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

+ **W.P.(C) 4115/2018 and CM Appl. 16216-17/2018**

CENTRAL BOARD OF SECONDARY EDUCATION Petitioner

Through: Mr. M. A. Niyazi and Mr. Kirti
Jaswal, Advocates.

versus

BABITA SINGH AND ANR. Respondents

Through: Mr. A. K. Behera and Mr. A. P.
Singh, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **28.01.2020**

1. On the first date of hearing of this petition, the following order was passed:

“The petitioner is aggrieved by the order dated 22.03.2018 passed by the Central Administrative Tribunal allowing O.A. No.62/2018 filed by the respondent No.1, who had prayed for quashing of the order dated 15.03.2017 passed by the CBSE declining to furnish her documents as requested, as also the termination order dated 30.03.2017.

2. By the impugned order, the Tribunal has quashed and set aside the Memoranda dated 15.03.2017 and 30.03.2017 issued by the petitioner/CBSE. Further, the petitioner has been directed to reinstate the respondent No.1 in service within two weeks from the date of the passing of the order along with back wages, without any interest thereon. Lastly, the Tribunal has granted the petitioner liberty to take appropriate action as per law for any alleged misdemeanour on the part of the respondent

No.1 by following the principles of natural justice and by conducting disciplinary proceedings in terms of the extant rules.

3. Mr. Niyazi, learned counsel for the petitioner states that the petitioner has no objection to reinstating the respondent No.1 by initiating disciplinary proceedings against her in accordance with law but she is not entitled to any back wages in view of the nature of allegations levelled against her, which are of a serious nature. He further states that petitioner has served the copy of the paper book directly on the respondent No.1. However, none is present on her behalf.

4. Issue notice to the respondents on the petitioner filing process fee within one week, by ordinary process and speed post, returnable before the Registrar on 06.08.2018, for completion service and pleadings. Notice shall also be issued to the counsel appearing for her before the Tribunal.

5. Without prejudice to its right, the petitioner shall reinstate the respondent No. I. Upon reinstating the respondent No. 1, the petitioner shall be entitled to initiate disciplinary proceedings against her including passing an order of suspension, if so advised, in accordance with the extant rules. However, the order of back wages shall remain stayed.

6. List in Court on 14.01.2019.

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2. Learned counsel for the Petitioner states that the inquiry is at an advanced stage and final orders are likely to be passed within a week.

3. Learned counsel for the Respondent No. 1 states that she is being paid suspension allowance from 17th May, 2018 onwards at 50%.

4. The question that now arises for determination is what order is required to be passed in lieu of the direction in the impugned order of the CAT that upon re-instatement the Respondent No. 1 should be paid full back wages?

5. Learned counsel for the Petitioner has drawn the attention of the Court to Rule 10 (4) of the Central Civil Services (Classification, Control, and Appeal) Rules, 1965 [‘CCS (CCA) Rules’] which reads as under:

“(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.”

6. Learned counsel for the Respondent No. 1 submits that the above rule will not apply since the words used therein are “dismissal” and “removal”, whereas, in the present case, the impugned order that was set aside by the CAT ‘terminated’ the services of the Respondent No. 1.

7. The Court is of the view that the cessation of the services of the Respondent No. 1 was brought about by either dismissal or removal.

Keeping in view the fact that such termination has been set aside by the CAT and a fresh inquiry has since been completed, it matters little whether such 'termination' should be construed as dismissal or removal. Therefore, given that there has been a cessation of the services of the Respondent No. 1 and the fresh inquiry concluded, the Court sees no reason why Rule 10 (4) of the CCS (CCA) Rules should not apply.

8. Accordingly, it is directed that, in substitution of the impugned order of the CAT directing the payment of full back wages to the Respondent No. 1, the Petitioners are directed to compute and pay to the Respondent No. 1 the suspension allowance for the period between 30th March, 2017 and the date of the conclusion of the fresh inquiry proceedings, calculated in terms of Fundamental Rule 53 within a period of eight weeks from today, after adjusting the amount already paid. It is made clear that this payment shall be made irrespective of the outcome of the fresh inquiry proceedings.

9. The petition is disposed of in the above terms. Pending applications are also disposed of.

10. Copy of the order be given *dasti* under the signatures of Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 28, 2020

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