAR, 1973 and the instructions issued from time to time;

AND WHEREAS, it is categorically stated in the grant-in-aid order that the school management will comply with the provisions of Rule 64 of Delhi School Education Rules, 1973;

AND WHEREAS, Sh. Dharma Bir Singh, PGT (Commerce) was appointed by the Managing Committee of the school, even without being eligible for appointment in Govt. Aided School due to his conviction in a criminal case;

AND WHEREAS, on the findings of this fact, the Dy. Director of Education (District North) vide letter No.DDE (N)/49/Z-7/2002/1137 dated 29.10.2002 directed the Manager of the school to suspend and to initiate disciplinary proceedings against Sh. Dharam Bir Singh, PGT (Commerce);

AND WHEREAS, the Dy. Director of Education (District North) issued subsequent reminders vide letter no. 1328 dated 2.10.2002 and 456 dated 20.3.2002 for compliance of the earlier directions;

AND WHEREAS, the Manager of the School did not comply with the directions issued vide letter no. 29.10.2002, and has submitted the reply dated 3.12.2003 which has been considered and not found to be logical;

AND WHEREAS, on the totality of the circumstances, and the facts as enumerated in the preceding paras, it has been established that the school is functioning contrary to the provisions of the aforesaid acts and rules;

AND WHEREAS, the managing committee has failed to run the school in the best interest of education of the children and has not allowed it to function normally and smoothly and has interfered in the day to day affairs of the school. The managing committee of the school has conducted the affairs of the school in such a way which has adversely affected the interests of the school and all this is against the provisions of rules 181, 182 and 185 of DSER, 1973.

AND WHEREAS, the Managing Committee of the school through its reply dated 3.12.2003 has openly admitted that it is not ready to comply with the directions so given in the Show Cause Notice and is rather giving threatening calls to the Department for approaching the Court of Law.

NOW, THEREFORE, considering the above stated violations by the school management, I, RAJENDRA KUMAR, Director of Education, am left with

no other option to come to the conclusion that the deficiencies so noticed against the management of the school stand proved and are of very serious nature. Therefore, the grant-in-aid in respect of Sh. Dharam Bir Singh, PGT (Commerce) is stopped with immediate effect till further orders under sub section (4) of Section 24 and under sub section (2) of Section 6 of Delhi School Education Act, 1973 as well as Rule 64(2) of DSER, 1973 read with Rule 69 (b) and Rule 69 (e) of DSER, 1973 for violating the provisions of Rule 64(1)(a) and 64(1)(f) of DSER, 1973.

Sd/-
(RAJENDRA KUMAR)
DIRECTOR EDUCATION

To
The Managing Committee
Through the Manager,
Dhanpatmal Virmani Sr. Sec. School,
Roop Nagar,
Delhi-110007

No. 2162-65

Dated: 5-2-2004

Copy to:-

1. Regional Director (Central), Dte of Education, Delhi
2. DDE (North) with the direction to serve the order upon the managing committee of the school through its Manager by special messenger under acknowledgement.

Sd/-
(K.C. ARORA)
ASSTT. DIRECTOR OF EDUCATION (ACT)
(underlining added)

2. It is seen that the impugned order has been passed on account of the respondent no. 2/school not taking any disciplinary action against the petitioner inspite of the petitioner being convicted in a criminal case. The issue is that whether the respondent no.1/DOE without examining the nature of the criminal case and the attending circumstances as also other relevant factors can simply because of conviction of the petitioner in a criminal case hold that petitioner will

not be entitled to payment of salary by grant-in-aid to the extent of 95%.

3. The issue in this regard has been recently pronounced upon by a Division Bench of three Judges of the Supreme Court in the case of *Avtar Singh Vs. Union of India (2016) 8 SCC 471*. The ratio of the judgment in the case of *Avtar Singh (supra)* is that concealment of facts with respect to pendency of a criminal case or conviction in a criminal case would not automatically lead to termination of services of an employee or for holding that the entry in the employment was by material concealment of facts. Supreme Court has observed that all relevant aspects are to be considered, including the nature of the case, other attending circumstances such as age of the person concerned, the nature of the job which is offered for employment, etc etc. The ratio of the judgment of the Supreme Court is contained in paras 38 to 38.11 of the judgment in the case of *Avtar Singh (supra)* and these paras read as under:-

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2 While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3 The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted: -

38.4.1 In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3 If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5 In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6 In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7 In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8 If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9 In case the employee is confirmed in service, *holding* Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10 For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge

of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11 Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

4. In the present case, it is seen that the impugned order does not consider the various circumstances and aspects which the Supreme Court has considered relevant for determining whether or not the services of an employee need to be terminated or an employee should be proceeded against with by disciplinary proceedings. Accordingly, since the impugned order dated 5.2.2004 does not deal with the relevant aspects and does not give reasons as to if petitioner can be exonerated or cannot be exonerated, to what extent employment would stand polluted including for, whether services should be terminated or not, etc etc, accordingly, the impugned order dated 5.2.2004, including consequential order dated 11.2.2004 passed by the respondent no. 2/school are set aside with directions to the respondent no. 1/DOE to decide the issue as regards whether disciplinary action has to be taken against the petitioner, whether petitioner's services have to be terminated, whether the nature of the offences for which petitioner was convicted are relevant to what extent for initiating disciplinary proceedings if at all they have to be initiated, etc etc. In sum and substance the respondent no.1/DOE or its nominee will now pass a

fresh order for considering the ratio of the judgment of the Supreme Court in the case of *Avtar Singh (supra)*. Needful be done by the respondent no.1/DOE after hearing the petitioner as also respondent no. 2/school within a period of two months from today.

5. I would like to clarify that though the impugned orders dated 5.2.2004 and 11.2.2004 are set aside, however, this is done on the consent of the petitioner through his counsel that in case if for any reason the respondent no.1/DOE passes an order upholding the denial of grant-in-aid, and which order achieves finality as per law, then the petitioner who has been getting his salary including 95% grant-in-aid by virtue of interim order of this Court will not take benefit of such interim order and petitioner will be liable to return the grant-in-aid of 95% of the monetary emoluments paid to him under the interim order. Further, I clarify that observations made in this judgment are only as regards the impugned orders dated 5.2.2004 and 11.2.2004 and this is without prejudice to the rights of the respondent no. 1/DOE to take any other action against the petitioner in case any or both of the respondents feel that there are other valid reasons for taking disciplinary action or any other related action against the petitioner.

6. The writ petition is accordingly allowed to the limited extent as stated above, and is accordingly disposed of, leaving the parties to bear their own costs.

MARCH 01, 2017

AK.

VALMIKI J. MEHTA, J

