

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

+ **W.P.(C) No.6769/2008**

% **1st February, 2017**

MANAGING COMMITTEE, ST. COLUMBA'S SCHOOL AND
ORS.

..... Petitioners

Through: Mr. Romy Chacko, Advocate
with Mr. Varun Mudgal,
Advocate.

versus

MRS. NEENA THOMAS & ANR.

..... Respondents

Through: Mr. Siddharth Dutta, Advocate
for GNCTD.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Learned counsel for the petitioners today only urges one aspect for seeking setting aside of the impugned judgment of the Delhi School Tribunal (DST) dated 27.8.2008. This point which is argued is that once the DST found the disciplinary proceedings to be vitiated on account of the violation of principles of natural justice in the form of non supply of documents, non granting of adjournments, examining quite a number of witnesses on one date, non supply of the enquiry report before passing of the order by the disciplinary authority etc etc, then in such a case the DST ought to have remanded the matter back to

the disciplinary authority for conduct of the enquiry proceedings in accordance with the principles of natural justice and following the provisions of the Delhi School Education Act and Rules, 1973 and DST could not have directed reinstatement of the respondent no.1 which has the effect of quashing the charges on merits. It is thus argued that DST after holding the enquiry proceedings to be violative of principles of natural justice, the disciplinary proceedings then should have only quashed the order of disciplinary authority without the respondent no.1 being directed to be reinstated and as is done by para 33 of the impugned judgment, and which para 33 reads as under:-

“33. In view of the above, the enquiry proceedings and the enquiry report of the Enquiry Officer as well as termination letter dated 3rd September, 1997 issued on behalf of the Managing Committee of the Respondent School on the basis of Report of the Enquiry Officer can not be sustained and all of them are hereby quashed. Appellant is hereby ordered to be reinstated in service as TGT (Social Studies) without any break in service. As far as payment of back wages is concerned, since the Appellant had not rendered any services to the Respondent School (although because of circumstances created by the respondent School), the Appellant be paid 50% of her salary and other benefits from 03/09/1997 till the date of this order and thereafter full salary with all consequential benefits. The arrears be paid within one month from today. Appellant be allowed to resume her duties w.e.f. 15th of September, 2008.”

2. It is seen that the impugned judgment of the DST proceeds that there is found violation of principles of natural justice by the disciplinary authority to the prejudice of the respondent no.1 including on the ground of non supply of requisite documents in time,

too long a conduct of cross-examination of witnesses of over 11 hours in one day, non grant of necessary adjournments of a reasonable length in the facts of the present case, respondent no.1 being not given sufficient opportunities to lead evidence and finally the Enquiry Officer's Report not being supplied to the respondent no.1 before passing of the order by the disciplinary authority on the basis of the Enquiry Officer's Report.

3. Once the issue is not of merits, but of violation of procedure, and the disciplinary proceedings are set aside on account of violation of procedure, the employee is not legally and finally exonerated, the disciplinary proceedings have then to be directed to be conducted from the stage from where there is found violation of compliance of principles of natural justice and which in this case would be from commencement of evidence of the management afresh before the Enquiry Officer and by beforehand supplying all the documents which are part of the enquiry file to the respondent no.1. The procedure thereafter would be that only a reasonable number of witnesses will be examined by the Enquiry Officer running into not more than three hours in one day, and that the adjournments which would be granted would be of sufficient number of days without the adjournment being too short so that the respondent no.1 can analyze

the evidence which has already come in on behalf of the management, and also giving sufficient opportunities as per the facts of the case so that the respondent no.1 can lead evidence. If the respondent no.1 so wants to appoint a Defence Assistant in accordance with law, she can.

4. In view of the above, this writ petition is allowed by setting aside the impugned judgment of the DST dated 27.8.2008 to the extent of setting aside the operative portion of the judgment directing reinstatement, while agreeing by this Court with the other findings of violation of principles of natural justice, and consequently, the enquiry proceedings are remanded for commencing afresh from the stage after reply of the respondent no.1 to the memo of charges. The disciplinary authority and the Enquiry Officer will duly note the observations made in the present order, as also those found in the findings against the management with respect to violation of principles of natural justice of the DST, so that the fresh enquiry proceedings which are now conducted would be without violation of principles of natural justice and would be in accordance with law.

5. Writ petition is accordingly disposed of in terms of aforesaid observations.

FEBRUARY 01, 2017/Ne

VALMIKI J. MEHTA, J