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

+ W.P.(C) 2957/2017 & CM. Nos. 12867/2017 and 16047/2017

VIKRANT SINGH BASWARA Petitioner

Through: Mr. Anuj Kumar Sharma, Adv.

versus

DIRECTOR OF EDUCATION & ANR. Respondents

Through: Mr. Pramod Saigal, Adv. for R-1 with
Mr. K.P. Singh, LA Zone-2
Mr. Romy Chacko, Adv. with Mr.
Shubham Singh & Mr. Varun
Mudgal, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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02.08.2017

1. In view of the order passed on July 17, 2017, the learned counsel for the parties have been finally heard on the writ petition.
2. The challenge in this writ petition is to the order of suspension dated February 09, 2017; show cause notice issued on February 23, 2017 and charge sheet dated March 14, 2017. The only submission made by the learned counsel for the petitioner is, the Authority i.e. the Administrator/Manager, who has issued the charge sheet dated March 14, 2017 was not competent to issue the same, inasmuch as he is Manager in three different Schools run by the Ryan International Group of Institutions and as per the provisions of the Delhi School Education Act and the Rules

made there under, a person can be a Manager of one School. In support of his contention, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case reported as **(2012) 11 SCC 565** *The Secretary, Ministry of Defence and Ors v. Prabhash Chandra Mirdha*, to contend that if an adverse order has been issued by person having no jurisdiction/competence, a writ application shall lie and such an action should be set at naught.

3. On the other hand, Mr. Romy Chacko learned counsel for the respondent No.2 has drawn my attention to the charge sheet dated March 14, 2017 itself to contend, the Administrator/Manager had only communicated the charge sheet pursuant to a decision taken by the Disciplinary Committee to issue charge sheet to the petitioner. In this regard, he would draw my attention to page 37 of the paper book wherein the following has been stated:-

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The Disciplinary Committee in its meeting held on 22.02.2017 has decided to issue the show cause notice for the serious acts of misconduct committed by you. Accordingly, you were show caused on 23.02.2017 and advised to submit your explanation for the same. You have submitted your reply dated 03.03.2017 to the show cause notice dated 23.02.2017. The Disciplinary

Committee in its meeting held on 10.03.2017 considered your reply and discussed in detail and found the same as unsatisfactory. Accordingly, the Disciplinary Committee has decided to issue this Charge sheet to you for indulging in serious acts of misconduct.

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XXXX”

4. Further, he qualifies his submission by stating, the decision to issue charge sheet was of the Disciplinary Committee and such decision cannot be imputed to the Administrator/Manager. Mr. Chacko states, the present petition challenging the suspension/show cause notice and the charge sheet, is premature, inasmuch as the Court shall not interdict the Disciplinary Proceedings, as no prejudice has been caused by mere issuance of a charge sheet. He states, the charges against the petitioner in the charge sheet are of very serious nature and the same need to be enquired by a proper procedure.

5. Having heard the learned counsel for the parties, insofar as the only issue urged by the learned counsel for the petitioner with regard to the competency of the Administrator/Manager to issue the charge sheet dated March 14, 2017 is concerned, I agree with the submission made by Mr. Chacko that the Administrator/Manager has only communicated the decision of the Disciplinary Committee to issue the charge sheet against the petitioner for alleged misconduct. Mere issuance of a charge sheet by an

Administrator/Manager would not nullify/vitiate the decision of the Disciplinary Committee to issue a charge sheet.

6. Even the plea that the Administrator/Manager was not competent, as he was Manager of three different Schools would not make the charge sheet dated March 14, 2017, issued pursuant to a decision of the Disciplinary Committee, as non-est as it is the decision of the Disciplinary Committee to issue a charge sheet to the petitioner for alleged misconduct is of relevance. The reliance placed by the learned counsel for the petitioner on the judgment of the Supreme Court in the case of *The Secretary, Ministry of Defence and Ors (supra)* is concerned, the Supreme Court was concerned with a charge memo issued to the respondent therein by an Authority, who was not competent to issue the same. The Central Administrative Tribunal, Hyderabad has allowed the Original Application filed by the respondent therein on the ground that the officer, who had issued the charge memo, was subordinate to the Appointing Authority of the delinquent and had no competence to initiate Disciplinary Proceedings. Even the Review Application filed thereafter was dismissed by the Tribunal. The writ petition filed before the High Court was dismissed vide order dated June 30, 2004. The Supreme Court in para 11, on which reliance was placed by the learned

counsel for the petitioner, has held that ordinarily a writ application does not lie against a charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. There cannot be any dispute on the proposition that a charge sheet need to be issued by a Competent Authority. It is not the case of the petitioner that the decision to issue a charge sheet is not of Disciplinary Committee. That apart, he could not able to show a rule which stipulates even communication of a decision of the Disciplinary Committee under the Delhi School Education Act and the Rules need to be made by the Disciplinary Committee itself. In view of the above, the communication of a decision of the Disciplinary Committee by the Administrator/Manager would not vitiate the decision to issue the charge sheet. I do not see any merit in the only contention urged by the learned counsel for the petitioner. The petition is dismissed.

CM. Nos. 12867/2017 (for stay) and 16047/2017 (for vacation of stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 02, 2017/ak