



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: July 18, 2022

+ W.P.(C) 10050/2021, CM APPL. 31006/2021

THE MANAGING COMMITTEE OF THE PINNACLE
SCHOOL

..... Petitioner

Through: Mr. Rakesh Khanna, Sr. Adv. with
Mr. Kartickay Mathur and
Mr. Himanshu Bhandari, Advs.

versus

DIRECTORATE OF EDUCATION & ANR. Respondents

Through: Mr. Anuj Aggarwal, ASC with
Ms. Ayushi Bansal, Ms. Sanyam Suri
and Ms. Aishwarya Sharma, Advs.
for R-1
Respondent No.2 in person.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed with the following prayers:-

“In view of the facts and circumstances and in the interest of justice, it is therefore, most respectfully prayed that the present writ petition be allowed and the impugned order dated 09.07.2021 passed by Shri Dilbag Singh Punia, Presiding Officer, Delhi School Tribunal, Lucknow Road, Timar Pur, Delhi- 110054 in Appeal Case No. 73 of 2013 titled as Mrs. Bindu Khanna Vs. Managing Committee, The Pinnacle School, may be quashed.

Any other order this Hon'ble Court feels appropriate in the facts of the case may also be passed in favour of the



Petitioner school and against the Respondents”

2. The challenge in this petition is to the order dated July 09, 2021 passed by the Delhi School Tribunal in Appeal No. 73 of 2013, setting aside the order bearing No. TPS/Adm/BK/2013/1104 dated July 29, 2013 passed by the Disciplinary Action Committee (‘DAC’, for short) of the petitioner, i.e., The Pinnacle School, Delhi, whereby the respondent No. 2 herein was removed from service.

3. At the outset, I may provide a brief factual background as averred in the petition. It is the case of the petitioner that the respondent No.2 was appointed as a TGT by the petitioner school on January 06, 1994 and was subsequently promoted as PGT on April 01, 2006. On April 22, 2010, she was suspended by the Management of the petitioner school on account of indiscipline, misbehaviour with colleagues, students, etc. and on various other serious grounds. The Managing Committee in its meeting held on July 07, 2010 constituted a DAC as per provisions of the Delhi School Education Act, 1973 and the Rules framed there under (collectively referred to as “DSEAR” hereinafter). The DAC comprised of the following members:-

- i. Wg. Cdr. R. Demonte, Chairman
- ii. Mr. K. K. Batra, Manager of the School
- iii. Mr. M. K. Sethi, Government Nominee
- iv. Mrs. Gail Demonte, Principal of the School
- v. Mrs. Rita Sinha, Teacher Representative
- vi. Education Officer, Zone 25

4. On September 29, 2010, the DAC held its meeting and



discussed the charges with respect to respondent No.2 and resolved to authorise the Chairman of the School Managing Committee to issue the charge sheet. The charge sheet was issued on the same day and sent to the respondent No.2 through speed post as well as registered A.D. The respondent No.2 replied to the charge sheet on October 14, 2010 denying the charges. The DAC held its meeting on October 20, 2010 and after considering the reply, decided to place the same before the Managing Committee for further action. The Managing Committee in its meeting held on October 21, 2010 appointed Sh. S. K. Bhatnagar, Advocate, as the Inquiry Officer.

5. The Inquiry Officer, after initiation of inquiry proceedings *vide* letter dated November 10, 2010 communicated to the respondent No.2 that the first date of inquiry was fixed on November 16, 2010. However, the respondent No.2 in her letter dated November 14, 2010 addressed to the Managing Committee sought an adjournment on medical grounds. The Managing Committee *vide* letter dated November 18, 2010 informed the respondent the next date of inquiry and also directed her that all future correspondence may be done by her directly to the Inquiry Officer. The respondent No.2 did not appear before the Inquiry Officer even on the next date of hearing and in her letter dated November 27, 2010 objected to the appointment of Sh. S. K. Bhatnagar as an Inquiry Officer on the ground that the DSEAR does not provide for an outsider or a person who is not an educationalist to be appointed as an Inquiry Officer. After due consideration, the Inquiry Officer rejected the said objection stating that the DSEAR does not prohibit the appointment of an Advocate as



an Inquiry Officer. He further assured that all the principles of natural justice would be adhered to and both parties would be given equal opportunities to present their case. The Presenting Officer of the petitioner school requested that in view of the absence of the respondent No.2 in the proceedings, she be proceeded as *ex parte*. However, the Inquiry Officer granted the respondent No.2 another opportunity to appear and adjourned the matter further. However, even on the next date of hearing the respondent No.2 failed to appear. The Inquiry Officer again took a lenient view and granted further time for the respondent to appear and present her case. He also directed that the documents before him along with the list of witnesses to be sent to respondent No.2 so as to enable her to prepare her defence. She was also granted the opportunity to file her written statement and it was made clear that if she fails to appear on the next date of hearing, she be proceeded *ex parte*.

6. On December 18, 2010, respondent No.2 remained absent and as a result she was proceeded *ex parte* and the proceedings were adjourned to December 20, 2010 for recording *ex parte* evidence. The Inquiry Officer even after recording *ex parte* evidence, granted yet another opportunity to the respondent No.2 to cross examine the witnesses of the Management. As no response was received in this regard, the Inquiry Officer continued with the inquiry proceedings and filed his report on January 29, 2011 holding the respondent No.2 guilty of all charges.

7. On February 19, 2011, in the meeting of DAC it was decided that a copy of the Inquiry Report along with the action proposed



against the respondent No.2, i.e., removal from service which shall not be a disqualification for future employment in any recognised private school, be sent to the respondent No.2. However, the Education Officer, Zone 25, who is the nominee of the Director of Education (“DoE”, for short) recorded her note of dissent.

8. On March 18, 2011, the Management of the petitioner school reconstituted the DAC after receiving legal opinion in that regard, and communicated the same to the DoE. It is stated that those members of the first DAC who had in any manner participated in the inquiry proceedings were not part of the newly constituted committee. The new DAC comprised of the following members:

- i. Wg. Cdr. R. Demonte (Chairman)
- ii. Wg. Cdr. S. Mahapatra (Management nominee)
- iii. Mr. Sita Ram Shastri (Principal, Govt. Boys School, Malviya Nagar)
- iv. Mrs. Ashima Bhasin (Teacher Representative)
- v. Education Officer, Zone 25

9. The DAC held its meeting on April 13, 2011 where the memorandum of charges along with the Inquiry Report were presented to each of the committee members for their opinion. Wg. Cdr. R. Demonte, Wg. Cdr. S. Mahapatra, Mr. Sita Ram Shastri and Mrs. Ashima Bhasin recommended removal of respondent No.2 from service. The Education Officer, Zone-25, i.e., DoE nominee stated that in view of her dissent note dated February 19, 2011 she was unable to make any further comments. On April 30, 2011, the DAC confirmed the quantum of the punishment to respondent No.2 and it was finally



decided that the respondent No.2 be removed from service which shall not be a disqualification for employment in any recognised private schools. Thereafter, her services were terminated *vide* order dated July 29, 2013. The respondent No.2 preferred an appeal against the order before the Delhi School Tribunal, which was allowed *vide* the impugned order.

10. Mr. Rakesh K Khanna, learned Senior Counsel appearing for the petitioner school has contended that the Tribunal has allowed the appeal on a technical ground that the school has violated the provisions of the DSEAR. The observations of the Tribunal in this regard are as follows:

- i. Managing Committee after suspending the employee should have handed over all the proceedings to the disciplinary authority as contemplated in Rule 120 of the DSEAR.
- ii. The Inquiry Officer was appointed by the Managing Committee and not the DAC.
- iii. The DAC constituted on February 07, 2010 was in violation of Rule 118 of the DSEAR.
- iv. The DAC, even if held to be constituted legally, had meetings only on two dates i.e., September 04, 2010 and September 24, 2010, before authorising the Managing Committee on September 29, 2010 to issue the charge sheet.
- v. The inclusion of one of the members of the DAC was in contravention to the directions of DoE as per Dixit School Manual (a private book).
- vi. There was a reasonable possibility of personal bias as



the Chairman of the Managing Committee who is also the Chairman of the DAC was the husband of the Principal of the School.

vii. The minutes of the DAC meeting held from February 07, 2011 to July 29, 2013 were not correctly recorded.

viii. Some members of the DAC also deposed before the Inquiry Officer as witnesses.

ix. It was the duty of the Managing Committee and the DAC to inform the DoE about replacement of interested witnesses.

11. Mr. Khanna has stated that it is trite law that strict rules of evidence are not applicable on departmental proceedings and the only requirement of law is to establish some evidence which is sufficient for a reasonable person to objectively arrive at a decision. The scope of jurisdiction of this Court under Article 226 of the Constitution to examine the validity of departmental proceedings is limited. In this regard he has relied upon the judgments in the case of ***Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762, State of Andhra Pradesh & Ors. v. Chitra Venkatrao, 1976 (32) FLR 44 and Managing Committee, Frank Anthony Public School v. C.S. Clarke, 184 (2011) DLT 550.*** He stated that for this Court to invoke its jurisdiction under Article 226 of the Constitution, it must be shown that the procedure followed is unjust or violative of the principles of natural justice and the inquiry report must be shown to be perverse on merits. That apart, he submitted that this Court or even the Tribunal cannot sit in appeal against the report of the Inquiry Officer, much less



review the minutes of the meetings of the DAC. He stated that the Tribunal has arrived at its conclusion on the basis of conjectures, presumptions and surmises, which is impermissible in law.

12. He also submitted that no prejudice has been caused to the respondent No.2 as all the documents that were examined, including the List of Witnesses were provided to her before commencement of the inquiry proceedings and she was given ample opportunity to defend herself. He relied upon ***Board of Directors, Himachal Pradesh Transport Corporation v. K.C. Rahi, (2008) 11 SCC 508***, to contend that when an employee abstains from departmental proceedings despite being aware of the same, he is estopped from claiming that the same is against the principles of natural justice.

13. Further, it is his contention that the Tribunal has failed to appreciate that the issue regarding issuance of charge sheet by the Managing Committee has been considered by the Division Bench of this Court in the case of ***Managing Committee of Naval Public School v. Neera Chopra, LPA 500/2012*** decided on April 29, 2013, wherein it was held that the words used in Rule 120 of the DSEAR regarding the procedure to be followed for imposing major penalty are “as far as may be”. The Court referred to the judgment in the case of ***Samarth Shiksha Samiti v. Directorate of Education, W.P.(C) 10628/2009*** decided on April 26, 2011, wherein it was held that the use of the words “as far as may be” suggests that strict compliance of the procedure prescribed therein is not to be insisted upon and deviations as per necessity are permissible and the principle of ratification would apply. He stated that the Managing Committee



having appointed the Inquiry Officer on the request of the DAC, there is due compliance of Rule 120, more so in view of the above judgment.

14. Insofar as the issue of participation of the Principal, Presenting Officer and the Manager in the inquiry proceedings is concerned, Mr. Khanna stated that the same was out of sheer necessity. Being natural witnesses, there was a mandatory requirement on them to prove the charges. This issue was considered by this Court in judgment titled ***Parimal Kumar Dutta v. Appejay School and Ors., LPA 432/2010***, decided on July 05, 2010, wherein the Division Bench held as under:-

17. We have referred to the aforesaid decisions to highlight that though confession is not defined in the Indian Evidence Act, ordinarily it is understood as an admission. The value of the confession has to be adjudged regard being had to the facts and circumstances, but, all steps are required to be taken to prove the confession as per law. The Principal concerned though a member of the Disciplinary Committee, yet in the obtaining factual matrix, was entitled under law to adduce evidence and hence, we do not perceive any error in the same.

18. The controversy can be looked from another angle. The confession, whatever would have its acceptance in law, was made before the Principal. The submission of learned counsel for the appellant is that she being a member of the Disciplinary Committee should not have become a witness. Learned counsel for the respondent No.2, per contra, would contend that she being the sole person before whom the confession was made the doctrine of necessity would also get attracted subject to certain riders. It is urged by him that as she shall not participate and recuse from the stage she has deposed before the Inquiry Officer the question of any kind of



bias does not arise. In this context, we may profitably refer to the decision in Badrinath Vs. Government of Tamil Nadu and Ors. AIR 2000 SC 3243. In the said case the third respondent therein who had earlier recorded adverse remarks against the appellant was the Chairman of the Joint Screening Committee which had found the appellant not fit for selection to the selection grade. The question that arose before the Apex Court related to bias and doctrine of necessity in the administrative law and the plea of malafide as against the said respondent. Their Lordships while dealing with the said facet have ruled as follows:-

“68. This contention raised by Sri C.S. Vaidyanathan for the respondents is well founded. This Court has held that, in such situations, no question of bias can be raised. In State of M.P. v. Ganekar Motghare, 1989 Suppl.(2) SCC 703, a Deputy Director was compulsorily retired on the recommendations of the Screening Committee. The Director, being head of the Department, had earlier awarded adverse remarks to the officer and later he also sat in the Screening Committee. It was held that there was nothing wrong with the presence in the Committee and neither bias nor malice in law could be imputed to him. The High Court’s reliance on A.K.Kriapak vs. Union of India, (1968) 2 SCC 262 : (AIR 1970 SC 150) was not accepted. Similarly, in State of Uttar Pradesh v. Raj Kishore Bhargava, 1992 Suppl. (2) SCC 92, the Chief Engineer who had given adverse entries against the officer in one year was appointed a member of the Screening Committee for deciding about the compulsory retirement of the officer. It was held that no allegation of bias can be made against the Chief Engineer. 69.



In the light of the two precedents, we hold that from the mere fact that the Chief Secretary who had earlier made certain adverse remarks against the appellant was the Chairman of the Screening Committee, no bias can be imputed from that fact alone.”

19. In the case at hand when the Principal herself has given in writing that she would not be participating when there would be discussion of the Disciplinary Authority with regard to delinquent employee, we are of the considered opinion, there is no violation of principles of natural justice and the doctrine of bias is not attracted.”

15. Mr. Khanna further submitted that even if this Court reaches a conclusion that there is any violation, the respondent No. 2 would still not be entitled to reinstatement, as her conduct has been unbecoming of a teacher and she has acted against the school and its management by filing more than 400 frivolous complaints against them. He relied upon the judgment of the Supreme Court in the case of ***Union of India v. YS Sadhu, (2008) 12 SCC 30***, to contend that an employee cannot be automatically reinstated, but the proceedings should continue from the stage where it stood before the vulnerability surfaced.

16. Further, it is his case that the respondent No. 2 was terminated on July 29, 2013 when there was no requirement of prior approval of DoE in view of the judgment of this Court in ***Kathuria Public School v. DOE, 2005 (123) DLT 89***, as the Judgment of the Supreme Court in ***Raj Kumar v. DOE (2016) 6 SCC 541*** only has prospective application. He has referred to the judgment of a Division Bench of this Court in ***Red Roses Public School v. Reshmawati & Anr.***



264(2019) DLT 498, in this regard.

17. He has contested the decision of the Tribunal, *inter alia* on the following grounds:

- i. The observation of the Tribunal that the DAC was not constituted in accordance with Rule 118 of the DSEAR is false and contrary to the record as the Chairman has only addressed the communication dated November 1, 2010 and November 10, 2010 as he is the Chairman of both the Managing Committee and the DAC. That apart, the document dated July 7, 2010 clearly reflects that the constitution of DAC is in strict compliance with Rule 118 of the DSEAR.
- ii. In any case, the DAC also had a government nominee and the meetings of the committee was attended by two government nominees as well as parents' and teachers' representatives and therefore no violation can be said to have been committed.
- iii. There is nothing to show that Managing Committee being a superior body was holding sway on the proceedings as has been observed by the Tribunal.
- iv. The Tribunal also failed to consider that the meeting of the DAC held on October 20, 2010 clearly indicated that the charges were framed by the DAC *vide* letter dated September 29, 2010 and after considering the reply of the respondent No.2, placed the matter before the Managing Committee.



- v. The Tribunal also failed to appreciate that the decision of the Managing Committee which is a superior body was subject to the denial of charges by the respondent No.2 and as such there is no irregularity or illegality in appointing the Inquiry Officer, and in any case the order of termination cannot be set aside on such mere irregularity.
- vi. The Tribunal also failed to consider that the meetings of the DAC was in compliance of principles of transparency and natural justice and decided to take action only when all the representatives including the government nominee and the EO were present.
- vii. The observations of the Tribunal regarding the dissent note of the EO was misplaced inasmuch as the Tribunal failed to appreciate that the same EO had given her consent to proceed with an advocate being appointed as an Inquiry Officer, and also that the dissent note was given under the threat and pressure of the respondent No.2.
- viii. The observation of the Tribunal that there is non-compliance of Rule 120 of the DSEAR is also misplaced as the Principal and other members of the DAC who had appeared as witnesses were subsequently removed and replaced with due intimation to the DoE.
- ix. Rule 120 of the DSEAR is not mandatory in nature as it only says that “*no penalty shall be made except for after an inquiry held as far as may be in the manner below*”, which clearly suggests strict compliance of the procedure



prescribed therein is not to be insisted upon and deviation as per necessity are permissible and the principle of ratification would apply.

- x. The Tribunal also failed to appreciate that if a person did not avail of normal opportunities to participate in the inquiry, he / she could not be permitted to challenge the report of the Inquiry Officer and raise allegations of bias against members of the DAC as the same could only have been made before the Inquiry Officer.
- xi. The Tribunal failed follow the law laid down by the Supreme Court in ***G. M. (Operations) S.B.I v. R. Periyasamy 2015 (3) SCC 101***, wherein it was stated that there is a presumption that the decision / order is properly and validly made unless proved to the contrary and the onus to prove the same rests upon the party alleging the lack of validity for which evidence is required. In this case no evidence has been given by the respondent No.2.
- xii. The Tribunal did not consider the judgment of a Division Bench of this Court in the case of ***The Management, Hindu Educational Society, Shri Kurukshetra and Ors. v. Govt. of N.C.T. of Delhi and Ors., LPA 29/2007*** decided on March 30, 2011, wherein it was observed that reinstatement is not automatic and if a sufficient period of time has passed, the person should only be compensated with money.
- xiii. The Tribunal also failed to consider the judgment of this Court in writ petition being ***W.P.(C) 1298/2017*** titled ***The***



Chairman, Ryan International School & Ors. v. Dinesh Singh Rawat & Anr., wherein it was held that if there is a violation on technical grounds, the matter has to be remanded back to the DAC for fresh consideration.

18. The respondent No.2, appearing in-person stated that it is an admitted case that the Managing Committee of the petitioner school removed her from service *vide* letter dated July 29, 2013 without prior approval of the respondent No.1, DoE, which is in violation of Section 8(2) of the DSEAR. Reference in this regard is made to the decision of the Supreme Court in ***Raj Kumar v. Director of Education & Ors., Civil Appeal No. 1020/2011*** and of this Court in ***Meena Oberoi v. Cambridge Foundation School & Ors., W.P.(C) 1363/2013*** decided on December 5, 2019.

19. It is her contention that the interpretation of the words '*as far as may be*' used in Rule 120 of the DSEAR are '*after an inquiry, held, as far as may be*'. In any case the said words are mentioned in sub-section (a) of Rule 120 of the DSEAR. Rather it should be read with Article 311 (2-(a), (b)) and (3) of the Constitution of India. Whenever an employer is conducting an inquiry, it has to be in accordance with the provision prescribed in Rule 120 of the DSEAR.

20. The findings arrived at by the Tribunal are after appreciation of evidence on merit and the same has attained finality. She has contested the writ petition on the following grounds:

- i. There is blatant violation of the principles of natural justice which would vitiate the inquiry proceedings. Reference in this regard is made to the decision of the



Supreme Court in the case of *Rattan Lal Sharma v. Managing Committee, Hari Ram (Co-education) Higher Secondary School and Ors., AIR 1993 SC 2155.*

- ii. If there was authorisation by DAC to the Managing Committee to issue charge sheet and appoint the Inquiry Officer, such authorisation should have been provided to her, which admittedly has not been done.
- iii. The appointment of Inquiry Officer has been made by the Managing Committee, and not the DAC, which is in violation of Rule 120 of the DSEAR. Therefore, the inquiry proceedings are null and void for the reason of non-compliance of statutory rules. Even the approval of the charge sheet was issued by the Managing Committee instead of the DAC.
- iv. The objections raised by her through numerous letters found no mention in the minutes of the DAC meetings.
- v. The Managing Committee was not constituted as per the CBSE Affiliation bye-laws.
- vi. Wg. Cdr. R. Demonte, husband of the Principal of the school was calling all the shots and other people were mere yes-men.
- vii. The minutes of the meeting of the Managing Committee dated July 7, 2010, were an afterthought and is in abdication of its functions and duties, which is impermissible under law.



- viii. The so-called delegation by the DAC of its functions to the Managing Committee is untenable in law as the Managing Committee is not authorised to do any such act under Rule 118 and Rule 120 of the DSEAR.
- ix. The decision of imposing major penalty of removal from service had already been taken, and the re-constitution of the DAC and subsequent ratification of its decision has no value in the eyes of the law.
- x. As the Managing Committee was in fact acting as the DAC, the maxim *nemo judex sua causa* would get attracted. Minutes of the meeting of the DAC and the Managing Committee from the period between April 15, 2010 and July 29, 2013 clearly show that the members of the Managing Committee were acting in dual capacity.
- xi. The allegations of the petitioner School that the respondent No.2 was working against the interest of the School is also untenable as the School itself was not following the statutory rules.
- xii. The assertion of the petitioner School that the doctrine of necessity warranted inclusion of Mr. K.K. Batra and Wg. Cdr. R. Demonte is also not tenable as Rule 118 (iv) of the DSEAR clearly provides that the DoE can replace any member including the Chairman. In any case, the doctrine of necessity is not a rule but an exception and the same has not been held to be



applicable to school service jurisprudence.

21. The respondent No. 2 has submitted that the petitioner has failed to make out a case that there is an error apparent on the face of the record in the judgment of the Tribunal dated July 9, 2021. The petitioner has intentionally and deliberately concealed the letters dated November 10, 2010, December 1, 2010, December 16, 2010 and January 5, 2011 written by the Managing Committee and also the legal objections raised by her *vide* letters dated October 14, 2010, November 1, 2010, November 27, 2010, December 3, 2010 and December 25, 2010 that prove that the entire disciplinary proceedings against her including suspension, issuance of charge sheet, appointment of Inquiry Officer etc. were all done by the Managing Committee.

22. She also stated that there is no scope for entertaining the writ petition under Section 5 read with Rule 59 of the DSEAR.

23. Regarding the allegation put forth by Mr. Khanna of damage caused to the reputation of the School by her conduct, the respondent No.2 stated that reputation of a School should be built upon better facilities for students, and qualified, honest and punctual staff, getting better results, motivating and guiding students etc., all of which the respondent No.2 has been doing for several years as is clear from her blemish-less service record. She has also referred to reports of the DoE dated November 29, 2013 and August 27, 2016 to contend that the petitioner School has been damaging its own reputation. She seeks dismissal of the writ petition.

24. Having heard the learned Senior Counsel appearing for the petitioner and the respondent No.2 in-person, the only issue which



arises for consideration is whether the Tribunal was justified in setting aside the order dated July 29, 2013 passed by the DAC removing the respondent No.2 from the services of the petitioner school. I have already culled out the submissions made by Mr. Khanna challenging the decision of the Tribunal in paragraph 16 above. One of the findings of the Tribunal was that the charge sheet was not issued by the DAC, but by the Managing Committee.

25. It is a conceded position that the Managing Committee in its meeting held on July 7, 2010 constituted the DAC. The DAC in its meeting held on September 29, 2010 discussed the charges with respect to the respondent No.2 and resolved to authorise the Chairman of the Managing Committee to issue the charge sheet. The charge sheet was sent to the respondent No.2 on September 29, 2020 who submitted her reply on October 14, 2010 denying the charges.

26. It is the case of the petitioner School that as the DAC has authorised the Chairman of the Managing Committee and not the Managing Committee to issue a charge sheet. The Managing Committee in its meeting held on October 21, 2010 appointed the Inquiry Officer. It is a matter of record, that the Inquiry Officer initiated the proceedings *vide* letter dated November 10, 2010. It is also a matter of record that the respondent No.2 did not participate in the proceedings.

27. It appears that Mr. K. K. Batra, Manager of the School and Mrs. Gail Demonte, Principal of the School, who were witnesses in the inquiry, and Mrs. Rita Sinha, Teacher Representative who was the Presenting Officer before the Inquiry Officer, were part of the DAC,



which discussed the charges, and authorised the Chairman of the Managing Committee to issue the charge sheet. This is as good as approving the charges framed against respondent No.2. It follows, the very witnesses and the Presenting Officer, who approved the charges against the respondent No.2 had deposed and conducted the enquiry for the Management in the proceedings, which is clearly untenable in law and contrary to the basic principles of natural justice. No doubt, a new DAC was constituted as shown in paragraph 8 above, replacing the three members, but by that time, the Inquiry Officer had already submitted his report. The new DAC has ratified the appointment of the Inquiry Officer and proceeded to act on the inquiry report as submitted by the Inquiry Officer. The objection of the respondent No.2 is that after the constitution of the new DAC, it is the new DAC which should have decided the aspect of issuance of charge sheet without acting on the inquiry report already submitted. This submission of respondent No.2 is appealing as I find that the Inquiry Officer has held the charges 1, 2, 3, 4, 5 and 7 to be proved on the basis of the deposition of the said two witnesses in the inquiry proceedings. That apart, I find that the fact that Mrs. Rita Sinha, Teacher Representative had presented the case of the Management before the Inquiry Officer after being part of the very DAC that issued/framed the charges against the respondent No.2 is tantamount to her acting as judge and prosecutor at the same time, which is clearly impermissible in law. In this regard, I may refer to the judgment of the Gauhati High Court in *Shanta Dutta v. The Silchar Collegiate School & Ors., W.P.(C) 2478/2014*, wherein it was held as under:-



“Suffice it to say that the respondent authorities by including the presenting officer as one of the members of the disciplinary committee for proceeding against the petitioner has acted contrary to the principles of natural justice thereby causing prejudice to the petitioner.

xxxx

xxxx

xxxx

Since the presenting officer appointed by the disciplinary authority has been made one of the members of the disciplinary committee, he has virtually become both the prosecutor and the judge. No man can be a judge in his own cause. There is thus likelihood of bias or a real danger of bias by including the presenting officer as one of the members of the disciplinary committee. Since, the defect in the inquiry held against the petitioner strikes at the root of the matter, a reasonable man can, on the admitted facts of this case, claim that there is real likelihood of bias. To this extent, the disciplinary proceeding against the petitioner in the impugned order emanating therefrom are vitiated. This calls for the interference of this Court.”

That apart, the High Court of Kerala in the case of **Sommy Kunjappan v. CBSE, W.P(C) 10054/2015** decided on March 21, 2016 set aside the order of dismissal of the petitioner therein, holding as under:

“4. Only considering the fact that the appellate authority is not properly constituted for reason only of the Presenting Officer, being a member of the disciplinary committee, this Court would set aside Ext.P19 order, leaving open the question of maintainability and also all contention of either parties.”

28. Mr. Khanna has justified the position, by invoking the doctrine



of necessity and by referring to Rule 118 of the DSEAR to state the presence of the above three members in the DAC was a necessity. But such a submission is belied by the fact that a new DAC without the three members was in fact constituted, which finally imposed the penalty. It means the new DAC which was constituted after the Inquiry Officer had submitted his report could have been constituted without the three members, at the initial stage itself. Mr. Khanna has relied upon the judgment of Division Bench of this Court *Parimal Kumar Dutta (supra)* in support of his submission. In the said judgment the Division Bench of this Court has upheld the action of the school wherein the Principal concerned, though the member of DAC, had adduced evidence in disciplinary proceedings wherein the Court has justified her presence on the ground of necessity inasmuch as it was the case of the school that the charged employee has confessed before the Principal about the misconduct which was the subject matter of the charge against her.

29. Clearly, the said judgment has no applicability in the facts of this case as it is not a case where the charges which have been framed against the respondent No.2 are relatable to her misbehaviour qua the Principal and Manager or a case where the charges can be proved only by the presence of the Principal and Manager as witnesses in the proceedings, so as to invoke the doctrine of necessity.

30. Further, the respondent No.2 has questioned the decision of the DAC to authorise the Chairman of the Managing Committee to issue the charge sheet. She is justified in saying that the charge sheet was neither issued by the DAC nor by the Managing Committee. To that



extent, the submission of respondent No.2 need to be accepted.

31. A related submission of Mr. Khanna is that the Chairman of the Managing Committee was competent to issue charge sheet by referring to the judgments of this court in the case of ***Samarth Shiksha Samiti (supra)*** and ***Managing Committee of Naval Public School (supra)***. I have seen the judgments. The Court has upheld the action of issuance of charge sheet by the Manager of the School / Chairman of the Managing Committee, as it is clear in those cases that the Managing Committee had considered / approved the charges. But in the case in hand, the charge sheet clearly reveals that the same has been issued by the Chairman of the Managing Committee without the Managing Committee considering / approving the charges.

32. Nothing has been placed before this Court to show that the charge sheet has been issued after the decision to do so has been taken by the Managing Committee collectively. In other words, the charge sheet not having been issued by the Managing Committee, the case of the petitioner School is not covered by the judgments in the cases of ***Samarth Shiksha Samiti (supra)*** and ***Managing Committee of Naval Public School (supra)*** and as such, the charge sheet itself was illegal.

33. One of the submissions of respondent No.2 was that the petitioner school has not taken the approval of the DoE before removing her from the services of the school. The respondent No.2 has relied upon the judgment of the Supreme Court in the case of ***Raj Kumar (supra)***, wherein the Supreme Court has held that the obligation on the part of the school to seek the approval of the DoE before removing a Teacher/Employee from the services of the school.



This submission was opposed by Mr. Khanna by relying upon the judgment of the Division Bench of this Court in the case of ***Red Roses Public School (supra)***, as, according to Mr. Khanna, when the respondent No.2 was removed from service, the Division Bench Judgment of this Court in case of ***Kathuria Public School (supra)*** held the field, which clearly stated that the approval of the DoE before removing/terminating the Teacher/Employee is not mandatory. Hence, the judgment of the Supreme Court in the case of ***Raj Kumar (supra)***, being after the date of removing her from the services of the school, would not be applicable.

34. I must state that in ***Red Roses Public School (supra)***, the Division Bench in paragraphs 21 to 24 has held as under:-

“21. So far as the aspect of non-compliance of Section 8(2) of the Delhi School Education Act is concerned, it is clear that the decision in Kathuria Public School (supra) rendered by a Division Bench of this Court was holding sway right from the year 2005 till 2016, when the said decision was upset by the Supreme Court in Raj Kumar (supra). The appellant, therefore, could not be faulted for non-compliance of the said provision. Pertinently, even the Director of Education took the stand before the Appellate Tribunal that there was no necessity of obtaining the prior approval of the Director under Section 8(2) in the light of the decision of this Court in Kathuria Public School (supra).

22. No doubt, the well settled position in law is that the Supreme Court merely declares the law as it has always been when it renders its decision and, therefore, the position of law, as declared by the Supreme Court would be taken to have prevailed in the past as well even since the law was framed, unless the



Supreme Court limits the application of the law declared by it only prospectively. But, the Director of Education has himself issued the order dated 20.05.2016, stating that after the decision of Supreme Court in Raj Kumar (supra), the prior approval of the Director of Education should be obtained from the date of the judgment in Raj Kumar (supra). Thus, in our view, it does not lie in the mouth of the learned counsel for the Director of Education to now contend that in the facts of the present case as well, compliance of Section 8(2) should be treated as mandatory. Therefore, even the Director of Education has sought to apply the decision in Raj Kumar (supra) prospectively, and not from an anterior date. Moreover, the decision in Kathuria Public School (supra) was not upset by the Supreme Court, either because the Director of Education accepted the said decision, or its Special Leave Petition before the Supreme Court was dismissed. Learned counsel for the appellant submits that the appeal preferred from Kathuria Public School (supra) was dismissed by a three-Bench Judge in limine.

23. A perusal of the relevant extract of Raj Kumar (supra) also shows that the Supreme Court rejected the reliance placed by the management on Kathuria Public School (supra) on the premise that the decision in Kathuria Public School (supra) was rendered after the notice of retrenchment was served on the employee.

24. We are also of the view that giving effect to the decision in Raj Kumar (supra) from an anterior date would lead to re-opening of cases and claims, which are already settled in terms of Kathuria Public School (supra). We, therefore, reject this submission.”

But the said judgment has been taken in appeal before the Supreme Court, which has stayed its operation vide order dated



February 24, 2020 in SLP No.3375/2020. In fact, the respondent No.2 on the other hand has relied upon the judgment of a coordinate Bench of this Court in ***Meena Oberoi (supra)*** wherein the Court by referring to the judgment of the Division Bench in ***Red Roses Public School (supra)***, has held that the attention of the Division Bench was not invited to a judgment rendered by the Supreme Court in ***Marwari Balika Vidyalaya v. Asha Srivastava, 2019 SCC OnLine SC 408***, wherein the Supreme Court, relying upon the judgment in the case of ***Raj Kumar (supra)*** upheld the setting aside of the termination of the respondent in that case which happened before the rendition of the judgment in ***Raj Kumar (supra)*** on the ground that requisite approval of the higher authorities was not obtained. The relevant part of the judgment of the coordinate Bench in the case of ***Meena Oberoi (supra)*** in paragraphs 54, 55 and 56 are reproduced as under:-

“54. That apart, a reading of the decision in Red Roses Public School²² reveals that the attention of this Court was not invited, in the said case, to the judgment rendered by the Supreme Court in Marwari Balika Vidyalaya¹⁸. Marwari Balika Vidyalaya¹⁸ was also a case in which the services of the respondent Asha Srivastava were terminated on 20th February, 2001, prior to the rendition of decision in Raj Kumar¹³. Even so, relying on Raj Kumar¹³, the Supreme Court upheld the setting aside, of the termination of the respondent Asha Srivastava, on the ground that requisite approval, of the higher authorities, had not been obtained.

55. That apart, a reading of paras 13 and 14 of the report in Marwari Balika Vidyalaya¹⁸, which have been reproduced in para 50 hereinabove, underscore the salutary purpose behind requiring that every order



of termination and dismissal of an employee must, prior thereto, obtain approval of the DoE. This, the Supreme Court, has emphasized, is a procedural safeguard “intended to avoid arbitrary and unreasonable termination/dismissal of employee of even recognized private school”.

56. In view of this opinion of the law, enunciated in Marwari Balika Vidyalaya¹⁸ by the Supreme Court, it would, in my opinion, not be open to this Court to continue applying the law laid down in Kathuria Public School³ which defeats the salutary purpose of obtaining of prior approval, as underscored by the Supreme Court in Marwari Balika Vidyalaya¹⁸. Kathuria Public School³ having been disapproved, in no uncertain terms, not in one, but in two judgments of the Supreme Court, continuing reliance, by this Court, on the principles enunciated in Kathuria Public School³, would, in my opinion, do complete disservice to Article 142 of the Constitution of India. Once the Supreme Court has held a decision, laid down by the High Court, to be bad in law, it is highly questionable whether any High Court could, thereafter, apply the said decision at all, irrespective of the practical difficulties which may, or may not, arise if the decision were not to be applied.”

35. It is also noted that the judgment of the coordinate Bench in the case of **Meena Oberoi (supra)** has been stayed by the Division Bench vide order dated January 13, 2020 in LPA 11/2020.

36. Having said that, the issue which arises for consideration is whether the judgment of the Supreme Court in **Raj Kumar (supra)**, shall have a prospective effect. In this regard I refer to the judgment of this Court on a similar issue in the case of **Gulshan Chaudhary v. Union of India, W.P.(C) 5375/2015 decided on October 05, 2015,**



wherein this Court has held that the judgment of the Supreme Court, unless held to be prospective would be taken to have prevailed in the past as well, ever since the law was framed. The relevant portion of the judgment is reproduced as under:-

“12. The Supreme Court in M.A. Murthy vs. State of Karnataka and ors (2003) 7 SCC 517 has held that normally, the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of stage of pendency thereof because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling, which is a feature of American jurisprudence is an exception to the normal principle of law. The Supreme Court also held that prospective over-ruling is a part of the principles of constitutional interpretation and can be resorted to by the Supreme Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. The Supreme Court held, it is for the Supreme Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in a particular decision.”

37. Having said that, in view of the above, and also in view of my other findings in paragraphs 27 to 32, the impugned action of the petitioner school against the respondent No.2 removing her from service stands vitiated. I concur with the view taken by the Tribunal to set aside the order of her removal.



38. Accordingly, I do not see any merit in the present petition, the same is dismissed. No costs.

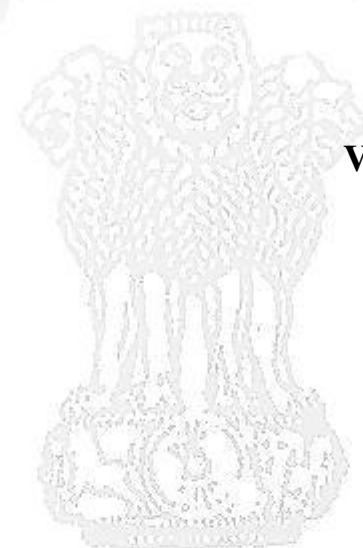
39. Nothing precludes the petitioner school to proceed against the respondent No.2 *de-novo* for the alleged misconduct by strictly following the principles of natural justice and the rules framed in that regard.

CM APPL. 31006/2021

In view of the order passed in the petition, this application has become infructuous and is dismissed as such.

V. KAMESWAR RAO, J

JULY 18, 2022/aky



न्यायमेव जयते