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

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Date of decision: 18.09.2020

+ W.P.(C) 1023/2020 & C.M. APPL. 19063/2020

MS. BHUPINDER KAUR Petitioner

Through: Mr. S.K. Gupta, Advocate

versus

PUNJABI ACADEMY Respondent

Through: Mr. Naushad Ahmad Khan, Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Petitioner herein joined the post of Librarian Grade II in the office of the Respondent on 20.08.1997. On 16.02.2016, Petitioner was given the look after charge of the post of Librarian Grade I in place of another incumbent who was superannuating. On 31.03.2016, Petitioner allegedly informed that on account of her ill-health, she would not be in a position to join the said post and also made various representations in this regard. On 23.06.2017, Petitioner was placed under suspension.

2. Petitioner filed a writ petition being W.P.(C) 6455/2017, challenging the suspension but the same was withdrawn on 28.07.2017. On 18.09.2017, a charge memo was issued to the Petitioner enumerating certain allegations therein.

3. Grievance of the Petitioner in the present petition is that the suspension order dates back to 23.06.2017, however, till date, there has been no review of the suspension and therefore, in terms of Rules 10(6)

and 10(7) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as CCS (CCA Rules), the suspension order deserves to be quashed.

4. Mr. S.K. Gupta learned counsel for the Petitioner places reliance on the judgement of the Supreme Court in the case of ***Union of India & Ors. vs. Dipak Mali (2010) 2 SCC 222*** to contend that the suspension not having been reviewed within the time frame stipulated under the Rules cannot be sustained in law. He further submits that Petitioner is to superannuate on 25.10.2020 and therefore the present suspension order be quashed and the Respondent be directed to reinstate the Petitioner in service forthwith.

5. It is an admitted position between the parties that the suspension order of the Petitioner was passed on 23.06.2017 and till date the Respondent has not convened any Review Committee, to review the suspension of the Petitioner. The contention of the learned counsel for the Respondent is that the Petitioner has not been cooperating in the inquiry and therefore the suspension has continued till date. Counsel for the Petitioner on the other hand rebuts this contention and submits that the Petitioner has all through been cooperating, despite the fact that she has taken an objection to the disqualification of the Inquiry Officer to hold the inquiry. Mr. Gupta vehemently argues that even assuming for the sake of argument that the Petitioner has not cooperated, this cannot be a defence for not reviewing the suspension in accordance with law.

6. I have heard the learned counsels for the parties.

7. Rules 10(6) and 10(7) of the CCS(CCA) Rules, 1965 which govern the field are as under :

“10. Suspension

xxx

xxx

xxx

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.”

8. A bare perusal of the Rules indicates the mandate of the Statute that an order of suspension shall be reviewed by the Competent Authority before the expiry of 90 days from the effective date of suspension on the recommendations of a Review Committee. Based on the decision of the Review Committee, the suspension shall either be extended or revoked. Before expiry of the extended period of suspension, a Review Committee would review if the suspension is required to be extended or revoked and the extension shall not be for a period exceeding 180 days at a time. Sub-Rule (7) further provides a deeming fiction of law by which an order of suspension shall be deemed to be invalid after a period of 90 days unless extended by the Review Committee.

9. In the case of ***Dipak Mali (supra)***, Supreme Court while interpreting Rules 10(6) and 10(7) of the CCS(CCA) Rules, 1965, clearly enunciated as under :

“10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioners' case came up for review on 20-10-2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of sub-rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

11. The case sought to be made out on behalf of the petitioner Union of India as to the cause of delay in reviewing the respondent's case, is not very convincing. Section 19(4) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.”

10. Having heard the learned counsels for the parties, this Court is of the view that the issue raised in the present petition is no longer *res integra* and is clearly covered by the enunciation of the Supreme Court in ***Dipak Mali (supra)***. Admittedly, the Petitioner was suspended vide an order dated 23.06.2017 and the suspension has not been reviewed till

W.P.(C) 1023/2020 Page 4 of 5

date. It is clear that the mandate of the Rules referred to above has been violated.

11. In view of the observations of the Supreme Court and the binding dicta, the suspension order of the Petitioner dated 23.06.2017 is hereby quashed. Needless to state that the Petitioner shall be entitled to all consequential benefits of quashing of the suspension order, which shall include reinstatement and an order by the Respondent regularizing the period of suspension, in accordance with law. Necessary action for reinstating the Petitioner shall be taken forthwith and the order regularizing the period shall be passed within a period of two weeks from today.

12. It is made clear, however, that this will not prevent the Respondent from taking further action in accordance with law with respect to the pending enquiry proceedings and the order dated 12.12.2019 would remain operative except to the extent of suspension of the Petitioner.

13. Petition, along with accompanying application, is disposed of in the above terms.

JYOTI SINGH, J

SEPTEMBER 18, 2020/rd