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

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**DECIDED ON: 12.09.2017**

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LPA 192/2017

**V S AGRICULTURE SENIOR SECONDARY SCHOOL  
THR ITS MANAGER**

..... Appellant

Through: Mr. Nitin Jain, proxy for Mr.  
Parvinder Chauhan, Advocate.

versus

**DIRECTOR OF EDUCATION & ANR** ..... Respondents

Through: Mr. Gautam Narayan, ASC, GNCTD  
with Ms. Mahamaya Chatterjee, Advocate.  
Mr. Hari Prakash, Adv. for Resp-2.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**S.RAVINDRA BHAT, J. (ORAL)**

1. The appellant is aggrieved by an order of the Single Judge which upheld the decision of the Directorate of Education not to grant approval to the proposed punishment of removal from service.
2. The facts are that the respondent employee was working with the appellant's school as Laboratory Assistant from 1993. Alleging misconduct, the appellant Management suspended its employee on 31.08.2013. Since the appellant school is aided by the Govt. of NCT of Delhi to the extent of 95% and also under the provisions of Section 8 (2) of the Delhi School Education Act, 1973, approval was

necessary, it sought such approval which was granted on 03.10.2013. This was followed by a chargesheet on 25.11.2013 after which the Inquiry Officer was appointed. The Inquiry Officer's report was furnished on 12.05.2014. The disciplinary authority of the School on 17.05.2014 sought to impose the penalty of dismissal from service. This move also required the approval of the Directorate which was sought on 02.06.2014. On 21.11.2014, the Directorate refused to approve the penalty of dismissal and communicated its decision to the school. The order of the Directorate was challenged by the school in writ proceedings.

3. The order of the Directorate which was impugned before the learned Single Judge *inter alia* states as follows: -

*“AND WHEREAS, while forwarding the Inquiry Report in the matter of Sompal, Lab. Asstt., the DDE (NW-A) submitted her observation on the Inquiry Report in the matte, as under:*

- i. The Inquiry Report in respect of Sh. Sompal dated 12.05.201 and proceedings are there, but supporting documents are not available on record/in file.*
- ii. As per the Procedure for withdrawal of PF Loan from the Bank, submitted by AAO(DNWA), the GPF of the staff of the school were maintained by the bank in the separate bank account in the name of the Manager of the school and the concerned staff/employee and for any withdrawal from the said account, signatures of the manager and concerned employee is required.*
- iii. The relevant file was given to Sh. Sompal, Lab. Asstt, and he directly approached to the Bank.*
- iv. Whether Sh. Sompal was alone or someone (staff from the school) was with him to withdraw the money form bank.*

v. *Loan was approved by the school management, the file was taken by hand, personally by Sh. Sompal, and loan money was directly taken from bank by Sh. Sompal, but the school authorities have not taken action against the Bank, neither any proper FIR has been lodged in this case.*

vi. *There figures no embezzlement in money, but the procedure manipulation on the part of Sh. Sompal.*

*“In view of the above, the punishment proposed by the Disciplinary authority to remove the charged official from service, cannot be recommended. Instead of that the Competent Authority may consider from any less punishment or with-holding increment(s), or as considered for, against Sh. Sompal, Lab. Asstt. (under suspension).”*

*AND WHEREAS, from the foregoing observations, it is observed that there is administrative lapse on the part of the Management of the V.S. Agriculture School, Khera Garhi, Delhi in handing over the concerned files and cheque to Sh. Sompal, Lab. Asstt. Even proper FIR has neither been lodged by the school authorities nor by the concerned bank against Sh. Sompal, Lab. Asstt. for any kind of embezzlement of Government money. As regards other charges no supportive documents are available on record.*

*Now, therefore, I Oadmini Singla, Director (Education), is of the opinion that the penalty of removal from service upon Sh. Sompal, Lab. Assistant, is not commensurate with the changes and recommend that the Managing Committee of V.S. Agri. Sr. Sec. School, Khera Garhi, Delhi may consider imposing minor penalty as defined under rule 117(a) of DSEAR, 1973.”*

4. The learned Single Judge who considered the entirety of circumstances was of the opinion that the submissions of the school

were unmerited and that having regard to the nature of the charge, i.e., that of unauthorised withdrawal of provident fund amounts, the extreme penalty of dismissal was not warranted. The Single Judge *inter alia* held as follows: -

*“10. Therefore, it is seen that out of the four charges against the respondent no.2, two of the charges were extremely minor of not supplying of residential address or details of his family members and another charge pertained to a personal relationship which was in no manner within the realm of consideration of the petitioner/school. The only charge, therefore, was of the respondent no.2 getting a loan from his provident fund account, which was of course with initial approval, but not with final approval as claimed by the petitioner/school. Surely, in my opinion, even if all the charges against the respondent no. 2 are established in the inquiry proceedings, and which report of the Inquiry Officer has been accepted by the respondent no.1/Directorate of Education in his impugned order dated 21.11.2014, yet, to impose the most drastic penalty and harshest of penalties of dismissal of respondent no.2 from services was completely unjustified in the facts of the present case and which penalty shocks the judicial conscious of this Court. Obviously, if this penalty shocks the judicial conscious of this Court it also has found unacceptability to the judicial conscience of the respondent no. 1/Director of Education which has passed the impugned order dated 21.11.2014 declining the request to grant approval to the penalty order of dismissal of respondent no.2 from his services with the petitioner/school. I have already noted above that respondent no.1/Director of Education gives as much as 95% of finances for the petitioner/school.*

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*12. To complete narration of the arguments urged on behalf of the petitioner/school, I note that the petitioner/school urged that the respondent no.1/Director of Education wrongly records in*

*the impugned order that documents are not filed by the petitioner, and which is a wrong observation as the documents were attached by the petitioner to its letter dated 19.6.2014, and even taking this argument as correct, the same will not result in negating the other discussion above which stands for sustaining the impugned order of the respondent no.1/Director of Education.”*

5. The appellant argues that the Single Judge fell into error in overlooking what was a serious misconduct. It was stated that the disciplinary authority had rendered clear findings that the employee had manipulated the records and that, given the circumstances the comparison of the signatures and conclusions drawn by the Inquiry Officer which was endorsed by the disciplinary authority, was justified. It was furthermore contended that the Single Judge failed to notice that in the present case, the employer had lost confidence in the respondent because of its conduct and, therefore, removal or termination of service was justified.

6. The Court has considered the submissions. It is quite evident that even though five charges were levelled against the employee, what was considered more serious was the charge of alleged manipulation of documents. What impressed the authority and the Single Judge apparently, was the circumstance that the employee of an aided school had worked for a considerable period and more crucially the in-principle sanction to secure a loan from out of the employee's own funds was forthcoming. Furthermore, another crucial fact which appears from the records is that despite the seriousness of the allegations levelled (which in fact the Management urges was even

proved), no further follow up action by way of criminal proceedings was launched. Both these aspects were taken into account by the Directorate and the learned Single Judge to conclude that extreme penalty of removal or dismissal was not warranted.

7. Having regard to the totality of circumstances, this Court is of the opinion that the doctrine of proportionality seems to have weighed with the decision maker, i.e., the Directorate of Education and duly affirmed by the Single Judge and has been employed by him in a salutary manner in the facts and circumstances of the case. Clearly no interference with the impugned judgment is warranted.

8. It is open to the appellant to, after following the procedure prescribed by law, propose penalty other than dismissal or removal having regard to the established facts and circumstances. The Court also sets aside the directions to pay costs.

9. The appeal is disposed of in the above terms.

**S. RAVINDRA BHAT  
(JUDGE)**

**SUNIL GAUR  
(JUDGE)**

**SEPTEMBER 12, 2017**  
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