

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

% *Date of decision: 16th May, 2017*

+ W.P.(C) 1298/2017

THE CHAIRMAN, RYAN INTERNATIONAL SCHOOL
& ORS. Petitioners

Through: Mr. Romy Chacko and
Mr. Shubham Singh, Advs.

versus

DINESH SINGH RAWAT & ANR. Respondents
Through: Mr. Dilip Singh, Adv.

**CORAM:-
HON'BLE MR JUSTICE V. KAMESWAR RAO**

V. KAMESWAR RAO, J. (ORAL)

CM. No. 5957/2017 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM. No. 17625/2017

This is an application filed by the petitioners seeking permission to file additional documents. The same is allowed. Application stands disposed of.

W.P.(C) 1298/2017

1. This petition has been filed by the petitioners challenging the order dated 17th October, 2016 of the Delhi School Tribunal in Appeal No. 18/2013 whereby the Tribunal has allowed the Appeal and directed the reinstatement of respondent no.1 within four weeks with all consequential

benefits and full wages. In so far as the back wages is concerned, in view of Rule 121 of the Delhi School Education Act and Rules, respondent no.1 has been directed to make exhaustive representation to the petitioners within four weeks, who were to decide the representation within four weeks thereafter by a speaking order and communicate the same to the respondent no.1.

2. It is the submission of Mr. Romy Chacko, learned counsel for the petitioners that respondent no.1 was appointed as Cashier in the petitioner School. On 28th June, 2011, a resolution was passed by the Management of St. Lawrence Education Society authorizing Smt. Priya Arora, the Principal of the School to take disciplinary action and impose any penalty as per service rules of the Society and to sign the letter of dismissal / termination order or any such letter in respect of its employees. On 26th July, 2012, respondent no.1 has handed over the question papers of Mathematics and Social Studies illegally and unauthorizedly to Mr. Neeraj Bahri, father of Ms. Rushali Bahri a student of Class-X(E) of the School, which were kept for unit test of Class-X(E) in the School Office. This was done so that Ms. Rushali Bahri could secure good grades in the Unit Test. A chargesheet was issued on 6th August, 2012 to the respondent no.1 with regard to the said misconduct. Respondent no.1

filed reply to the chargesheet. Ms. Anita Burman, was appointed as an Enquiry Officer, who submitted report holding the charges against the respondent no.1 as proved. Respondent no.1 was granted an opportunity to show cause as to why action should not be taken against him for the misconduct committed by him as per the report of the Enquiry Officer. On 20th February, 2013, the Management Committee of the School, after considering the reply, passed an order dismissing the respondent no.1 from service. Respondent no.1 filed an Appeal being no. 18/2013 against the order of the dismissal, before the Delhi School Tribunal. According to Mr. Chacko, the Tribunal has allowed the Appeal on a technical ground that the Disciplinary Authority was not constituted according to the provisions of the Rule 118 of the Delhi School Education Rules (DSER), whereby the entire proceedings starting from submission of the chargesheet, framing of charges, appointment of Enquiry Officer and subsequent enquiry proceedings as well as the Enquiry Report have been held as illegal and the impugned order of dismissal was also held illegal and was set aside. According to him, even if in view of the judgment of the Supreme Court in the case of *Frank Anthony Public School Employees Association v. Union of India 1987 SC 311*, Rule 118, which is part of Chapter VIII of the Rules, is applicable to an unaided minority

School, the impugned action of the petitioners initiating disciplinary proceedings leading to the dismissal of the respondent no.1 having been ratified by the Management Committee, which is a larger body consisting of the members of the Disciplinary Committee as well, no prejudice has been caused to the petitioner Mr. Chacko would also state that on a similar issue arising from a Judgment of this Court in the case of ***Mount Carmel School Society and Anr. V. Central Board of Secondary Education and Anr. SLP 23380/2016***, the Supreme Court has granted *status quo*. He has also relied upon the judgment of this Court in the case of ***Management Committee St.Columbus School and Ors. v. Neena Thomas and Ors, W.P.(C) 6769/2008*** decided on 1st February, 2017.

3. That apart, he has drawn my attention to Page 141 of the paper book to contend that even there was an infirmity in holding of the disciplinary proceedings against the respondent no.1, the petitioners did make a request to the Tribunal to remand the matter back to the Disciplinary Authority for taking appropriate action. Unfortunately, the request has not been dealt with by the Tribunal. In other words, it is submission that the impugned order of the Delhi School Tribunal dated 17th October, 2016 need to be set aside and the matter remanded back to the Disciplinary Authority to proceed in accordance with law including

Rule 115 and 116 of DSER. In support of his contention, he would rely upon the judgment of the Supreme Court in the case reported as **2006 2 SCC Page 584 South Bengal State Transport Corporation v. Sapan Kr. Mitra and Ors.**

4. On the other hand, Mr. Dilip Singh, learned counsel appearing for the respondent no.1 would support the order of the Tribunal. He states that the Management Committee could not have taken the place of Disciplinary Committee under Rule 118 of the Delhi School Education Rules. He states that in the case in hand, the chargesheet ought to have been issued by the Disciplinary Committee and not by the Principal in contravention with the provisions of the Delhi School Education Act and Rules. It is his submission that the School Tribunal having set aside the impugned action of the petitioners, the necessary consequence must follow that is the respondent no.1 need to be reinstated with all consequential benefits. He states, petitioners cannot rely upon Section 115 (4) in support of their contention as the same is in a situation when the infirmities have occurred during the course of proceedings, but here the infirmities are with regard to the constitution of the Disciplinary Committee itself. He would rely upon the judgment of this Court in the case of **2005 II AD (Delhi) 600 Ajay Singh v. Delhi Police School and**

Ors. and the Judgments of the Division Bench of this Court reported as **2017 AD (Delhi) 585 Surender Kumar (Since Deceased Thru Lrs.) Vs. UOI & Ors. and 1991 Suppl. 2 SCC 127 Mahender Singh and Anr.** in support of his contentions.

5. Having heard the learned counsel for the parties, I am unable to agree with the contention of Mr. Chacko that Rule 118 of DSER is not applicable to the petitioners. It is a clear pronouncement of the Supreme Court in **Frank Anthony Public School (Supra)**, wherein the Supreme Court has held that Section 12 of the Delhi School Education Act which makes all provisions of Chapter IV inapplicable to an unaided minority institution as discriminatory and void. As a corollary Rule 96 which excludes applicability of Chapter VIII, including Rule 118 relating to Disciplinary Committee, the said Chapter shall also be applicable to an unaided minority school. Insofar as the second contention of Mr. Chacko that no prejudice has been caused to the petitioners as the disciplinary proceedings from the issuance of chargesheet to the penalty have been ratified by the Management Committee of the School, i.e., a larger body, which also have same members who would have constituted the Disciplinary Committee is concerned, I am unable to agree with this submission of Mr. Chacko inasmuch perusal of Rule 118 shows the

composition of the Disciplinary Committee has to be as under:

“118. Disciplinary authorities in respect of employees -

The disciplinary committee in respect of every recognised private school, whether aided or not, shall consist of:-

(i) the chairman of the managing committee of the school;

(ii) the manager of the school;

(iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;

(iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director;

(v) a teacher who is a member of the managing committee of the school; nominated by the Chairman of such managing committee.”

6. The Chairman of the Management Committee of the School is part of the Disciplinary Committee. That apart, the nominee of the Director in the case of an aided school or a nominee of the appropriate authority in the case of an unaided school, are also part of the Disciplinary Committee. Perusal of the Minutes of the meeting of the Management committee held on 1st April, 2013 wherein the Management Committee stated to have ratified the disciplinary action taken by the Principal against respondent no.1 reveals the Chairman was absent. That apart on a specific query to Mr. Chacko, whether any representative of the Directorate of Education was present, his answer was in the negative. If that be so, two functionaries, who would constitute the Disciplinary

Committee were conspicuous of their absence in the meeting of the Management Committee held on 1st April, 2013 when a decision was taken to ratify the disciplinary action against respondent no.1. That apart, there is nothing in Rule 118, which contemplates, delegation of Disciplinary Powers to the Principal as has been done in this case. Further a statutory Rule needs to be followed in the manner it exists without any deviation. But the plea of Mr. Chacko that the Tribunal should have remanded back the matter to the Disciplinary Authority for taking appropriate action in accordance with the rules appeals this Court. It is a case where Delhi School Tribunal has set aside the impugned order of dismissal on a technical ground of the Disciplinary Committee having not been constituted in accordance with the Rule 118 of DSER. The charges against the petitioners are of very serious nature and cannot be overlooked and the same need to be enquired. The plea of the learned counsel for the respondent no.1 that the proceedings need to be initiated or not should be left to the Disciplinary Committee is also appealing. In the facts, the Tribunal should have remanded back the matter to the Disciplinary Committee to take a decision afresh, in accordance with law.

7. In view of my above discussion without dilating further, I set aside the order dated 17th October, 2016 and remanded the matter back to

the Disciplinary Committee to take a decision, whether to proceed against the respondent no.1 in a departmental enquiry, if not, then the matter shall be treated as closed, if it is otherwise, then the respondent shall conduct the proceedings in terms of Rule 120 and pass orders with regard to the period post dismissal of respondent No.1 in accordance with law, in terms of the judgments referred to by the counsel for the respondent No.1 and Rules on the subject. The aforesaid direction shall be complied within eight weeks from the receipt of the copy of this order. The writ petition is disposed of.

CM Nos. 17626/2017 & 5956/2017 (for stay)

Dismissed as infructuous.

MAY 16, 2017/ljg

V. KAMESWAR RAO, J