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

% *Date of Decision: 9<sup>th</sup> December, 2022*

+ W.P.(C) 10468/2018

SHRI NAND KISHORE

..... Petitioner

Through: Mr. Prakash Khandelwal,  
Advocate.

versus

DILSHAD PUBLIC SCHOOL AND ANR. .... Respondents

Through: Dr. Kedar Nath Tripathy,  
Advocate for R-1.

Mr. Naushad Ahmed Khan, Advocate for  
R-2.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JUDGEMENT**

**JYOTI SINGH, J.**

1. Present writ petition has been filed by the Petitioner assailing the order dated 26.07.2018, passed by the Delhi School Tribunal in Appeal No.57/2015, whereby the application filed by Respondent No.1/School under Order VII Rule 11 CPC was allowed and the appeal filed by the Petitioner, Appellant therein is dismissed.

2. Shorn of unnecessary details, the factual score to the extent relevant for the purpose of adjudication of the present writ petition and as captured therein is:

(A) Petitioner Nand Kishore was appointed as Chowkidar-cum-Peon with Respondent No.1/Dilshad Public School (hereinafter referred to as the 'School') on 31.03.2000, and was subsequently confirmed on the said post *vide* letter dated 31.03.2001;

- (B) Respondent No.1 is a recognized school and affiliated with CBSE. Pursuant to recommendations of 6<sup>th</sup> Central Pay Commission ('CPC'), Petitioner requested for revision in the pay scale. Upon failure of the School to implement the 6<sup>th</sup> CPC recommendations, in order to enforce his rights, Petitioner along with other employees filed a writ petition in this Court being W.P.(C) 6367/2014, which was allowed *vide* order dated 06.02.2015, directing the School to pay the difference in the salary along with arrears in accordance with 6<sup>th</sup> CPC recommendations, within six months from the date of the order;
- (C) School did not comply with the said directions and instead terminated the services of the Petitioner *vide* order dated 22.08.2015, without following the due process of law. No enquiry was conducted and no opportunity was given to reply to the show cause notice dated 07.08.2015. The termination order was challenged by the Petitioner before the Delhi School Tribunal (hereinafter referred to as the 'Tribunal'), by way of an appeal bearing No.57/2015;
- (D) After the pleadings were completed and the appeal was at the stage of final arguments, School filed an application under Order VII Rule 11 CPC, seeking rejection of the appeal on the ground that Petitioner had filed a claim before the Conciliation Officer under the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as the 'ID Act') and had withdrawn the same, without seeking liberty to file a fresh case. Petitioner also concealed the filing of the said claim before the Tribunal, which amounts to playing fraud on the Tribunal;

(E) Reply was filed by the Petitioner to the application under Order VII Rule 11 CPC and after hearing arguments, Tribunal allowed the application and dismissed the appeal, *vide* order dated 26.07.2018, which is the order impugned before this Court.

3. Contentions raised on behalf of the Petitioner:

(a) Order XXIII CPC or the principle underlying the provision, relied upon by the School, deals with withdrawal of suit or abandonment of part of claim and applies to a suit, which can be filed only in a 'Court'. Proceeding before a Conciliation Officer is not a 'suit' and Conciliation Officer is not a 'Court'. At the highest, a Conciliation Officer is an Administrative Officer with no power to decide the dispute, as an Adjudicatory Authority. He only acts as a Mediator and endeavours to bring about an amicable settlement, between the parties before him. If the parties fail to reach an amicable and/or negotiated settlement, Conciliation Officer has no power to proceed further for adjudication and the only option available to him is to refer the matter to the 'Appropriate Government';

(b) There is a clear distinction between proceedings in a Court and those before a Conciliation Officer. The interim or the final verdict given by a Court binds the parties thereto, while in conciliation proceedings, no verdict is delivered and in fact, Conciliation Officer cannot even compel the parties to settle. In the present case, no claim/proceedings were filed before the Labour Court/Industrial Tribunal and the statement of claim was withdrawn before the Conciliation Officer, at a very early stage;

(c) In *Jaswant Sugar Mills Ltd., Meerut v. Lakshmi Chand and Others, AIR 1963 SC 677*, the Supreme Court held that

function of a Conciliation Officer is not to deliver a definitive judgment affecting the rights of the parties before him and he cannot adjudicate industrial disputes. Although he is appointed under a Statute relating to adjudication of industrial disputes, but his functions are purely incidental to industrial adjudication and his power is not of a same character as that of an Industrial Court or Board or Tribunal. Calcutta High Court in ***Royal Calcutta Golf Club Mazdur Union v. State of West Bengal and Others, AIR 1956 Cal 550***, held that duties of a Conciliation Officer are administrative and not judicial and the main task is to go from one camp to the other to assess the common measure of agreement. Kerala High Court in ***Workmen of the Standard Furniture Co. Ltd., Chalakudi v. District Labour Officer & Conciliation Officer and others, 1965 SCC OnLine Ker 99***, ruled that no writ of certiorari would lie as the Conciliation Officer acting under Section 12 of the ID Act, is not discharging judicial or quasi-judicial functions and to the same effect are the decisions of the Madras High Court in ***The Employees In The Caltex (India) Ltd., Madras, Represented By The Petroleum Workers Union, Madras, By Its Vice-President; K.S. Janakiraman and Another v. The Commissioner of Labour And Conciliation Officer, Government of Madras, And Another, 1959 SCC OnLine Mad 25***; and ***East India Ceramics and others v. Labour Officer (Conciliation), Vellore, 1999 SCC OnLine Mad 811***;

- (d) ID Act is a general law applicable to all non-managerial employees, while Delhi School Education Act and Rules (hereinafter referred to as 'DSEA&R'), is a specific Legislation applicable only to employees of the schools, located in Delhi

and general law shall have to give way to a special law. Hence, if an employee files a claim before the Labour Court/Industrial Tribunal, the same would be without jurisdiction and withdrawal of the claim will not be hit by Order XXIII Rule 1 CPC;

- (e) Petitioner had requested the Conciliation Officer to give permission to withdraw the claim but had no intention to forego his claims as the grievances were yet to be redressed. The order of withdrawal was passed by the Conciliation Officer in presence of School's Authorized Representative and was on legal advice. This fact was also within the knowledge of the School and despite knowing and understanding, School also did not inform the Tribunal and rightly so, as it understood that the proceedings were not before a Court/Tribunal and had no bearing on filing of the appeal. It was only later, when the Appeal was at the final stage of hearing and the School realized that it had no case on merits that a frivolous application under Order VII Rule 11 CPC was filed, which the Tribunal erroneously allowed.

4. Contentions of the School in opposition to the writ petition:

- A) Appeal filed before the Tribunal was not maintainable and has been correctly dismissed under the provisions of Order VII Rule 11(d) CPC. Petitioner had raised an industrial dispute before the Labour Office, Government of NCT of Delhi but withdrew the same without taking any liberty or permission from the Conciliation Officer, to file an appeal before the Tribunal. Petitioner was working as a chowkidar-cum-peon with the School and being a non-teaching staff, is a 'workman' as defined under Section 2(s) of the ID Act. Petitioner raised an

industrial dispute under Section 10 of the ID Act, by filing a statement of claim dated 05.10.2015, before the Conciliation Officer, claiming the relief of reinstatement along with back-wages and continuity of service. Conciliation Officer registered the industrial dispute *vide* ID No.ID/137/NE/15, and issued notice to the Management for appearance on 05.11.2015. Reply was filed by the School and subsequently on 17.12.2015, Petitioner withdrew the statement of claim without permission of the Conciliation Officer and/or liberty to take recourse to another remedy before another Forum, which is impermissible in law;

- B) Petitioner is guilty of concealing material facts before the Tribunal and this was sufficient to non-suit him before the Tribunal and the writ petition also deserves to be dismissed on this short ground. Courts have always taken a serious view on concealment of material facts by a party who is litigating. Appeal was filed on 18.11.2015, but without disclosing to the Tribunal that Petitioner had already availed the remedy under the provisions of the ID Act and/or had filed a statement of claim. Upon perusal of the facts and circumstances of the case, the Tribunal rightly held that filing of the appeal before the Tribunal, without disclosing the material fact that Petitioner had initiated proceedings before the Labour Officer *albeit* withdrawn, was a deliberate and material concealment which goes to the root of the matter and reliance was rightly placed on the proposition of law brought forth in ***Ms. Ritu Taneja v. Ganga International School & Ors., 2016 SCC OnLine Del 6366;***

- C) Petitioner is a 'workman' as defined under Section 2(s) of the ID Act and has an option to avail either of two remedies against the termination i.e. an industrial dispute under the ID Act or an appeal before the Tribunal, in view of the law laid down by this Court in *Apeejay School v. Darbari Lal & Ors., 2010 SCC OnLine Del 2128*. However, having chosen one path by resorting to the remedy of raising an industrial dispute, he cannot take recourse to the remedy of appeal before the Tribunal, without taking liberty from the Conciliation Officer to do so, while withdrawing the claim. This Court in *Lancer Convent Sr. Sec. School v. The Govt. of NCT of Delhi & Anr. in W.P.(C) 6993/2012 & connected matters*, held that in view of the categorical ratio of the judgment of the Supreme Court in *Agra District Coop. Bank Ltd. v. Prescribed Authority, Labour Court, 2001 SCC OnLine SC 1466*, if no permission is taken from the Labour Court/Industrial Tribunal, Applicant cannot invoke the remedy before the Tribunal. In *Agra District Coop. Bank Ltd. (supra)*, the Supreme Court held that if one remedy is pursued then same will have to be taken to the hilt and cannot be withdrawn mid-way to approach another Forum, without seeking liberty to do so;
- D) It is a misconceived contention of the Petitioner that merely because proceedings before the Conciliation Officer are not akin to the proceedings before a Court or Tribunal, provisions of Order XXIII CPC are inapplicable. Once a party files any proceeding before a Forum, principles underlying the provisions of Order XXIII CPC shall apply and withdrawal without liberty, amounts to abandonment.

5. Reading the impugned order reflects that the Tribunal, dismissed the appeal on the grounds viz: (a) Petitioner has not disclosed that he had initiated proceedings before the Conciliation Officer/Labour Officer; (b) proceedings were initiated on 05.10.2015 and withdrawn on 17.12.2015 and even though, the appeal was filed in the Tribunal on 18.11.2015, there was not a whisper of the said fact, which is a deliberate material concealment going to the root of the matter; (c) Courts have taken serious view of concealment of material facts as in the case of *Ms. Ritu Taneja (supra)*; (d) order-sheet dated 17.12.2015, before the Conciliation Officer clearly indicates that claim was withdrawn by the Petitioner without seeking permission/liberty to pursue the appeal before the Tribunal, which was pending; (e) Petitioner did not disclose the factum of filing of the appeal before the Conciliation Officer; and (f) in view of the settled law in *Apeejay School (supra)*, and *Agra District Coop. Bank Ltd. (supra)*, while the Petitioner being a 'workman' had a remedy both under the ID Act and DSEA&R, however, once he had chosen to take recourse to one remedy, he had no option but to pursue the same to its logical conclusion and the appeal was not maintainable.

6. I have heard learned counsels for the parties and examined the respective contentions.

7. It is an undisputed fact that Petitioner was employed as a chowkidar-cum-peon in the School. His services were terminated *vide* order dated 22.08.2015. It is equally undisputed that Petitioner filed a claim before the Conciliation Officer on 05.10.2015 for release of his salary and directions to the Management to continue his services. Reply was filed by the School on 03.11.2015. However, on 17.12.2015, Petitioner withdrew his statement of claim *albeit* without seeking permission/liberty to take recourse to any other remedy

available in law and/or approach the Tribunal. The Tribunal has, *vide* the impugned order, ousted the Petitioner on the short ground that the appeal was not maintainable as no liberty was sought to withdraw the statement of claim before the Conciliation Officer and filing of the claim was not disclosed before the Tribunal in the appeal, which amounts to concealment.

8. The neat legal nodus that arises in the present writ petition is whether the Petitioner can file an appeal before the Tribunal functioning under the DSEA&R, after having invoked the remedy under the ID Act by filing a claim before the Conciliation Officer. Pithily put, the contention of the School and the finding of the Tribunal is that having invoked the remedy under the ID Act, it was not open to the Petitioner to file an appeal invoking the provisions of DSEA&R and the proceedings under the ID Act should have been taken to their logical end. In the application filed by the School under Order VII Rule 11 CPC, the case is essentially predicated on Rule 11(d) of Order VII CPC and it is stated that the appeal is barred by law, placing heavy reliance on ***Lancer Convent Sr. Sec. School (supra)*** and ***Bhargavi Constructions and Another v. Kothakapu Muthyam Reddy and Others, 2017 SCC OnLine SC 1053.***

9. Significantly, it is a common ground between the parties that the employees of a school, who fall under the definition of ‘workman’, can seek redressal of their grievances both under the ID Act and the DSEA&R. [***Ref. Apeejay School (supra)***]. Placing reliance on the judgment in ***Lancer Convent Sr. Sec. School (supra)***, it is urged by the School that on the first principles of Order XXIII Rule 1 CPC, having invoked the remedy under ID Act, Petitioner is not entitled to file the Appeal and being barred by law, the same has been rightly dismissed under Order VII Rule 11(d) CPC.

10. Order XXIII Rule 3(b) CPC, provides that where a Court is satisfied that there are sufficient grounds to allow the Plaintiff to institute a fresh suit for the subject matter of the suit or part of a claim, it may on such terms as it thinks fit, grant permission to withdraw the suit or part of the claim, with liberty to institute a fresh suit. Order XXIII Rule 1(4) CPC, however, provides that where the Plaintiff withdraws the suit without the permission of the Court, he is precluded from instituting any fresh suit in respect of the subject matter of the suit or part of the claim.

11. The seminal question that arises is whether the provisions of Order XXIII Rule 4 CPC or the principle underlying can apply to a case as the present, where the Petitioner had filed a statement of claim before the Conciliation Officer. The key to answer this question seemingly lies in understanding the nature of proceedings before a Conciliation Officer *albeit* what lies beyond a pale of doubt is that the proceeding before a Conciliation Officer cannot be termed as a 'suit'.

12. In order to answer this question, Scheme of the ID Act will require examination. The duties and power of the Conciliation Officer under the ID Act are circumscribed by Section 12 of the ID Act and he has no power to transgress beyond the said statutory provision. It is clear from the provisions of Section 12 that a Conciliation Officer is not empowered to adjudicate upon disputes between the management and the workman and can only assist the parties to arrive at an amicable settlement and take steps in furtherance thereto using what may be called his power of 'persuasion'. On failure of settlement talks between the parties, the Conciliation Officer is required to send a report to the Appropriate Government under Section 12(4), setting forth the steps taken to arrive at a settlement together with the reasons

why the settlement could not be arrived at. If the parties arrive at a settlement, then the Conciliation Officer shall send a report to the Appropriate Government along with a memorandum of settlement signed by the parties. If on consideration of the report under Section 12(4), the Appropriate Government is satisfied that a case for reference is made out, it may refer the case to the Board/Labour Court/Tribunal, as the case may be.

13. Therefore, it is only the appropriate Government, who is competent to decide whether the dispute(s) is to be referred to the Industrial Tribunals set up under the Act and insofar as Conciliation Officer is concerned, his role is that of a mediator and no more. It has been held in various judgments that Conciliation Officer does not discharge judicial or quasi-judicial functions and his acts are merely administrative in nature. Relevant it is to note that even if the Conciliation Officer brings about a settlement and records the same, the report so rendered is not an 'award', defined under the ID Act as an interim or final determination of an industrial dispute by a Labour Court or Industrial Tribunal. From the scheme of the ID Act, by no stretch of imagination can it be said that the functions of a Conciliation Officer are akin to that of an Industrial Tribunal or a Labour Court. Looking at the industrial unrest that usually takes place in management-workman dispute, Legislature has provided a machinery for settlement of disputes but certainly without any powers to the Conciliation Officer to adjudicate upon them. The only and avowed object and purpose for this machinery under the Act is to provide a step to attempt to bring an end to the disputes and differences between the rival parties so that the disputes do not travel to Labour Courts or Industrial Tribunals. In ***East India Ceramics and others (supra)***, the Madras High Court has ruled as follows:

*“45. The Conciliation Officer is not vested with the powers to adjudicate on industrial dispute, but he can try to persuade the parties to come to a fair and amicable settlement, besides he has to exercise his resourcefulness and power of persuasion to try to induce and persuade the parties to come to a fair and amicable settlement. The Conciliation Officer is not competent to decide the various points in issue between the opposing parties of adjudicate the dispute. The functions of the Conciliation Officer under S. 12 is not of either judicial or quasi-judicial nature. If it is to be held quasi-judicial or judicial function, then in connection with whatever he does under S. 12 or other provisions of the Act or Rules, the formalities of a judicial trial would have to be observed. The duties, which the Conciliation Officer performs are only administrative and are purely incidental to industrial adjudication as has been held by the Apex Court in Jaswant Sugar Mills, Ltd., Meerut v. Lakshmi Chand (cited supra).*

*46. The Conciliation Officer is not exercising judicial or quasi-judicial powers or authority nor he is a quasi-judicial or judicial authority, but he is a pure and simple administrative functionary. Even where a Conciliation Officer refused to take a dispute for conciliation after his being satisfied with the action of management in regard to the promotion in a particular case was bona fide his order could not be interfered with by the High Court in exercise of writ jurisdiction as has been held by the Division Bench of the Bombay High Court in Paints Employees' Union v. M.D. Nail [1966 — I L.L.J. 579].*

*47. Thus the Conciliation Officer namely, the first respondent not being quasi-judicial authority nor he exercises a judicial or quasi-judicial function, no question of issue of prohibition prayed for would arise.*

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*49. In addition to the said aspect it is to be pointed out that the first respondent Conciliation Officer merely holds a conciliation and sends a report or persuade the parties to arrive at some settlement and beyond that he has no power or authority to adjudicate.*

*50. The writ of prohibition will lie in cases as to matters which are judicial in nature. In S. Govinda Menon v. Union of India [A.I.R. 1967 S.C. 1274], the Apex Court analysing the case after law held thus:*

*‘The jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain Courts or inferior Tribunals from exercising a jurisdiction which they do not possess at all or else to prevent them from exceeding the limits of their jurisdiction. In other words, the object is to confine Courts or Tribunals of inferior or limited jurisdiction within their inferior or limited jurisdiction within their bounds. It is well settled that the writ of prohibition lies not only for excess of jurisdiction or for absence of jurisdiction but the writ*

*also lies in a case of departure from the rules of natural justice (see Halsbury's Laws of England, Third Edn., Vol. II, Page. 114). It was held for instance by the Court of Appeal in King v. North [1927 I KB. 491], that as the order of the Judge of the consistory Court of July 24, 1925 was made without giving the vicar an opportunity of being heard in his defence, the order was made in violation of the principles of natural justice and was, therefore, an order made without jurisdiction and the writ of prohibition ought to issue. But the writ does not lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings. It is also well established that a writ of prohibition cannot be issued to a Court or an inferior Tribunal for an error of law unless the error makes it go outside its jurisdiction (See Regina v. Comptroller-General of Patents and Design [1953 (2) W.L.R. 760], and Parisienne Basket Shoes Proprietary, Ltd. Whyte 59 C.L.R. 369]. A clear distinction must, therefore, be maintained between want of jurisdiction and the manner in which it is exercised. If there is want of jurisdiction then the matter is coram non judice and a writ of prohibition will lie to the Court or inferior Tribunal forbidding it to continue proceedings therein in excess of its jurisdiction.'"*

14. In **Jaswant Sugar Mills (supra)**, Supreme Court held that Conciliation Officer renders no award or even a decision. His function is not to deliver a definitive judgment affecting the rights of the parties before him and is not invested with powers to adjudicate industrial disputes. Even though he may be constituted under a Statute, his power is not of the character as that of Industrial Court or Board or Tribunal.

15. Seen in the light of the aforesaid judgments, scheme of the ID Act and tested on their anvil, Conciliation Officer is not an Industrial Tribunal or a Labour Court and does not exercise judicial/quasi-judicial functions and/or does not adjudicate the claims of /disputes between the parties. Thus, the argument of the School that the Appeal before the Tribunal was not maintainable, having been filed by the Petitioner, without seeking liberty before the Conciliation Officer and/or Petitioner was bound to take the proceedings under the ID Act to the hilt, cannot be countenanced. Petitioner had relied on the

aforementioned judgments before the Tribunal, however, the same have been brushed aside by merely stating that they are not applicable in the facts of this case, without even dealing with them.

16. In the judgment of this Court in ***Lancer Convent Sr. Sec. School (supra)***, heavily relied upon by the Respondent, Court has held that once an employee files a claim before the Labour Court/Industrial Tribunal, he cannot take re-course to the remedy under the DSEA&R, without taking permission of the Labour Court/Industrial Tribunal. The judgment, in my view, is clearly distinguishable from the present case where the proceedings filed by the Petitioner did not even reach the stage of the Conciliation Officer making an attempt to bring about a settlement and were thus far from the stage of even reference of the dispute to the Industrial Tribunal/Labour Court by the appropriate Government. The statement of claim filed before the Conciliation Officer was withdrawn at the threshold stage and therefore, in my view, the judgement will be inapplicable.

17. In this context, I may allude to the judgment of the Supreme Court in ***Sarva Shramik Sanghatana (KV), Mumbai v. State of Maharashtra and Others, 2007 SCC OnLine SC 1431***, where the Supreme Court held that the provision of Order XXIII Rule 1(4) CPC or the underlying principle thereto will apply only to suits and even an application under Section 25-O(1) filed by the Appellant therein was held to be beyond the purview of the said provision.

18. The second factor that led to the dismissal of the appeal, as discernible from the impugned judgement, is the alleged concealment by the Petitioner of filing the claim before the Conciliation Officer. According to the Tribunal, this was a material concealment and reliance was placed on the judgement of this Court in ***Ritu Taneja (supra)***. The judgment, on a bare reading is wholly inapplicable in the

facts of the present case. In the said case, during the pendency of the Appeal before the Tribunal, appellant had obtained a permanent job at the same post in another school. This Court upheld the order of the Tribunal on two-fold grounds: (a) concealment of facts; and (b) there cannot exist two mutually destructive relationships i.e. permanent jobs with two schools at the same time. There is no similitude of facts in the said case and the present one.

19. There is no gainsaying that every litigant must come to the Court with clean hands and truthfully disclose all relevant facts. However, the question that arises is whether the non-disclosure by the Petitioner of the factum of filing the claim before the Conciliation Officer is a concealment of material fact so as to dismiss the Appeal. Ideally, Petitioner should have disclosed the said fact while filing the Appeal before the Tribunal, however, this cannot be a concealment of a material fact leading to dismissal of the Appeal. Petitioner had explained before the Tribunal that since the matter rested only before the Conciliation Officer, his understanding was that there was no claim in the Labour Court, besides the fact that when the claim was withdrawn, an authorised representative of the Management/School was present. Record shows that the same person Sh. Mohit Sharma had filed the reply to the Appeal. Significantly, even the Respondent did not mention about the filing of the claim before the Conciliation Officer in the detailed reply, despite devoting a paragraph on alleged concealment of facts relating to the factual matrix of the acts of omission and commission, including bar of limitation as preliminary objections. This was obviously because even the Respondent understood that filing of the claim before the Conciliation Officer was inconsequential. As rightly contended by the Petitioner, only when the proceedings were at the final end and appeal was to be finally argued,

Respondent filed the application under Order VII Rule 11 CPC, alleging concealment and this is a classic and text book case of 'kettle calling the pot black'. This Court finds that the Tribunal has grossly erred in dismissing the Appeal on this ground.

20. Accordingly, the writ petition is allowed. Matter is remanded back to the Tribunal for hearing on merits.

21. It is made clear that this Court has not expressed any opinion on the merits of the case and it is open to the Tribunal to decide the case on merits, in accordance with law.

**JYOTI SINGH, J**

**DECEMBER 9, 2022/shivam/rk**

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