

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

+ **W.P.(C) No.8970/2008**

% **14th February, 2017**

MANJEET SINGH Petitioner
Through: Mr. Saurabh Kansal, Advocate
with Mr. Mohd. Azhar,
Advocate.

versus

STATE OF NCT OF DELHI & ORS. Respondents
Through: Ms. Jyoti Taneja, Advocate for
respondent Nos.1 and 2.
Mr. Jasmeet Singh, Advocate
with Ms. Gayatri Aryan,
Advocate and Ms. Astha
Sharma, Advocate for
respondent Nos.3 to 6.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 and Article 227 of the Constitution of India, the petitioner impugns the judgment of the Delhi School Tribunal (DST) dated 29.8.2008 by which the DST has dismissed the appeal filed by the petitioner challenging the order dated 28.10.2006 passed by the respondents/Guru Harkrishan Public School (represented by respondent nos.4 to 6) imposing the penalty of removal

from services upon the petitioner. The petitioner was served with the following Articles of Charges dated 17.4.2006:-

“Guru Harkrishan Public School
TILAK NAGAR, NEW DELHI-110018
PHONE: 25994364

Ref. No. 14-56/06-07/Ent./96

Dated: 17-4-06

STATEMENT OF ARTICLE OF CHARGE

1. You, Shri Manjeet Singh while working as P.E.T. in the G.H.P.S. Tilak Nagar, New Delhi-110018, stole the staff list duly signed on 14/07/2005 by the teaching staff and a request letter signed by S. Baldev Singh, P.E.T., from his drawer and used the same as a protest against the school management under Baldev Singh's signatures without consent of the staff and S. Baldev Singh, P.E.T. (Staff Secretary) and send these letter unauthorizedly to the Director of Education, Govt. of NCT of Delhi against the Management.
2. You, Shri Manjeet Singh while working as P.E.T. in the G.H.P.S. Tilak Nagar, New Delhi-110018 had called the police on 24th August 2005 in the school premises during the school hours i.e. 1.00 P.M. without getting permission from the school authorities and without the knowledge of the school authorities. It spoiled the school reputation and brought humiliation to the students as well to the staff.
3. You, Shri Manjeet Singh while working as P.E.T. in the G.H.P.S. Tilak Nagar, New Delhi-110018, came late at 10.06 A.M. instead of usual time 07.30 A.M. on 26th August 2005 for which you did not give message in the morning to the school authorities and marked your attendance without getting permission or giving reasons to the Vice-Principal of the school for your later arrival.
4. You, Shri Manjeet Singh while working as P.E.T. in the G.H.P.S. Tilak Nagar, New Delhi-110018, were called on 26/08/2005 first by the Vice-Principal and then also by the Manager to know the reasons of your aforesaid conduct but you straightway refused to appear both of them.
5. You, Shri Manjeet Singh while working as P.E.T. in the G.H.P.S. Tilak Nagar, New Delhi-110018, did not attend the staff meeting on 30th August 2005 scheduled at 1.30 P.M., which was called by the management with the instruction that it is compulsory for all staff member to attend the said meeting. Not only that you had also instigated the other staff members not to attend the said meeting on that day.
6. You, Shri Manjeet Singh while working as P.E.T. in the G.H.P.S. Tilak Nagar, New Delhi-110018, proceeded on leave without getting sanctioned the earned leave for the period 1st September 2005 to 2nd September 2005 by simply submitting your application for grant of E.L. on 1st September 2005 itself with the dealing assistant while you

were required to get the earned leave sanctioned in advance. Moreover you have asked for E.L. for the aforesaid period on the false ground that you have to go to the Hon'ble High Court while you had no case to attend on these date.

Thus the above acts of omission and commission on the part of Shri Manjeet Singh, P.E.T., while functioning as the employee of the management of the School amounts to unbecoming of an employee of the School thus contravened provisions of Rule 123 (1) (a) (i), (vii), (xvi), (xvii), (c) (i) & (ii) of Delhi School Education Rules 1973."

2. Petitioner submitted his statement of defence to the charge-sheet on 2.5.2006. On 15-19/6/2006 one Advocate Mr. Satish Chandra Pathak was appointed as an Enquiry Officer. Enquiry Officer issued various notices to the petitioner for appearance but petitioner did not appear and which aspect is stated by the DST in para 6 of the impugned judgment of the DST, being the case of the management, as under:-

"6. As per Management, the matter was sent to the Disciplinary Authority constituted under Rule 118 of DSER, 1973. The matter was considered in the meeting of Disciplinary Authority on 12/04/2006 and it was proposed to hold an enquiry against the Appellant in accordance with the procedure laid down under Rule 120 of DSER, 1973. The Disciplinary Authority also approved the charge-sheet to be issued to the Appellant. The said charge-sheet was issued to him on 17/04/2006. Disciplinary Authority appointed Sh. Satish Chandra Pathak as Enquiry Officer. The Enquiry Officer sent letter dated 22/06/2006 addressed to the Appellant through courier informing him about the institution of the enquiry proceedings and next date was fixed on 27/06/2006 and he was called to join the enquiry proceedings. After waiting for the Appellant till 11:30 A.M. on 27/06/2006, enquiry proceedings were adjourned to 30/06/2006, which was last working day of the month of June, 2006 and it was compulsory for every teaching and non-teaching staff to remain present in the school on this date and the enquiry was adjourned to the said date with a view to ensure the presence of the Appellant. Again on 30/06/2006, Appellant neither joined the enquiry proceedings nor he was present in the school. In the mean time, Enquiry Officer had received POD(proof of delivery) of his earlier letter dated 22/06/2006 showing that someone at the residence of the Appellant had received the letter

prior to 27/06/2006. However, with a view to give one more opportunity to the Appellant, enquiry proceedings were adjourned to 04/07/2006. Another letter dated 30/06/2006 was issued to the Appellant by Speed Post, Courier as well as by hand. Copy of this letter was handed over to the Presenting Officer to serve the same on the Appellant on 3rd of July, 2006 on re-opening of the School after summer vacations. Prior thereto, Enquiry Officer received back his letter dated 27/06/2006 with the remarks that 'despite repeated visits door was found locked' and the postal staff had visited house of the Appellant thrice. When the letter was presented to the Appellant on 03/07/2006, initially he acknowledged the same by signing office copy but after reading the contents, he immediately took back office copy of the letter and destroyed/defaced his signatures. Appellant did not turn up in the enquiry but when a message was sent to him, he joined the enquiry proceedings at 8:30 A.M. and instead of co-operating in conduct of enquiry proceedings he did not prefer to even take his seat despite several requests/instructions of the Enquiry Officer. Rather he started making arguments at a loud voice alleging illegality of appointment of Enquiry Officer and he also said that he was not aware about the enquiry proceedings as he had not received any information in this regard. Presenting Officer submitted that Appellant was served with memo dated 19/06/2006 by speed post AD which was duly acknowledged on 20/06/2006. The fact regarding appointment of Enquiry Officer and Presenting Officer was duly mentioned in the said document. In spite of request of the Enquiry Officer to join enquiry proceedings and get his objections recorded in writing, Appellant left the room by saying that they might do whatever they wanted and he would see all of them in High Court as it was all illegal. Despite this indecent act of the Appellant, Enquiry Officer decided to give photocopies of all the letters/memos and the letters issued by him to the Appellant so the Watchman-cum-Peon of the School S. Rajinder Singh Bhatti was sent to call the Appellant to come and collect the photocopies, but Appellant told him that he was not well so he could not come before the Enquiry Officer. At the request of the Presenting Officer, the Medical Room Register was called but there was no entry in respect of the Appellant showing him sick/unwell. So, it was clear that he intentionally did not want to attend and co-operate in the enquiry proceedings. However, to give some more time to the Appellant, proceedings were adjourned to 12:30 P.M. But Appellant again did not appear so a letter was issued to him by the Enquiry Officer with directions to appear before him in the enquiry proceedings at 2:15 P.M. This letter was sent through staff member Mrs. Manjit Kaur at 1:05 P.M. The said attendant came back at 1:15 P.M. and submitted in writing that Appellant had gone through the contents of the letter but he refused to receive the same. The Appellant was waited till 2:15 P.M. but he did not turn up, so the Appellant was marked absent and proceedings were ordered to be conducted ex-parte as non-appearance of the Appellant was deliberate, willful and intentional and he was not willing to join the

enquiry proceedings. Appellant sent a letter dated 04/07/2006 to the Enquiry Officer through Speed Post which clearly indicated that Appellant had the knowledge of enquiry proceedings going on against him through letters sent to him but he had deliberately avoided to attend the enquiry proceedings. Appellant had never represented against appointment of Enquiry Officer or alleged violation of any rules in conducting the enquiry. Witnesses were examined by following all procedures and enquiry report dated 12/09/2006 was submitted by the Enquiry Officer to the Chairman. Copy of the said Enquiry Report was handed over to the Appellant alongwith letter dated 19/09/2006 on 20/09/2006 for his comments and representations to be sent within 15 days but no such representation was received by any authority till 18/10/2006 when Disciplinary Authority met and unanimously proposed punishment of removal from service of the Appellant and to further give him time of 7 days to represent against the proposed punishment. Appellant submitted his representation dated 26/10/2006 which was considered by Disciplinary Authority in its meeting dated 27/10/2006 but the same was found unsatisfactory containing false and fabricated allegations against the Management, so Disciplinary Authority unanimously decided to recommend major penalty of removal from service to the Managing Committee for approval and further action. The Managing Committee in its meeting dated 28/10/2006 confirmed the punishment and authorized the Manager to issue order of removal from service to the Appellant with immediate effect. The impugned order was passed after following all the procedural requirements and no right of the Appellant was violated so it does not require any interference by this Tribunal.” (underlining added)

3. Since the petitioner did not appear before the Enquiry Officer, *ex-parte* proceedings were held against the petitioner. Respondent nos.3 to 6/school led evidence of as many as nine witnesses and also proved various documents through these witnesses. Enquiry Officer discussing the issues and the evidence which was led held that all the six charges against the petitioner stood proved. Enquiry Officer therefore gave his report dated 12.9.2006 indicting the petitioner. The report of the Enquiry Officer was given to the petitioner along with the letter dated 19.9.2006. Petitioner was thereafter served

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a show cause notice dated 18.10.2006 proposing the punishment of removal from his services and calling for his comments against the proposed punishment. Petitioner sent his reply dated 26.10.2006. The impugned termination order was thereafter passed against the petitioner by the disciplinary authority with approval of the managing committee on 28.10.2006.

4. (i) The first issue to be addressed is as to whether or not principles of natural justice are violated because petitioner claims that he was not served in the enquiry proceedings. Petitioner secondly also contends that the petitioner was physically prevented from attending the departmental proceedings.

(ii) I have already reproduced above the stand of the respondent nos.3 to 6/school given in para 6 of the impugned judgment, and it is found that petitioner was in fact duly served of the notice by the Enquiry Officer but petitioner claims that this notice was not served upon the petitioner but was taken by a neighbor of the petitioner. It is therefore argued that this notice was not a proper notice upon the petitioner. However, assuming that the argument of the petitioner of the notice dated 30.6.2006 being not served upon the petitioner is correct, even then petitioner very much knew of the enquiry proceedings because petitioner appeared before the Enquiry Officer on

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4.7.2006. Counsel for the petitioner claims that he appeared on 4.7.2006 because he was informed that enquiry proceedings were going on against him by one teacher, and therefore, the petitioner appeared before the Enquiry Officer. What happened before the Enquiry Officer is a contested version with the petitioner claiming that Enquiry Officer did not allow him to participate and which stand of the petitioner is denied by the respondent nos.3 to 6/school.

(iii) I cannot agree with the contention urged on behalf of the petitioner that petitioner was not served of the notice of hearing in the disciplinary proceedings, and in any case it is held that the petitioner knew of the disciplinary proceedings on 4.7.2006 and he attended the same. If the petitioner's case is that he was physically prevented on 4.7.2006 or thereafter from contesting the proceedings by appearing before the Enquiry Officer, then if this stand was correct, then the petitioner would have written not only one but various letters to the school as also the Enquiry Officer that he was being physically prevented. Admittedly there is not a single letter of the petitioner to the school that petitioner was being physically prevented from appearing in the enquiry proceedings. Therefore the argument of the petitioner that he was not aware of the enquiry proceedings or that was physically prevented is absolutely without substance and is rejected.

Therefore, I hold that Enquiry Officer rightly proceeded *ex-parte* against the petitioner.

5. It is seen that respondent nos.3 to 6/school has proved its case by leading of evidence being the deposition of witnesses as also by proving the documents. Strict rules of the Evidence Act, 1872 do not apply to enquiry proceedings. Once the management proved its case by leading evidence, then it was for the petitioner herein to lead evidence on his behalf, but which evidence has admittedly not been led. Therefore, there is no reason why this Court should not accept the report of the Enquiry Officer dated 12.9.2006. I therefore hold that the Enquiry Officer was justified in arriving at a finding that the Articles of Charges stood proved against the petitioner.

6. Learned counsel for the petitioner finally argued that the punishment imposed of dismissal from services is a disproportionate punishment and therefore the same should be set aside by this Court. I have already reproduced above the Articles of Charges. Article I of Charges is a very serious charge of stealing of letters. This charge is a case of grave indiscipline. Not only the first Article of Charge but also the other charges show that petitioner was an impudent and a recalcitrant employee and such an employee such as the petitioner, when all the charges are taken cumulatively, cannot allowed to be

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continued by the school because repeatedly refusing to comply with the directions by an employee would result in complete indiscipline and which cannot be accepted by any organization much less a school, and that too from a teacher who is expected to be a role model of discipline. Therefore in my opinion when all the Articles of Charges are cumulatively taken as against the petitioner, in facts of the present case, I do not think that the petitioner's argument of disproportionate punishment is correct inasmuch as the law in this regard is that punishment can only be said to be disproportionate if it shocks the judicial conscience of this Court. Considering all the Articles of Charges proved against the petitioner and taking all of them cumulatively, the punishment imposed upon the petitioner of dismissal from services therefore was completely justified and not disproportionate as argued on behalf of the petitioner.

7. In view of the above, I do not find any merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 14, 2017
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VALMIKI J. MEHTA, J