

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

Date of Order: January 02, 2018

+ **W.P.(C) 7870/2017 & CMs. 32542/2017, 36382/2017**

HIMANSHU PANDE Petitioner

Through: Mr. S.K. Das, Advocate

versus

MANAGING COMMITTEE OF THE BANYAN TREE SCHOOL
& ORS Respondents

Through: Mr. Samrat Nigam, Mr. Sandeep
Mittal and Ms. Rekha, Advocates for
respondents No.1 & 2

Mr. Gautam Narayan, AC and Ms. Mahamaya
Chatterjee and Mr. M.I. Khan, Advocates for
respondent-DOE

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Vide order of 5th July, 2017 (*Annexure P-1*), petitioner's suspension has been extended for a period of six months while serving a memorandum of charge of even date upon petitioner. Petitioner's Representation of 23rd March, 2016 has been rejected by respondent-School vide order of 9th April, 2016 (*Annexure P-3*). The challenge to afore-referred orders is on the ground that consequent upon setting aside of petitioner's removal from service, *de novo* inquiry is impermissible. While entertaining this petition, initiation of fresh Inquiry was stayed vide order of 6th September, 2017.

2. Vide order of 29th February, 2016 (*Annexure P-10*), Delhi School Tribunal had set aside order of 18th August, 2010 vide which petitioner was removed from service. The challenge to impugned orders by learned counsel for petitioner is on the ground that initiation of fresh inquiry was not permitted by Delhi School Tribunal and on the same charges, petitioner cannot be tried twice. Learned counsel for petitioner submits that this Court vide order of 28th March, 2017 (*Annexure P-13*) had not permitted respondent-School to initiate fresh inquiry and so, impugned orders deserve to be set aside and petitioner ought to be reinstated in service with consequential benefits.

3. On the contrary, learned counsel for respondent-School submits that vide order of 28th March, 2017 (*Annexure P-13*) fresh inquiry was permitted and so, petitioner has been rightly suspended and has been served with fresh memorandum of charge as penalty of removal from service was set aside by Delhi School Tribunal on a technical ground. To submit so, attention of this Court is drawn to paragraphs No. 26 to 28 & 44 of order of 29th February, 2016. On instructions, it is submitted by learned counsel for respondent-School that fresh inquiry initiated against petitioner would be positively concluded within a period of three months.

4. Upon hearing and on perusal of impugned orders, the order of 28th March, 2017 (*Annexure P-13*) passed in the earlier litigation between the parties and the material on record, I find that earlier writ petition i.e. W.P. (C) 4951/2016 was disposed of as not pressed while taking note of respondent-School's stand of recommencing inquiry proceedings as the penalty imposed upon petitioner herein was set aside on a technical ground. It is not a case of simplicitor '*not pressing*' of earlier writ petition

by respondent-School. There is no ambiguity or doubt that respondent-School was permitted to initiate fresh inquiry on the same charges as penalty inflicted upon petitioner was set aside on the ground that the Presenting Officer had appeared as a witness and was also a member of the Managing Committee of respondent-School. Therefore, issuance of fresh memorandum of charge of 5th July, 2017 is not vitiated as the stand of respondent-School of initiating fresh inquiry on the same charges was not negated in the earlier round of litigation.

5. During the course of hearing, it was not disputed that petitioner had been paid subsistence allowance till the penalty of removal from service was inflicted upon him. However, for the period from 1st March, 2016 till 5th July, 2017 petitioner has neither been reinstated nor his suspension relates back to 1st March, 2016. Since this Court is not inclined to quash impugned memo of charge of 5th July, 2017, therefore, order suspending him for six months from 5th July, 2017 is not being interfered with, but it is clarified that this period of suspension would commence from 1st March, 2016 and subsistence allowance since 1st March, 2016 till date be paid to petitioner within a period of four weeks from today. As regards denial of full salary and allowances w.e.f. 20th January, 2005 till petitioner's reinstatement, as ordered by the Delhi School Tribunal, is concerned, I find that impugned letter of 9th April, 2016 (*Annexure P-3*) is not required to be tested for the reason that respondent-School is being directed to conclude the fresh inquiry in pursuance of impugned memorandum of 5th July, 2017 on or before 31st March, 2018. While repelling petitioner's challenge to impugned memorandum of charge of

5th July, 2017, this petition and the applications are disposed of with above directions.

(SUNIL GAUR)
JUDGE

JANUARY 02, 2018

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