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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Order: March 23, 2018

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W.P.(C) 8294/2017 & CM 42891/2017

DINESH SINGH RAWAT

.....Petitioner

Through: Mr. Dilip Singh, Advocate

versus

CHAIRMAN, RYAN INTERNATIONAL SCHOOL

AND ORS.

.....Respondents

Through: Mr. Romy Chako and Mr. Chandan
Kumar, Advocates for R-1, R-2 and R-3
Mr. Ashutosh Kaushik and Ms. Manika
Tripathy Pandey, Advocates for R-4

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. In the first round of litigation, consequent upon a departmental inquiry, penalty of dismissal was inflicted upon petitioner which he had challenged by way of an appeal before Delhi School Tribunal. Vide order of 17th October, 2016, the Delhi School Tribunal had set aside the penalty imposed upon petitioner and directed his reinstatement within four weeks. The said order was challenged by respondent herein by way of a writ petition which stood allowed vide order of 16th May, 2017 (*Annexure P-2*). The order (*Annexure P-1*) of Delhi School Tribunal was set aside and the matter was remanded back to the Disciplinary Committee to take a decision whether it will proceed against petitioner herein in departmental inquiry and if not, then the matter shall be treated as closed. This Court, vide order of 16th May, 2017 (*Annexure P-2*) had

permitted the respondent to conduct the proceedings in terms of Rule 120 of *the Delhi School Education Rules, 1973* and pass orders with regard to the post dismissal period.

2. The challenge in this petition is to an order of 4th July, 2017 passed by respondent-School whereby petitioner was suspended with retrospective effect while denying back wages for the post dismissal period. In this petition, a direction is sought to respondent-school to pay full salary from the date of earlier dismissal i.e. 20th February, 2013. Alongwith the writ petition, charge sheet of 4th July, 2017 (*Annexure P-3*) has been appended. In the counter filed, there is no reference to any order of 4th July, 2017 regarding petitioner's suspension with retrospective effect and about denial of back wages etc. Even petitioner has not placed on record any such order. So far as the issuance of charge sheet of 4th July, 2017 (*Annexure P-3*) is concerned, it is in consonance with the order (*Annexure P-2*) of this Court. It is matter of record that petitioner was suspended way back in the year 2012 when the inquiry was initiated against him and the suspension allowance etc. till the date of his dismissal has been paid to him. The question of post dismissal period was required to be considered by respondent-school, in view of the directions issued by this Court in its order (*Annexure P-2*). It is evident from the reply filed by respondent-school that the said aspect has not been dealt with by the respondent-school. The whole emphasis of respondent-school in the counter filed is that in view of sub-Rule 4 of Rule 115 of *Delhi School Education Rules, 1973*, the charge sheet now issued is part of further inquiry and so petitioner is deemed to be suspended from the initial date. On the contrary, petitioner's counsel asserts that the instant case is not

covered by sub-Rule 4 of Rule 115 of *the Delhi School Education Rules, 1973* as the issuance of charge sheet of 4th July, 2017 amounts of initiation of fresh inquiry and so, petitioner ought to be first reinstated and paid the back wages and thereafter the fresh inquiry can be initiated.

3. Upon hearing and on perusal of charge sheet of 4th July, 2017 and the material on record, I find that petitioner's representation against the charge sheet of 4th July, 2017 (*Annexure P-3*) has been responded to by the respondent-school vide Reply (*Annexure P-5*) on 28th July, 2017 and its perusal reveals that the directions of this Court in the order (*Annexure P-2*) regarding the period post dismissal has not been dealt with the proper prospective. During the course of hearing, petitioner's counsel relied upon a decision of a Coordinate Bench of this Court in *Ajay Singh Vs. Delhi Police Public School & Ors.* 2005 SCC OnLine Del 6 and another decision of a coordinate Bench of this Court in *Ramesh Chander Dubey Vs. Director of Education & Anr.* 2009 SCC OnLine Del 554 to submit that sub-Rule 4 of Rule 115 of *the Delhi School Education Rules, 1973* would not apply as termination of service was without following the mandate of Rule 120 of *the Delhi School Education Rules, 1973*.

4. On the contrary, learned counsel for respondent-school relied upon Supreme Court's decision in *South Bengal State Transport Corporation Vs. Sapan Kumar Mitra & Ors.* (2006) 2 SCC 584 to submit that when penalty is set aside on technical ground, then reinstatement with back wages amounts to rewarding the dishonest and the guilty and results in stretching the concept of justice to an illogical limit.

5. After having gone through the decisions cited, I find that in *Ramesh Chander Dubey* (supra) and *Ajay Singh* (supra), no inquiry was

held and so it was rightly ruled that sub-Rule 4 of Rule 115 of *the Delhi School Education Rules, 1973* would not apply. In the instant case, inquiry was held and the penalty imposed upon petitioner was set aside because the Disciplinary Committee was not properly constituted and this Court vide order (*Annexure P-2*) had permitted respondent-school to proceed with the inquiry. In the considered opinion of this Court, the instant case would be covered under sub-Rule 4 of Rule 115 of *the Delhi School Education Rules, 1973*. However, respondent-school is required to pass a speaking order within six weeks regarding the post dismissal period so far as payment of suspension allowance etc. is concerned.

6. In the facts and circumstances of this case, it is considered appropriate to direct the respondent-school to conclude the inquiry in pursuance to the charge sheet of 4th July, 2017 (*Annexure P-3*) within a period of three months from the date already fixed. It is made clear that in case petitioner causes delay in holding of the inquiry, then the aforesaid time limit will not bind the respondent-school.

7. With aforesaid directions, this petition and the application are disposed of.

Copy of this order be given *dasti* to counsel for respondent-School to ensure its compliance within the above stipulated time.

(SUNIL GAUR)
JUDGE

MARCH 23, 2018
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