

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

Date of Decision: January 19, 2018

(i) + W.P.(C) 949/2017 & C.M. 4327/2017
(ii) + W.P.(C) 3808/2017 & C.M. 16719/2017
(iii) + W.P.(C) 3850/2017 & C.M. 16889/2017

PRABHU DAYAL PUBLIC SCHOOL AND ANR. ... Petitioners

Through: Mr. K.P. Sundar Rao, Ms. Seema
Meena & Ms. R. Gayathri Manasa, Advocates

Versus

(i) N R VERMA AND ANR.
(ii) ANITA BHARADWAJ & ANR.
(iii) MS DEV BALA THROUGH HER LRS JAGAT BANDHU
AND ANR.

..... Respondents

Through: Mr. Ashok Aggarwal & Mr. Anuj
Aggarwal, Advocates for respondent No.1
Mr. Santosh Kumar Tripathi, Advocate for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

1. In the above captioned three petitions, challenge is to order of 5th October, 2016 (*Annexure-A*) of Delhi School Tribunal (*henceforth referred to as the "Tribunal"*) vide which penalty of "*removal from service*" has been set aside with direction to reinstate respondents-teachers/ Laboratory Assistant. Counsel representing both the sides submit that the impugned order in these three petitions adopts the same

reasoning and so, with the consent of learned counsel for the parties, these petitions have been heard together and are being disposed of by this common judgment.

2. Impugned order of 5th October, 2016 (*Annexure-A*) notes that recommendation of Disciplinary Committee held at 9:00 a.m. on 19th June, 2010 and its approval by the Managing Committee at 10.30 a.m. on the same day, reveals non application of mind, as Disciplinary Committee's recommendation of eleven pages could not have been placed before the Managing Committee within a time gap of 1½ hours. The conclusion drawn by learned Tribunal is that the minutes of meeting are false and manipulated. Not only this, learned Tribunal has found that the Disciplinary Committee was not constituted in accordance with the provisions of Rule 118 of *Delhi School Education Act & Rules, 1973*. Such a conclusion was drawn by learned Tribunal, as it was found that *Smt. Vimla Bhatia*, Manager of petitioner-School, was the complainant and also a member of Managing Committee and *Mr. Y.P. Gurang* was the Chairman of preliminary Inquiry Committee and was also a member of Disciplinary Committee and Managing Committee. Learned Tribunal has also held that the penalty of "*removal from service*" is disproportionate, as the respondents herein were only agitating their claim for grant of benefits in terms of Sixth Pay Commission.

3. Learned counsel for petitioner-School draws the attention of this Court to Paragraph No.12 of impugned order of 5th October, 2016 (*Annexure-A*), which is as under:-

*"12. The summer vacations started w.e.f.
01.05.2009. On 04.05.2009 at about 10/10.30 AM*

Appellant alongwith other teachers entered the office of the Manager of the School and started shouting slogans for the salary. They continued their agitation for about two hours. They did not allow the Manager to get up. The Manager did not speak a single word as he was under a threat of assault from the teachers. They had also blocked the entrance of the office. Appellant alongwith other teachers also made fun of handicap of Manager. They had also threatened to disrepute the school and to continue agitation and strike. Media persons from 'Aajtak' were also called by them to sensationalize the whole issue. It was also aired on National Television, which was disrepute to the School. At about 3.30 PM when the aim of the Appellant and other teachers was fulfilled, they left the school threatening that a bigger demonstration will be done on 15.05.2009."

4. Counsel for petitioner submits that unruly agitation by respondents- teachers/ Laboratory Assistant clearly constitutes misconduct and merely because the Disciplinary Committee's recommendations were approved by Managing Committee within a short time, it cannot possibly give rise to an inference that the minutes of meeting were false and manipulated.

5. Learned counsel for respondents- teachers/ Laboratory Assistant submits that the agitation for grant of benefits under the Sixth Pay Commission does not constitute misconduct and so, impugned order deserves to be maintained.

6. Upon hearing and on perusal of impugned order and the material on record, I find that since constitution of Disciplinary Committee was not in accordance with the provisions of Rule 118 of *Delhi School Education Act & Rules, 1973*, therefore, learned Tribunal was well within

its rights to conclude that the disciplinary proceedings stood vitiated. However, Tribunal's conclusion of Disciplinary Committee's minutes of meeting and of the Management Committee being false and manipulated is unwarranted on the premise that there was a gap of 1½ hours only. Such a conclusion is perverse. The alleged misconduct, as noted in paragraph No.12 of the impugned order, needs to be seriously viewed. Therefore, it is deemed appropriate to permit petitioner-School to hold *de novo* inquiry into the aforesaid misconduct, as detailed in paragraph No.12 of impugned order.

7. In view of aforesaid, impugned order is accordingly modified while permitting petitioner-School to initiate inquiry afresh, as on technical grounds, the alleged misconduct cannot be ignored as it is to be tested on merits. Since the incident in question relates to the year 2009, therefore, it is expected that inquiry proceedings will conclude within a period of six months from today.

8. With aforesaid directions, the above captioned three petitions and applications are disposed of.

SUNIL GAUR
(JUDGE)

JANUARY 19, 2018

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