

\$~18

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

Date of decision: 8th December, 2020

+ **W.P.(C) 9630/2020**

K. M. YADAV

..... Petitioner

Through: Mr. Sanjeev Ralli, Ms. Simran
Mehrotra and Mr. Mohit Mudgal,
Advocates. (M:9811087093)

versus

DIRECTOR OF EDUCATION & ANR.

..... Respondents

Through: Ms. Mona Sinha and Ms. Ruchira
Gupta, Advocate for R-1 (M:
9810350333).
Mr. Anurag Lakhotia, Advocate for
R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present writ petition has been filed under Article 226 of the Constitution of India challenging the dismissal order dated 28th August, 2020 issued by the D.A.V. Senior Secondary Public School, J-Block, Paschim Vihar, New Delhi for which approval was granted by the Department of Education on 27th August, 2020 and communicated on 28th August, 2020.
3. The short point raised by Mr. Sanjeev Ralli, Id. Counsel for the Petitioner is that the Petitioner had already attained superannuation on 6th August, 2020 in terms of Rule 110 of The Delhi School Education Rules,

1973, as he turned 60 years old. Thus, the approval and the dismissal order passed after his retirement are completely without jurisdiction. He further submits that the disciplinary proceedings against the Petitioner was subject matter of petitions before the Ld. Division Bench of this Court which had passed judgment on 31st October, 2018 to the following effect:-

“24. Consequently, the impugned order of the learned Single Judge is modified only to the extent indicated hereunder:

(i) The de novo inquiry in terms of the impugned order will be held and concluded within a period of six months from today.

(ii) For the period between the date of his removal by the disciplinary committee i.e. 5th June 2012 till the date of conclusion of the de novo inquiry and the consequential order passed thereon, the employee will be treated as being in service but under suspension and be entitled to 50% of the wages during the said period which will be paid to him hereafter before the 10th of every month.

(iii) As far as the arrears of the subsistence wages is concerned it will be paid to the employee by the school within a period of eight weeks from today.

(iv) The de novo inquiry will be held by providing the employee the DA of his choice and a fresh inquiry report will be rendered uninfluenced by the earlier inquiry report or any observations on merits of the Tribunal, the learned Single Judge of this Court, or in the present judgment.”

4. As per the above order, the time given for concluding the enquiry was six months which was thereafter finally extended by the Id. Division Bench on 6th May, 2019 and 5th December, 2019 for a further period of six and three months respectively. Thus, the disciplinary proceedings had to be

concluded by 5th March, 2020. According to Id. Counsel, any proceedings conducted thereafter would be void *ab initio*.

5. Mr. Anurag Lakhotia, Id. Counsel appearing for the Respondent No.2 - School, on the other hand, relies upon Sections 8 and 11 of the Delhi School Education Act, 1973 to argue that the remedy for the Petitioner is to approach the Tribunal constituted under the Act and a writ petition would not be maintainable. He relies upon the judgment in ***Shashi Gaur vs. NCT of Delhi and Ors., (2001) 10 SCC 445***.

6. After hearing Id. Counsel for the parties, this Court is of the opinion that in case a jurisdictional issue is raised, a petition under Art. 226/227 may still be maintainable and the jurisdiction of this Court may not be completely ousted. However, the question as to whether a writ should be entertained or not would have to be decided on the facts and circumstances of each case. Recently, a Id. Single Judge of this Court, following ***Shashi Gaur (supra)*** and after considering the relevant case law, in ***Sandhya Bindal v. State of NCT of Delhi & Ors. [W.P.(C) 6975/2020, decided on 24th November, 2020]***, held:

“19. The foremost issue that needs to be decided is the maintainability of the present petition before this Court in view of the existence of the remedy of appeal under Section 8 (3) of the DSEAR. The provisions of Section 8(3) would be required to be examined and the provisions are as follows -

“8. Terms and conditions of service of employees of recognised private schools –

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of

communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.

XXX

20. A close scrutiny of Sub-Section (3) of Section 8 leaves no doubt that the provisions enable an employee of a recognized private school to appeal against an order dismissing, removing or reducing him/her in rank, before the Tribunal constituted under Section 11 of the DSEAR. Supreme Court in the case of Shashi Gaur (supra) while interpreting Sub-Sections (2) and (3) of Section 8 observed that it would be inappropriate to give a narrow construction to Sub-Section (3), thereby taking the teachers whose services were terminated, not by way of dismissal or removal, but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. Statute has provided a Tribunal to confer a remedy to the teachers who are taken out of service on the whims of the Management of private Institutions and Governmental Authorities have been given certain control over them. If an appeal to the Tribunal is not provided to the employee as a remedy, he / she would approach a Court under Article 226 of the Constitution, which is a discretionary remedy. The additional reason that weighed with the Supreme Court, to observe so, was that the remedy of an appeal was a more efficacious remedy. With this background on the canvas, the Court categorically held that Section 8(3) of the DSEAR provides an appeal for challenging any termination except where the service comes to an end by efflux of time. ...

XXX

25. Having considered the above referred

judgments more particularly the binding dicta of the Supreme Court in Shashi Gaur (supra), I am persuaded to hold that the appropriate remedy available to the Petitioner is to approach the Tribunal by filing an appeal against the order of termination. While there is no gain-saying that the inherent jurisdiction of a High Court under Article 226 of the Constitution to issue prerogative writs cannot be limited by reason of an alternative remedy being available but this Court is equally bound by the dicta in Shashi Gaur (supra) where the specific issue before the Court was the availability of remedy of appeal before the Tribunal constituted under the DSEAR.

36. In view of the above, the objection to maintainability of the present petition before this Court raised by the Respondents is decided in favour of the Respondents and against the Petitioner. The petition is therefore dismissed as not maintainable in this Court, leaving it open, however, to the Petitioner to approach the Tribunal in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the case. Arguments were heard limited to the maintainability of the present petition and the judgment was reserved on this aspect alone.”

7. In the present case, due to the conduct of the Petitioner in the school, a disciplinary enquiry was conducted against him. The enquiry report recommended dismissal of the Petitioner. The question as to whether on 27th and 28th August, 2020, approval could have been given by the appropriate government and a dismissal order could have been passed is a legal issue which can be raised before the Tribunal and considered by it. Moreover, even the question as to whether the enquiry was conducted within the time

period specified by the Id. Division Bench could be a ground to challenge the Inquiry report before the Tribunal which may be examining the legality and validity of the Inquiry. All the issues raised, including the issue as to jurisdiction for passing the dismissal order can be adjudicated by the Tribunal. Thus, the Petitioner has an alternate remedy which is also efficacious.

8. In view of the judgments cited above, including the recent judgment of this Court in *Sandhya Bindal (supra)*, this Court is not inclined to entertain the present writ petition. The Petitioner is permitted to avail of his legal remedies in accordance with law.

9. The Tribunal under The Delhi School Education Act, 1973 shall consider all the issues and objections raised by the Petitioner and decide the same in accordance with law. It is left to the discretion of the Tribunal if it deems necessary and expedient to consider if any issue should be decided as a preliminary issue or whether the matter needs to be decided in a comprehensive manner.

10. The Petitioner is permitted to approach the Tribunal within a period of thirty days from today. If the appeal is filed within thirty days, the delay in filing of the appeal shall stand condoned. Needless to add, this Court has not examined any of the issues raised on merits. The Tribunal would take a view independent of any observation in the present order.

11. The writ petition is disposed of in the above terms.

**PRATHIBA M. SINGH,
JUDGE**

**DECEMBER 8, 2020
MR/T**