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

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LPA 26/2017 & CM No.912/2017

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Date of decision : 12th July, 2018

KULACHI HANSRAJ MODEL SCHOOL & ANR. Appellants

Through: Mr. Rajshekhar Rao, Ms.
Amita Singh Kalkal and Mr.
Sameer Dawar, Advs.

versus

HARI OM SHARMA & ANR

..... Respondent

Through: Mr. J.S. Bakshi and Mr. A.K.
Bakshi, Advs. for R-1.
Mr. Yogesh Kumar, DEO,
Zone-XI.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

LPA No.26/2017

1. The appellant assails an order dated 19th October, 2016 passed by the learned Single Judge, allowing W.P.(C) No. 8144/2010 which had been filed by Late Sh. Hari Om Sharma (hereinafter referred to as the 'employee'). By way of the writ petition, Sh. Sharma had assailed an order dated 7th September, 2010 passed by the Presiding

Officer of the Delhi School Tribunal dismissing his appeal assailing the inquiry report dated 5th February, 2002 made by the Inquiry Officer after conducting disciplinary proceedings against Shri Hari Om Sharma as the order of imposition of major penalty of removal from service which had been conveyed to Sh. Sharma vide an order dated 14th August, 2002.

2. The respondent had been appointed as a Physical Education Teacher on 10th July, 1981 and confirmed as such on 12th July, 1985. He was made the Physical Education Teacher and Transport Incharge on 7th December, 1997 and w.e.f. 1st July, 1999, was promoted to the TGT Scale. There had been no complaint against him and he enjoyed 19 years of unblemished record.

3. The appellant asserts that on complaints received in the year 2000 against him, disciplinary proceedings were initiated against the respondent.

4. In contemplation of disciplinary proceedings, the respondent was placed under suspension on 24th February, 2001 with immediate effect. One Shri Singhal, a former District and Sessions Judge was the CLO of the school. The management of the school appointed Shri V.P. Kalra, a retired District & Sessions Judge as the inquiry officer. It is on the record that (and the delinquent employees contention) Shri V.P. Kalra was a close friend of the said Shri Singhal.

5. The delinquent official complained about the manner in which the inquiry officer conducted the proceedings before the Delhi School

Tribunal in the brief synopsis if the appeal filed by the respondent.

6. As the Inquiry Officer was legally trained and experienced, and in the above facts, the respondent made a request to be defended by a defence counsel and to avail the assistance of an advocate.

The request of the delinquent unfolded as noted hereafter. It appears that during the inquiry proceedings, the employee made a request vide a letter dated 16th July, 2001 for certain documents and further to the effect that the disciplinary proceedings to be rescheduled at 2 p.m. for the reason that his Counsel was likely to be not available before such time as he would be busy in court. In response, the employee was informed that a legal practitioner could not be allowed as a defence assistant in the domestic inquiry and that he could take the assistance of an employee or a union representative of the institution. This request was thus declined. The respondent contended before the Delhi School Tribunal that this refusal vitiated the inquiry.

7. The submission is that the Inquiry Officer proceeded with the inquiry and submitted a report dated 5th February, 2002 finding the employee guilty of the charges with which he was charged. The Disciplinary Authority agreed with the findings of the Inquiry Officer and by an order dated 14th August, 2002 imposed the penalty of removal from service.

8. Aggrieved thereby, Sh. Hari Om Sharma filed an appeal being Appeal No. 60/2002 before the Delhi School Tribunal. This appeal remained pending before the Delhi School Tribunal for a long period

of 8 years. It came to be rejected only on 7th September, 2010 and the Tribunal upheld order of removal from service was upheld.

9. The order of dismissal from service by the School as well as the order dated 7th September, 2010 of the Delhi School Tribunal was assailed by the appellant by way of W.P.(C) No.8144/2010. *Inter alia*, it was urged on behalf of Sh. Hari Om Sharma that the inquiry was vitiated for the reason that even though the Inquiry Officer was a retired District & Sessions Judge, a person with a trained legal mind, the services of a lawyer were not permitted for conducting his defence and that as such, the inquiry had been conducted in violation of principles of natural justice.

10. In support of this submission, reliance was placed by counsel for the employee on the pronouncement of the Supreme Court reported at **(2013) 6 SCC 530 Chairman, LIC of India & Ors. v. A. Masilamani**.

Additionally, reliance was placed on the pronouncement of the Supreme Court in **Civil Appeal No. 8824/2012, Professor Ramesh Chandra v. University of Delhi & Ors.** wherein the Supreme Court had specifically held that if any person, who is or was a legal practitioner including a retired Judge, is appointed as an Inquiry Officer in disciplinary proceedings against an employee, denial of the assistance of a legal practitioner to the charged employee would be unfair.

11. We may note that the respondents did not file any reply to the

writ petition. Instead only a three page synopsis dated 3rd August, 2016 was filed mentioning bald facts and placing reliance on the pronouncements of the Supreme Court reported at **1996 (1) LMJ 1231 SC, B.C. Chaturvedi v. Union of India & Ors.** setting out the limitations on the powers of judicial review of the order with regard to the disciplinary proceedings.

12. After a detailed consideration, the Id. Single Judge by the judgment dated 19th October, 2016 accepted the writ petition directing as follows :

“6. In view of the above settled position in law, the petitioner would be treated as having been reinstated in the service. However, his reinstatement would be taken from the point that the inquiry proceedings against him were vitiated by breach of principles of natural justice. The petitioner was suspended for a period of one year with effect from 24.02.2001. He would therefore be entitled to 75% of his salary after three months’ of such suspension order. Hence, from the 4th month of the suspension order, the petitioner would be entitled to 75% of his salary since he would be treated as being on suspension but in service, along with consequential benefits of service.

7. In the circumstances, the impugned order dated 07.09.2010, Inquiry Report dated 05.02.2002 and imposition of major penalty of removal from the service dated 14.08.2002 are quashed. The petitioner shall be treated as being in service but under suspension and shall be entitled to 75% of the salary from the 4th month of the order of suspension. The money will be paid to the petitioner in two equal instalments in four weeks.

8. Should the respondent choose to proceed against the petitioner as per the charge-sheet issued, it may do so.

9. The petitioner shall be entitled to assistance of a counsel should the inquiry proceedings be conducted by a retired judge or a legally trained mind.

10. The writ petition is disposed off in the above terms.”

13. It is contended by Mr. Rajshekhar Rao, Id. counsel for the appellants that the factual basis in **Ramesh Chandra** was that both the inquiry officer as well as the presenting officer were legally trained persons and therefore, the finding of the Supreme Court in para 70 has overlooked the fact that the presenting officer in the present case was not a legally trained person.

14. We find ourselves unable to agree with this submission. The Supreme Court has explicitly noted the facts of the case which included the qualifications of the defending officer and the inquiry officer. The findings have thereafter been categorically recorded. For expediency, we extract para 70 of the judgment of the Supreme Court in **Ramesh Chandra** wherein the court has categorically held as follows :

“70. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as an enquiry officer in an inquiry initiated against an employee, the denial of assistance of a legal practitioner to the charged employee would be unfair.”

(Emphasis by us)

15. Before the Supreme Court, the fact that the presenting officer was also a legally trained person was really only an additional fact. The court was concerned with fair opportunity to present his defence to an officer who was defending himself in disciplinary proceedings while laying down the above position and has clearly reiterated the legal position that if the inquiry officer is a legally trained mind which would include a retired judge, the charged employee would be entitled to the services of a legally trained mind for conducting his defence. It has been held that denial of such defence officer would be in violation of principles of natural justice.

16. We may place useful reliance on the pronouncement of the Supreme Court reported at **(1983) 1 SCC 124 Port of Bombay v. Dilipkumar Raghavendranath Nadkarni**, where the court has expounded on the need for allowing legal assistance to an employee, where he is being pitted against a legally trained mind:-

“9. We concern ourselves in this case with a narrow question whether where in such a disciplinary enquiry by a domestic tribunal, the employer appoints Presenting-cum-Prosecuting Officer to represent the employer by persons who are legally trained, the delinquent employee, if he seeks permission to appear and defend himself by a legal practitioner, a denial of such a request would vitiate the enquiry on the ground that the delinquent employee had not been afforded a reasonable opportunity to defend himself, thereby vitiating one of the essential principles of natural justice.

10. Even in a domestic enquiry there can be very serious

charges, and an adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake. Such an enquiry is generally treated as a managerial function and the Enquiry Officer is more often a man of the establishment. Ordinarily he combines the role of a Presenting-cum-Prosecuting Officer and an Enquiry Officer a Judge and a prosecutor rolled into one. In the past it could be said that there was an informal atmosphere before such a domestic tribunal and that strict rules of evidence and pitfalls of procedural law did not hamstring the enquiry by such a domestic tribunal. We have moved far away from this stage. The situation is where the employer has on his pay rolls labour officers, legal advisers — lawyers in the garb of employees — and they are appointed Presenting-cum-Prosecuting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself. Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner. Why do we say so? Let us recall the nature of enquiry, who held it, where it is held and what is the atmosphere? Domestic enquiry is claimed to be a managerial function. **A man of the establishment dons the robe of a Judge. It is held in the establishment office or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased Judge?. The Enquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally**

employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehensions. Add to these uneven scales, the weight of legally trained minds on behalf of employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not a euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi-judicial tribunal cannot view the matter with equanimity on inequality of representation. This Court in M.H. Hoskot v. State of Maharashtra [(1978) 3 SCC 544 : 1978 SCC (Cri) 468 : AIR 1978 SC 1548 : 1978 Cri LJ 1678] clearly ruled that in criminal trial where prosecution is in the hands of public prosecutor, accused, for adequate representation, must have legal aid at State cost. This will apply mutatis mutandis to the present situation.”

(Emphasis by us)

17. In the present case, the fact that the inquiry officer was a retired judicial officer is not denied. The above narration of facts would show that as per the representation dated 16th July, 2001, the employee in fact had appointed a lawyer but was not permitted to use his services during the inquiry.

18. It is also important to note that the deceased Shri Hari Om Sharma had sought leave to be defended by a lawyer at the earliest. The inquiry report before us notes that Shri Hari Om Sharma had submitted a representation dated 16th July, 2001. This was even before first date of preliminary inquiry held on 19th July, 2001. This

request was not favourably considered.

19. The record also shows that the order of Disciplinary Authority was assailed by way of an appeal filed in 2002 by the Delhi School Tribunal which remained pending for 8 years and came to be decided against Shri Hari Om Sharma only in the year 2010.

20. The writ petition (*being W.P.(C)No.8144/2010*) filed by Shri Hari Om Sharma in 2010 was not heard for a long time. Shri Hari Om Sharma filed an application being CM No10604/2016 for expeditious hearing, which came to be allowed by the court on 12th July, 2016.

We may note that the ground for seeking expedited hearing by Shri Hari Om Sharma was that he had been suffering from Stage IV-Cancer. We are noting this fact only for the reason that the appellants before us were put to notice about the criticality so far as the health of Shri Hari Om Sharma was concerned. As a result of this fervent prayer for a hearing that the writ petition was taken up for hearing and decided by the order impugned before us.

21. In this background, the finding of the learned Single Judge that the inquiry was conducted in violation of the principles of natural justice and that the Inquiry Report dated 5th February, 2002 and the order dated 14th August, 2002 dismissing the respondent from service, are unassailable.

22. It is also to be noted that despite having been fully aware of the urgency of proceeding in the matter and the order of the Id. Single Judge having been passed on 19th October, 2016, the appellants before

us took no steps in the matter. When we say that the appellants took no steps, we are adverting not only to the fact that they took no steps in proceeding with the inquiry, as directed by the Id. Single Judge but also took no effective steps to ensure that their challenge to the order dated 19th October, 2016 was actually listed and heard.

This inaction was despite the matter being brought to the appellants notice.

23. An unfortunate event has intervened in the meantime. We are informed by Mr. J.S. Bakshi, learned counsel for the employee that unfortunately on 18th December, 2016, Sh. Hari Om Sharma has expired.

24. The present appeal was filed and listed for the first time on 11th January, 2017 i.e. after the death of the employee.

25. Another important fact which intervened in the matter was that Shri Hari Om Sharma, during his lifetime, filed a petition under the Contempt Of Courts Act, 1971 being Cont.Cas.(C)No.1257/2016 complaining that the appellants had failed to comply with the orders of the Id. Single Judge. This contempt petition was disposed of by the Id. Single Judge by an order dated 21st February, 2017 which has been placed before us and reads as follows :

“After some arguments, it is agreed that half of the 75% of the salary, directed to be paid by a Coordinate Bench of this Court vide order dated 19th October, 2016 in W.P.(C) 8144/2010, i.e. Rs.22,00,942/- shall be released to the two petitioners in equal share subject to their furnishing

undertakings to this Court that in the event the respondent-school's LPA No.26/2017 is ultimately allowed, petitioners shall refund the said amount to the respondent-school.

The undertakings are directed to be furnished by the petitioners on or before 22nd February, 2017 and the amount is directed to be released to the petitioners within twenty-four hours thereafter.

The balance 50% amount shall be deposited by the respondent-school with the Registry of this Court within a period of two weeks. The said amount shall be released subject to further orders to be passed in LPA 26/2017.

It is clarified that the aforesaid payments are only in pursuance to the order dated 19th October, 2016 passed in W.P.(C) 8144/2010.

By the aforesaid consensual order, present contempt petition and application stand disposed of.

Order dasti under the signature of Court Master."

26. Mr. Rajshekhar Rao, learned counsel for the appellant/school has contended that Mr. Hari Om Sharma was suspended from service for a period of one year with effect from 24th February, 2001. At the time of passing of the final order on 19th October, 2016 in the writ petition, the penalty of removal from service by the order dated 14th August, 2002 stood against him and as such he was not in service.

27. We are informed by Mr. Rajshekhar Rao, ld. counsel for the appellants that the amount in terms of the order of the ld. Single Judge

has been computed by the appellants at a total amount of Rs.44,01,884/-. We are informed that an amount of Rs.22,00,942/- has been paid to the respondent in terms thereof and the balance amount is lying deposited in this court.

28. It is submitted by Mr. Rajshekhar Rao that the allegations with which the employee was charged were extremely serious in nature and that the order of the Single Judge dated 19th October, 2016 directing that the employee be treated as being in service but under suspension and entitled to 75% of his salary from the 4th month of the order of suspension on 24th February, 2001 is unfair and unsustainable.

29. *Per contra*, Mr. J.S. Bakshi would urge that the inquiry report dated 5th February, 2002 and the major penalty of removal from service dated 14th August, 2002 stand quashed by the order dated 19th October, 2016.

30. As noted above, so far as the request for permission to be defended by a lawyer is concerned, Shri Hari Om Sharma had made the request by his letter dated 16th July, 2001 which was even before the first hearing before the inquiry officer.

31. Vide the letter dated 16th of July 2001, the respondent had made a request for certain documents and sought rescheduling of the time of the inquiry. Clearly, on that date, the inquiry was at the very initial stage. The Id. Single Judge had remanded the matter by the order dated 19th October, 2016 when it would have commenced by this stage.

32. We find that in the impugned order, the learned Single Judge has noted the ratio laid in ***Chairman, LIC of India & Ors. v. Masilamani*** wherein it has been held that the disciplinary proceedings which violate the principles of natural justice would have to be set aside right from the stage when the benefit of assistance of a lawyer was not given, and that the impugned inquiry report would have to be set aside because the corresponding nature of defense assistance was not accorded to the petitioner and that a fresh inquiry would have to be conducted in view of the aforesaid judgment.

33. It is further submitted that even after the passing of the orders dated 19th October, 2016, the appellant took no steps at all, either to initiate the inquiry or to pay the amount which was directed to be paid as subsistence allowance.

34. It is pointed out that, therefore, as on 18th December, 2016 when Sh. Hari Om Sharma expired, other than the framing of charges, no steps had taken place in the Inquiry even in accordance with law.

35. Mr. J.S. Bakshi would submit that as such, the legal heirs of the employee are really entitled to the full arrears of the salary and dues payable to Sh. Hari Om Sharma. In support of this submission, reliance is placed on the pronouncement of the Supreme Court in the judgment reported at ***2013 (12) SCC 322, Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.***

36. The judgment in ***Deepali Gundu*** dealt with a case of termination of service. The Supreme Court has laid down the

applicable principles as follows :

“33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though

the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for

delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

(Emphasis by us)

37. The learned Single Judge has placed reliance on the above principles to direct the respondents to pay 75% of the salary after three months of such suspension order.

38. We have rejected the appellants challenge to the order of the Id. Single Judge dated 19th October, 2016. The Id. Single Judge had set aside the order dated 7th September, 2010 of the Delhi School Tribunal and directed that Shri Hari Om Sharma be treated as being

in service. The appellants did not impugn the said orders. As a result of our rejection of the order of the Id. Single Judge; on account of intervention of the unfortunate fact that Shri Hari Om Sharma expired on 18th December, 2016 and as a result of his being held to be treated in service, the natural consequence would be that the legal heirs of Shri Hari Om Sharma would be entitled to the entire financial benefits to which he was entitled at the time of his death.

39. In the light of the above factual narration, it cannot be contested that by virtue of the impugned order dated 19th October, 2016, the Id. Single Judge had set aside the inquiry report dated 5th February, 2002 as well as the order dated 14th August, 2002 imposing the major penalty of removal from service upon Shri Hari Om Sharma. On 18th December, 2016, when Shri Hari Om Sharma expired, there was no disciplinary proceedings concluded against him and no order of punishment. There was no order of dismissed from service against the employee.

40. In its pronouncement reported at ***JT (2013) 12 SC 322, Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya***, the Supreme Court has emphasized the well settled principle that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the rule.

41. While considering the aspect of entitlement to full or partial back wages as a consequence, in sub-para (iii) of para 33 of ***Deepali Gundu*** judgment, the court has directed that “*ordinarily, an employee*

or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service.”

42. In the present case, Mr. J.S. Bakshi, Id. counsel for the respondent no.1 has drawn our attention to the following assertions made in para 7, the application dated 18th October, 2016 filed by the petitioner for directions of payment of subsistence allowance wherein the writ petitioner pleaded as follows :

“7. That the petitioner has been turned into a mental wreck. He has no independent income and is dependent only upon his wife. He is not gainfully employed anywhere. He is in a state of penury and requires at least some subsistence allowance as quantified by the Hon’ble Court.”
(Emphasis supplied)

This factual assertion was not disputed by the respondents.

43. An application dated 1st March, 2016 seeking early hearing of the matter was filed, relevant portion whereof reads as follows :

“3. That the Petitioner is suffering from cancer i.e. ‘Peritoneum: Metstatic Mucinous Adenocarcinoma appendix (4th stage).

4. *That if the matter is not immediately posted for hearing, it might be that the Petitioner is unable to get the benefit of the decision of the present writ petition, even if the same is in favour of the petitioner.*

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6. *That in the event the Orders as prayed for are not passed the petitioner shall suffer irreparable loss and injury, which cannot be compensated."*

44. It is noteworthy that the appellants have at no place stated that Shri Hari Om Sharma was gainfully employed.

45. We may note that it is not the appellants contention even before us that Shri Hari Om Sharma was gainfully employed, at any stage after his dismissal, till his death.

46. Mr. J.S. Bakshi, Id. counsel for the respondent no.1 has also drawn our attention to Clause 4 of Rule 116 of the Delhi School Education Rules, 1973 which reads as follows :

"116. Subsistence allowance

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(4) Where a suspended employee is exonerated after disciplinary proceeding or where any criminal prosecution against a suspended employee ends with an honorable acquittal the salaries and allowances of such employee minus the subsistence allowance received by him shall be paid to him from the date on which he was suspended."

47. Though it is self-evident, we may note that our direction, to disburse the entire financial benefits to the legal heirs of Shri Hari Om

Sharma is not in any way affected by the directions, in the impugned order of the learned Single Judge (which we have otherwise upheld) entitling Shri Hari Om Sharma to 75% of his salary by way of subsistence allowance. That direction was conditional upon a *de novo* enquiry being held against Shri Hari Om Sharma. That enquiry, obviously, cannot be held, owing to the unfortunate demise of Shri Hari Om Sharma in the interregnum. What survives are the legal heirs of Shri Hari Om Sharma, and the quashing of the disciplinary proceedings held against him. The benefit, of the latter, must of necessity enure to the former. The disciplinary proceedings against Shri Hari Om Sharma having been set aside, all financial benefits, that would result as a consequence thereof, must enure in favour of his legal heirs.

48. The matter may be viewed from another angle as well. Effectively, because of the demise of Shri Hari Om Sharma, all that remains against him, at worst, is a charge-sheet, which can never be decided. Mere issuance of a charge-sheet can afford no ground to withhold any part of an employee's emoluments. For this reason, too, the legal heirs of Shri Hari Om Sharma would be entitled to his entire financial benefits.

49. As noted above, the respondents have deposited the amount of Rs.22,00,942/- in the Registry in Cont.Cas(C)No.1257/2016. However, calculation of the basis thereof has to be furnished to the legal heirs. The above amount shall be released to the legal heirs of

the Shri Hari Om Sharma. The orders with regard to the balance amount, due and payable as required in terms of this order, have to be made.

50. In view of the above, it is directed as follows :

(i) The disciplinary proceedings against the respondent shall stand abated.

(ii) The appellants are directed to forthwith effect computation of the entire salary and allowances admissible to Shri Hari Om Sharma. The appellants would be entitled to deduct the amount of subsistence allowance paid to Shri Hari Om Sharma, the amount of Rs.22,00,942/- paid to his legal representatives under orders of the court and the amount lying deposited in this court.

(iii) The calculations of the above amount shall be furnished to Mr. J.S. Bakshi, Id. counsel for the respondent no.1 within a period of two weeks from today.

(iv) The respondents shall pay the balance amount due and payable under the present orders to Smt. R. Sujata Sharma and Shri Avinash, the widow and only son of Late Shri Hari Om Sharma respectively within a period of two weeks thereafter.

(v) The Registry is directed to forthwith release the amount of Rs.22,00,942/- lying deposited in this court.

(vi) The respondents shall be entitled to the costs of the present appeal which are quantified at Rs.25,000/-. The same shall also be paid by the appellants to the respondents within four weeks from

today.

51. This appeal is dismissed in the above terms.

CM No.912/2017

In view of the orders passed in the appeal, this application does not survive for adjudication and is hereby dismissed.

Dasti.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

JULY 12, 2018/aj

