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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Decided on : 22.07.2020**

\+ **W.P.(C) No.1608/2017**

RAJESH MATHEWS ....Petitioner

Through: Ms. Indrani Ghose, Advocate.

versus

MANANGING COMMITTEE, BLUEBELLS INTERNATIONAL SCHOOL, KAILASH & ORS......Respondents

Through: Mr. Rajinder Dhawan, Advocate with Mr.B.S.Rana, Advocate for R-1 & R-2.

Ms.Latika Chaudhary, Advocate for DoE.

CORAM:
HON'BLE MR. JUSTICE A.K. CHAWLA

J U D G M E N T

A.K.CHAWLA, J.

By the instant writ petition, the petitioner - hereinafter to be referred as 'Mathews', in effect, seeks issuance of a Writ of Mandamus for being released the entire amounts towards salary for the period he remained under suspension w.e.f 21.03.2011 till the date of his superannuation on 31.12.2016 for the post of TGT-Music with the respondent No.1 - Bluebells School International, in short ' the school'. Though, in the petition, Mathews has also vaguely averred for entire retiral benefits remaining payable to him by the school, no specific claim therefor is either stated in the writ petition nor pointed out during the course of hearing. Any reference thereto is therefore, not called for.

2. Relevant to the subject, the facts emerging from the record are that Mathews was initially appointed by the school as a primary teacher-Music on ad hoc basis in the year 1993. He was given regular appointment w.e.f. 01.10.1994. In the year 1995, he was promoted as TGT-Music to impart teaching to the students in Music - a part of the Cultural Department or the activities of the school. On 21.03.2011, he was put under suspension. He was served with a charge sheet in May, 2011 and a departmental inquiry ensued, which concluded with the submission of the inquiry report dated 05.11.2015 by the Inquiry Officer Sh.V.M.Dutta. It also transpires that from the date of suspension till the date of conclusion of the inquiry on 05.11.2015, Mathews had approached this Court a few times by way of diverse writ petitions. First of such actions by him was by way of W.P.(C) No.6588/2011 ***'Rajesh Mathews vs. Bluebells School (International) & Anr.'*** The said writ petition was dismissed as not

pressed on 07.10.2013 in view of the fact that the school was not a minority school. Then, by way of W.P.(C) No.8672/2011 ***'Rajesh Mathews vs. Director of Education & Ors.'***, Mathews sought change of the Inquiry Officer Sh.R.V.Saxena on the ground of bias. It was disposed of by the Court on 13.12.2011, when the school came forward to decide the representation dated 24.11.2011 made by Mathews relating to the change of Inquiry Officer and to not to proceed with the inquiry till the disposal thereof. It appears, thereafter, the Departmental Committee of the school without adverting to the merits of the allegations made for change of Inquiry Officer, appointed another Inquiry Officer Sh.V.M.Dutta. During the course of such proceedings, Mathews sought to substitute his Defence Assistant. Initially, he had appointed one Ms.Sushmita Mitra as his Defence Assistant. Later, he sought to appoint his wife Ms.Rita Mathews as his Defence Assistant, which the Inquiry Officer declined on the premise that Ms.Rita Mathews was neither an employee of the school nor had retired from the School. It resulted into fling of another W.P.(C) 632/2012 ***'Rajesh Mathews vs. Director of Education & Ors.'***. It appears, during the pendency of this writ petition, Mathews filed Cont. Case (C) No. 403/2012 'Rajesh Mathews vs. V.M.Dutta', when this petition was treated to be an application under

Section 151 CPC and a direction issued to the Inquiry Officer to not to proceed with the inquiry. On 07.10.2013, W.P.(C) 632/2012 came to be allowed by the ld. Single Judge. The school feeling aggrieved thereof, preferred LPA 856/2013 ***'Managing Committee & Ors. vs. Rajesh Mathews & Ors.'***. It was dismissed by the Division Bench on 18.11.2013 with the observations and the reservations provided thereunder. Thereafter, at some stage, the Departmental Committee amended the statement of imputation of Articles of Charges. On this, Mathews again approached the Court by way of W.P.(C) 5863/2015 ***Rajesh Mathews v. Managing Committee, Bluebells International School***. It was dismissed as withdrawn on 29.05.2015, with the liberty reserved to Mathews to extend challenge on merits in accordance with law at an appropriate stage. On the conclusion of the departmental inquiry, the Inquiry Officer submitted his report dated 05.11.2015. As per the inquiry report, most of the charges stood proved. Here, it may only be noted that amongst others Ms.Suman Kumar - the Principal of the school had appeared as one of the management witnesses in the inquiry proceedings. The inquiry report was served upon Mathews sometime in December, 2015. Mathews acknowledged the report thereof and on the indulgence given submitted his response dated 01.02.2016. In the response so given, Mathews inter alia raised objection as regards the Principal of the School having appeared as a witness in the inquiry proceedings and then being also a member of the Disciplinary Committee. In other words, the constitution of the Disciplinary Committee was put to question by Mathews adverting to Rule 118 of the Delhi School Education Act in short 'the Act, 1973' and The Delhi School Education Rules 1973, in short 'the Rules, 1973'. On this, the school sought the intervention of the Deputy Director of Education for associating HOS of another School in the Disciplinary Committee inasmuch as the inquiry report was pending evaluation before the Disciplinary Committee. For the purpose, the Deputy Director of Education, South-East was requested to nominate an HOS of his choice from any other School. To the similar effect, a few reminders were sent to him and thereafter, to the Director of Education, Directorate of Education by the School. Last of such communication on record addressed to the Director of Education is dated 07.12.2016. In the meantime, Mathews attained the age of 60 years as on 26.12.2016 and was retired from service w.e.f. 31.12.2016. Thus, premised on the inquiry report, no punishment came to be imposed on Mathews till his superannuation on 31.12.2016. The Disciplinary Committee in its meeting of 18.02.2017 took view that the charges stood proved against

Mathews and that, a punishment of 'c*ompulsory retirement from service'* should be awarded to Mathews, but, in view of the objections raised by Mathews that he had already attained the age of superannuation and stood retired from service from 31.12.2016, no punitive action could be taken against him. It therefore decided to refer the matter to the Managing Board of the School for consideration and advise. On the matter so referred, the Board in its meeting of 25.02.2017 *inter alia* took decision that Mathews was not entitled to any other and / or further payment other than the subsistence allowances paid to him for the period of his suspension till his superannuation i.e. 31.12.2016 and that, such period be treated as leave without pay. Mathews was served with Memorandum dated 17.05.2017 enclosing therewith a cheque no.074370 dated 17th May 2017 for Rs.6,74,585/- (Rupees Six Lacs Seventy Four Thousand Five Hundred Eighty Five Only) drawn on Bank of Baroda towards payment of Gratuity and another cheque no.006147 dated 17th May 2017 for Rs.30,856 (Rupees Thirty Thousand Eight Hundred Fifty Six Only) towards encashment of balance earned leave. By the instant petition, Mathews seeks entire amounts towards salary sans the subsistence allowance paid for the period of suspension primarily on the premise that the school had failed to conclude the disciplinary proceedings till the time of his superannuation on 31.12.2016 and thereby, the inquiry lapsed.

3. According to the School, Mathews was not entitled to any payment other than the subsistence allowance paid in view of the decision taken by its Managing Board on 25.02.2017. The school also attributes delay in conclusion of the inquiry to Mathews. According to the School, the inquiry could not proceed for almost two years from February, 2012 to December, 2013 on account of the diverse proceedings initiated by Mathews and the interim orders passed by the Court. In addition thereto, the school asserts that it was only on account of the objections raised by Mathews - for the Principal of the school having appeared as a witness in the inquiry proceedings, the matter was taken up with the Directorate of Education for nomination of Head of another school to be a member of the Disciplinary Committee but it did not evoke any response in spite of the repeated reminders dated 18.03.2016, 07.04.2016, 12.05.2016, 20.06.2016, 01.08.2016, 05.10.2016, 22.11.2016 and 07.12.2016. Here, it may only be noted that the respondent No.3 - Director of Education has not chosen to file any counter affidavit in the instant proceedings stating that it was only a *pro forma* party. Be that as it may, the school also points

out for having paid Mathews amounts towards gratuity and the encashment of the leave by way of cheques.

4. In the submissions of Ms. Ghosh, learned counsel for Mathews, the disciplinary proceedings having been not concluded before the superannuation of Mathews on 31.12.2016, in the absence of any statutory provision for its continuance post retirement, it lapsed and no action premised thereon could be taken. In support of such submissions, reliance is placed on ***Bhagirathi Jena vs. Board of Directors, OSFC and Ors. 1999 (3) SCC 666*** and ***Dev Prakash Tewari vs.U.P.Cooperative Institutional Service Board, Lucknow & Ors. (2014) 7 SCC 260***. In the submissions of Ms.Ghosh, once the delinquent employee - Mathews retired from service on 31.12.2016, no authority vested with the school to continue the disciplinary proceedings even for the purpose of imposing any penalty much less of reduction of any retiral benefits. In the strenuous submission of Ms. Ghosh, there was no provision in the Act, 1973 or the rules framed thereunder to continue the disciplinary proceedings against a non-employee of the school in as much as a disciplinary committee under Rule 118 can be constituted only for an employee rather than an outsider - an ex employee. As a sequel thereof, in her submission, the representation dated 23.01.2017 made by Mathews

to the Managing Board / Committee could not be considered by the disciplinary committee, which, according to her, had become redundant on the superannuation of Mathews. Adverting to Rule 59, it is also her submission that the scheme of management of recognized schools as provided thereunder was quite distinct from the disciplinary action (s) to be taken by the school against its employees through the disciplinary authority constituted under Rule 118. In view thereof, in her submissions, while the Board erred in sending Mathews representation to the disciplinary committee, the decision taken by the disciplinary committee in its meeting of 18.02.2017 to make its proposal to award the punishment of compulsory retirement from service and refer the representation dated 23.01.2017 of Mathews to the Managing Board for the consideration thereof, was not only without any authority or jurisdiction, it was violative of the statutory mandate of Rule 120 (1)(d) in as much as the disciplinary committee on its part on receipt of the inquiry report had not either recorded its own findings on the charges nor communicated its tentative decision to the Director of Education for his prior approval as provided for under Rule 120(1) (d) (iii) & (iv). In addition thereto, it is her plea than the decision taken by the Board was without jurisdiction and perverse irrespective of the fact that the disciplinary proceedings were continued after the superannuation of Mathews. In doing so, it comes to be pointed out that on 25.02.2017, when the Board took the decision that Mathews was not entitled to any other and / or further payment other than subsistence allowance paid to him for the period of his suspension till his superannuation on 31.12.2016 and that the period of suspension be treated as leave without pay, the Board met and dealt with only the representation of Mathews and nothing else. This comes to be pointed out to supplement the contention that the school authorities at all levels exhibited high handedness. Ms. Ghosh has thus submitted that Mathews was entitled to be paid the entire amounts towards salary for the period of suspension till 31.12.2016 and thereafter, till 30.04.2017 in view of Rule 110 (2) of the Rules, 1973 with the applicable 7th Pay Commission recommendations.

5. In the submissions of Mr.Dhawan, learned counsel for the school, the petition was wholly unmerited. In his submissions, the Inquiry Officer as also the disciplinary committee had found eight out of nine statements of imputations proved against Mathews and therefore, the Managing Board of the school was entitled to take the given facts into consideration while deciding the monetary claims sought by Mathews. According to him, the relevant rule for deciding the entitlement of petitioner's claim would be sub-rule (4) of rule 116 of the Rules 1973. In

the submissions of Mr. Dhawan though no punishment could be imposed on Mathews due to his retirement, in the absence of complete exoneration on all the charges level against him, it cannot be said that he was entitled to all his claims. It is his contention that when there exist circumstances and the material that the suspension of the employee was not wholly unjustified, the decision of the competent authority to not to pay the full pay and allowances for the period of suspension cannot be interfered with by the tribunal or the court. In support of such submissions, he places reliance on ***Union of India & Ors vs. K.V.Jankiraman & Ors. 1991 (4) SCC 109***; ***Greater Hyderabad Municipal Corporation vs. M.Prabhakar Rao (2011) 8 SCC 155***; ***State of Assam & Anr. vs. Raghav Rajgopalachari (1972) 7 SLR 44***; ***Brij Lal Bundel vs. State of Rajasthan & Anr. decided on 10.10.2006***. On the given aspect, it is thus his contention that the Managing Board of the school having considered the case of Mathews in the light of the judgments (supra) and having decided to not to grant any financial benefit to Mathews other than the subsistence allowance, such decision does not deserve interference. Also, in Mr. Dhawan's submissions, the delay in conclusion of the departmental inquiry was attributable to none else but Mathews in as much as he had filed diverse writ petitions. Placing reliance upon ***K.V.Jankiraman's case***

(supra), it is equally his submission that in the given facts and circumstances, Mathews was not entitled to claim full wages. It also comes to be contended that the departmental committee in meeting of 25.02.2016 decided to refer the matter to the Director of Education to appoint Head of another school to be its member in view of the comments / response dated 01.02.2016 given by Mathews to the inquiry report and in that regard only, the school had written letters to Director of Education from time to time. As for the validity of suspension of Mathews, in the submissions of Mr.Dhawan, it was valid in view of the judgment of the Division Bench of this court in ***Kathuria Public School vs. Directorate of Education (2005) 123 DLT 89*** though it came to be overruled later in ***Raj Kumar's case (supra)***. In the said context, it is also the contention of Mr. Dhawan that the challenge extended to suspension by way of W.P.(C) No.6588/2011 having not been pressed in as much as the said writ petition was dismissed as not pressed without any leave to Mathews to extend challenge thereto afresh, any challenge to the validity thereof, was hit by Order 2 Rule 2 as also Order 23 Rule 1(4) CPC inasmuch as the provisions of CPC have been held to be applicable to the proceedings under Article 226 in ***Teja Singh Vs. Union Territory of Chandigarh & Ors. AIR 1982 P&H 169***.

6. Before the court proceeds to advert to the pertinent questions of law inviting consideration, it would be desirable to take note of the undisputed facts on which the writ petition is founded.

7. The school is a private unaided school. Mathews was its regular employee w.e.f.01.10.1994. On the allegations of misconduct, he was put under suspension on 21.03.2011. He was served with the charge sheet in May, 2011. On the conclusion of departmental inquiry, inquiry officer submitted his report dated 05.11.2015. As per the report, most of the charges stood proved. Copy of the inquiry report was served upon Mathews in December, 2015, to which, Mathews submitted his response dated 01.02.2016 *inter alia* raising objection as regards the constitution of the disciplinary authority inasmuch as one of its members i.e. Head of the School - Mrs. Suman Kumar, the Principal had appeared as a witness in the disciplinary inquiry proceedings. On this, the Disciplinary Committee in its meeting of 25.02.2016 decided, as follows:

> *"Shri Mathews further stated, in his comments, that principles of natural justice were violated as the Principal was associated in the DAC despite being a management witness. However, no merit was found in his ground as the Principal had not been participating in the meetings of the DAC ever*

since she appeared as a Management Witness. She leaves the meeting after making her attendance.

Further, Principal of any school is not the sole authority in the DAC. The DAC comprises of five members and Principal of the school is one of the member of the DAC. The RTI referred in his comments by Shri Rajesh Mathews did not pertain to the school. Rule 118 of the DSEA&R prohibits inclusion of the HOS (Principal) only in cases where the proceedings against HOS itself.

The DAC further observed that till now the DAC had dealt with only allied matters and representations of the CO after issue of the Charge Sheet. The DAC had yet to evaluate the inquiry report vis a vis comments of the CO. Hence no evaluation of inquiry record had taken place till date and no prejudice had been caused to the CO.

However, in view of the above reference made by Shri. Mathews, on the basis of a RTI reply by the Directorate of Education pertaining to some other school, the DAC decided to seek clarification from the Directorate of Education and to seek nomination of an HOS from the Directorate of Education in case such rule / direction exists."

8. The foregoing minutes of the Disciplinary Committee disclose two factual aspects clearly. One, no evaluation of the inquiry report was done by the Disciplinary Committee till then. Secondly, on that day, it only decided to seek clarifications from the Directorate of Education and seek nomination of an HOS, if, any rule / direction existed. In pursuance thereof, many reminders are stated to have been sent by the school but

without evoking any response thereto. The undisputed fact however remains that till the date of superannuation of Mathews on 31.12.2016, the disciplinary committee - assumingly, a valid and duly constituted disciplinary authority, neither evaluated the inquiry report nor any action(s) of any kind came to be taken against Mathews by any competent authority. It transpires that on 18.02.2017, the same very disciplinary committee, which had refrained to evaluate the inquiry report and take any decision on 25.02.2016, proceeded to look into everything and took decisions after the superannuation of Mathews. Relevant to the context, the minutes of the meeting of the Disciplinary Committee dated 18.02.2017 read, as follows:

> *" BLUEBELLS SCHOOL INTERNATIONAL*
> *KAILASH, NEW DELHI 110048*
>
> *Disciplinary Committee Meeting held on Saturday, the 18the February, 2017, at 11.30 a.m. in the School premises.*
>
> ***<u>Present</u>**:*
>
> *1. Dr.A.Sankara Reddy, Chairperson.*
>
> *2. Mrs.G.Soni, Manager.*
>
> *3. Mrs.Suman Kumar, Principal (left after marking attendance)*
>
> *4. Dr.J.C.Yadav, DDE-Zone-25, Director of Education, Delhi.*

5. Mrs.Nisha Mendiratta, Teachers' Representative.

Proceedings

The Chairperson welcomed the members. Mrs. Suman Kumar, Principal, of the School. sought permission to leave the meeting as she had appeared as a witness in the inquiry held against Shri Rajesh Mathews. Permission was granted and accordingly, Mrs.Suman Kumar, Principal, left the meeting.

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The Director of Education neither confirmed issuance of any such directions nor any other Head of the School was nominated by the Authorities. In fact the Directorate of Education did not respond to the said letters. ....

Accordingly, DAC examined the findings of the Inquiry Officer as well as comments of Shri Rajesh Mathews, on each statement of imputation.

After consideration of all the facts on record and Mr.Rajesh Mathew's comments thereon, the members of the DAC were of the unanimous view that the findings of the Inquiry Officer in respect of each statement of imputation are based on evidence. DAC further noted that issues raised by Shri Mathews in his comments already had been discussed in detail by the Inquiry Officer in his Inquiry Report. DAC is further of the view that the findings of the Inquiry Officer are based on logical reasoning and justified grounds. As such the DAC agrees with the findings of the Inquiry Officer on allegations mentioned in para 2 to 10 of Statement of Imputation (annexed to the charge sheet) and hold that eight out of nine statement of allegations as mentioned in Inquiry Officer's Report against Shri Rajesh Mathews had been proved.

DAC also agrees with the Inquiry Officer that the allegations mentioned in para 5 of the Statement of Imputation had not been proved. DAC further agrees with the Inquiry Officer that the allegations proved in the inquiry against Mr.Mathews, amounts to commission of misconduct mentioned by the Inquiry Officer in his report and contained in Statement of Article of Charges annexed with the charge sheet.

In view of the charges proved against Mr.Mathews DAC proposes to award the punishment of : "Compulsory Retirement From Service".

The Chairperson of the DAC informed the Committee that Mr.Rajesh Mathews had submitted a representation dated 23rd January, 2017, a copy whereof was placed on record. DAC noted that Shri Mathews had raised amongst others issue that he already had attained the age of superannuation and stood retired from the service of the school form 31st December, 2016 and, therefore, no punitive action could be taken against him.

After discussions, DAC decided that the matter be referred to the Managing Board of the School to consider the same and advise DAC accordingly.

....

...."

9. It emerges that in view of the foregoing decision of the disciplinary committee , the Managing Board of the school met on 25.02.2017 and *inter alia* decided as follows:

"m) DAC also took into consideration representation dated 23rd Jan 2017 of Shri Mathews. DAC proposed to impose the punishment of 'Compulsory Retirement

from Service' but in view of Shri Mathews attaining the age of superannuation on 26th December, 2016, DAC decided to refer the matter to the Managing Board of the School to decide as to whether punishment could be imposed on Shri Mathews under the circumstances. Representation dated 23rd Jan 2017 from Shri Mathews was also forwarded to the Managing Board for consideration.

n) Shri Mathews in his representation dated 23rd January 2017 had stated that he had attained the age of 60 years on 26t December, 2016 and therefore, he stood retired from service w.e.f.31st December, 2016 and as such no punishment could be imposed on him.

o) The Board further noted that Shri Mathews had relied upon some judgments of the Hon'ble Supreme Court in support of his said contention. Shri Mathews had requested that he should be paid salary for the entire period of suspension after deducting the subsistence allowances.

p) The Board took into consideration the aforesaid facts and circumstances of the case and resolved that in view of the retirement of Shri Rajesh Mathews, the School is unable to impose any punishment on him, in spite of the findings of the Inquiry Officer which were accepted by the DAC and which proposed to impose punishment of 'Compulsory Retirement from service'.

Further, as eight out of nine charges stand proved against Shri Rajesh Mathews, it was resolved by the Managing Board that 'Shri Rajesh Mathews is not entitled to any other and / or further payment other than subsistence allowance which was paid to him for the period of his suspension till his superannuation i.e. 31st December 2016 and that the period of suspension be treated as Leave without Pay.

....

....

r) The Managing Board also took consideration contention of Shri Mathews in his representation dated 23rd Jan 2017 that in view of proviso of Rule 110(2) of the Delhi School Education Rules, 1973, he is entitled to re-employment till 30th April, 2017.

The Board considered the aforesaid request of Shri Mathews and decided that the proviso to Rule 110(2) would not be applicable in the instant case as Shri Mathews was under suspension and that his retirement had not resulted in disturbance / distraction of studies of the students during the remaining period of current academic session. The Managing Board, therefore, did not accept the request of Shri Mathews for his re-employment.

s) With regard to request of Shri Mathews in his representation for extending him benefit of MACP, it was noted by the Managing Board that Shri Rajesh Mahews was appointed in regular service w.e.f. 1st October, 1994 in the pay scale of Rs.1200-2040 (Primary Teacher Scale as per IV Pay Commission) and he was subsequently promoted to the next higher scale of pay of Rs.5500-9000 (TGT Teacher Scale as per V Pay Commission) w.e.f.1st January, 1995. As such, he had not completed requisite number of years of service till his suspension in March 2011 and, therefore, was not eligible for such benefit. The Board, therefore, resolved that Shri Mathews is not eligible for any further benefit of MACP Scheme.

t) Request made by Shri Mathews, in his representation dated 23rd Jan 2017, for fixation of his pay as per the 7th Pay Commission was also considered.

The Board noted that School had not taken a decision with regard to the implementation of the 7th Pay Commission in view of circular being Circular No.DE-15/PSB/Misc/2016/33 dated 06/01/2017 issued by the Competent Authority directing schools *not to hold any meeting of the Managing Committee regarding increase in the fee for the session 2017-18 as the modalities of implementation of VII pay commission Rules were being worked out and till a decision is taken in this regard by the competent authority. In view of the above, the said request would be considered by the Managing Board only after the School implements recommendations of 7th Pay Commission and in accordance with the provisions / rules of the same."*

10. Whether the foregoing decision of the Managing Board is sustainable in law is much agitated by Mathews.

11. Section 5 and Rule 59 when read conjunctly with Rule 98 do suggest that the Managing Committee of a recognized private school is the superior authority to the disciplinary authority provided for under Rule 118. The Rules, 1973 do speak in that direction. In this regard, in retrospect, let us look at Section 5 of the Act, 1973, where-under, the Rules, 1973 have come to be framed. Section 5 reads, as follows:

"5. Scheme of management - 1) Notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any such law, the managing committee of every recognized school shall make, in accordance with the rules made under this Act and with the previous approval of the appropriate authority, a scheme of management for such school:

Provided that in the case of a recognized private school which does not receive any aid, the scheme *of management shall apply with such variations and modifications as may be prescribed:*

Provided further that so much of this sub-section as relates to the previous approval of the appropriate authority, shall not apply to a scheme of management for an unaided minority school.

(2) A scheme may be made, in like manner, to add to, vary or modify any scheme made under sub-section (1)."

12. A bare perusal of Section 5 makes it clear that the Managing Committee of the school is constituted to make a scheme of management of the school in accordance with the rules made under the Act, 1973. The rules so framed under the Act, 1973 are none else but the Rules, 1973 which are statutory and binding.

13. As per Rule 98 of the Rules, Managing Committee is the appointing authority of every employee of a school which would include teachers. Relevant to the context, the scheme of management of the recognized school *inter alia* is required to provide for managing committee to have control over appointments, disciplinary action etc. Rule 59 (2)(e) in that respect stipulates, as follows:

"59. Scheme of management of recognized schools ..

....

....

2) The scheme of management shall also provide for the following, namely:-

....

....

(e) ***the duties, powers and responsibilities of the managing committee****, which shall* ***include control over appointments****,* ***disciplinary action****, and control on staff, and shall also provide that no financial irregularity is committed or any irregular procedure is followed;*

....

.... "

14. Though, the school on its part has failed to place before the court the scheme of management to be made by the Managing Committee in consonance with the requirements laid down under Rule 59, the fact remains, the Rules, as observed to earlier, are statutory and binding and therefore , what is provided for under Rule 59, has to prevail over anything else.

15. Rule 59 (2) (e) in no uncertain terms lays down the duties, powers and responsibilities of the managing committee to not only include the control over appointments but the disciplinary action as well. The scope of powers and the responsibilities of the managing committee under this rule is certainly wider. In effect, it is in the nature of supervisory

authority invested with the jurisdiction to intervene even in the case of a disciplinary action, which may be an outcome of the disciplinary proceedings conducted by a disciplinary authority. In exercise of such power, as per subject rule, the managing committee is empowered to even look into the procedure followed by the Disciplinary Authority being regular or not. There is nothing in Rule 59, which imposes any restriction in exercise of such powers by the managing committee. The vesting of such power (s) with the managing committee, in the considered opinion of the court, is well intended and to be exercised, as and when a situation warrants. The expression "*control over appointments, disciplinary action*, ... " used in Rule 59 (2)(e) by itself signifies that. In the Oxford's dictionary, the word 'control' *means "1. the act or power of directing or regulating; command, regulating influence. 2. The action of holding in check; restraint; self-restraint; prevention of the spread of something unwanted .... "*. Such meaning of the word 'control' when read in the context it is used, leaves no doubt that the power invested in the managing committee by virtue of Rule 59(2)(e) is supervisory, being the superior authority.

16. In ***Kathuria's case (supra)*** (para 38), the Division Bench of this court had observed that the ultimate power vests with the managing

committee and that the constitution of the disciplinary authority does not in any manner take away the powers of the managing committee to take necessary action in the matters of discipline relating to teachers and employees. In ***Raj Kumar's case (supra)***, the Supreme Court actually dealt with the validity of the statutory provisions rather than the interpretation thereof.

17. In ***Bhagirathi Jena's case (supra)*** relied upon by Ms.Ghosh, the Supreme Court with regard to the question of continuance of the disciplinary inquiry for the purpose of reduction of retiral benefits payable to an employee of Orissa Financial State Corporation and the applicable staff regulations, observed as under:

> *"6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.*
>
> *7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the applicant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from*

retiral benefits. Once the appellant had retired from service on 30.06.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

18. In ***Tiwari's case (supra)***, the Supreme Court reiterating the ratio of the judgment in ***Jena's case (supra)***, held as under:

" 8. Once the appellant had retired from service on 31.03.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.

9. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and up to the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him.

10. The appeals are, therefore, allowed and the judgment and the order of the High Court are set aside and the respondents are directed to pay arrears of salary and allowances payable to the appellant and also to pay him his all the retiral benefits in accordance with the rules and regulations as if there had been no disciplinary *proceeding or order passed therein. No costs."*

19. In ***Jena's*** and ***Tiwari's cases,*** the Supreme Court clearly laid down that in the absence of any authority vesting with the employer / Inquiry Officer to continue the disciplinary proceedings after retirement / superannuation, the enquiry lapses and the charged employee would be entitled to get the full retiral benefits on retirement. As for the salary and allowances payable for the period of suspension up to the death of superannuation, in ***Jena's case***, the Supreme Court also held as under:

> *10. The appeals are, therefore, allowed and the judgment and the order of the High Court are set aside and the respondents are directed to pay arrears of salary and allowances payable to the appellant and also to pay him his all the retiral benefits in accordance with the rules and regulations as if there had been no disciplinary proceeding or order passed therein. No costs."*

20. Pith and substance of the submission of Mr.Dhawan to negate the application of the foregoing law revolves around sub-rule 4 of Rule 116. Rule 116 pertains to payment of subsistence allowance to an employee under suspension and the sub-rule (4) thereof, provides as under:

> *"116. Subsistence Allowance*
>
> ....

....

4) Where a suspended employee is exonerated after disciplinary proceeding or where any criminal prosecution against a suspended employee ends with an honourable acquittal the salaries and allowances of such employee minus the subsistence allowance received by him shall be paid to him from the date on which he was suspended."

In the submission of Mr.Dhawan, in the case of a suspended employee, he is entitled to the salaries and allowances minus the subsistence allowance already received only in a case where such an employee comes to be exonerated after disciplinary proceedings or the criminal prosecution against him comes to an end with honorable acquittal and not in any other case. In other words, in a case, where there is no exoneration or honorable acquittal, the competent authority, which in the instant case would be the managing committee, could form an opinion that the suspension was not wholly unjustified and therefore, the employee was not entitled to any further payment and that, such decision is not open to interference by a tribunal or court. In support of such submission, Mr.Dhawan places reliance on the judgment of the Supreme Court in ***K.V.Janakiraman's case*** and in para 26 whereof, it was observed and held as under:

" 26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an

> *employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with penalty even of censure, he has to be given the benefit of salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary / criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary / criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests........"*

21. In Greater Hyderabad's case, the Supreme Court reiterated the views expressed in ***K.V.Jankiraman's case*** while dealing with the scope of F.R.54(B)(3) of Andhra Pradesh Fundamental Rules. Similar was the position in ***State of Assam's case*** wherein the Supreme Court had dealt with the scope of F.R.54 of the Assam Fundamental Rules. In ***Brij Lal's***

case dealing with the scope of Rule 54(1) of the Rajasthan Higher Judicial Service (RHJS) held that under the said rule, a member of RHJS becomes entitled to sentence of annual increment (s) falling due during the suspension period - whether he has been fully exonerated or not and the suspension has been held to be wholly unjustified or not - unless the punishment of withholding of increment is imposed on him in accordance with the relevant provisions of the CCA rules. All these are the cases where the discretionary or criminal proceedings have had their full course and concluded with the result of exoneration or honorable acquittal, which had attained finality. On facts, the instant case of Mathews is quite distinct. In this case, Mathews pertinently extends challenge to not only the validity of the disciplinary proceedings but also the conclusions founded thereon after his superannuation. These issues, were much agitated by Mathews in his representation dated 23.01.2017, which he had made to the Managing Board; which, it appears, the Managing Board in its wisdom sent to the disciplinary authority for consideration rather than looking into it by itself and form its own independent opinion. The minutes of the meeting of the Managing Board dated 25.02.2017 by itself also show that neither the disciplinary authority nor the board on its part, actually have had any objections or the divergence of opinion with the pleas agitated by Mathews. Fact also remains, the Managing Board / Committee on its part did not record its reasons for agreeing or disagreeing with or modifying the decision taken by the disciplinary authority assuming, it was sustainable in law.

22. Substantively, the Board in its meeting on 25.02.2017 decided as under:

> *"p) The Board took into consideration the aforesaid facts and circumstances of the case and resolved that in view of the retirement of Shri Rajesh Mathews, the School is unable to impose any punishment on him, in spite of the findings of the Inquiry Officer which were accepted by the DAC and which proposed to impose punishment of 'Compulsory Retirement from service'.*
>
> *Further, as eight out of nine charges stand proved against Shri Rajesh Mathews, it was resolved by the Managing Board that 'Shri Rajesh Mathews is not entitled to any other and / or further payment other than subsistence allowance which was paid to him for the period of his suspension till his superannuation i.e. 31st December 2016 and that the period of suspension be treated as Leave without Pay."*

The foregoing decision by itself discloses that it was founded on the disciplinary proceedings - which lapsed and nothing else. In other words, it came to be passed in the absence of any disciplinary action. In the given situation, justifying suspension on the basis of an inquiry report, which did not reach its logical end, would necessarily imply circumventing the well established norms of the procedure and the law. Permitting so would be violative of the principles of natural justice and in violation of the ratio of the judgment of the Supreme Court in ***Jena's case***. Even otherwise, the foregoing decision of the Managing Board is arbitrary. While such decision to treat the period of suspension as leave without pay does not fall within the scope of Rule 117 prescribing the penalties which may be imposed upon an employee of a recognized private school, it also has the effect of setting to winds the purpose and the objective of payment of subsistence allowance to an employee facing the disciplinary proceedings, which in the given case, never fructified. What was the justification for immediate suspension of Mathews on 21.03.2011 and to continue his suspension on serving charge sheet on him in May, 2011 and then, continue it till his superannuation on 31.12.2016 without any review thereof at any stage, the minutes of the board meeting of 25.02.2017 are equally silent. In this regard, nothing emerges from the record nor has come to be pointed out during the course of hearing or in the written submissions filed. The mere fact that Mathews had initially challenged his suspension by way of a writ petition which was not pressed later, did not absolve the competent authority of due application of its mind to consider the validity of suspension. A contention raised by Mr.Dhawan placing reliance on ***Teja's case*** that the instant writ petition or the relief sought thereby, was hit by Order 2 Rule 2 or Order 23 Rule 1(4) CPC, the Court has no hesitation to say, is wholly misconceived and meritless, as least, in the given case. Outrightly, it may be observed that it is the school, who seeks to justify suspension to deny full salary and allowances rather than Mathews - the petitioner. Then, the jurisdiction of the High Court under Article 226 is unfettered to be exercised in its discretion where required rather than being constrained by the technicalities of procedure. Contentions raised to the contrary are therefore rejected. In view of the foregoing, the court has no hesitation to conclude that the refusal of the school to remit full pay and allowances to Mathews for the period of suspension till his superannuation on 31.12.2016 is not justifiable and cannot be sustained.

23. Though, adverting to proviso to sub-rule 2 of Rule 110 Ms.Ghosh has also submitted that the retirement age of Mathews should be treated to be 30.04.2017 instead of 30.12.2016, her such submission is ill founded. Rule 110 prescribes the age of retirement of employees and that of teachers, laboratory assistant, librarian, Principal or Vice Principal to be 58 years and 60 years respectively. It is the proviso attached to sub-rule (2), which provides for re-employment, as under:

2) Notwithstanding anything contained in sub-rule (1), every teacher, laboratory assistant, Librarian, Principal or Vice-Principal employed in such school shall continue to hold office until he attains the age of 60 years.

Provided that where a teacher, Principal or Vice-Principal attains the age of superannuation on or after the 1st day of November of an year, such teacher, Principal or Vice-Principal shall be re-employed upto the 30th day of April of the year immediately following."

24. A plain reading of the foregoing proviso makes it clear that its scope, object and the purport is to satisfactorily provide for re-employment in a given case for the benefit of the students rather than the teachers. The objective of such provision is to ensure that the education of the students does not suffer on account of absence of the teacher rather than for the benefit of the teachers for the purposes of their employment after superannuation. In the factual conspectus of the instant case, the purported claim towards re-employment and the financial benefits arising therefrom, is wholly misconceived and is rejected.

25. In view of the foregoing, the writ petition is granted partially with the direction to the respondent No.1 to pay the arrears of salary to the petitioner from the date of his suspension till his superannuation on 31.12.2016 with interest at the rate of 6 per cent per annum within four

weeks from today, failing which, the interest payable on the arrears shall be at the rate of 9 per cent per annum. Writ petition stands disposed of accordingly. No order as to costs.

A.K.CHAWLA, J.

JULY, 22, 2020/dm