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

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Date of decision: 02.09.2020

+ W.P.(C) 5368/2020 and C.M. 19327/2020

HARISH CHAND

..... Petitioner

Through: Mr. Khagesh B. Jha and Ms. Shikha
Sharma Bagga, Advocates

versus

PREET PUBLIC SR. SEC. SCHOOL AND ORS Respondents

Through: Mr. Vineet Mehta, Adv. for R-1 & 2
Ms. Vibha Mahajan Seth, Adv. for R-3

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Petitioner herein has assailed the impugned decision of the Disciplinary Committee, which according to his knowledge, has decided to impose the penalty of termination on the Petitioner.
2. The facts which require to be narrated are in a narrow compass.
3. Petitioner herein was appointed as PET in Preet Public Senior Secondary School / Respondent Nos. 1 and 2 (hereinafter referred to as 'School') on 02.01.1995. As per the case of the Petitioner, in 2010 he was involved in a litigation in this Court, relating to the non-payment of the benefits of the 5th Pay Commission and writ petition being W.P.(C) 128/2010 was decided on 03.03.2010 directing the grant of said benefits. On account of this litigation, the School became vindictive against the Petitioner and started searching ways to terminate him.

4. On 01.12.2012, the School had issued a Memorandum to the Petitioner on the ground that the child of the Petitioner had been wrongly admitted under EWS category. Memorandum was considered by the Directorate of Education and was found to be pseudonymous, thus, no action was taken and the case was closed.

5. In April 2019, Petitioner raised his grievance with regard to non-payment of the benefits of the 7th Pay Commission and brought the matter to the notice of the Chairman of the SMC. Out of sheer vindictiveness, School has again issued a Memorandum on 10.08.2019 on the same allegations regarding the admission of the child of the Petitioner under the EWS category.

6. Learned counsel for the Petitioner submits that an inquiry was held on the basis of the said Memorandum and the Petitioner has now learnt that the School has decided to impose major penalty of termination and has sent the case for prior approval of the Director of Education under Section 8(3) of the Delhi School Education Act and Rules, 1973 (hereinafter referred to as 'Act'). He also points out that on 30.07.2020, Petitioner has sent a representation to Respondent No.3 requesting him to reject the proposal and not grant approval for termination of his service. He has also requested to provide a personal hearing to the Petitioner before any decision is taken, but there has been no response.

7. Learned counsel for the petitioner submits that the Chargesheet has been issued out of vindictiveness on account of the litigation in which the Petitioner was embroiled. The action to issue a chargesheet has been taken on a letter issued by the SDM to the School Management, which is an action impermissible in law. He further submits that once the

Memorandum issued in 2012, on the same allegation, was not acted upon and the issue stood closed, it was not open to the School to issue a chargesheet on the same set of allegations, only because the SDM has requested the school, to do so.

8. Mr. Vineet Mehta, appearing on behalf of the School submits that chargesheet has been issued on the basis of a letter received on 30.05.2019 from the SDM, informing the School that the Petitioner has procured an Income Certificate dated 16.10.2012, issued by SDM (Preet Vihar) on the basis of false Affidavit and documents and the SDM has thus requested the School to take necessary action for furnishing false information and giving false evidence to the Government.

9. Mr. Mehta also draws the attention of the Court to an earlier order passed by this Court in W.P.(C) 13191/2019 dated 13.12.2019 and argued that the Petitioner had approached the Court challenging the Chargesheet and the disciplinary proceedings but after some hearing had sought to withdraw the writ petition. Petitioner was granted liberty to agitate his pleas at the appropriate stage. He submits that the appropriate stage has not yet arrived, since the matter is still pending before the Directorate of Education for prior approval. Law is settled that the Courts should not interfere in the disciplinary proceedings before their culmination unless exceptional circumstances are made out to do so.

10. Ms. Vibha Mahajan Seth, who appears for Directorate of Education submits that the petition is premature as the Directorate of Education is yet to consider the request of the School for grant of approval under Section 8(3) of the Act and necessary decision shall be taken by Respondent No.3 in due course of time. She further submits that there is

no provision in law which permits oral/personal hearing to be granted to the Petitioner. He has already made a representation and the same shall be duly considered, before any decision is taken by the Director under Section 8(3) of the Act.

11. Mr. Jha, learned counsel for the Petitioner submits that Petitioner shall take recourse to his remedies to challenge the disciplinary proceedings, at the appropriate stage. He further submits that at this stage, the Petitioner would be satisfied if the Director of Education grants him a personal hearing before taking any decision on grant of approval of the proposed penalty under Section 8(3) of the Act. Mr. Jha submits that in a personal hearing, the Petitioner would be in a better position to explain his stand, more particularly, that the allegations under the Chargesheet are the same allegations which were made against the Petitioner seven years ago and Director of Education had closed the proceedings.

12. I have heard learned counsels for the parties.

13. I find force in the contention of Mr. Mehta. Petition is premature and cannot be entertained at this stage. The matter is pending consideration with the Director of Education for grant of approval of the proposed major penalty, under the provisions of Section 8(3) of the Act. In case the approval is granted by the Director of Education, Petitioner shall have remedies in accordance with law, in the appropriate Forum. No interference is thus called for at this stage. It also needs to be noticed that the Petitioner had approached the Court on an earlier occasion but had withdrawn the petition. The Court cannot entertain a writ petition on the same cause of action, at this stage.

14. Insofar as the prayer of the Petitioner for grant of personal hearing by the Director of Education is concerned, in the peculiar facts and circumstances of the case, Director of Education is directed to grant a hearing to the Petitioner. The date and time for the hearing shall be intimated to the Petitioner via email/WhatsApp. Needless to state that the hearing shall be through Video Conferencing and the Director need not call the petitioner for a physical hearing.

15. It is made clear that this order has been passed in the peculiar facts and circumstances of the present case and shall not be treated as a precedent in any other case.

16. Petitioner is at liberty to challenge the disciplinary proceedings in accordance with law at the appropriate stage. Court has not expressed any opinion on the merits of the case.

17. Petition along with the application filed herewith, is disposed of in above terms.

SEPTEMBER 02, 2020

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JYOTI SINGH, J