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

*Date of decision: 16<sup>th</sup> November, 2018*

+ W.P.(C) 12234/2018 & CM APPL. 47395-47396/2018

MATA GUJRI PUBLIC SCHOOL

..... Petitioner

Through: Mr. Harshbir Singh Kohli, Advocate along  
with Mr. Prakash Chandra Sen, Mr.  
Gurvinder Singh, Representatives of  
petitioner school.

versus

NARINDER KAUR & ORS

..... Respondents

Through: Ms. Vibha Mahajan Seth, Advocate for R-2  
& R-3.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**J U D G M E N T (O R A L)**

1. Vide the present petition, the petitioner has challenged order dated 06.11.2017 passed by the Delhi School Tribunal whereby the learned tribunal while setting aside order dated 14.08.2018 directed the petitioner herein to reinstate the respondent No.1 within one month from passing of the order. It is further directed the respondent No. 1 will be entitled for all consequential benefits and full wages from the date of impugned order. With respect to the back wages in Rule 125 of Delhi School Education Act and Rules, 1973, the respondent No. 1 is directed to give representation to the petitioner school within a period of four weeks from the date of the order, as to how and in what manner the respondent No. 1

will be entitled to complete wages. The school was directed to decide the representation given by the respondent No. 1 within four weeks and respecting the same by speaking order and the order along with the copy of same to respondent No.1.

2. Brief facts of the case are that respondent No.1 is working in the school who is recognized unaided minority school. She joined the School on 31.08.1995 as PRT. On 25.06.2002 seniority list was prepared in which she was wrongly shown to have joined the service on 01.08.1996. Accordingly, she had given various representations for the correction of the date of joining. In the year 2003, she had obtained master degree and requested to the management for her promotion also.
3. Management vide letter dated 21.10.2003 informed the respondent No. 1 that her initial recruitment was against the leave vacancy and her substantive appointment was made on 01.08.1996.
4. The respondent No. 1 vide her letter dated 30.10.2003 applied for the post of head mistress as she was eligible for the same according to her seniority. On 12.04.2004, she had applied for the post of TGT social science in response to the advertisement which was published in Hindustan times in the month of July, 2004. She came to know that three persons who were junior to her, were promoted to the post of TGT. Accordingly, she had given representation dated 19.10.2004 in this regard. In the year 2008, she had again requested for seeking her promotion which was due for a long time. On 08.03.2008, she was informed for the first time that that she had violated the code of conduct for teachers as provided under Rule 123 of the DSEAR. Some false allegations were also made against her in the letter dated 08.03.2008; and

vide her reply dated 29.05.2008 denied all the allegations made against her.

5. It is further case of the respondent No. 1 before the Tribunal that on 01.10.2008, she was informed that the Managing Committee (MC) had decided to initiate inquiry against her hence the MC had decided to place her under suspension pending the inquiry. On 01.10.2009, after about one year from the date of issuance of memo dated 08.03.2008, Mr. K. Mohan was appointed as Inquiry Officer (I.O). On 02.09.2009, I.O. had given his report in favour of the respondent No. 1. Thereafter, vide letter dated 29.09.2009, respondent No.1 was informed that Disciplinary Committee had rejected the inquiry report dated 02.09.2009 on technical grounds and the matter was again referred to the Inquiry Officer Sh. K. Mohan but he refused to conduct the inquiry hence another Inquiry Officer was appointed. Respondent No. 1 had given her representation dated 22.12.2009 against the appointment of new Inquiry Officer submitting that the same is illegal. In spite of representation of the respondent No. 1 the new Inquiry Officer continued the inquiry proceedings.
6. Being aggrieved, the respondent No. 1 had filed W.P (C) 706/2010 against her suspension and for implementation of inquiry report dated 02.09.2009 and for quashing the appointment of second Inquiry Officer. The above referred writ of the respondent No. 1 was disposed off vide order dated 03.02.2010, whereby the Director of Education was directed to dispose off the representation of the respondent No.1 dated 22.12.2009.
7. Accordingly, Respondent No. 1 on 25.02.2010 filed her case before the Directorate of Education and participated in the proceedings on

18.03.2010 and same was disposed off on 09.04.2010. On 18.05.2010, after the passing of order dated 09.04.2010, the respondent No. 1 was served with the memorandum dated 18.05.2010 along with the inquiry report dated 15.02.2010. The respondent No. 1 vide her letter dated 04.08.2010 sought time to send her representation and sent representation dated 18.08.2010 on 20.08.2010. However, she received letter dated 14.08.2010 whereby she was informed that she had been removed from the service. Hence, she approached the Tribunal.

8. The present petition is filed on the ground that the Delhi School Tribunal instead of remanding back the matter for fresh inquiry before the disciplinary committee, has passed an arbitrary order whereby the order dated 14.08.2010 by virtue of which the respondent No. 1 was terminated was held illegal and has been set aside. The Tribunal failed to appreciate that the First Inquiry Officer had not followed the proper procedure as laid down in Section 120 (1) (c) of the Delhi School Education Act and Rules 1973. The said Inquiry officer did not prepare a report of the inquiry regarding his findings on each of the charge and did not give any reasons thereof as mandated by Section 120 (1) (c) of the Delhi School Education Act and Rules 1973.
9. Learned counsel appearing on behalf of the petitioner submits that the First Inquiry Officer conducted the inquiry without calling any witness and no document has been examined, thus the enquiry was incomplete. Then, the petitioner had discarded the First Inquiry Report and directed to initiate the second inquiry against the Respondent No. 1 and thereafter, the disciplinary authority removed the respondent No. 1 from the service vide its letter dated 14.08.2010.

10. Learned counsel further submits that there is no illegality in the findings of the disciplinary authority. Since the First Enquiry Report was not as per the statute, therefore same was discarded. Thus, the present petition deserves to be allowed by setting aside order dated 06.11.2017 passed by the Tribunal.
11. It is not in dispute that when second Inquiry Officer started the inquiry proceedings, the respondent No. 1 filed WP (C) No. 706/2010 before this Court as mentioned above and the same was disposed of vide order dated 03.02.2010. The relevant portion of the order is as under:

*“In the said representation made by the petitioner, the petitioner has sought revocation as his suspension being in contravention of the Rule 115 (2) of the Delhi School Education Act, 1973. Let the said representation of the petitioner be decided by respondent No. 1 within a period of one month from the date of this order. Necessary hearing, if warranted, shall also be given to the petitioner by the Director of Education.”*

12. In pursuant to order dated 03.02.2010 respondent No. 1 filed her representation before Directorate of Education and the same was decided vide order dated 09.04.2010. However, the petitioner/school continued with the inquiry proceedings and the second Inquiry Officer had given his report on 15.02.2010 which was served to respondent No.1 vide memorandum dated 18.05.2010. The Disciplinary Committee had considered the report of the second Inquiry officer in its meeting dated 18.05.2010 and on the same day issued the memorandum. Thereafter the

impugned order dated 14.08.2010 of removal of Appellant was passed.

13. It is also not in dispute that initially Disciplinary Authority had appointed Sh. K. Mohan as Inquiry officer, who had given his report dated 02.09.2009 with the consent of the then Chairman of Respondent School Sardar Amrik Bhandari as well as the respondent No. 1. The report of the First Enquiry Officer is reduced as under:-

*“Mrs. Narinder Kaur duly reported on August 28, 09 at the office of Principal, Mata Gujri Public School and the proceedings were duly started by the Enquiry Officer in the presence of Mrs. N. Grover, Principal and Chaudhary Surinder Singh, General Secretary, Mata Gujri Public School. Mrs. Narinder Kaur was at the outset asked if she would like to be represented by a counsel since none had accompanied her. Mrs. Narinder Kaur expressed her remorse for the entire conduct which lead to the suspension and the subsequent enquiry proceedings. She was in pensive mood and clearly stated that she was in no mood to confront school authorities and wanted that it should be settled amicably. Sardar Amrik Bhandari Chairman of Mata Gujri Public School, assured Mrs. Narinder Kaur that she will be extended full financial benefits including salary under the rules. There will be no recrimination and victimisation. It was suggested by the enquiry officer that Mrs. Narinder kaur should be given a proper and suitable certificate for the services rendered by her. Sardar Amrik Singh Bhandari promised that her record will be blemishless. Efforts would be made that she gets her next posting without any difficulty.*

*The enquiry committee ended its deliberations in view of the above mentioned facts.”*

14. It is pertinent to mention here that the Disciplinary Committee has not set aside first inquiry report with a speaking order. No explanation is given as to what technical fault, first Inquiry Officer, had committed, whereas, same was with consent. Thereafter second Inquiry officer was appointed against which respondent No. 1 had filed WP (C) No. 706/2010 wherein this Court has directed to decide the representation of respondent No. 1. The Director of Education, decided the representation of respondent No. 1 vide order dated 09.04.2010. However, second Inquiry officer had given his report even prior to the order dated 09.04.2010. Moreover, the Disciplinary Authority had not remanded back the inquiry report to the second Inquiry Officer after coming to know about the order of this Court dated 03.02.2010 for reconsideration. Thus, the petitioner acted in arbitrary manner without bothering the order passed by the Director of Education pursuant to the directions of this Court.

15. In view of the above discussion, I find no discrepancy and illegality in the order dated 06.11.2017 passed by the Learned Tribunal.

16. I find no merit in this petition. The same is accordingly, dismissed.

**SURESH KUMAR KAIT, J**

**NOVEMBER 16, 2018**

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