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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Decided on: 23.04.2018

+ LPA 219/2018, CM APPL. 15839/2018, CM APPL. 15840/2018 & CM APPL. 15841/2018

DINESH SINGH RAWAT

..... Appellant

Through: Mr. Dilip Singh, Advocate.

versus

CHAIRMAN & ORS

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel (Service) for respondent No. 4.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

1. The present Letters Patent Appeal under Clause 10 of the Letters Patent Act impugns the judgment and order dated 23.03.2018 rendered by a learned Single Judge of this Court in Writ Petition (Civil) No. 8294/2017, titled as '*Dinesh Singh Rawat vs. Chairman, Ryan International School*', whereby the same was disposed off with a direction to the respondent/School to conclude the enquiry in pursuance of the charge sheet dated 04.07.2017 issued to the appellant, within a period of three months from the date already fixed.

2. Before we proceed to adjudicate the present appeal, it would be necessary to observe that the present proceedings are the second

round of litigation in relation to the disciplinary proceedings conducted by the respondent/School *qua* the appellant. In the first round, the appellant had assailed his dismissal from service by the Management of the respondent/School by preferring an appeal before the Delhi School Tribunal. The said Tribunal by its order dated 17.10.2016 in Appeal No. 18/2013 directed reinstatement of the appellant *inter alia* with all consequential benefits and back wages, essentially on the ground that the disciplinary authority had not been constituted in consonance with the provisions of Rule 118 of the Delhi School Education Rules, 1973 (hereinafter referred to as ‘the said Rules’).

3. A learned Single Judge of this Court vide order dated 16.05.2017 in W.P. (C) No. 1298/2017, titled as “***The Chairman, Ryan International School vs. Dinesh Singh Rawat & Ors***” had set aside the said order dated 17.10.2016 and remanded the matter back to the Disciplinary Committee to take a decision, whether to proceed against the appellant in a disciplinary enquiry and, if not, then the matter shall be treated as closed. It was further directed that if the disciplinary enquiry is to be conducted against the appellant, then the respondent/School shall conduct proceedings in terms of Rule 120 of the said Rules and pass orders with regard to the period post dismissal of the appellant, in accordance with law.

4. It is an admitted position that the said judgment and order dated 16.05.2017 has attained finality. It is further admitted that an enquiry is currently underway against the appellant in pursuance of the charge

sheet dated 04.07.2017. The appellant has, in this round of litigation assailed the said charge sheet dated 04.07.2017. The grievance of the appellant in this behalf is that in response to his representation against the charge sheet dated 04.07.2017, the respondent/School has declined to grant him reinstatement with full back wages and all attendant benefits from the period post the date of dismissal. The stand of the respondent/School in this behalf is that pursuant to the directions issued by this Court vide the order dated 16.05.2017 in the earlier round of litigation, the disciplinary committee in its meeting held on 03.07.2017, decided to hold a further enquiry into the allegations of misconduct against the appellant and consequently, the latter having been placed under suspension from the date of the order of the dismissal i.e. 20.02.2013, would continue under suspension until further orders.

5. The learned Single Judge, in the impugned order dated 23.02.2018, having heard learned counsel appearing on behalf of the parties, held as follows:-

“2. The challenge in this petition is to an order of 4th July, 2017 passed by respondent-School whereby petitioner was suspended with retrospective effect while denying back wages for the post dismissal period. In this petition, a direction is sought to respondent-school to pay full salary from the date of earlier dismissal i.e. 20th February, 2013. Alongwith the writ petition, charge sheet of 4th July, 2017 {Annexure P-3} has been appended. In the counter filed, there is no reference to any order of 4th July, 2017 regarding petitioner's suspension with retrospective effect and about denial of back wages etc. Even petitioner has not placed on record any such order. So far as the issuance of charge sheet of 4th July, 2017 (Annexure P-3) is concerned, it is in consonance with the order (Annexure P-2) of

this Court. It is matter of record that petitioner was suspended way back in the year 2012 when the inquiry was initiated against him and the suspension allowance etc. till the date of his dismissal has been paid to him. The question of post dismissal period was required to be considered by respondent-school, in view of the directions issued by this Court in its order (Annexure P-2). It is evident from the reply filed by respondent-school that the said aspect has not been dealt with by the respondent-school. The whole emphasis of respondent-school in the counter filed is that in view of sub-Rule 4 of Rule 115 of Delhi School Education Rules, 1973, the charge sheet now issued is part of further inquiry and so petitioner is deemed to be suspended from the initial date. On the contrary, petitioner's counsel asserts that the instant case is not covered by sub-Rule 4 of Rule 115 of the Delhi School Education Rules, 1973 as the issuance of charge sheet of 4th July, 2017 amounts of initiation of fresh inquiry and so, petitioner ought to be first reinstated and paid the back wages and thereafter the fresh inquiry can be initiated.

3. Upon hearing and on perusal of charge sheet of 4th July, 2017 and the material on record, I find that petitioner's representation against the charge sheet of 4th July, 2017 {Annexure P-3} has been responded to by the respondent-school vide Reply {Annexure P-5} on 28th July, 2017 and its perusal reveals that the directions of this Court in the order {Annexure P-2} regarding the period post dismissal has not been dealt with the proper prospective. During the course of hearing, petitioner's counsel relied upon a decision of a Coordinate Bench of this Court in Ajay Singh Vs. Delhi Police Public School & Ors. 2005 SCC OnLine Del 6 and another decision of a coordinate Bench of this Court in Ramesh Chander Dubey Vs. Director of Education & Anr. 2009 SCC OnLine Del 554 to submit that sub-Rule 4 of Rule 115 of the Delhi School Education Rules, 1973 would not apply as termination of service was without following the mandate of Rule 120 of the Delhi School Education Rules, 1973.

4. On the contrary, learned counsel for respondent-school relied upon Supreme Court's decision in South Bengal State Transport Corporation Vs. Sapan Kumar Mitra & Ors. (2006) 2 SCC 584 to submit that when penalty is set aside on technical

ground, then reinstatement with back wages amounts to rewarding the dishonest and the guilty and results in stretching the concept of justice to an illogical limit.

5. After having gone through the decisions cited, I find that in Ramesh Chander Dubey (supra) and Ajay Singh (supra), no inquiry was held and so it was rightly ruled that sub-Rule 4 of Rule 115 of the Delhi School Education Rules, 1973 would not apply. In the instant case, inquiry was held and the penalty imposed upon petitioner was set aside because the Disciplinary Committee was not properly constituted and this Court vide order {Annexure P-2} had permitted respondent-school to proceed with the inquiry. In the considered opinion of this Court, the instant case would be covered under sub-Rule 4 of Rule 115 of the Delhi School Education Rules, 1973. However, respondent-school is required to pass a speaking order within six weeks regarding the post dismissal period so far as payment of suspension allowance etc. is concerned.

6. In the facts and circumstances of this case, it is considered appropriate to direct the respondent-school to conclude the inquiry in pursuance to the charge sheet of 4th July, 2017 {Annexure P-3} within a period of three months from the date already fixed. It is made clear that in case petitioner causes delay in holding of the inquiry, then the aforesaid time limit will not bind the respondent-school.”

(emphasis supplied)

6. The solitary submission canvassed on behalf of the appellant is to the effect that the enquiry being conducted by the Disciplinary Committee, in terms of the direction of this Court, as contained in the judgment and order dated 16.05.2017, was a ‘fresh enquiry’ and not a ‘further enquiry’, so as to attract the stipulations contained in Rule 115 (4) of the said Rules.

7. In this behalf, it would be relevant to extract the Rule 115 (4) of the said Rules.

“ 115. *Suspension*

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx 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.”

8. It would be pertinent at this stage to observe that the gravamen of the charge against the appellant is that he handed over the question papers of Mathematics and Social Studies illegally and unauthorisedly to the father of a Class X student of the respondent/School so as to enable the latter to secure good grades.

9. In this behalf, the Supreme Court has clearly and unequivocally held in **South Bengal State Transport vs. Sapan Kumar Mitra**, reported as (2006) 2 SCC 584, that when penalty is set aside on technical grounds, reinstatement with back wages would amount to

rewarding the dishonest and the guilty in stretching the injustice to its illegal logic.

10. It is in view of the foregoing facts and circumstances that, we are in agreement with the finding and directions contained in the impugned order dated 23.05.2018, to the effect that the instant case would be covered under Sub-Rule 4 of the Rule 115 of the said Rules; and that consequently the appellant is deemed to have been placed under suspension from the date of the original order of dismissal i.e. 20.02.2013 and will continue to remain under suspension until further orders.

11. Resultantly, the appeal being devoid of any merit is accordingly dismissed.

12. However, the respondents are directed to comply with the directions contained in the impugned order within the specified time frames, without demur.

**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

APRIL 23, 2018/ss