

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

+ **W.P.(C) No.5284/2016& conn.**

% **23rd March, 2017**

+ **W.P.(C) No. 5284/2016**

ARCHANA KUKREJA Petitioner

Through: Ms. Indrani Ghosh, Adv.

versus

MANAGING COMMITTEE ST. ANGELS SCHOOL ROHINI &
ORS. Respondents

Through: Mr. Prakash Gautam and Mr.
Sandeep Kumar, Advs. for R-1
to 3.

Mr. Rizwan, Adv. for Mr.
Santosh Kr. Tripathi, Adv. for
R/GNCTD.

+ **W.P.(C) No. 5285/2016**

POMILA HANDA Petitioner

Through: Ms. Indrani Ghosh, Adv.

versus

MANAGING COMMITTEE ST. ANGELS SCHOOL ROHINI &
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R/GNCTD.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No. 5284/2016

1. In this writ petition two prayers were made. One prayer was for seeking appointment of a Defence Assistant for the petitioner in the enquiry proceedings, and which relief has become infructuous because petitioner has been allowed to appoint a Defence Assistant. The second relief prayed by the petitioner is for declaration that the Enquiry Officer while passing the order dated 3.2.2016 has wrongly noted that CCS (CCA) Rules will not apply to subject enquiry proceedings against the petitioner and that what will apply to the enquiry proceedings are the Delhi School Education Act and Rules, 1973 (DSEAR, 1973) inasmuch as petitioner is an employee of a school in Delhi which is governed by the DSEAR, 1973.

2. Learned counsel for the petitioner in support of the argument that CCS (CCA) Rules apply to enquiry proceedings even under the DSEAR, 1973 places reliance upon the circular of the Director of Education dated 25.3.1991 to argue that if there is nothing in the DSEAR, 1973 with respect to conducting of enquiry by the Enquiry Officer appointed by the disciplinary authority, then the CCS (CCA) Rules will apply with respect to the procedure to be adopted by the Enquiry Officer for conducting the enquiry and giving of the report. This para 3 of the Circular No. F-

17/3/Misc./Per./GASTA/91/3824-4624, dated 25.3.1991 of the Director of Education reads as under:-

“3. **In the matter of discipline/leave.** There is a provision in the Delhi School Education Act and Rules, 1973 and rules made thereunder, the applicability of rules governing Govt. employees will be applicable employees of aided/unaided schools where the Act and Rules made thereunder is silent.”

3. It is seen that this para 3 of the circular dated 25.3.1991 is not happily worded because this para goes on the assumption and presumption that there is a provision in the DSEAR, 1973 providing that in case the DSEAR, 1973 is silent then CCS (CCA) Rules will apply to disciplinary proceedings.

4. I have put it to counsel for the petitioner to show me any provision in the DSEAR, 1973 which provides that in case the DSEAR, 1973 is silent on an aspect/issue, of the procedure in enquiry proceedings then, CCS (CCA) Rules will apply to enquiry proceedings being conducted by the Enquiry Officer pursuant to appropriate directions by the disciplinary authority of the school. Learned counsel for the petitioner places in response to the Court query reliance upon Rule 111 of the DSEAR, 1973 which provides that with respect to an employee of a recognized private school, whether aided or not, such employee will be entitled to leave as admissible to employees of a

corresponding status in a government school. This Rule 111 of the DSEAR, 1973 reads as under:-

“111. Leave of absence- Every employee of a recognised private school, whether aided or not, shall be entitled to such leave as are admissible to employees of a corresponding status in Government schools.”

5. It is seen that the aforesaid Rule 111 is only for the applicability of government rules with respect to leave and this rule does pertain to/is with respect to disciplinary proceedings conducted by a school/employer. The procedure for conducting disciplinary proceedings which are conducted under the DSEAR, 1973 is that which is provided under Rules 119 and 120, and these rules do not provide any specified strict procedure except requiring of compliance of general principles of natural justice. These Rule 119 and 120 of the DSEAR, 1973 read as under:-

“119. Procedure for imposing minor penalties- No order imposing a minor penalty shall be made except after informing the employee in writing of the proposal to take action against him and the allegation on which such action is proposed to be taken and except after giving to the employee an opportunity to make any representation against the proposed action.

120. Procedure for imposing major penalty (1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below:

(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defence and also to state whether he desires to be heard in person;

(b) on receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority

may itself make inquiry into such of the charges as are not admitted or if considers it necessary so to do, appoint an inquiry officer for the purpose;

(c) at the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry regarding his findings on each of the charges together with the reasons therefore;

(d) the disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall—

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;

(ii) give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action;

(iii) on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the Director for his prior approval;

(iv) after considering the representation made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty which it proposes to impose on the employee and send its findings, and decision to the Director for his approval and while sending the case to the Director, the disciplinary authority shall furnish to him all relevant records of the case including the statement of allegations charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made, and the proceedings of the disciplinary authority.

(2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director.

(3) Any employee of a recognised private school who is aggrieved by any order imposing on him the penalty of compulsory retirement or any minor penalty may prefer an appeal to the Tribunal.”

6. In view of the above, I cannot accept the misconceived contention of the counsel for the petitioner that the circular dated 25.3.1991 issued by the Director of Education provides that CCS (CCA) Rules apply with respect to enquiry proceedings/disciplinary proceedings being conducted against employees of private schools in Delhi.

7. In view of the above discussion, there is no merit in the petition, and the same is therefore dismissed, except as regards the issue of appointment of Defence Assistant which no longer survives as stated above. Parties are left to bear their own costs.

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8. This writ petition will also stand disposed of in terms of the operative Para no. 7 of W.P. (C) No. 5284/2016 by adopting the discussion and reasoning given in the judgment passed in W.P. (C) No. 5284/2016.

MARCH 23, 2017/ib

VALMIKI J. MEHTA, J