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

Date of decision: 17th September, 2018

+ W.P.(C) 3423/2011

DELHI POLICE PUBLIC SCHOOL Petitioner

Through : Mr. J.P.N. Gupta and
Mr. I.M. Singh, Advs.

versus

AJAY SINGH & ORS. Respondents

Through : Mr. Rajat Rathee, Adv. for R-1.
Mr. Sachin Nahar, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

1. Ajay Singh, Respondent No.1 in the present writ petition, was appointed as Post Graduate Teacher (Physics) in the petitioner-school (hereinafter referred to as “the school”). He was confirmed on the said post on 1st August, 1998. The terms and conditions contained in the contract of service between the school and Respondent No. 1 incorporated a condition that, after confirmation, too, the services of Respondent No. 1 could be terminated by the Managing Committee of the School, by giving three months’ notice in writing or by paying a sum equivalent to thrice the monthly salary being drawn by him.

2. *Vide* order dated 30th January, 2002, the Manager of the School issued an order, communicating the decision of the Managing Committee of the School, in its meeting held on 7th January, 2002, to

dispense with the services of Respondent No.1 with effect from 31st January, 2002. Three months' salary, in lieu of the notice period, from 1st February, 2002 to 30th April, 2002, was attached therewith.

3. Apropos Respondent No.1, the minutes of the meeting of the Managing Committee, held on 7th January, 2002 resolved as under :

“7. Recapitulating the case of Mr. Ajay Singh, PGT (Physics) the House resolved that -

“Although disciplinary proceedings had been initiated against Mr. Ajay Singh, in view of the inordinate delay in arriving at a decision on the one hand and the continuing indiscipline by the teacher on the other hand, urgent action needed to be taken without further delay.

Also in view of the inefficiency of the teacher, his growing misdemeanors and his tendency to victimize students and the rising discontent among parents at the colossal psychological as well as academic damage caused to their wards, the Committee unanimously decided that the services of Mr. Ajay Singh should be terminated immediately after giving him 3 months' salary in lieu of notice.”

4. A reading of para 7 of the minutes of the meeting of the Managing Committee, held on 7th January, 2002, which formed the foundation of the order dated 30th January, 2002, effectively disengaging the services of Respondent No.1, makes it absolutely clear that the dispensation of the services of Respondent No.1 cannot be treated as simplicitor in nature, but was fundamentally punitive, based on his perceived “continuing indiscipline”, “inefficiency”, “growing misdemeanours” and his “tendency to victimise students and the rising discontent among parents at the colossal, psychological” as well as “academic damage caused to their ward”.

5. Respondent No. 1 challenged the order dated 31st January, 2002 (*supra*), terminating his services, before the learned Delhi School Tribunal (hereinafter referred to as “the learned Tribunal”) *vide* Appeal No.03/2002.

6. The learned Tribunal found that the termination of the services of Respondent No. 1 had been effected in violation of Rules 117 to 120 of the Delhi School Education Rules, 1973 (hereinafter referred to as “the DSE Rules”), inasmuch as no inquiry was conducted and no approval for such removal had been obtained from the Director of Education (DoE). As such, the learned Tribunal allowed the appeal of the respondent, and set aside the order dated 31st January, 2002, terminating his services.

7. The school challenged the aforementioned order, dated 9th January, 2003, before this Court, by way of WP (C) 1509/2003. However, on 6th November, 2003, the petitioner unconditionally withdrew the said petition.

8. This prompted Respondent No. 1 to approach the School, seeking implementation of the order, dated 9th January, 2003 (*supra*), passed by the learned Tribunal. A representation, for the said purpose, was also submitted by Respondent No. 1.

9. However, instead of implementing the order of the learned Tribunal, the School, on 6th October, 2003, placed Respondent No.1

under suspension, in terms of Rule 115(4) of the DSE Rules, with retrospective effective from 31st January, 2002. Approval, to the said suspension, was also accorded, by the DoE on 25th November, 2003. *Vide* letter dated 2nd December, 2003, the School informed Respondent No.1 that his suspension had been made retrospective in view of Rule 115(4) of the DSE Rules.

10. Respondent No.1 challenged the aforementioned order, dated 6th October, 2003, placing him under suspension, before this Court by way of WP (C) 8613/2003.

11. *Vide* judgment dated 4th January, 2005, a learned Single Judge of this Court allowed the said writ petition and issued a direction, to the petitioner, to pay, to the respondent, his salary, emoluments and other dues, from 1st February, 2002 till the date of suspension, i.e., 7th November, 2003. The learned Single Judge observed that with the withdrawal by the School of WP (C) 1509/2003 on 6th November, 2003, the order dated 9th January, 2003, of the learned Tribunal, had become final. As such, it was held that it was no longer open to the petitioner to contend that an inquiry had been held. In the absence of any inquiry, the learned Single Judge held that there was no question of application of Rule 115(4) of the DSE Rules and that, consequently, the order of suspension, dated 30th January, 2002, which was founded on the said Rule 115(4), stood vitiated in its entirety. The operative part of the judgment, dated 4th January, 2005 of the learned Single Judge in WP (C) 8603/2003, as contained in para 9 of the said judgment, reads thus:

“In view of the foregoing discussion and the judicial pronouncement in *Mahender Singh v. Union of India and Anr., (Supra)*, as noted above, it is held that, in the present case, it was not open to the respondent/School to invoke Sub-Rule (4) of Rule 115 of the Delhi Education Rules and pass an order, providing for suspension of the petitioner retrospectively from 30.1.2002. *The said order of termination having been set aside on merits and there having been no inquiry, it was not a case, where Sub-Rule (4) of Rule 115 could be invoked.* The suspension of the petitioner can only be prospective. A writ of mandamus shall issue to the respondent to pay to the petitioner his salary, emoluments and dues from 1.2.2002 to the date of the impugned suspension order i.e. 7.11.2003”

(Emphasis supplied)

12. During the pendency of the said writ petition, the School served, on Respondent No. 1, a charge-sheet, dated 3rd January, 2004, initiating a departmental inquiry against him. The charge-sheet contained seven articles of charge, which stand reproduced in the impugned order dated 11th January, 2001, of the learned Tribunal, thus:

“Article-I

That the said Sh. Ajay Singh, PGT (Physics) while functioning as PGT (Physics) in Delhi Police Public School, Safdarjung Enclave, neglected his duties knowingly and willfully in violation of code of conduct meant for teachers of recognized schools as envisaged under Rule 123(1) (a) Sub-Rule (1) of Delhi. School Education Rules, 1973.

Article-II

That the said Sh. Ajay Singh, PGT (Physics) while functioning in the aforesaid school violated Rule 123 (1) (a) Sub-Rule (iv) of School Education Rules 1973 by indulging himself and encouraging malpractices connected with examination and other school activities.

Article-III

That the said Sh. Ajay Singh, PGT (Physics) while functioning in the aforesaid school absented himself while being present in the school and neglected his classes which he is required to attend in total violation, of rule 123 (1) (a) Sub-Rule (vi), of Delhi School Education Rules 1973.

Article-IV

That the said Sh. Ajay Singh, PGT (Physics) while functioning in the aforesaid school forced the students of the school for private tuition in gross violation of Rule 123 (1) (a) Sub-Rule (viii) of Delhi School Education Rules 1973.

Article-V

That the said Sh. Ajay Singh, PGT (Physics) while functioning in the aforesaid school used indecent and vulgar language to the students as well as some parents. He also indulged himself to threaten, the parents of some students in violation of Rule 123 (1) (b) Sub-Rule (xvi) Of Delhi School Education Rules 1973.

Article-VI

That the said Sh. Ajay Singh, PGT (Physics) while functioning in the aforesaid school was found guilty of misbehaviour and cruelty towards students by making fun of students in front of other classmates. He was also found guilty for threatening and physically assaulting the students in grave violation of Rule 123 (1) (b) Sub-Rule (xvi) of Delhi, School Education Rules 1973.

Article-VII

That the said Sh. Ajay Singh, PGT (Physics) while functioning in the aforesaid school was duty bound to abide by the rules and regulations of the school and also show due respect to the constituted authority. But he acted contrary and in violation of Rule 123 (1) (b) Sub-Rule (xvi) of Delhi School Education Rules 1973.”

13. The aforementioned charge-sheet, dated 3rd January, 2004, culminated in order dated 13th July, 2005, passed by the Disciplinary Authority, imposing on Respondent No. 1 the penalty of removal from service. The said order was ratified by the Managing Committee of the School and, thereafter, by the DoE as well, *vide* letter dated 8th July, 2005.

14. The respondent appealed against the said decision dated 13th July, 2005, of the Disciplinary Authority, before the learned Tribunal and it is the said appeal which stands decided by the impugned judgment dated 11th January, 2011. The learned Tribunal has, in the impugned order observed/held as under :

(i) It was not open to the learned Tribunal to re-examine the evidence and revisit the findings of the inquiry officer, insofar as the merits of the case were concerned. Reliance was placed, for this proposition, by the learned Tribunal, on the well-known judgment of the Supreme Court in ***B.C. Chaturvedi v. UOI (1995) 6 SCC 749.***

(ii) It still remained however, to be decided whether the School had acted in accordance with law in holding a second inquiry, once the termination of the service of Respondent No. 1, on 31st January, 2002, stood set aside by the learned Tribunal and the writ petition, preferred by the School thereagainst, stood withdrawn.

(iii) The petitioner chose to defend the issuance, by it, of the charge-sheet dated 3rd January, 2004, by placing reliance on Rule 115(4) of the DSE Rules. For ready reference, Rule 115(4) of the DSE Rules may be reproduced thus:

“115. Suspension

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xxx

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or rendered void, in consequence of or by, a decision of a court of law or of the Tribunal; and the disciplinary authority on a consideration of the circumstances of the case decides to hold further inquiry against such employee on the same allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such employee shall be deemed to have been placed under suspension by the managing committee from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.”

(iv) Rule 115(4) of the DSE Rules, was analogous to Rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1985 (hereinafter referred to as “the CCS (CCA) Rules”). Dealing with the said Rule 10(4) of the CCS (CCA) Rules, the Supreme Court had held, in *Mahinder Singh v. UOI*, 1991 Suppl. (2) SCC 127 that, where the removal of the employee, in the first instance, was not consequent on an inquiry, the decision to hold a fresh inquiry would not attract

Rule 10(4). The learned Tribunal held that, if Rule 10(4) of the CCS (CCA) Rules, which was equivalent to Rule 115(4) of the DSE Rules, could not be invoked for the purpose of retrospective suspension, equally, it was not invokable for the purpose of holding a “further inquiry”.

15. Proceeding on the above reasoning, the learned Tribunal held that the holding of the “further inquiry” against the respondent, by the petitioner–School, was violative of the law and *ex facie* untenable. Consequently, the learned Tribunal directed that the respondent be reinstated with full back wages.

16. Assailing the said order before this Court in the present writ petition, the School has essentially made three submissions, which have been echoed by Mr. J. P. N. Gupta, learned counsel arguing at the bar. These submissions may be enumerated thus :

(i) The DST did not possess the jurisdiction to award back wages, the said power exclusively being vested with the Managing Committee of the School by Section 11(6) of the DSE Act, as held by this Court in ***Manager, Arya Samaj Girls Higher Secondary School v. Sunrita Thakur, 43 (1991) DLT 139.***

(ii) There was no illegality in the holding, by the School, of a fresh inquiry, against the petitioner, by issuing the charge-sheet dated 3rd January, 2004, even if the charge-sheet purported to be

in the nature of “further inquiry”. In this connection, keeping in view the seriousness of the charges against Respondent No. 1, the word “further inquiry”, as contained in Rule 115(4) of the DSE Rules, it was sought to be submitted, deserved an expansive, rather than a restrictive, construction. In any event, it was submitted that it would not be in the interests of the School, or the students, to permit the respondent to be reinstated, given the nature of the charges against him.

17. I may note, even at this stage, that the issue of whether reinstatement of the respondent would, or would not, be in the interests of the students, has really paled into significance as, during the pendency of these proceedings, the respondent was, in fact, reinstated by the School, and has been teaching in the School for around seven years as on date. Though learned counsel for the petitioner seeks to submit that his conduct continues to be abominable, he is unable to point out any action that has been taken against the respondent during these seven years, during which he has served the School after passing of the impugned order by the learned Tribunal. Insofar as the award of back wages to the respondent is concerned, there is substance in the contention of the petitioner that the learned Tribunal did not possess the jurisdiction to pass orders to that effect, its jurisdiction being limited to sitting in appeal over the order of punishment passed by the Disciplinary Authority. This issue is no longer *res integra*, as it stands concluded by the judgment of the Full Bench of this Court in ***Guru Harkrishan Public School v. Directorate of Education, 151 (2015) DRJ 24, (FB)*** which held ***Sunrita Thakur***

(*supra*) to be lying down the correct law. As such, the impugned order of the learned Tribunal, insofar as it awards back wages to the respondent, would necessarily have to be set aside.

18. Proceeding to the aspect of the legality of the charge-sheet dated 3rd January, 2004, issued by the petitioner to the respondent, and the inquiry and other proceedings which followed thereupon, however, I am of the view that petitioner really has no case. Irrespective of whether the charge-sheet dated 3rd January, 2004 is to be construed as a “further inquiry” or as a “fresh inquiry”, it is clear, from the facts, that the School could not have initiated it at all.

19. Learned counsel for the petitioner candidly concedes the fact that the allegations against Respondent No. 1, on the basis whereof he had been terminated on 31st January, 2002, were the same as those which constituted subject matter of the charge-sheet dated 3rd January, 2004. He however, contends that no inquiry had taken place prior to passing of the order of termination dated 31st January, 2002 and that, therefore, the charge-sheet dated 3rd January, 2004 was the first instance when an inquiry into the said charges was initiated. As such, he would submit, there was no embargo on such a charge-sheet being issued. He seeks to contend that the termination of the services of the Respondent No. 1 on 31st January 2002 was, in fact, effected in exercise of the express stipulation, in the contract between the School and Respondent No. 1, which permitted the service of Respondent No. 1, even after his confirmation, to be terminated on payment of three months’ salary.

20. He draws my attention to the fact that, in fact, three months' salary was disbursed to Respondent No.1 at the time of his termination on 31st January, 2002. He would, therefore, seek to contend that the findings of the DST, to the effect that the inquiry, which was initiated on 3rd January, 2004, violated Rule 115(4) of the DSE Rules, was fundamentally vitiated by the misconception that this was a "further inquiry" whereas, in actual fact, it was the first inquiry initiated into the charges against Respondent No. 1.

21. Though the submission of learned counsel is undoubtedly ingenious, I am of the opinion that the express contents of the Resolution dated 7th January, 2002 of the minutes of the Managing Committee, which constituted the foundation of the order dated 30th January, 2002, terminating the services of Respondent No. 1, belie this submission. It is clear, from the said Resolution, of the Managing Committee, that the termination of Respondent No. 1 was punitive in nature, based on the very same allegations which constituted the subject matter of the charge-sheet later issued to him on 3rd January, 2004.

22. Two wrongs, it is well settled, cannot make a right. Having erred in terminating the services of Respondent No. 1, on the basis of the said allegation in 2002, without holding any inquiry, it would hardly be open to the petitioner-school to piggyback on its own lapse and now subject Respondent No. 1 to a protracted inquiry on the very same charges, as there is no law, known to me, which would permit

termination of an employee, on a set of charges, without holding an inquiry and, thereafter, once the said termination was set aside, holding an inquiry and again proceeding against the employee on the same charge, unless and until leave is obtained, from the Court, to do so.

23. This, in my view, is a clear case of double jeopardy of the employee concerned. The situation is compounded in the present case by the fact that the School itself withdrew WP (C) 1509/2003 filed by it, challenging the order, 9th January, 2003, of the DST, which had set aside the termination of the services of Respondent No.1 on 31st January, 2002, *without seeking any liberty to initiate a fresh inquiry*. As such, the initiation of the fresh inquiry, on the same allegations, on the basis whereof Respondent No. 1 had once been terminated on 31st January, 2002, after he succeeded in getting the termination set aside by the learned Tribunal, and the writ petition against the said order of the Tribunal having been withdrawn by the School, cannot in my view, be sustained either on facts or in law.

24. Given the fact that the manner in which the Respondent has proceeded, in issuing the charge-sheet on 3rd January, 2004 and continuing with the inquiry thereafter, is totally alien to the law, and clearly contrary to the provisions of the DSE Act and the DSE Rules, I am of the view that nothing can be gained by entering into the thicket of the allegations against Respondent No. 1 howsoever serious the allegations may appear to be. We live in a land governed by the rule of law, which does not permit any citizen to be proceeded against, save

and except in the manner prescribed by the law for the said purpose. That, if the law prescribes a particular manner in which a thing has to be done, that thing must be done in that manner or not done at all, is an adage which stands fossilized in legal lore, starting from *Taylor v. Taylor*, (1875) 1 Ch D. 426 proceeding through *Nazir Ahmad v. King Emperor*, AIR 1936 PC 253 and reiterated, perhaps most recently, in *Kameng Dolo v. Atum Welly*, (2017) 7 SCC 521.

25. That apart, it is a matter of fact that Respondent No. 1 has, in fact, being discharging his duties as teacher in the School for about seven years *after* passing of the order by the DST, with no complaint and, apparently, no further action being taken against him, giving rising to a legitimate interference that he has been discharging his duties satisfactorily. No purpose would, in these circumstances, be served by examining the contentions of learned counsel for the petitioner that the seriousness of the charges against Respondent No. 1 rendered him unfit to function as a teacher in the School.

26. For all the above reasons, the present writ petition is allowed to the following extent :

(i) The impugned order dated 10th January, 2011 passed by the learned Tribunal, is affirmed, except to the extent of awarding of back wages to Respondent No. 1, which direction is, accordingly, set aside.

(iii) The issue of back wages would be considered and decided by the Managing Committee of the School, in accordance with Section

11(6) of the DSE Act.

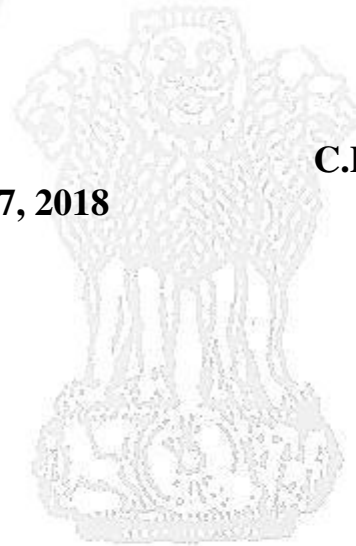
(iii) The petitioner is directed to ensure that this exercise is completed and concluded within a period of three months from receipt of the certified copy of this judgment, and back wages, to the extent deemed payable to the respondent by the petitioner are disbursed to him within four weeks thereof.

27. There shall be no orders as to costs.

C.HARI SHANKAR, J

SEPTEMBER 17, 2018

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