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

+ W.P.(C) 2640/2016, CM Nos. 11189/2016 & 21071/2016

KAMLESH KUMARI

..... Petitioner

Through: Mr. S.D. Singh, Mr. Rahul Kr. Singh,  
Mr. Kamla Prasad and Mr. Vikas  
Sachdeva, Advs.

versus

THE MANAGING COMMITTEE, THROUGH: ITS MANAGER  
DCM GIRLS SR. SEC. SSSHOOL & ORS. .... Respondents

Through: Mr. Rohit Aggarwal, Adv. for R1.  
Ms. Neha Rastogi and Mr. Animesh  
Rastogi, Advs. for R2 and R3.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

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**25.09.2017**

1. The present petition has been filed by the petitioner challenging the order dated December 17, 2015 whereby the petitioner was put on deemed suspension, on her conviction in a Criminal Case no. 117/2015 by the learned Chief Metropolitan Magistrate, Agra, by the respondent no.1 / School on the directions of respondent no.2.
2. It is the case of the petitioner that she was married to one Karam Vir Singh at Agra on May 6, 1982. It is averred that the husband of the petitioner filed a Divorce Petition being HMA 472/2007 seeking divorce

from the petitioner before Addl. District Judge (East), Karkardooma, Delhi. The said petition was dismissed on July 4, 2013. The husband of the petitioner had assailed the said order by filing a MAT Appeal no. 25/2013 before this Court. It is noted from the petition and contended by Mr. S.D. Singh, learned counsel for the petitioner that pursuant to FIR registered against the petitioner and her brother for offences under Section 452 / 323 IPC, the petitioner has been convicted to undergo imprisonment for two years and six months for the said offences on September 29, 2015. The Court on the same date, i.e. September 29, 2015 granted bail to the petitioner. He would submit that the petitioner along with her brothers have challenged the conviction of September 29, 2015 before the learned Sessions Court, Agra and the Appeal came up for hearing before the concerned learned Additional Sessions Judge on October 6, 2015 and after hearing the parties, the Court had granted stay of the operation of the order of the learned CMM dated September 29, 2015 till the disposal of the Appeal. Mr. Singh would contend that the petitioner on the same date, i.e., October 6, 2015 had intimated the factum of the stay of the operation of the order dated September 29, 2015 to respondent no.1. According to Mr. Singh, the certified copy of the order was sent by the respondent no.1 to the respondent

no.2. However respondent no.2 vide its communication dated October 10, 2015 directed the respondent no.1 being the appointing authority to pass order against the petitioner and treat her on deemed suspension w.e.f September 29, 2015. He would submit that the petitioner had filed an appropriate application before the learned Addl. District Judge seeking complete stay of the order dated September 29, 2015. The above application came up for hearing before the learned ADJ on December 18, 2012, who after hearing the arguments and noting the position of law has passed the following order (in terms of translated version as filed by Mr. S.D. Singh on September 25, 2017, in the Court).

*“From the perusal of the order dated 6.10.2015 it would be clear that while hearing on the issue of admission, the Hon’ble Sessions Judge on deposit of the half of the fine amount in the subordinate court, stayed the recovery of the arrears of fine and the operation of order of sentence, which has the direct effect of staying the conviction order of the Subordinate Court. In this regard, the Appellant has produced the judicial citations of Navjot Singh Siddhu v. State of Punjab and Others SCC 2007 page 74 Volume 2 and Lalsahi Kunte Vs. Nirmala Sinha and Others SCC 2007 (9) 330. In the case of Navjot Singh Siddhu the Hon’ble Supreme Court has held that the order of holding guilt and sentence would remain stayed till the disposal of appeal. In the same manner in the case of Lalsahi Kunte also the same view has been expressed. I fully agree with the aforesaid legal proposition and even otherwise also the effect of stay of the operation of sentence do lead to the effect of staying the decision of holding guilt. As there is stay of sentence,*

*accordingly it is clear that there is also stay of the effect of decision of holding guilt, during the pendency of appeal and as such for that purpose there is no necessity to pass separate order. Accordingly, the application is hereby disposed of in the wake of this conclusion that in the present matter the operation of order of sentence has already been stayed by the Hon'ble Sessions Judge vide order dated 6.10.2015. The direct effect of the same, is staying the decision of conviction of the subordinate court. The application is hereby decided accordingly. List the matter on the date fixed."*

3. It is the submission of Mr. Singh that the conviction of the petitioner has been stayed by the learned Addl. District Judge. According to him, immediately thereafter the petitioner made a representation on December 23, 2015. She had also sought payment of subsistence allowance. He states the conviction having been stayed by the learned Additional Sessions judge, the basis on which the suspension has been effected, no more exists. Even otherwise, it is his contention that the suspension is for reason other than connected with discharge of her official duties and cannot be justified. He also states, the process of Appeal may take time to be decided and no purpose would be achieved if petitioner is kept away from duties.
4. On the other hand, learned counsel appearing for the respondents would justify the order of suspension because of conviction.
5. Having heard the learned counsel for the parties, insofar as the submission of Mr. Singh that, the conviction having been stayed, the very

basis for suspension does not survive is concerned, the same is not appealing for the simple reason that learned Additional Sessions Judge has drawn an inference that staying of the sentence would have an effect of staying the conviction. Suffice to state, stay of the sentence and conviction have two different and separate consequences. Be that as it may, in so far as the submission of Mr. Singh relying on Rule 115 (3)(b) of the Delhi School Education Act and Rules, 1973 that an employee governed by the Delhi School Education Act and Rules can be suspended on a conviction only if, in the opinion of the Management Committee, the conviction was for offences involving moral turpitude and offences under Section 323 and 452 IPC would not involve moral turpitude is concerned, the same is appealing. In this regard, he has drawn my attention to the judgment of the Division Bench of this Court in *Commissioner of Police v. Mukesh Kumar W.P.(C) 4052/2012* and connected writ petitions decided on April 29, 2013, more specifically page 5, wherein, the Division Bench has referred to a judgment of another Division Bench of this Court in *Robin Singh's case* wherein reference is made to OM issued by the State of Haryana which is a list of penal offences, which are considered grave, serious and involving moral turpitude to include offences under various sections but excluding Sections

323 and 452 of IPC. The Division Bench in Para 12 has also referred to the judgment of the Supreme Court in the case reported as **1996 4 SCC 17 Pawan Kr. And Ors. v. State of Haryana**, wherein the Supreme Court while referring to the policy decision of the Govt. of Haryana dated February 2, 1973 has held that conviction for offences not involving moral turpitude should not result in services of a Govt. servant being terminated. The Division Bench concluded that the same could be applied when the issue of giving public employment arises.

6. In view of the aforesaid position, it must be held that offences for which the petitioner was convicted are not offences involving moral turpitude. It appears this particular aspect has not been considered by the authority while passing the impugned order. It being the mandate of the Rule, the concerned authority should have considered the said aspect and then came to a conclusion whether suspension was justified. There is yet another aspect to the matter i.e. whether the conviction is relatable to the discharge of duties by the petitioner as the Head of School. The suspension has been effected on December 17, 2015 from a retrospective date of September 29, 2015. More than 1 ½ years have elapsed thereafter. It is not known when the appeal shall come for hearing. In such an eventuality, it

would be appropriate for the authority to reinstate the petitioner and take her services as HOS, as there cannot be any denial to the fact that the respondent no.1 is paying 50% subsistence allowance to the petitioner.

7. In view of my discussion above, I accordingly set aside the order dated December 17, 2015 and remand the matter to the Management Committee of the respondent no.1 to take into consideration the aforesaid conclusion of this court and pass fresh order on the suspension of the petitioner within three weeks from today with a communication to the petitioner. If the respondent no.1 decides to reinstate the petitioner, the same shall be effected within two weeks thereafter.

The petition stands disposed of.

**CM Nos. 11189/2016 (for Stay) & 21071/2016 (early hearing)**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**SEPTEMBER 25, 2017/jg**