

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

% *Date of Decision : March 05, 2018*

+ **W.P.(C) 6155/2016**

THE MANAGEMENT OF RUKAMANI DEVI JAIPURIA PUBLIC
SCHOOL Petitioner

Through: Dr. M Y Khan, Advocate

Versus

THE DIRECTORATE OF EDUCATION & ANR Respondents

Through: Mr. Santosh K Tripathi, ASC,
GNCTD for respondent no.1 with Mr.
R K Gambhir, DEO of R-1/Directorate
of Education
Mr. Parvinder Chauhan, Advocate for
Respondent -Bharti Sharma

+ **W.P.(C) 6156/2016**

THE MANAGEMENT OF RUKMANI DEVI
JAIPURIA PUBLIC SCHOOL Petitioner

Through: Dr. M Y Khan, Advocate

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Through: Mr. Santosh K Tripathi, ASC,
GNCTD for respondent no.1 with Mr.
R K Gambhir, DEO of R-1/Directorate
of Education
Mr. Ashok Aggarwal &
Mr. Anuj Aggarwal, Advocates for
Respondent no.2

+ **W.P.(C) 6513/2016**

THE MANAGEMENT OF RUKMANI DEVI

JAIPURIA PUBLIC SCHOOL

..... Petitioner

Through: Dr. M Y Khan, Advocate

Versus

THE DIRECTORATE OF EDUCATION & ANR Respondents

Through: Mr. Santosh K Tripathi, ASC,
GNCTD for respondent no.1 with Mr.
R K Gambhir, DEO of R-1
Mr. Ashok Aggarwal &
Mr. Anuj Aggarwal, Advocates for
Respondent no.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. The challenge in the above captioned first petition is to impugned order of 19th April, 2016 which directs reinstatement of respondent- *Bharti Sharma* who was working as Assistant Teacher in the petitioner-school. In the above captioned second petition, the challenge is to impugned order of even date directing reinstatement of respondent- *Dinesh Kumar Sharma* who was working as Physical Training Instructor (PTI) in petitioner-school. In the above captioned third petition, petitioner challenges reinstatement of respondent- *Sadhna Payal* who was working as Post Graduate Teacher (PGT) in the petitioner-school.

2. The penultimate findings returned by the Delhi School Tribunal (*hereinafter referred to as the Tribunal*) in the impugned order in these three petitions is as under:-

“Considering the cumulative effect of the facts that Sh. S.K. Saxena, Principal of the Respondent School had appeared as

a witness in the inquiry proceedings against the Appellant and had also participated in the meeting of Disciplinary Committee, no nominee of the Directorate of Education was present in the Disciplinary Committee; no Teachers' Representative was included in the Disciplinary Committee; relevant documents were not provided to the appellant in spite of her demand, the findings of the Inquiry Officer is perverted. This Tribunal is of the opinion that the impugned order dated 08.04.2013 is illegal and arbitrary hence the same is set aside. R1 and R3 are directed to re-instate the appellant with immediate effect. Appellant will be entitled for full wages along with all the consequential benefits from the date of this order onwards."

3. Since the basis of impugned orders in these three petitions is quite identical, therefore, these three petitions were heard together and are being decided by this common judgment.

4. It is a matter of record that respondent-*Bharti Sharma* was appointed on 15th July, 1994, respondent- *Dinesh Kumar Sharma* was appointed on 16th July, 1990 whereas respondent-*Sadhna Payal* was appointed in petitioner-school on 9th July, 1980.

5. Respondent-*Bharti Sharma* was charged with tampering of her service book on 6th September, 2011 by writing and pasting certain remarks on page 12 of her service book. She was also charged with neglecting her duties and was found to be lacking in honesty and integrity, as per review of her service book record for the years from 2008-09 upto 2010-11. Delhi School Tribunal has drawn adverse inference against the petitioner in the impugned order on account of non-production of service book of respondent-*Bharti Sharma* and has concluded that charge of tampering with her service book is not proved.

6. Regarding charge of respondent-*Bharti Sharma* neglecting her duties

and lacking honesty and integrity, the Tribunal has drawn adverse inference for non-production of her ACRs and has thus concluded that evidence to prove this charge is lacking and hence penalty of removal from service has been set aside, additionally on the ground of school principal appearing as a witness in inquiry proceedings and as the School principal had also participated in the meeting of Disciplinary Committee. The Tribunal has also drawn adverse inference against the petitioner as no nominee from Directorate of Education was present when the meeting of Disciplinary Committee took place and no teachers' representative was included in the Disciplinary Committee meeting. The impugned order also takes note of the fact that despite demand, relevant documents were not provided to respondent-*Bharti Sharma* and hence it was concluded that findings of the Inquiry Officer are adverse.

7. To assail the impugned order qua respondent-*Bharti Sharma*, learned counsel for petitioner submitted that a Communication of 18th February, 2012 was sent to respondent-*Directorate of Education* to depute a nominee for the meeting of the Disciplinary Committee slated for 28th February, 2012 and the said letter was sent vide diary no.3794 on 27th February, 2012 and it is so evident from Annexure P-1. It was submitted that Inquiry Report was duly considered by the Disciplinary Authority on 22nd March, 2013 and in the said meeting, a nominee of Directorate of Education and Teachers' Representative was also present, which is evident from Annexure P-2.

8. Learned counsel for petitioner submitted that the Tribunal has erred in drawing adverse inference against the petitioner on account of non production of service book of respondent-*Bharti Sharma* and her ACRs as same were

produced before the Inquiry Officer. It was submitted that Tribunal's findings regarding non supply of relevant documents before the Tribunal are vague and so impugned order qua respondent-*Bharti Sharma* deserves to be set aside.

9. On the contrary, learned counsel for respondent-*Bharti Sharma* submitted that letter of 18th February, 2012 (Annexure P-3) requiring presence of nominee of Directorate of Education in Disciplinary Committee meeting of 28th February, 2012 was not delivered in time as it is evident from Annexure P-1 that it was sent by petitioner's school through dak on 27.02.2012 and it could not have been received on 28.2.2012 in office of Directorate of Education. Thus, it was submitted that meeting of Disciplinary Committee of 28th February, 2012 approving issuance of charge against respondent-*Bharti Sharma* renders initiation of inquiry illegal.

10. Attention of this Court was drawn to counter affidavit of respondent-*Directorate of Education* to point out that receiving of letter of 18th February, 2012 from petitioner-school for nominating of a nominee has been disputed. The stand of respondent-*Directorate of Education* is that no nominee was deputed to attend Disciplinary Committee's meeting of 22nd March, 2013. It was pointed out by learned counsel for respondent-*Bharti Sharma*, that letter of nomination was addressed to Education Officer, whereas it should have been addressed to Directorate of Education. It was submitted that ACRs of respondent-*Bharti Sharma* were not produced even before the Inquiry officer and so the impugned order is justified.

11. Regarding respondent-*Dinesh Kumar Sharma*, learned counsel for petitioner submitted that penalty of compulsory retirement has rightly been

inflicted and evidence of school principal in inquiry proceedings was necessary to prove the charges and his presence in the meeting of Disciplinary Committee was mandatory and so on this ground, inquiry report cannot be set aside and learned tribunal has erred in doing so.

12. To assail reinstatement of respondent-*Dinesh Kumar Sharma*, learned counsel for petitioner adopted arguments addressed in case of respondent-*Bharti Sharma*. Learned counsel for respondent-*Dinesh Kumar Sharma* also adopted arguments addressed on behalf of respondent-*Bharti Sharma* to submit that initiation in inquiry proceedings against respondent-*Dinesh Kumar Sharma* is bad in law as nominee of Directorate of Education was not present in the meeting of 28th February, 2012 and presence of school principal in the meeting of the Disciplinary Committee causes serious prejudice as he was a witness in inquiry proceedings.

13. Learned counsel for respondent-*Dinesh Kumar Sharma* submitted that the language of charges levelled against respondent-*Dinesh Kumar Sharma* is identical to the charges levelled against respondent-*Bharti Sharma* which discloses a stereotype approach and non-application of mind. It was pointed out that as per information received from Directorate of Education under RTI regarding nomination of government nominee, no letter was received by it from the petitioner-school requiring presence of Government nominee for meeting of Disciplinary Committee slated for 28th February, 2012.

14. So far as respondent-*Sadhna Payal* is concerned, learned counsel for petitioner assailed the impugned order on the same very grounds as have been taken in the case of respondent-*Bharti Sharma* and respondent-*Dinesh Kumar Sharma*. Likewise, learned counsel for respondent-*Sadhna Payal* adopted

submissions as already addressed on behalf of respondent-*Dinesh Kumar Sharma*, to support the impugned order.

15. The submissions advanced, impugned orders and the material on record have been duly considered and thereupon I find that since the school principal has appeared as a witness in the inquiry proceedings, therefore, he should not have been present in meeting of the Disciplinary Committee as a member and in his place, some other nominee of petitioner-school ought to have attended the meeting of Disciplinary Committee, in which initiation of inquiry proceedings against the contesting respondents was approved. It is matter of record that no nominee of Director of Education was present in the meeting of Disciplinary Committee in which initiation of inquiry proceedings against the contesting respondents was approved. Respondent-*Directorate of Education* in its counter affidavit has admitted that the letter seeking nomination of a government nominee was received on 27th February, 2012. It is a matter of record that no nominee was deputed by the Directorate of Education to participate in the meeting of Disciplinary Committee held on 28th February, 2012. Thus, it becomes evident that initiation of departmental inquiry against the contesting respondents was approved by the Disciplinary Committee which did not have requisite coram, as neither nominee of Directorate of Education nor teachers' representative was included in the meeting of the Disciplinary Committee. Evidently, the approval to initiation of departmental proceedings against the contesting respondents was by the Disciplinary Committee which was not properly constituted.

16. Not only this, as per sub section (2) of section 8 of the Delhi School Education Act, 1973, any major penalty has to be inflicted with the prior

approval of the Director of Education. Supreme Court in *Raj Kumar vs. Director of Education* (2016) 6 SCC 541 has reiterated that as per Section 8 (2) of Delhi School Education Act, 1973, prior approval of Director of Education is mandatory for awarding major penalty.

17. In the instant case, not only initiation of departmental inquiry was by improperly constituted Disciplinary Committee, but even the penalty inflicted upon the contesting respondents did not have prior approval of the Director of Education. This infirmity goes to the root of the matter and thus nullifies the penalty awarded to the contesting respondents.

18. Learned Tribunal has rightly set aside the penalty awarded to the contesting respondents. It is so said as non production of ACRs of respondent-*Bharti Sharma* in the inquiry proceedings negates the penalty imposed upon her. This Court is of the considered opinion that although charges levelled against the contesting respondents are of serious nature, but due to procedural irregularities, the penalty inflicted upon them is liable to be set aside.

19. In the peculiar facts and circumstances of this case, it is deemed appropriate to permit the petitioner-school to conduct inquiry against the contesting respondents, *de novo*. Adopting of such a course is justified as substantive cause cannot be sacrificed on mere technicalities. Supreme Court in *Allahabad Bank & Ors. Vs. Krishna Narayan Tewari* (2017) 2 SCC 308 has reiterated that there is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient, either procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo the same afresh. Without going into prejudice

factor, while upholding the impugned order, these three petitions are dismissed with liberty to petitioner-school to conduct and conclude *de novo* inquiry against the contesting respondents within sixteen weeks, failing which the contesting respondents have to be reinstated with back wages.

20. These three petitions are accordingly disposed of with aforesaid directions.

(SUNIL GAUR)
JUDGE

MARCH 05, 2018

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