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

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Reserved on : 11.11.2020

Pronounced on: 24.11.2020

+ **W.P.(C) 6975/2020 and CM Nos.23831/2020 and 23832/2020**

SANDHYA BINDALPETITIONER

Through **Mr. Sandeep Jindal, Advocate**

versus

STATE OF NCT OF DELHI & ORS.RESPONDENTS

Through **Mr. V. Balaji, Adv. for R-1**

**Mr. Kirti Uppal, Sr. Advocate with
Mr. Sidharth Chopra and Mr.
Aditya Raj, Advocates for R-2 to 4**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Challenge in the present petition is to a Termination Order dated 06.03.2020 passed by Respondent No.2 / Ramjas School (hereinafter referred to as 'School'). A writ of mandamus is sought for reinstatement of the Petitioner in service with back wages, salary, seniority and arrears in accordance with the provisions of the Delhi School Education Act and Rules (hereinafter referred to as the 'DSEAR'). Petitioner also prays for declaring the inquiry proceedings held against her as well as the Inquiry Report ultra vires the provisions of the DSEAR and CCS (CCA) Rules and also seeks compensation for alleged harassment, defamation, mental agony and loss of career.

2. The facts as set out in the petition and required for adjudication of the present writ petition are that the Petitioner was appointed as PGT (Chemistry) Teacher in the School in July, 2000. After rendering 14 years of service, she was appointed as Officiating Principal in May, 2014 and in this regard a Certificate dated 20.09.2016 was issued by the School highlighting her satisfactory service as well as in appreciation of her leadership qualities and competency. Pursuant to a Departmental Promotion Committee (hereinafter referred to as "DPC") held on 22.09.2016, Petitioner was promoted as a Regular Principal of the School.

3. According to the Petitioner the trouble started in her life when one Mr. Gupta was appointed as Manager of the School with effect from 19.10.2016 and soon thereafter different sections of Respondent Nos.2 and 4 and its Trustees started running the affairs of the School and differences of opinion emerged amongst the members of Respondent No.4. Petitioner was pressurized to accept various unethical practices, while discharging the official duties which she refused to do.

4. Petitioner avers that a complaint dated 03.05.2017 was made to Respondent No.1 / Govt. of NCT of Delhi with respect to the alleged harassment by the School, more particularly by the Chairman. A complaint was also made on 30.06.2017 to the Delhi Commission for Women which is self explanatory. On 20.07.2017 an order was however passed by Respondent No.1 under Section 24(3) of the DSEAR directing the Management of the School to take action against the Petitioner for committing a breach of code of conduct based on an Inquiry Report dated 11.07.2017 of a Committee of 4 members.

5. The said order was challenged by the Petitioner before this Court in W.P.(C) No.6354/2017, which was dismissed on 26.07.2017 with an observation that the Court would refrain itself from going into the relevancy/sufficiency of the material available with the Inquiry Committee. Subsequently, the Petitioner was placed under suspension vide Suspension Order dated 25.07.2017, invoking provisions of Rule 115 of the DSEAR. On 31.08.2017 Petitioner filed an appeal bearing LPA No.578/2017 against the order dated 26.07.2017, in which the Division Bench issued notice on 01.09.2017.

6. In the meantime, on 04.10.2017 a Show Cause Notice was issued by the School asking the Petitioner to respond within seven working days. It was alleged in the Show Cause Notice that a large number of complaints were lodged by the Teachers, parents and staff of the School against the Petitioner which included harassment of students, illegal suspension of students including corporal punishments, misbehaviour with parents, etc. Petitioner submitted a response to the said notice and sought the documents to enable her to file a detailed response. According to the Petitioner the documents were not supplied and vide letter dated 22.12.2017 last opportunity was given to file a reply to the Show Cause Notice, failing which Disciplinary Committee would proceed as per law.

7. Vide order dated 22.01.2018 suspension of the Petitioner was continued. Petitioner thereafter filed a suit for mandatory injunction before the Trial Court seeking directions to the School to supply the documents and materials as requested by her in the letter dated 12.10.2017.

8. A Memorandum of Charge was issued on 27.02.2018 and the same was communicated to the Petitioner vide letter dated 01.03.2018. As per the letter the School Management had found the reply of the Petitioner unsatisfactory and decided to initiate disciplinary proceedings. A Disciplinary Committee was constituted under Rule 118 of the DSEAR which, in its meeting held on 27.02.2018, framed the chargesheet under Rule 117(b) of the DSEAR. Petitioner was directed to submit the written statement of defence within 15 days as also to indicate if she desired to be heard in person. Petitioner sought time of one month to respond as the documents were voluminous. Vide letter dated 17.03.2018 Petitioner denied the allegations and sought statement of witnesses.

9. Vide order dated 25.07.2018 suspension was extended till 23.01.2019 or till further orders and the subsistence allowance was reduced. When the appeal was listed before the Division Bench on 12.10.2018, it was pointed out by the School that the Inquiry Officer had been appointed, whereupon Petitioner did not press the appeal. Petitioner, however, sought direction to conclude the inquiry expeditiously and the Court directed the Inquiry Officer to complete the inquiry within four months, leaving it open to the petitioner to raise all grounds in accordance with law as well as those raised in the appeal, before the Inquiry Officer.

10. The inquiry finally culminated into the charges being proved against the Petitioner and passing of a Termination Order dated 06.03.2020, which is assailed in the present petition. The order has been passed under Rules 120, 123 and 59 of the DSEAR. The period of suspension has been treated as period not spent on duty for all purposes. The order is assailed before this Court on several grounds from violation

of Section 8(2) to Rule 120 of the DSEAR as well as violation of principles of natural justice.

11. Mr. V. Balaji learned counsel appearing for Respondent No.1 as well as Mr. Kirti Uppal learned Senior Counsel for Respondent Nos. 2 to 4 have taken a preliminary objection to the maintainability of the present petition in this Court. It is argued that the challenge in the present petition is essentially to a Termination Order and for which the remedy available to the Petitioner is to approach the Delhi School Education Tribunal (hereinafter referred to as the 'Tribunal'). The contention is that there cannot be a doubt on the proposition that this Court under Article 226 of the Constitution of India has inherent powers to entertain writs even where alternative remedies are available and the law to this effect is well settled. However, while dealing with the specific issue of maintainability of a writ petition in case of dismissal, removal, etc. under Section 8(3) of the DSEAR, the Supreme Court in ***Shashi Gaur vs. NCT of Delhi and Ors., (2001) 10 SCC 445*** has categorically upheld the order of the High Court declining to entertain a writ petition in view of the alternative remedy before the Tribunal, in a case of termination, in view of the provisions of Sub-Section (3) of Section 8 of the DSEAR. It is submitted that the said judgment has not been overruled and still holds the field. In fact, the said judgment has been subsequently followed by several Benches of this Court and the Petitioners have been relegated to the remedy of Appeal before the Tribunal. In a nutshell the argument is that the remedy of the Petitioner is to challenge the impugned order only by way of an appeal before the Tribunal constituted under Section 11 of the DSEAR. Reliance is placed on the judgments of this Court in :

- (i) *Maharaja Agarsain Education Society and Ors. vs. Mithlesh Gupta and Ors. in W.P. (C) 2518/2012 and CM 5392/2012 decided on 30.09.2013.*
- (ii) *Daya Nand Adarsh Vidyalaya vs. Deepa Chibber & Anr. W.P.(C) 1009/2012 decided on 19.09.2013.*
- (iii) *Ritu Hooda vs. Directorate of Education and Ors. in W.P. (C) 4951/2020 and Pragya Gupta vs. Directorate of Education and Ors. in W.P.(C) 4201/2020, decided on 09.09.2020.*

12. Controverting the preliminary objection, counsel for the Petitioner vehemently argued that there is no merit in the preliminary objection and the petition is liable to be entertained. It is contended that the present petition has been filed under Article 226 read with Articles 14 and 21 of the Constitution of India and this Court has the jurisdiction to entertain it. Respondents have violated the fundamental and legal rights of the Petitioner. The order dated 20.07.2017 itself indicates that for similar allegations inquiries have been conducted three times against the Petitioner. Double jeopardy is strictly prohibited by Article 20 of the Constitution and the Court must protect the victimization and sufferings of the Petitioner.

13. It is argued that the present petition is the fourth petition by the Petitioner in this Court. The first petition was decided on 26.07.2017 against which the appeal was filed, which was decided on 12.10.2018 granting liberty to the Petitioner to raise all grounds before the Inquiry Officer. Since the earlier petitions were filed in this Court and also entertained by the Court, the present petition is maintainable. Elaborating

the argument, learned counsel contends that the Petitioner had also filed a petition seeking quashing of the Suspension Order and payment of subsistence allowance, which was also entertained by this Court and is pending. Thus, in effect the present petition is nothing but a continuation of the earlier petitions filed in this Court.

14. The next contention of the Petitioner is that the alternate remedy of appeal to the Tribunal is not effective and the Tribunal is not competent to entertain and adjudicate prayer (c) of the present petition which is a challenge to the vires of the DSEAR vis-a-vis CCS (CCA) Rules. It is argued that the jurisdiction of this Court can never be ousted by reason of any alternative remedy and it is a settled position of law that in three contingencies the writ petition under Article 226 of the Constitution is maintainable viz. (i) where the writ petition is filed for enforcement of fundamental rights; (ii) where there is violation of principles of natural justice; or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. According to the counsel for the Petitioner in the present case all the three conditions are fulfilled.

15. It is argued that the entire inquiry proceedings would reveal that there is violation of principles of natural justice as no fair opportunity was given to the Petitioner to defend herself. Provisions of the DSEAR were violated. The counsel for the Petitioner relies on the judgment of the Supreme Court in *Satwati Deswal vs. State of Haryana, (2010) 1 SCC 126* to contend that in the said case the Supreme Court had observed that the High Court had fallen in grave error in rejecting the writ petition on the ground that the petitioner had an alternate remedy of appeal before the Tribunal. Since the order of termination was found to have been issued

without any Show Cause Notice or without initiating any disciplinary proceedings and affording an opportunity of hearing, the Supreme Court held that the writ petition was maintainable, even if an alternate remedy was available. Reliance is also placed on the judgment of the Supreme Court in ***Mariammas Roy vs. Indian Bank, (2009) 16 SCC 187*** where again the Court held that even if an alternative remedy was available to an aggrieved party, a writ could be entertained, if there are violations of principles of natural justice, while passing the order impugned.

16. Counsel for the Petitioner emphasized that in ***Whirlpool Corporation vs. Registrar of Trade Marks, (1998) 8 SCC 1***, the Supreme Court has clearly held that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and can be exercised for enforcement of any fundamental right contained in Part-III of the Constitution as also for 'any other purpose'. The High Court has the discretion to entertain or not to entertain a writ petition and the alternative remedy cannot operate as a bar in three contingencies, which are mentioned therein. Counsel also relies on a passage from ***Mayank Babu Agrawal vs. State of U.P. and Ors., 2019 SCC OnLine All 4146*** where the Allahabad High Court entertained a writ petition despite availability of an alternate remedy of a statutory appeal under the Rules applicable in the said case and /or approaching the Administrative Tribunal.

17. Responding to the arguments of the learned counsel for the Petitioner, learned Senior Counsel for Respondent Nos.2 to 4 and learned counsel for Respondent No.1 submit that the judgment of the Supreme Court in ***Satwati Deswal (supra)*** is clearly distinguishable. In the said case the Court had found that there were violations of principles of

natural justice while the present case does not fall in any of the three categories which are exceptions to the Rule that a writ petition should not normally be entertained if there are alternative remedies. In the instant case all procedures have been followed. Inquiry Committee was properly constituted and opportunity was given to the Petitioner to prove her defence. More significantly the said judgment has not considered the earlier judgment in *Shashi Gaur (supra)* and since both are judgments of a Bench of equal strength, the latter judgment would be *per-incuriam*. It is further argued that a Coordinate Bench of this Court in *Arshpreet Kaur vs. Guru Teg Bahadur Polytechnic Institute and Ors., 2017 SCC OnLine Del 6761* has distinguished the case of *Satwati Deswal (supra)* on the ground that the said judgment only lays down a general proposition of law and where an alternate efficacious remedy exists, the writ Court should refuse to exercise its extraordinary jurisdiction under Article 226 of the Constitution.

18. I have heard the learned Senior Counsel for Respondent Nos.2 to 4 and the respective counsels for the Petitioner and Respondent No.1.

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.”

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. Relevant paras of the judgment are as follows :-

“5. Mr. Das, the learned senior Counsel appearing for the appellant, contends that Section 8(3) provides for an appeal

against an order of dismissal, removal or reduction in rank and not against any order of termination as is apparent from the provisions contained in Sub-section (2) of Section 8, which provides for obtaining prior approval of the Director before dismissal, removal or reduction in rank or otherwise terminating the services of an employee of a recognised private school. The very fact of absence of the expression "otherwise termination" available in Subsection (2) from the provisions of Sub-section (3) clearly demonstrates that against an order of termination which does not come within the expression "dismissal, removal or reduction in rank", the Legislature has not provided for an appeal to the Tribunal constituted under Section 11 of the Act.

*6. In support of this contention, the Counsel also placed reliance on Rule 117 Explanation, which indicates that replacement of a teacher who was not qualified on the date of his appointment by a qualified one, will not amount to a penalty within the meaning of the said Rule [see Explanation (c)]. The learned Counsel also placed before us the observations made by this Court in the case of *The Principal and Ors. v. The Presiding Officer and Ors.* MANU/SC/0046/1978 : [1978] 2 SCR 507 wherein this Court had observed that for applicability of the provisions of Section 11 two conditions must co-exist, namely, (i) that the employee should be an employee of a recognised private school and (ii) that he should be visited with either of the three major penalties, i.e., dismissal, removal or reduction in rank.*

7. This judgment and the interpretation put to the provisions of Subsections (2) and (3) of Section 8 undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but

otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Governmental authorities having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that availability of an alternative remedy out the jurisdiction of the Court under Article 226 of the Constitution.”

21. Relying on the judgment in ***Shashi Gaur (supra)***, a Coordinate Bench of this Court in ***Daya Nand (supra)*** held as follows :-

“3. So far as the first ground that an appeal is not maintainable before the Delhi School Tribunal is concerned, I may note that the Supreme Court in the case of Shashi Gaur Vs. NCT of Delhi, MANU/SC/2349/2000 : (2001) 10 SCC 445 has held that any and every removal of

a teacher/employee of a school has to be challenged by means of appeal which is to be filed before the Delhi School Tribunal.

4. In view of the aforesaid judgment of the Supreme Court in the case of Shashi Gaur (supra), in my opinion, there can be no doubt that once a teacher/employee of a school takes up a case that she has been illegally removed, this aspect very much falls within the jurisdiction of the Tribunal. The mere fact that in determining this issue the Tribunal has also to consider that whether or not the teacher or employee has resigned or not cannot mean that Tribunal will have no jurisdiction because it is only on arriving at a conclusion that there is no valid resignation, would thereafter the Tribunal arrive at a decision of illegal removal of a teacher/employee of a school. Surely, a teacher/employee who is illegally removed, will naturally approach the Tribunal as per the ratio of the Supreme Court in the case of Shashi Gaur (supra), and surely the defence which is laid out by the school to justify the action of the school would not mean that the issue will not remain that of removal of the teacher/employee from the school. In fact, it is reiterated that it is because of the assertion of the respondent no. 1 that she has been illegally removed from the school, and which case has been accepted by the Tribunal, that the impugned judgment has been passed in favour of respondent no. 1 and against the petitioner.”

22. In fact in the case of **Daya Nand (supra)** the Court was confronted with the question of maintainability of an appeal before the Tribunal where the Petitioner had resigned and even in that context the Court held that since resignation was one of the modes of cessation of service, it would be within the purview of the Tribunal under Section 8(3) of the Act to adjudicate the issue. In a recent judgment in **GD Goenka Public School and Ors. vs. Vinod Handa and Ors. 262 (2019) DLT 154**, a

Coordinate Bench of this Court has taken a similar view and relegated the Petitioner to the remedy of an appeal before the Tribunal, as the challenge was to an order of resignation.

23. In fact in **G.D. Goenka (supra)**, the Court has followed and applied the principles with respect to efficacious remedy as culled out in **Rajasthan SRTC v. Krishna Kant, (1995) 5 SCC 75** and observed that a teacher, whose relationship is severed with the School, should be permitted to agitate her grievance by following recourse to an expedient course of action under Section 8(3) of the Act rather than other modes which are more inexpedient and time consuming. The principles as culled out in **Rajasthan SRTC (supra)** are as follows:-

“35. (1) Where the dispute arises from general law of contract i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an 'industrial dispute' within the meaning of Section 2(k) or

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like the Industrial Employment (Standing Orders) Act, 1946 -- which can be called 'sister enactments' to the Industrial Disputes Act -- and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of the Industrial Disputes Act or where such enactment says that

such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

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(7) The policy of law emerging from the Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

24. This Court has recently in the case of **Ritu Hooda (supra)** taken a similar view where the challenge was to an order whereby the services of the Petitioners were discontinued on account of the recruitment process being declared void ab initio and one of the arguments raised was that the said order did not fall within the purview of the provisions of

Section 8(3) as the Petitioners were neither dismissed nor removed nor reduced to rank. Following the judgment of the Supreme Court in *Shashi Gaur (supra)* as well as the judgments of the Coordinate Benches, this Court had upheld the preliminary objection of the Respondents therein that the petitions were not maintainable and the appropriate remedy to the Petitioners was to file an appeal before the Tribunal, constituted under the DSEAR.

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.

26. The judgments relied upon by counsel for the Petitioner in my considered view are distinguishable on facts and cannot inure to his advantage. In *Satwati Deswal (supra)*, heavily relied upon by the Petitioner, the undisputed facts were that no Show Cause Notice was issued to the Petitioner and no departmental proceedings were held, giving opportunity of hearing to the Petitioner, before terminating her services. The writ petition was dismissed by the High Court on the ground that the Petitioner had an alternate remedy before the Tribunal.

The Supreme Court while examining the order of the High Court held as follows:-

“5. In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed without issuing any show cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the act were in question.”

27. The factors which weighed with the Supreme Court in holding that despite the availability of alternative remedy, the writ petition was maintainable, was that there was complete violation of principles of natural justice as well as violation of the statutory provision involved in the said case which required the holding of an inquiry by framing a definite charge before imposing the major penalty of termination. In such an extreme situation, the Supreme Court quashed the order of the High Court as well as the termination order giving liberty to the employer to initiate disciplinary proceedings, if they so desired. Relevant paras are as follows :-

“7. Such being the position and in view of the admitted fact in this case that before termination of the services of the appellant, no disciplinary proceeding was initiated nor any opportunity of hearing was given to the appellant. It is clear from the record that the order of termination was passed without initiating any disciplinary proceedings and without affording any opportunity of hearing to the appellant. In

that view of the matter, we are of the view that the writ petition was maintainable in law and the High Court was in error in holding that in view of availability of alternative remedy to challenge the order of termination, the writ petition was not maintainable in law.

8. Apart from that, on a cursory look of the statutory provision of the Constitution of the Parishad Working Committees, it would be clear that before imposing any major penalty against an employee, namely, an order of termination of service, an inquiry must be held in the manner specified in the statutory rules by which the disciplinary authority shall frame definite charges on the basis of allegations on which an inquiry shall be proposed and opportunity must be given to the employee to submit a written statement stating therein whether he/she desires to be heard in person and no order of termination also can be passed without the approval of the Managing Committee. On this count alone, therefore, the High Court was, in our view, in grave error in dismissing the writ petition of the writ petitioner.”

28. In the present case it is the case of the Petitioner herself that a Show Cause Notice was issued to the Petitioner followed by a Memorandum of Charge. Inquiry Officer was appointed who conducted the inquiry proceedings, in which the Petitioner participated. An inquiry Report was rendered by the Inquiry Officer and finally the Disciplinary Authority passed the impugned termination order. The facts of the present case cannot be therefore placed at the same pedestal as those in the case of **Satwati Deswal (supra)**. Additionally, it is also required to be noted that the Supreme Court in the said case did not consider the earlier judgment of the Court in **Shashi Gaur (supra)** and there is thus force in

the contention of the Respondents that the said judgment would be of no avail to the Petitioner.

29. In ***Mariamamma Roy (supra)***, the Supreme Court was examining the order of the High Court which had dismissed the writ petition on the ground of availability of an alternative remedy of appeal to the Petitioner, under the provisions of Recovery of Debts due to Banks and Financial Institutions Act, 1993. In the said case the admitted position was that before passing the impugned order no notice was served on the appellant and thus the Supreme Court finding that there was violation of principles of natural justice interfered in the matter and set aside the impugned order, remitting the matter back to the High Court. In ***Mayank Babu Agrawal (supra)*** the fulcrum of the argument of the Petitioner was that the charges framed against him were vague, unclear and did not disclose unambiguously the nature of allegations against him to enable him to defend herself effectively. A reading of the judgment clearly shows that the Court dealt at length with the law on issuance of chargesheet and posed a question if the charges were vague, indefinite/not precise i.e. beyond comprehension. This is evident from reading para 15 of the judgment which is as follows :-

“ The question that arises for determination is as to whether the disciplinary enquiry stands vitiated for non-compliance of the mandatory procedure contemplated in Rule 7 of Rules, 1999, and whether the charges are vague, not definite/precise i.e. beyond comprehension.”

30. In fact when the Respondent therein raised a preliminary objection with regard to the maintainability of the writ petition on the ground that

the Petitioner had an alternative remedy of a statutory appeal under the Rules for approaching the Tribunal, the Petitioner, in rebuttal, urged that the Petitioner was not raising any defence on merit but was only contending that taking the charges as they stood, it did not make out a case of misconduct, being vague and unclear. The Court keeping in view the vague and unambiguous chargesheet as well as having found as a matter of fact that the Petitioner was harassed, willfully and deliberately, with a pre-determined mind, concluded that in the given facts it would be a futile exercise to relegate the Petitioner to an alternate remedy and thus entertained the petition. In my view the facts involved in the two judgments are not even remotely close to the facts of the present case so as to persuade this Court to entertain the present petition.

31. In so far as the reliance of the Petitioner on the judgment in *Whirlpool Corporation (supra)* is concerned, suffice would it be to state that the said case related to a case where the Show Cause Notice issued by the Registrar of Trademarks under Section 56(4) of the Trade and Merchandise Marks Act, 1958 was challenged by way of a writ petition on the ground that the notice was wholly without jurisdiction. In that context the Supreme Court held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and not limited by any other provision of the Constitution. The High Court having regard to the facts of the case has the discretion to entertain or not entertain a writ petition. The Supreme Court, however, also observed that the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available the High Court would not normally exercise its jurisdiction. While examining the issue of

maintainability of a writ petition against an order of termination under the provisions of DSEAR, the Supreme Court in *Shashi Gaur (supra)* has categorically held that the remedy of an appeal before the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated rather than knock the doors of a Court under Article 226 of the Constitution, which is a discretionary remedy. The judgment in *Whirlpool Corporation (supra)* is thus of no avail to the Petitioner.

32. Coming to the argument of the learned counsel for the Petitioner that there are violations of principles of natural justice and the provisions of the DSEAR Act during the inquiry proceedings, suffice would it be to state that it would be certainly open to the Petitioner to raise all grievances regarding the conduct of the inquiry before the Tribunal. As far as the argument that the Petitioner has challenged the vires of CCS (CCA) Rules and therefore the petition is maintainable, is concerned, the said argument only deserves to be rejected. Counsel for the Petitioner during the course of the arguments had drawn the attention of the Court to the Report of the Inquiry Officer where in the opening paragraph of the Inquiry Report, there is a reference to the Inquiry Officer having been appointed under Rule 14 of the CCS (CCA) Rules. Taking advantage of the contents of this part of the Inquiry Report, counsel for the Petitioner has very ingenuously argued that the inquiry could not have been conducted under the CCS (CCA) Rules since the Petitioner was a Principal in a private aided school and an inquiry could only be held under the provisions of DSEAR.

33. I have carefully perused the entire Inquiry Report and but for a mention of Rule 14 of the CCS (CCA) Rules in paragraph 1, there is no

reference to the said Rules in any other part of the Report. Significant it would be to mention that admittedly the Termination Order impugned herein has been passed under Rule 120 of the DSEAR. Relevant para of the Termination Order is as under :-

“NOW THEREFORE in exercise of the powers conferred by Rule 120 of DSEAR 1973, undersigned terminate the services of Mrs. Sandhya Bindal, Principal (under suspension), Ramjas School Anand Parvat, New Delhi-110005 with immediate effect i.e. 06.03.2020.”

34. In this regard I may also refer to the Suspension Order dated 25.07.2017 issued under Section 24(3) of the DSEAR wherein it is categorically mentioned that the Directorate of Education has directed the Management of the School to take action against the Petitioner under Rules 115 and 117 and other connected provisions of the DSEAR, for breach of Code of Conduct as prescribed for the employees of private unaided schools under Rule 123 (1)(a) of the DSEAR. Relevant para is as under :-

“Whereas, the DOE has by the said order directed the management of school to take immediate action against Ms. Sandhya Bindal, School Principal under Rule 115 and 117 and other connected rules/provisions of DSEAR, 1973 for the breach of the Code of Conduct as prescribed for the employees of Private unaided Recognized schools of Delhi under Rule 123 (1) (a) of DSER, 1973 and to ensure that the school is being run strictly as per the provisions of DSER, 1973;”

35. The Memorandum of Chargesheet has been placed by the Petitioner on record. It is clearly mentioned in the Memorandum that the Managing Committee constituted a Disciplinary Committee under Rule

118 of the DSEAR and the Committee in its meeting held on 27.02.2018 framed a chargesheet under Rule 117 (b) of the DSEAR. I may also at this stage allude to an order dated 26.07.2017 passed by this Court in W.P.(C) 6354/2017 where the challenge by the Petitioner was to the order dated 20.07.2017. It was the stand of the Petitioner before the Court that the disciplinary proceedings were initiated against the Petitioner under the provisions of the DSEAR. It is thus obvious that the Petitioner has been all through aware of the fact that the disciplinary proceedings were instituted, continued and culminated under the provisions of the DSEAR and had no connection with the CCS (CCA) Rules. The Petitioner is only trying to take advantage of what may perhaps be called a typographical error by the Inquiry Officer, when he refers to CCS (CCA) Rules, in the first part of the Report. The argument of the counsel canvassed on the challenge to the vires of the CCS (CCA) Rules as a ground to entertain the present petition, in my opinion, is totally misconceived and deserves to be rejected at the outset.

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.

37. All pending applications are accordingly dismissed. No orders as to costs.

JYOTI SINGH, J

NOVEMBER 24th, 2020

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