

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

Date of Decision: January 02, 2018

+ **W.P.(C) 11251/2017 & C.Ms. 45985-86/2017**

HIMANI MALHOTRA

..... Petitioner

Through: Mr. G. Tushar Rao & Mr. Mayank
Sharma, Advocates

Versus

INDRAPRASTHA COLLEGE FOR WOMEN & ANR.

.....Respondents

Through: Mr. Rajesh Gogna, Ms. Vipra
Bhardwaj & Mr. Akhilesh Kumar, Advocates
for respondent No.1

Ms. Slomita Rai, Advocate for Mr. Mohinder
J.S. Rupal, Advocate for respondent- Delhi
University

QUORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. The question which falls for consideration in this petition is, whether a person can assert a right which stood relinquished earlier.
2. Petitioner is a suspended Assistant Professor, who was appointed against a permanent post on 29th September, 2010 in the Department of Physical Education by respondent-College. In pursuance to Show Cause Notice of 28th July, 2012, petitioner was put under suspension on 21st August, 2012, after respondent-University granted its approval on 13th August, 2012. It is not disputed that petitioner in earlier round of

litigation had unsuccessfully challenged the impugned Show Cause Notice of 28th July, 2012, Suspension Order of 21st August, 2012 and approval of 13th August, 2012 granted by respondent-University. Petitioner's earlier writ petition W.P.(C) 5758/2012 laying challenge to the aforesaid Show Cause Notice of 28th July, 2012 was disposed of vide order of 5th July, 2013 (*Annexure P-7*) with directions to conclude the inquiry within a stipulated time frame. It is relevant to note that the challenge to the impugned Show Cause Notice of 28th July, 2012 and petitioner's Suspension Order of 21st August, 2012 was not adjudicated on merits by this Court in its order of 5th July, 2013.

3. In this petition, challenge is to the initiation of inquiry by respondent-College on the ground that the governing body of respondent-College was not validly constituted and that it was not having the requisite quorum. Quashing of *Minutes of Meeting* of 25th July, 2012 of respondent-College; *Resolution* passed by its governing body in the meeting on 27th July, 2012 to issue Show Cause Notice to petitioner; Governing Body's *Minutes of Meeting* of 7th August, 2012 rejecting petitioner's reply to Show Cause Notice and issuance of Suspension letter of 21st August, 2012, is sought by petitioner. A challenge is also laid to the *Minutes of Meeting* of 12th September, 2012 whereby the Inquiry Officer was appointed.

4. At the outset, learned counsel for respondent-College raises objection to the maintainability of this petition by submitting that this petition is impliedly hit by principle of *res judicata*. Learned counsel for respondent-College draws the attention of this Court to a copy of earlier writ petition W.P.(C) 5758/2012 (*Annexure P-6 colly*) to point out that

petitioner had also taken the ground of respondent-College's Governing Body being truncated as it comprised of five members only. It is submitted by learned counsel for respondent-College that in pursuance to the Show Cause Notice of 28th July, 2012, a fresh inquiry has been initiated and petitioner has been participating for the past four years and filing of multiple petitions is unduly prolonging the inquiry proceedings, as the plea of respondent-College's governing body being truncated was urged earlier also. So, it is submitted that the objection of governing body of respondent-College being truncated stood abandoned/ waived.

5. Learned counsel for respondent-College submits that the basis to file the instant writ petition, as spelt out in Paragraph No.3 (p) of the writ petition, cannot provide a fresh ground to petitioner to forestall the inquiry against her. Reliance is placed upon Supreme Court's decision in *Beerbal Singh (D) through LRS Vs. State of U.P. & Ors.* 2017 SCC OnLine SC 688 by counsel for first respondent to submit that filing of second writ petition on the same cause of action is not only misconceived but is an ill advised action. Reliance is also placed upon another Supreme Court's decision in *Orissa Power Transmission Corporation Limited & Ors. Vs. Asian School of Business Management Trust & Ors.* (2013) 8 SCC 738 to submit that when the prayer is substantially similar, dismissal of the first petition would operate as *res judicata*. Counsel for first respondent also places reliance upon Supreme Court's decision in *State of Punjab Vs. Davinder Pal Singh Bhullar* 2012 AIR (SC) 364 to submit that waiver is an intentional relinquishment of a right.

6. On the other hand, learned counsel for petitioner maintains that the issue of respondent-College's governing body being truncated was not

earlier adjudicated upon and so, it is not hit by *res judicata* or constructive *res judicata*. Counsel for petitioner also submits that there is no question of any relinquishment or waiver, as petitioner for the first time had come to know about the requisite quorum of college's governing body being fifteen in October, 2017 from the pleadings in W.P.(C) 616/2013. It is further submitted that the question of respondent-College's governing body being not validly constituted and of not having requisite quorum, goes to the root of the matter and since governing body was not validly constituted, therefore, initiation of disciplinary proceedings against petitioner is *void ab initio*.

7. After having heard counsel representing both the sides on the aspect of maintainability of this petition and on perusal of material on record and decisions cited, I find that the plea of respondent-College's governing body being truncated was specifically taken by petitioner in the earlier round of litigation. It is evident from the order of 5th July, 2013 (*Annexure P-7*) passed in earlier round of litigation, that instead of asserting the plea of respondent-College's governing body being truncated, petitioner herein had agreed to get the earlier writ petition disposed of with direction to conclude the disciplinary proceedings within a particular time frame.

8. Since the order of 5th July, 2013 passed in the earlier writ petition W.P.(C) 5758/2012 was an agreed order, therefore, there is no escape from the conclusion that petitioner had intentionally waived the right to challenge the initiation of disciplinary proceedings on the ground of respondent-College's governing body being truncated. Supreme Court in *Davinder Pal Singh Bhullar (supra)* has reiterated that waiver is an

intentional relinquishment of right. Once petitioner has agreed to conclusion of disciplinary proceedings within a particular time frame, then the logical conclusion is that she had intentionally waived her right to challenge the initiation of disciplinary proceedings, in which she is participating now. In such a situation, petitioner cannot be now permitted to turn around amidst inquiry to reagitate the plea which she had earlier waived. It is impermissible to do so, even if some material has now come to light.

9. In the light of aforesaid, this Court finds that petitioner's challenge to impugned minutes of meetings of respondent-College's governing body, is not maintainable, as petitioner had made an attempt to do so in the earlier round of litigation in W.P.(C) 5758/2012 and because it is evident from the order of 5th July, 2013 (*Annexure P-7*) that the said challenge was not taken to its logical end. Rather, petitioner had agreed to get the earlier writ petition W.P.(C) 5758/2012 disposed of with directions to conclude the inquiry proceedings within a particular time frame.

10. Consequentially, this petition and applications are dismissed as misconceived.

SUNIL GAUR
(JUDGE)

JANUARY 02, 2018

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