

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

+ W.P.(C) 187/2018 and CM APPL. 771/2018

Reserved on: 09.01.2018

Date of decision: 23.01.2018

IN THE MATTER OF:
BHUVNESH KUMARI

..... Petitioner

Through: Mr. V.K. Tandon, Advocate.

versus

GOVERNMENT OF N.C.T. DELHI AND ORS Respondents

Through: Mr. N.A. Khan, ASC (Civil), GNCTD.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

HIMA KOHLI, J.

1. The petitioner, who was a PGT and had retired on the post of Vice-Principal in the Govt. Girls Senior Secondary School, Sonia Vihar, Delhi (hereinafter referred to as '**the school**') run by the Directorate of Education, Govt. of NCT of Delhi, assails an order dated 12.5.2017, passed by the Central Administrative Tribunal, dismissing O.A. No. 1915/ 2014 filed by her for quashing the Memorandum dated 10.9.2008, calling upon her to explain her absence from duty from 02.9.2008 to 05.9.2008, without prior approval of the competent authority, order dated 09.1.2013 passed by the Chief Secretary, Govt of NCT of Delhi (Disciplinary Authority), imposing a penalty of 'Censure' on her and the order dated 19.8.2013 passed by the Lt. Governor, NCT of Delhi (Appellate Authority) dismissing her appeal

against the penalty of 'Censure' on the ground of limitation.

2. The facts of the case as elicited from the records are that the petitioner, who was appointed as a TGT on 18.3.1981, was promoted on 31.3.1989 to the post of PGT (Political Science) and finally, she was promoted to the post of Vice-Principal on 26.11.2002. With effect from 23.5.2003, the petitioner was made the Head of the school (hereinafter referred to as 'the **HOS**'), where she had continued to officiate on the said post till she superannuated on 30.9.2013.

3. While serving as the HOS, on 10.9.2008, the petitioner was served with a Memorandum by the respondents directing her to submit her explanation for remaining absent from duty for the period between 02.9.2008 to 05.9.2008, without obtaining the prior approval of the competent authority and by simply dropping her leave application, which was not sanctioned by the competent authority and noting that she joined the school on 06.9.2008, without submitting her joining report to the competent authority. On the very same day, the petitioner was placed under suspension by the respondents. It is noteworthy that on 01.9.2008, the girl students of the school sat on an agitation at Nanaksar Piao, Wazirabad Road, complaining against the lack of basic facilities in the school. On receiving a communication from the Control Room of P.S. Khajoori Khas and from the office of the Minister of Education, Govt. of NCT of Delhi, the Dy. Director of Education (North East) visited the place of the agitation and persuaded the students to return to the school where they informed him of their grievances.

4. Upon conducting an inquiry, the Dy. Director of Education found that the grievances of the students were genuine and in his report dated

01.9.2008, he pointed out several irregularities committed by the petitioner, which had compelled the students to sit on an agitation. On 03.9.2008, the respondent No.2/Director of Education personally visited the school and found the following glaring deficiencies:-

- “(i) At the time of visit, the Smt. Bhuvnesh Kumar, Vice-Principal/HOS was not present in the school.*
- (ii) On scrutiny of the attendance register it revealed that she had not reported for duty on any day in September, 2008.*
- (iii) At the time of visit most of the girls were either in the ground or in the corridor, although it was fourth period.*
- (iv) The school had only 25-30 desks and many rooms did not even have Daris for the girls to sit on with the result that the students were forced to sit on the floor itself.*
- (v) There was only one source of drinking water in the school a hand pump. Taps were not in working condition.*
- (vi) Most of the black boards are in pathetic condition with patches of paints gone and with small dents. Hardly anything could be written or understood out of blackboard.*
- (vii) Class rooms did not have any fans.*
- (viii) In most of the classes there were no window panes and grills.*
- (ix) Very poor quality material had been used for the work done under Bala Scheme.*
- (x) Part of the school ground was covered with stagnant rain water providing ideal breeding ground for mosquitoes.*
- (xi) The worst feature of the school were its toilets-sans water, light and fresh air which were no way fit for human use.*
- (xii) Despite repeated instructions the projector supplied had not even been opened. Similarly, CAL Lab was also completely out of use for months.*
- (xiii) The school had shortage of teachers.*
- (xiv) In many classes syllabi were incomplete. Students did not even know about the weekly syllabus.*
- (xv) It was noticed that teachers were not taking their*

classes.”

5. The petitioner submitted her reply to the aforesaid Memorandum on 12.9.2008, claiming that she was on leave in that duration due to health reasons and her husband had telephonically informed the authorities about her illness.

6. For the sake of completion of narration of facts, it may be noted here that on 09.6.2009, the respondents had revoked the petitioner's suspension after about 15 months and she was posted at a school at Shakarpur and then at Mansarovar Park as the HOS. Later on, vide order dated 01.9.2014, post her superannuation, the petitioner's period of suspension was ordered to be treated as “spent on duty for all purposes”.

7. Vide Memorandum dated 01.12.2011, the respondents issued a charge sheet against the petitioner under Rule 16 of the CCS (CCA) Rules on the ground of lack of devotion to duty and for indulging in a conduct that was unbecoming of a govt. servant. Vide letter dated 23.1.2012, the petitioner submitted her reply to the Memorandum dated 01.12.2011. Vide order dated 09.01.2013, the Disciplinary Authority rejected her representation as being devoid of merits and imposed a penalty of ‘Censure’ on the petitioner.

8. Aggrieved by the aforesaid order, the petitioner submitted an appeal dated 25.4.2013 to the respondent No.3/Lt.Governor of NCT Delhi (Appellate Authority), which was rejected vide order dated 19.8.2013 on the ground that the same was filed beyond 45 days, the prescribed period of limitation under Rule 25 CCS (CCA) Rules, 1965. Aggrieved by the aforesaid order, the petitioner filed an Original Application before the

Tribunal in May, 2014, which was dismissed by the impugned order dated 12.5.2017.

9. It was contended on behalf of the petitioner before the Tribunal that she had performed her duties satisfactorily and on regular intervals pointed out the shortage of teachers and deficiencies in the infrastructure available in the school to the higher authorities, but she could not be faulted for their inaction; that the incident in question had taken place on 01.9.2008, whereas the charge-sheet was issued to her on 01.9.2012, after a delay of three years, which had caused her great prejudice; that her performance could be gauged by the fact that after her joining the school, the pass percentage of the students had increased and finally, that the Appellate Authority had erred in rejecting her appeal on the ground of limitation.

10. Learned counsel for the respondents had countered the aforesaid pleas taken on behalf of the petitioner and submitted before the Tribunal that it was the prime responsibility of the petitioner, being the HOS, to act as a friend, philosopher and guide to the teachers, be a role model for the students and set an example to others by her conduct, which she had failed to do; that none of the letters referred to by the petitioner in her O.A. and claimed to have addressed to the respondents pointing out shortage of teachers and lack of basic facilities could be traced in the school records and therefore their authenticity remains unverified; that the Annual Performance Assessment Report (APAR) of the petitioner for the year 2012-13 had clearly recorded that she was non-responsive to peoples' needs and she needed training for improving the knowledge of the Rules as also adopt a positive attitude towards her work. It was thus argued on behalf of the respondents that having regard to the conduct of the petitioner, the penalty

of 'Censure' imposed upon her, was minimal and did not deserve any interference.

11. After hearing the learned counsel for the parties, the Tribunal refused to grant any relief to the petitioner by taking note of the incident of 01.9.2008, when on receiving information about the students of the school sitting on an agitation against lack of facilities at the school, senior officers from the Department found that the petitioner was missing and noted that the school was kept in a very shabby condition. The Tribunal also recorded that the excuse of ill-health offered by the petitioner to explain her absence between 02.9.2008 to 05.9.2008, was a sheer afterthought. Consequently, the Tribunal upheld the order of "Censure" passed by the Disciplinary Authority against the petitioner and upheld by the Appellate Authority and dismissed the O.A. Hence, the present petition.

12. Mr. Vivek Tandon, learned counsel appearing for the petitioner argued before us that the Tribunal erred in rejecting the explanation offered by the petitioner that she was unavailable in the school between the period, 02.9.2008 to 05.9.2008 due to her illness. He stated that the petitioner's application for grant of earned leave was submitted in the office of the DDE (NE) on 02.9.2008 and during the course of arguments before the Tribunal, a copy of the petitioner's medical prescription slip alongwith her ECG was handed over, but those documents have not been taken into consideration by the Tribunal. He argued that the Tribunal completely ignored the fact that the petitioner had addressed several letters to the respondents pointing out lack of infrastructure in the school but no constructive steps were taken at their end, for which she could not be blamed.

13. We have carefully perused the impugned order and the documents

placed on record including the pleadings in the O.A., the representation submitted by the petitioner against the Memorandum of Charge and the appeal filed by her against the order dated 09.1.2013 passed by the Disciplinary Authority as also the letters addressed by her to the Department.

14. It is an undisputed position that the girl students of the school, where the petitioner was posted in the year 2008, had sat on an agitation on 01.9.2008, complaining against the lack of basic facilities in the school. It is not as if the petitioner was on leave on that day. She had reported to work but apparently, could not persuade the students to remain in the school. Instead, they left the school and sat on a *dharna* at Nanaksar, Piao, Wazirabad Road. Only after the Deputy Director Education (NE) was dispatched to the site by the respondent No.2, could he persuade the students to return to the school. On the very same day, the DDE had conducted an inspection of the school to verify the genuineness of the grievances raised by the students that had escalated to the point that they had sat on an agitation. During the inspection, the DDE noted several deficiencies in the school, primarily relating to lack of infrastructure. He also observed that teachers were not taking their classes and the students were loitering in the corridors, in the fourth period. Later on, the Director of Education had personally visited the school on 03.9.2008, so as to assess the situation first hand.

15. We have no reason to disagree with the findings returned by the Tribunal that the petitioner had gone on leave on the day next to the day of the agitation by the school students i.e., on 02.9.2008 and she had apparently remained on leave for four days thereafter, till 05.9.2008, knowing very well that she was in deep trouble. The petitioner did not enclose her medical

prescription with her Original Application to substantiate her plea of having remained on leave on medical grounds. If her plea was genuine, there was no good reason for the petitioner to have withheld the said documents at the time of filing the O.A. We therefore do not find any infirmity in the view taken in the impugned order that non-availability of the petitioner in the school from 02.9.2008 to 05.9.2008, on the ground that she was indisposed, cannot be accepted.

16. Coming next to the plea taken by learned counsel for the petitioner that imposition of the penalty of 'Censure' on the petitioner is illegal and untenable for the reason that the Tribunal failed to appreciate that she had been discharging her duties diligently and had taken steps to point out the lack of facilities, infrastructure and shortage of teachers to the respondents on several occasions, which letters were ignored by the respondents. However, on going through the correspondence addressed by the petitioner to her superior officers, as placed on record, we find that except for pointing out the shortage of teachers in the school, no letter was addressed by the petitioner on the aspect of lack of infrastructure in the school. In such a grim situation, where drinking water was unavailable in the school, there were no desks or *daris* for the students to sit on in the class room, no fans or window panes and grills installed in the class rooms, there were non-functional black boards and the toilets were filthy and unfit for human use, if the students did manage to score a high percentage, it would have to be assumed that they did so inspite of the deplorable conditions of the school and the short staff and not due to any efforts made by the petitioner, as professed by her.

17. Lastly, coming to the plea taken by the petitioner is that the Appellate Authority had committed an error by declining to go into the merits of the

case, as set out by her in the appeal and had instead, rejected the same only on the ground of limitation, we may note that the petitioner does not dispute the fact that she had filed the appeal far beyond the prescribed period of limitation and that too without seeking any condonation of delay. Even otherwise, the impugned order reveals that the Tribunal has examined the pleas taken by the petitioner on merits but did not find any infirmity in the order imposing a penalty of ‘Censure’ on her. Merely because the petitioner’s period of suspension was later on regularized by the respondents would hardly be a ground to brush aside the serious imputations of misconduct and misbehaviour levelled against the petitioner.

18. No doubt, due to the penalty of “Censure” imposed on her, the petitioner has lost an opportunity of re-employment. But that cannot be a ground for interfering in the order of penalty imposed on her by the respondents. Rather, we are of the opinion that looking at her transgressions and dereliction of duty, the petitioner has been let off lightly by the respondents.

19. In view of the aforesaid facts and circumstances, we do not find any merit in the present petition, which is accordingly dismissed alongwith the pending application.

HIMA KOHLI, J

REKHA PALLI, J

JANUARY 23rd, 2018

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