

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: October 13, 2017

+ W.P.(C) 5629/2017

SUKHDEV JAIN

..... Petitioner

Through: Ms. Tibah Siddiqui, Adv.

versus

MODERN SCHOOL & ANR

..... Respondents

Through: Ms. Raavi Birbal, Adv. for R1.
Mr. Gautam Narayan, ASC with
Mr. R.A. Iyer, Adv. for R2.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R A L

V. KAMESWAR RAO, J

1. The challenge in the writ petition is to the order dated November 02, 2016 passed by the Delhi School Tribunal in Appeal No. 28/2013, whereby the appeal filed by the petitioner herein against the penalty of removal from service was imposed on her.

2. Some of the relevant facts are, the petitioner was appointed as TGT on October 16, 1998 in the respondent No.1 School. On April 15, 2005, a charge sheet was issued to the petitioner. The charge sheet culminated in a penalty of removal imposed on the petitioner on March 16, 2006. The removal was a subject matter of Appeal NO. 37/2007 before the Delhi School Tribunal, which

set aside the order of removal vide its order dated May 18, 2010 with a direction to conduct a fresh inquiry. It appears that the respondent No.1 School herein has challenged the order of the Delhi School Tribunal dated May 18, 2010 before this Court, which order was sustained by this Court in terms of its order dated August 25, 2011. This Court had observed that the inquiry against the petitioner shall be conducted in terms of the Rules by giving opportunity to the petitioner herein. An amount of Rs.7,11,167/- was directed to be deposited in this Court, which was to be kept in the form of an FDR. Pursuant thereto, a fresh inquiry was held, which also culminated in the penalty of removal from service imposed on the petitioner vide order dated March 25, 2013. This order was also subject matter of Appeal before the Delhi School Tribunal. On November 22, 2016, the Tribunal dismissed the appeal filed by the petitioner.

3. The learned counsel for the petitioner would make only one submission that the order of the Disciplinary Authority dated March 25, 2013 was a non speaking order, inasmuch as the Disciplinary Authority has only held that the Managing Committee has accepted the recommendation of the Disciplinary Committee with immediate effect. According to her, even the Tribunal did not deal with this submission urged by the petitioner in this regard before the Tribunal. She would rely upon the judgment of the Supreme Court in the cases reported as *(2013) 6 SCC 530 Chairman, Life Insurance Corporation of India and Others v. A. Masilamani* and *(2006) 11 SCC 147 Director (Marketing), Indian Oil Corpn Ltd and Another v. Santosh Kumar*.

4. Suffice to state, the submission made by the learned counsel for the petitioner is appealing on a first blush, but on a deeper consideration of the law laid down by the Supreme Court as referred to by the learned counsel for the petitioner, the plea needs to be rejected for the simple reason, in terms of the judgments, it is the obligation of the Appellate Authority to pass a reasoned order and not the Disciplinary Authority. In fact, in both the judgments the Supreme Court was concerned with non speaking order passed by the Appellate Authority. Insofar as ***Chairman, Life Insurance Corporation of India and Others v. A. Masilamani (supra)*** is concerned, the Supreme Court, in para 19 has held as under:-

“19. The word “consider”, is of great significance. Its dictionary meaning of the same is, “to think over”, “to regard as”, or “deem to be”. Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term “consider” postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. (Vide: Director, Marketing, Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar, (2006) 11 SCC 147; and Bhikhubhai Vithlabhai Patel & Ors. v. State of Gujarat & Anr., AIR 2008 SC 1771).”

5. Similarly, in *Director (Marketing), Indian Oil Corpn Ltd and Another (supra)*, the Supreme Court in para 9, has held as under:-

“9. We have also perused the order passed by the General Manager (Operations) which is available at page 51 and the order passed by the Director (Marketing) who is the appellate authority. A close scrutiny of both the orders would only go to show that the Appellate Authority has simply adopted the language employed by the Disciplinary Authority and inflicted the punishment of dismissal on the respondent herein.”

6. In view of the above, the only submission made by the learned counsel for the petitioner needs to be rejected. The Tribunal, having dealt with the other pleas raised on behalf of the petitioner, I do not see any merit in the petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

OCTOBER 13, 2017/ak