

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

Date of Decision: February 13, 2018

+ W.P.(C) 11394/2016 & C.M. 44659/2016

RAVINDRA MEMORIAL PUBLIC SCHOOL Petitioner

Through: Mr. Ajay Garg & Ms. Shilpa
Sharma, Advocates

Versus

DIRECTOR OF EDUCATION & ANR. Respondents

Through: Mr. Rahul Sharma &
Mr.C.K.Bhatt, Advocates for respondent No.1
Mr. Kamlesh Kumar & Ms. Satakshi Varma,
Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned order of 2nd September, 2016 directs reinstatement of petitioner with back wages, as respondent had attained the age of superannuation on 31st August, 2016. The facts, as noted in the impugned order, need no reproduction. Suffice to note that second respondent had joined petitioner-School as Assistant Teacher on temporary basis in the year 1988 and had rendered uninterrupted service till June, 2013. Consequent upon a departmental inquiry, second respondent was '*dismissed from service*' vide order of 6th June, 2013. The charges on which second respondent was tried was of inflicting corporal

punishment upon *Master Varun Walia*, a student of Class III-D on 17th August, 2010 and of abandoning her duties since November, 2011. Besides it, the second respondent was also tried on ancillary charges.

2. Though second respondent did not participate in the inquiry, but while relying upon the evidence of co-teacher *Ms. Pravesh Arora* and peon- *Tarun Kumar Singh*, the Inquiry Officer held second respondent guilty of misconduct imputed to her, which resulted in termination of her service, which was challenged by way of an appeal before Delhi School Tribunal (*henceforth referred to as the 'Tribunal';*), who vide impugned order has held that the inquiry report is not based on any legally admissible evidence. It is noted in the impugned order that the documents have not been exhibited in evidence as per *Indian Evidence Act, 1872* and witnesses in their testimony have not exhibited the documents relied upon and that the admission of inflicting corporal punishment by second respondent stands retracted by her. Impugned order proceeds on the basis that the Inquiry Officer in the order sheets has not mentioned about recording of evidence of any witness and has thus, concluded that inquiry was not conducted by following principles of natural justice and the legal provisions.

3. The challenge to the impugned order by learned counsel for petitioner is on the ground that in the departmental proceedings, preponderance of probability is to be seen and not strict rules of evidence are to be applied. It is submitted that on the basis of evidence of co-teacher *Ms. Pravesh Arora* and peon-*Tarun Kumar Singh*, the charges levelled against second respondent stood proved and the admission made by her of inflicting corporal punishment has not been retracted by her. It

is pointed out that in the statutory appeal filed by second respondent, there is no challenge to the inquiry proceedings and so, learned Tribunal has erred in setting aside the penalty order and it needs to be restored. In support of above submissions, petitioner's counsel places reliance upon decisions of this Court in *Parents Forum For Meaningful Education & Anr. Vs. Union of India & Anr.* 89 (2001) DLT 705 (DB) and *Kishor Guleria Vs Director of Education, Directorate of Education & Ors.* 195 (2012) DLT 189.

4. On the other hand, learned counsel for second respondent supports the impugned order and submits that second respondent was not afforded a fair opportunity. To submit so, it is pointed out that second respondent had received a notice requiring her to appear before the Inquiry Officer on 30th January, 2013 while indicating that this would be the last opportunity and on that day, she was proceeded *ex-parte* and on the very same day, inquiry was concluded. It is submitted that termination order and inquiry report was not served upon second respondent and since procedure laid down under Rule 118 of *Delhi School Education Act & Rules, 1973* has not been followed, therefore, impugned penalty inflicted upon second respondent has been rightly set aside.

5. Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that the grave charge of second respondent inflicting corporal punishment on a minor child, thereby causing serious injuries, has not been retracted by second respondent although impugned order notes that it was retracted by her. Even in the statutory appeal filed by second respondent, the stand now put forth, is not taken. It is pertinent to note that second respondent in her Communication of 3rd December,

2011 (*Annexure P-4 colly*) has categorically stated that she had not given corporal punishment with any bad intention and rather it was an accidental happening. The charge of inflicting corporal punishment stands duly established. The charge of abandoning of duty also stands substantially proved. I find that learned Tribunal has gravely erred in adopting a mechanical approach to conclude that the evidence has not been led in accordance with the *Indian Evidence Act, 1872*. It is the cardinal principal of service jurisprudence that in departmental proceedings, the yardstick of preponderance of probability has to be applied and not strict rules of evidence are to be applied and charges are not to be proved beyond reasonable doubt. It is apparent from the material on record that second respondent had not challenged the inquiry proceedings on merits and so, in such a situation, learned Tribunal ought not to have interfered with the findings of the Inquiry Officer.

6. So far as violation of principles of natural justice is concerned, it becomes evident from letters of 19th September and 28th September, 2012 of second respondent that she was aware of inquiry proceedings and so, it cannot be said that the inquiry was conducted behind her back to her detriment.

7. In the considered opinion of this Court, impugned order is not only illegal but is perverse, as it sets aside the well considered Inquiry Report, which is based on evidence of co-teacher and that of a peon. So, learned Tribunal has gravely erred in holding that the inquiry was not based on any admissible evidence. Infringement of Rule 118 of *Delhi School Education Act & Rules, 1973* is not borne out from the record. Finding no discrepancy in the inquiry conducted against second respondent,

impugned order is set aside and penalty of '*dismissal from service*' quashed by learned Tribunal is restored.

8. This petition and application are accordingly allowed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

FEBRUARY 13, 2018

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