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

% *Date of Order: February 26, 2018*

+ **W.P.(C) 1785/2018 & CM No. 7389/2018**

DR. ASHWANI KUMAR KALA Petitioner

Through: Mr. Joginder Sukhija, Advocate
with petitioner in person

Versus

SCHOOL MANAGEMENT OF HIRA LAL JAIN SENIOR
SECONDARY SCHOOL AND ORS. Respondents

Through: Counsel (appearance not given)

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Impugned order of 13th February, 2018 (*Annexure P-1*) rejects petitioner's appeal against order of 28th April, 2017 (*Annexure P-2*) vide which petitioner, a PGT (Commerce) has been removed from service. Vide Memorandum of 6th April, 2017 petitioner was called upon to explain his acts and misconduct and non-performance of assigned duties as a post graduate teacher and petitioner vide his undated reply (*Annexure P-3*) had called upon the respondent - school to state the reason and intention of threatening, misbehaving and harassing petitioner by not holding the Departmental Promotion Committee meeting for the post of Vice Principal. Petitioner had also sought copy of the Managing

Committee Resolution on the basis of which Memorandum of 6th April, 2017 was issued to petitioner. Vide the said reply, petitioner had also called upon the respondent - school to provide complete names of MC members who had voted in favour of the resolution on the basis of which said Memorandum has been issued to the petitioner. The complete names and addresses of the nominees of the respondent – Directorate of Education was also sought by petitioner in his reply. The findings of the Delhi School Tribunal in the impugned order are as under:-

“Appellant could not prove his worth as a teacher through his work and conduct. He used to defy the authority of principal and acted in a manner detrimental to the smooth running of school. In view of his arrogant and defiant attitude he was warned to desist from such conduct. The Appellant was not regular in taking classes he had not improve his behaviour and conduct inspite of several opportunities given to him. Such type of his behaviour was certainly detrimental to the smooth running of the school. From the above quoted reply of the Appellant, it is clear that he has not replied any of the issue raised in the show cause notice. The conduct of the Appellant and his continuous defiance of the authorities is evident from the ACRs since the year 2001-02 till 2015-16. Appellant was given many opportunities to improve his conduct and behaviour but he has not changed his attitude. His work and conduct was not satisfactory. The quality, competency and character of the teacher are most significant for the efficiency of the education system. Any educational institute for its growth

and development depends upon the quality of teachers. In these circumstances, Respondent School removed the Appellant from the service vide order dated 28th April, 2017. The order is well reasoned and self-explanatory. When the Appellant has not improved his conduct and behaviour and continue to defy the principal as well as school authorities, in these circumstances, no option left with the Respondent School but to remove the Appellant in the interest of students. The interest of students is the paramount consideration for running the educational institute. In view of above discussion, there is no merit in the appeal hence the same is dismissed.”

2. Learned counsel for petitioner assails impugned order on the ground that the removal order (*Annexure P-2*) as well as impugned order (*Annexure P-1*) are in violation of Rule 118 and Rule 120 of the Delhi School Education Act & Rules, 1973. It is submitted by petitioner's counsel that no valid reason is forthcoming to dispense with the enquiry which was mandatory and that removal order (*Annexure P-2*) has been passed by the Managing Committee whereas as per Rule 118 of the Delhi School Education Rule, 1973, it was required to be passed by the disciplinary committee whose composition has to be as per Rule 118 of the said rules. So, it is submitted that the impugned order as well as removal order deserve to be quashed.

3. Learned counsel for respondent supports the impugned order and draws attention of this Court to paragraph no. 27 of the impugned order to point out that since there was no proper reply to the show cause notice,

therefore holding of an enquiry was an empty formality and composition of Managing committee of the respondent – school and disciplinary committee is no different and so, petitioner suffers no prejudice by not specifically constituting the disciplinary committee as the members of the disciplinary committee were already there in the Managing Committee of the respondent - school. Thus, it is submitted that impugned order deserves to be upheld and this petition ought to be dismissed.

4. Upon hearing and perusal of impugned order and the material on record, I find that Delhi School Tribunal has not considered vital aspect of dispensing with the enquiry which as per Rule 120 of Delhi School Education Rules, 1973 is mandatory. Merely because there is no proper reply to the show cause notice, it would not justify dispensing with the enquiry as it has to be determined as to whether under the Delhi School Education Rules, enquiry can be dispensed with or not. This crucial aspect has not been dealt with by the learned Tribunal. What would be the effect of not constituting disciplinary committee and as to whether the composition of the disciplinary committee and the Managing Committee being overlapping has not been considered by the learned Tribunal. This aspect goes to the root of the matter.

5. Since the afore-referred vital aspects have not been considered by the learned Tribunal in the impugned order, therefore the impugned order is set aside and the matter is remanded back to decide the appeal afresh while dealing with the aforesaid vital aspects. Parties to appear before the learned Tribunal on 6th March, 2018. It is expected that the learned Tribunal shall expeditiously decide petitioner's appeal afresh.

6. With aforesaid directions, this petition and the application are disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 26, 2018
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