

**IN THE HIGH COURT OF DELHI AT NEW DELHI****Judgment delivered on: July 04, 2022**

+ W.P.(C) 212/2018, CM APPLs. 860/2018 & 861/2018

ROSARY SENIOR SECONDARY SCHOOL Petitioner

Through: Mr. Kailash Vasdev, Sr. Adv. with Mr.
Siddharth Dias and Mr. Umrao Singh
Rawat, Advs.

versus

DIRECTORATE OF EDUCATION & ORS Respondents

Through: Mr. Rajat Aneja and
Ms. Aparna Shukla, Advs. for R-2**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****J U D G M E N T****V. KAMESWAR RAO, J**

1. The challenge in this petition is to an order dated November 17, 2017 of the Presiding Officer of the Delhi School Tribunal in Appeal No.11/2017 ('Tribunal', for short) whereby the Tribunal has allowed the appeal of the respondent No.2 herein and set aside the charge sheet, appointment of the Inquiry Officer and the removal of the respondent No.2 on the basis of inquiry report dated September 09, 2016 as illegal and arbitrary with cost and directed reinstatement of the respondent No.2. Insofar as the back wages are concerned, the petitioner / School was directed to decide as to how and in what manner, the respondent No.2 shall be entitled to the complete wages.

2. The facts as noted from the record are that the respondent No.2 was appointed by the petitioner / School on probation. Her services were confirmed on July 01, 2014 on completion of two years of probation period. It



is the case of the respondent No.2 in the appeal before the Tribunal that she was called by the then Principal, who made certain allegations against her and aggressively interrogated her for an alleged incident of her fake signatures in the staff attendance Register on April 05, 2016. She was coerced to falsely admit, in writing on a piece of paper, to have committed the illegal act of getting her signatures forged in the attendance Register on April 05, 2016, under the threat of termination of her job.

3. On April 29, 2016, she received a show cause notice with respect to the incident dated April 05, 2016. It was alleged that the respondent No.2 while leaving the school premises failed to sign the staff attendance register despite having signed the same in the morning. It has been discovered that she had directed Renuka Daniel, one other staff member to sign the register on her behalf.

4. In the reply dated May 03, 2016 to the show cause notice she clarified that she had not committed any such misconduct. She is being unnecessarily harassed. A chargesheet dated May 31, 2016 was issued to the respondent No.2. The respondent No.2 filed a reply to the charge sheet on June 09, 2016. On June 22, 2016, the petitioner / School appointed an independent investigator Cyril Minj for the purpose of investigating the matter and to submit his report. The respondent No.2 was called upon to attend the inquiry proceedings vide letter dated July 14, 2016 in the office of the Inquiry Officer on July 20, 2016.

5. It was the case of the respondent No.2 before the Tribunal that the Inquiry Officer discussed the matter with her for about an hour. She told him that, she never asked Renuka Daniel to sign the staff attendance register on her behalf. She was neither provided any document nor was she allowed to



cross-examine any witness. Her request for CCTV footage of April 05, 2016 was not accepted.

6. On November 04, 2016, the Chairman of the alleged Disciplinary Committee of the School in disregard of the principle of natural justice issued a memorandum wherein it was stated that the Disciplinary Committee being fully convinced that offence committed by the respondent No.2 was of serious nature it has been decided to impose a major penalty of termination upon her. The respondent No.2 submitted her reply dated December 08, 2016 to the above memorandum / inquiry report denying all the allegations made against her and clarifying her stand.

7. The services of the respondent No.2 were terminated vide order dated December 28, 2012. The case setup by the respondent No.2 before the Tribunal was that no Disciplinary Committee as required under Rule 118 was constituted. The inquiry was not conducted according to the provisions of the Delhi School Education Rules, 1973 (Rules) and the principles of natural justice. No document relied upon against the respondent No.2 was provided to her. The Inquiry Officer was biased which is clear from the derogatory language, used by the Inquiry Officer, for the respondent No.2 in the inquiry report. He has also exceeded his brief and taken into consideration various matters which were not the subject matter of the inquiry. The Inquiry Officer has not recorded the statement of any witness and she was not provided an opportunity to lead her evidence. The entire inquiry proceedings were concluded in an hour on July 20, 2016.

8. The case of the petitioner / school was that the respondent No.2 had failed to sign the staff attendance register while leaving the school premises after having signed it in the morning. It was discovered that she had colluded



with another staff member Renuka Daniel, Primary Teacher, to put respondent No.2 signature in the staff attendance register.

9. On April 08, 2016, the school Principal confronted her regarding the aforesaid incident. The respondent No.2 admitted the offence and submitted a letter to the Principal in her own hand writing. On April 12, 2016, the respondent No.2 submitted another unsigned letter to the School, falsely accusing the Principal of threatening her, confining her and using coercive method to extract a confession regarding her conduct on April 05, 2016.

10. The fact that she had not signed the staff attendance register on April 05, 2016, while leaving the school but had asked another colleague Renuka Daniel to sign the attendance register against her name amounts to tampering the official record and indulging in malpractice in discharge of her duties.

11. The petitioner also referred to show cause notice issued to the respondent No.2 dated April 29, 2016, and the reply submitted by her vide letter dated May 03, 2016. The stand is also that the charge sheet was issued on May 03, 2016, to which a reply was given by the respondent No.2 on June 09, 2016. The inquiry proceedings were conducted and inquiry report was provided to the respondent No.2 and was asked to reply to the same.

12. A reply to the inquiry report was given by the respondent No.2 on December 08, 2016. She was removed from service on December 28, 2016. The School justifies the action taken against the respondent No.2. The Tribunal was of the view that the Disciplinary Committee has not been constituted in accordance with the provision of the Rule 118 of the Delhi School Education Rules, 1973.

13. It held that the School has not produced any documents with regard to the constitution of the Disciplinary Committee. The chargesheet has to be



issued by Disciplinary Committee, the Article of Charges are to be framed by the Disciplinary Committee. The Inquiry Officer has to be appointed by the Disciplinary Committee which is clear from the perusal of the charge sheet. Even Inquiry Officer in his inquiry report has admitted that he was appointed by the Managing Committee to inquire into the matter. Even the chargesheet dated May 31, 2016, issued to the respondent No.2 was with regard to the incident happened on April 05, 2016. The Tribunal held that no document has been supplied to the respondent No.2 with the charge sheet. No defence assistance was provided to the respondent No.2 to defend her in the inquiry. The Inquiry Officer has not recorded the statement of any witness. The Inquiry Officer has interrogated the respondent No.2 which is clear from the inquiry report. The Tribunal was of the view that on perusal of the inquiry report, it is clear that the Inquiry Officer has given his findings qua the allegations which are neither part of the show cause notice nor in the chargesheet. The Inquiry Officer has also used such language which should not be used at least against a lady teacher.

14. The Inquiry Officer in his inquiry report has concluded that Renuka Daniel had put the signatures of the respondent No.2 in the staff attendance register on April 05, 2016, at the instance of the respondent No.2. Whereas Renuka Daniel in her hand written statement before the Principal on April 08, 2016 specifically mentioned that the respondent No.2 did not ask her to sign the staff attendance register for her. The Tribunal held that the Inquiry Officer had not pointed out any evidence as to how he concluded that Renuka Daniel had signed the staff attendance register on behalf of respondent No.2.

15. Mr. Kailash Vasdev, learned Senior Counsel appearing for the petitioner / School would contest the conclusion arrived at by the Tribunal by



stating that the Tribunal failed to appreciate that it is an admitted case of the respondent No.2 to have committed the misconduct, inasmuch as the respondent No.2 in her pleading before the Tribunal had also admitted that she had knowledge of forged signature by Renuka Daniel on the staff attendance register.

16. He specifically referred to the letter of respondent No.2 dated April 8, 2016 wherein she has admitted the offence. It was never the case of the respondent No.2 before the Tribunal that she did not commit any misconduct as is evident from her pleadings. The only grievance of the respondent No.2 was the procedural infirmities committed in the inquiry process. This aspect has been ignored by the Tribunal.

17. He also stresses on the fact that, at no point of time, did the respondent No.2 raised any objection before the Authority / School. She kept quiet regarding the misconduct, thereby giving her implied consent to an illegal act committed by Renuka Daniel in forging her signature on statutory record. Therefore, the respondent No.2 is guilty of collusion and conspiracy.

18. According to Mr. Vasdev both the teachers in the respective admissions dated April 08, 2016 have clearly stated that the misconduct was repeated more than once. He also submitted that handwriting expert stated that the signature was repeated 32 times based on the records furnished to him. He contested the finding of the Tribunal that it was Renuka Daniel who put her signature in the staff attendance register on April 05, 2016 without the consent of the respondent No.2.

19. He stated that the Tribunal failed to appreciate the settled law in catena of judgments that when a delinquent employee has admitted the commission of misconduct, then the procedural lapses in conducting inquiry



may be overlooked. Furthermore, it is settled law that in case there is no prejudice caused to the delinquent employee, then the procedural lapses in conducting the inquiry can be condoned.

20. That apart, the Inquiry Officer had also found out other serious lapses in the working and performance of the respondent No.2 and her negligence was highlighted in the inquiry report, pertaining to the incorrect evaluation of answer sheets. Further, the Tribunal erred in overlooking the fact that, during the period of inquiry itself, two serious complaints were received from the parents of the students about the working, conduct and negligence of the respondent No. 2. All these aspects were brought to the notice of the Managing Committee and the Members of the Committee were duly apprised of the said facts before deciding the quantum of punishment for the admitted misconduct. According to Mr. Vasdev, even the conclusion of the Tribunal that the appointment and removal is highly disproportionate to the misconduct is also untenable, as no such contention was raised on behalf of the respondent No.2 before the Tribunal. The petitioner was not given any opportunity to rebut the said contention. Moreover, it had been admitted that respondent No.2 was aware of Renuka Daniel forging her signature on the official records of the petitioners and not informing such misconduct to the appropriate authorities clearly establishes the fact that the respondent No.2 was implicitly colluding with Renuka Daniel and cheated the petitioner / School.

21. That apart, the Tribunal erred in holding that the chargesheet issued by the Managing Committee is illegal and the appointment of the Inquiry Officer by the Managing Committee is illegal. According to him, in arriving at such a conclusion, the Tribunal clearly overlooked the recent judgment of the Coordinate Bench of this Court in ***Pawan Jaishial v. Khalsa Middle School***



reported as 240 (2017) DLT 19 (CN) (Delhi High Court), in which, it is held that a larger and higher body like Managing Committee will have all the powers of a smaller body like a Disciplinary Committee. The Tribunal has also overlooked the dicta of the judgment of a Coordinate Bench of this Court in *Samarth Shiksha Samiti v. Directorate of Education & Another reported as 180 (2011) DLT 93*, wherein it has been held that the words “as far as may be” are distinct from the words “shall apply”, and further held that, such expressions are obviously designed to free the proceedings from technicalities and rigours of a strict application.

22. That apart, the Tribunal has also failed to appreciate that even if an infirmity found in the conduct of the inquiry, the Tribunal should have remanded the matter back to the Authorities for conducting a fresh inquiry by following the rules. In no case, the respondent No.2 can be allowed to go scot free when there are serious allegations of misconduct against her. Mr. Vasdev, seeks the prayers made in the petition.

23. On the other hand, Mr. Rajat Aneja, learned counsel appearing for respondent No.2 would justify the order of the Tribunal by stating that the Tribunal has rightly set aside the order of termination dated December 08, 2016 passed by the petitioner School as it was in violation of the principles of natural justice and the Rules, more specifically with regard to the conduct of the disciplinary proceedings by the petitioner. He stated, it is a well reasoned order where the Tribunal has dealt with all the pleas advanced by the parties. He submitted that the allegation of the petitioner against the respondent No.2 was that she failed to sign the staff attendance register while leaving the school premises on April 05, 2016 by colluding with Ms. Renuka Daniel, by forging the signatures of the respondent No.2 on the



attendance register is untenable, frivolous and requires no consideration from this Court.

24. The reliance placed by the petitioner School on the letter dated April 8, 2016 of the petitioner was because the Principal had coerced the petitioner into admitting to have committed an illegal act of getting her signatures forged on the attendance register on April 05, 2016, by threatening to terminate her from the job. He also stated that the respondent No.2 was present in the School on April 5, 2016 and duly marked her presence in the attendance register in the morning. However, while leaving the school she forgot to put her attendance in the staff attendance register. In fact, respondent No.2 was present even beyond her duty hours. He further stated that Ms. Renuka Daniel who happened to be her colleague has appended the signatures of the respondent No. 2 in the staff attendance register at her own instance without the respondent No.2 stating her to do the same. He also highlighted that the chargesheet was issued by the Managing Committee as different from the Disciplinary Committee. Even the Inquiry Officer was appointed by the Managing Committee.

25. The scheme of the rules clearly contemplates that, it is the Disciplinary Committee which needs to issue the chargesheet and appoint the Inquiry Officer. The very initiation of the disciplinary proceedings being in violation of the Rules, any action taken thereof would also be unsustainable. That apart, he highlighted the manner in which proceedings were held by the Investigating Officer namely Cyril Minj, who had investigated the petitioner without there being any document in support of the charge or any witness having been produced in the inquiry which includes the handwriting expert.



26. According to Mr. Aneja, the inquiry proceedings were initiated against Renuka Daniel, but the same did not culminate in any inquiry report, rather Renuka Daniel had resigned from her services, which was accepted. Hence, it is a case where the allegation primarily relatable to Renuka Daniel has not even been proved in the proceedings against her. He vehemently argued that the manner in which the Inquiry Officer has written the report surely suggest his bias attitude against a lady teacher. He has concluded on certain aspects which were not the subject matter of the show-cause notice or the chargesheet. He stated that the findings of the Inquiry Officer are beyond the charges framed against the petitioner and could not have been taken into consideration by the authorities for imposing the penalty of removal / termination of the petitioner. He also highlighted the fact that Renuka Daniel has in her letter admitted that she was not called upon by the petitioner to mark her attendance. In other words, if Renuka Daniel herself put the signature in the attendance register, the same cannot be a misconduct by respondent No.2. He has relied upon the following judgments in support his submissions:

Sl. No.	JUDGMENTS	PROPOSITION
1.	<i>Shivakumar and Ors. v. Sharanabasappa and Ors., Civil Appeal No. 6076 of 2009</i>	<i>The Hon'ble Supreme Court of India, in Para 25.4, found that a conjoint reading of the Rules 23, 23A and 24 of Order XLI C.P.C., brings forth the scope and contours of the power of remand holding that when the Appellate Court has sufficient</i>



		evidence before it, the proper course is to determine the suit finally and the order of remand shall not be passed in a routine manner.
2.	Allahabad Bank and Ors. v. Krishna Naryan Tiwari, Civil Appeal No. 7600 of 2014	The Hon'ble Supreme Court of India, in Para 8, observed that when the Court finds the Inquiry to be deficient, the proper course is to remand the matter back for the Inquiry to be held afresh, but that course may not be the only course open in situations where because of a long time lag or such other supervening circumstances, the Writ Court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority.
3	Bharti Sharma v. The Management of Rukmani Devi Jaipuria Public School and Ors., LPA 199/2018	This Hon'ble Court, from Para 27 onwards, observed that in the facts of the said case, where the Respondents have no evidence in hand, the said case is one where the de novo inquiry is not warranted; and therefore, upheld the order of the DST with cost, reinstating the Appellants with back wages.



27. Having heard the learned counsel for the parties and perused the record, the issue which falls for consideration is whether the Tribunal was justified in its order dated November 17, 2017 to allow the appeal of the respondent No.2 by setting aside the chargesheet issued against the respondent No.2, appointment of the Inquiry Officer and also the order of removal of the respondent No.2 as illegal and arbitrary. I have already reproduced the reasons for which the Tribunal has passed the impugned order.

28. The submissions of Mr. Kailash Vasdev, learned Sr. Counsel appearing for the petitioner School can be summed up as under:

- (i) The Tribunal failed to appreciate that it is the admitted case of the respondent No. 2 to have committed the misconduct inasmuch as the respondent No.2 in her pleadings before the Tribunal had admitted that she had the knowledge of forging signature by Renuka Daniel on the staff register.
- (ii) Respondent No. 2 has also admitted before the Inquiry Officer during the proceedings the aforesaid aspect.
- (iii) The only ground of challenge to the chargesheet, inquiry proceedings and inquiry report was on procedural errors, i.e., violation of rules during the inquiry process.
- (iv) Respondent No.2 had never raised an objection with regard to those procedural errors and has given implied consent to the illegal acts committed by Renuka Daniel for forging her signature on statutory record.



- (v) There is an admission on the part of both the teachers that the misconduct was repeated more than once.
- (vi) The handwriting expert has stated that the signature was repeated 32 times based on the records furnished to him.
- (vii) The Tribunal was erred in coming to the conclusion that Renuka Daniel who had put the signature of the respondent No.2 in the staff attendance register on April 5, 2016 was without the consent of respondent No.2.
- (viii) It is settled law that wherein a delinquent employee has admitted the commission of misconduct, procedural lapses in conducting the inquiry can be overlooked.
- (ix) No prejudice has been caused to the respondent No.2 because of the procedural lapses in conducting the inquiry which can be condoned.

29. The submissions made by Mr. Vasdev are not at all appealing.

30. At the outset, I deal with the plea that respondent No.2 has admitted her misconduct in her letter dated April 8, 2016. The said letter reads as under:

*“To
The Principal
Rosary Senior Secondary School,
Delhi – 110009*

*Respected Father
I was called by our worthy Principal Rev. Father Vincent D’souza on Friday 8th April 2016. Father asked me about the misconduct happened in last few days. I agreed that Renuka Ma’am has signed by attendance register. It was in my knowledge. Father*



also said that it's the matter of boldness. I said no Father, it is not the boldness or due to courage. It is the mis-conduct happened. It happened in the month of April for 4 or 5 days.

Thanking you

*Your Faithfully
Mrs. Kirti Malhotra
Sd/-
8/4/16"*

31. A similar letter was taken from Renuka Daniel as well, the same reads as under:

*To,
The Principal,
Rosary Senior Secondary School,
Delhi- 110009.
Respected Father,*

I was called by you on 8.4.2016 at 12 as I was on leave. Father, you enquired me about my misconduct as a teacher. This I said I helped my son with some questions that I saw on the computer (staffroom). But father enquired again as I was not truthful. I asked father to tell me the specific area. Father said, it could be teacher, student or parent involved. Then I admitted my mistake. I signed for the other teacher, Mrs. Kriti Sharma. Once I recalled two years back and I repeated it twice this year. Mrs. Kriti Sharma did not ask me to sign for her. I accept my mistake and seek forgiveness.

*Sd/-
Thanking you
Ms. Renuka Daniel
8.4.2016"*

32. It is necessary to state here that respondent No.2 had on April 12, 2016 written another letter where she narrates the circumstances under which the earlier letter dated April 8, 2016 was taken from her. It also narrates that she had come to the School on April 11, 2016 at 8.30 am to hand over the



letter personally but the principal refused to meet her. Suffice to state, letter dated April 12, 2016 of the respondent No.2 is self-speaking. Pursuant thereto, a show-cause notice was issued to the respondent No.2 on April 29, 2016. Reply was given by respondent No.2 on May 3, 2016. Pursuant thereto a meeting of the Managing Committee was held on May 16, 2016 when the following members were present:

1. Rev. Fr- Susai Sebastian : Chairman
2. Rev. Fr. Maria Susai : Vice Chairman/Manager
3. Rev. Fr. Dominic Arockiam : Member
4. Rev. Fr. Eugene Kujur : Member
5. Mrs. Archana Khetarpal : Staff Representative
6. Mrs. Ruma Toppo : Staff Representative
7. Mr. Martin Tirkey : Parent Representative
8. Mr. Justin Fernandes : Educational Consultant and the Senior most member of the Governing Board -DCA (Special Invitee)
9. Rev. Fr. Vincent D'Souza : Secretary-cum-Principal

33. In the said meeting, it was decided to conduct an inquiry by appointing Cyril Minj, Retired Deputy Director of Education (Delhi), who was to submit the report to the Managing Committee. It appears, chargesheet was issued to the respondent No.2 on May 31, 2016, alleging violation of Clauses 23 and 24 of the service contract. Respondent No.2 replied to the same on June 9, 2016.



34. The Inquiry Officer submitted his report on September 9, 2016 wherein, he has provided comments/suggestions as reproduced below:-

“Comments of the Inquiry Officer

1) The entire reply of the C.O. Mrs. Kriti Sharma to the show cause notice and to the charge sheet, is a manifestation of an insubordination, obstinate, unruliness, and eccentric behavior of the official.

2) The C.O. has questioned her employer-the school management and the school Principal about their prerogative powers. The C.O. cannot suggest in any capacity what the employer should or should not do to run the institute because she being the employee should abide by the terms of her service contract and behave as subordinate.

3) The reply of the C.O. Mrs. Kriti Sharma dated 05.05.2016 is too full of false accusations against the head of the school. To hide her own offences and misconduct the C.O. has delineated the Principal of the School as a criminal. The delinquent officer has with folded hands requested the superior authority of the M.C. to take an appropriate disciplinary action against the Head of the School, for admonishing, rendering guidance to her. Then the C.O. termed as harassment and torture. This suggests that the C.O. should be allowed to perform or neglect any of her tasks as she wishes without any rules or regulations or restraint.

4) When the C.O. Mrs. Kriti Sharma was fully aware that her signature was forged she did not object to it which means with full understanding and knowledge, she has cultivated multifarious misconducts like hiding the true facts, abusing the constituted authorities, encouraging her colleague friend Mrs. Renuka Daniel, the another C.O. to continue the wrong doing, neglecting one's own assigned duties like not properly evaluating and incorrectly marking the exam answer sheets.

5) Mrs. Renuka Daniel, the another C.O., stated, before the I.O. that whenever she saw Mrs. Kriti Sharma, C.O. as



disturbed, tensed, forgetful and overburdened she felt pity and compassion. She (Mrs. Renuka Daniel) then felt an urge to help her (Mrs. Kriti Sharma) out. How someone who does not know one's own duty and tasks and is incapable to perform can be employed to nurture the innocent minds- little kids/students.

6) As per the written statement of the C.O. on 8.04.2016 Mrs. Kriti Sharma has admitted her own fault willingly in her own handwriting. Mrs. Kriti Sharma has also verbally admitted before the I.O. on 20.07.2016 that she was fully aware of her signature being forged. And yet the C.O. declares herself innocent. The C.O. is relentlessly attempting to cover up her own omission and commission by attacking the Head of the school. Hence it can be inferred that to save her own skin the C.O. Mrs. Kriti Sharma could go to any extent as to intimidate anyone who would offer her help to improve.

7) The C.O. Mrs. Kriti Sharma has emerged herself as most unreliable person; infidel to her own chosen profession of teaching; and her integrity is wholly doubtful.

8) When the I.O. has gone into the depth of the case of Mrs. Kriti Sharma, PRT it causes the undersigned a great pain to point out that the selection of the Charged Official (Mrs. Kriti Sharma) appears to have been done out of some kind of inordinate affection or pity from some corner of the Managing Committee. The undersigned feels an impression that the recruitment rules and the selection proceedings were over looked in the selection of the C.O. Mrs. Kriti Sharma.

9) All the facts about the misconduct, behavior and the character of the C.O. Mrs. Kriti Sharma discovered in the course of the inquiry and the proceedings, through papers, documents, the school staff personnel and the Handwriting Expert report are the resounding proof and evidence that the C.O. Mrs. Kriti Sharma, PRT is totally unfaithful to her own duties. She has neglected her assigned tasks. The C.O. Mrs. Kriti Sharma can be termed as as cunning as a fox and yet she pretends to be so loyal to the institute.



10) The C.O. Mrs. Kriti Sharma has clearly violated the rule 123 of the D.S.E.R. (Act) 1973, states that no teacher shall/will-

Rule 123 (a) (i)...knowingly and willingly neglects one's duty;

(a)(v)...make any sustained neglect in correcting class work or home work done by students;

(b)(xvii)... be guilty of.... any conduct which involves moral turpitude;

(c)(ii)every teacher shall abide by the rules and regulations of the school and also show due respect to the constituted authority.

11) The C.O. Mrs. Kriti Sharma has also breached the terms and conditions of the service contract as per clauses 13, 23 and 24 of the appointment letter issued to her (vide dated 02.07.2012) by the Managing Committee which she has signed in front of two witnesses after having read & understood them. And so the C.O. has purportedly and willingly has broken the rules & regulations of the school.

Suggestions:

1) As the charged official Mrs. Kriti Sharma has willfully and knowingly breached the terms and conditions of the contract of appointment, especially the clauses 13, 23 and 24; and also the rule 123 of D.S.E.R (Act) 1973, clause (a)(i)&(v), (b)(xvii) and (c)(ii). The school authority may therefore invoke the rule 117 and 118 of the D,S.E.R.(Act)1973, and impose upon the C.O. Mrs. Kriti Sharma a suitable disciplinary action against her.

2) If the M.C. is keen, to save the future of the hundreds and thousands of innocent little kids, and the efficient and smooth running of the school, now the situation is something like a rotting apple that could not possibly be kept in a basket where healthy and beautiful apples are conserved.



3) Administratively, a surprise and regular supervision of the works and duties performed by the teaching staff should be done either individually or by a team of supervisors.

4) Whenever there may arise a need for selection of teaching staff, compassion, pity and mercy should not be preferred to merits.

5) And the school records should be maintained properly and kept safely.”

35. It appears on receipt of the inquiry report, the Managing Committee had on September 29, 2016 constituted a Disciplinary Committee consisting of (i) Chairman of the Managing Committee; (ii) Vice-Chairman of the Managing Committee and Manager of the School; (iii) Member of the Governing Body of the Society; (iv) Teacher Representative of the Managing Committee and (v) Principal of the St. Anthony Girls Senior Secondary School, Hauz Khas. Pursuant thereto a notice dated November 4, 2016 was issued by the Chairman of the Disciplinary Committee by enclosing therewith inquiry report submitted by Cyril Minj. A reply to the same was given by respondent No.2 vide her letter dated December 8, 2016. Accordingly, the Disciplinary Committee in the meeting held on December 19, 2016, decided that the respondent No.2 is wholly an unwanted personality in the school staff and she be terminated. It was also proposed by the Manager of the School that the case be put up before the School Managing Committee immediately. Pursuant thereto, after the deliberations of the School Managing Committee on December 20, 2016, a removal order was issued by the Manager of the School.

36. The plea of Mr. Vasdev was that respondent No.2 has admitted her guilt in her letter dated April 08, 2016 is not appealing. The said letter cannot



be read in isolation, but has to be read in conjunction with her letter dated April 12, 2016 wherein respondent No.2 has referred to the circumstances under which she was made to write the letter dated April 08, 2016. In the said letter the respondent No.2 has stated that on April 08, 2016, the Principal called her at around 11:20 am, while she was in School. When she reached the Principal's room, he started asking questions as if she has committed a misconduct. She stated the Principal coerced her to answer to his vague questions in his fashion. She also stated that the Principal under threat, got the letter written on his instructions in captivity. She stated, the Principal threatened her that he has all evidences to show that she has committed criminal activities. He has also threatened her of termination. Suffice to say given the date of letter, being April 11, 2016, just four days after April 08, 2016, it is clear that the respondent No.2 has immediately clarified the circumstances under which the April 08, 2016 was written by her, on which much reliance has been placed by the School. This Court is of the view that, it actually needs to see whether the charge as framed against the respondent No.2, can be said to have been proved notwithstanding there is a so-called admission on the part of the respondent No.2. In other words, the letter dated April 08, 2016 of the respondent No.2, on which reliance is being placed by the petitioner School cannot be read as an admission of respondent No.2 with regard to charge framed / misconduct, given the circumstances under which she was made to write the letter.

37. Having said that, from the record it emerges that the respondent No.2 did not tell Renuka Daniel to mark her attendance. This is clear from the letter of Renuka Daniel. So the knowledge which was imputed on respondent No.2 is not borne out from the stand of Renuka Daniel. The so-called



admission on the part of the respondent No.2 is not substantiated and the same cannot be read against her.

38. It also follows the marking of attendance of the respondent No.2 without her knowledge cannot be construed as misconduct on her part.

39. The plea of respondent No.2 before the Tribunal was that the charge sheet was issued by the Managing Committee without constituting a Disciplinary Committee. I find, that the Disciplinary Committee was constituted by the Managing Committee much after the inquiry report was submitted by the Inquiry Officer. It follows, the decision to issue charge sheet, appointment of Inquiry Officer was taken by the Managing Committee.

40. The rule governing the conduct of inquiry under the Rules is also Rule 118, which contemplates constitution of a Disciplinary Committee in respect of employees. It shall consist of (i) Chairman of the Managing Committee of the school; (ii) Manager of the School; (iii) the nominee of the Director in the case of aided School or a nominee of appropriate authority in the case of unaided School; (iv) Head of the School; (v) a teacher who is a member of the Managing Committee of the School nominated by the Chairman of such Managing Committee.

41. The chargesheet so issued was signed by the Manager of the School on behalf of the Managing Committee of the School. So in that sense, the charge sheet was not issued by the Disciplinary Committee. The Disciplinary Committee constituted, was only for a limited purpose to consider the reply of the respondent No.2 on the inquiry report.

42. In any case, the final removal order was issued by the Manager in conveying the decision of the Managing Committee. In that sense, penalty was also not imposed by the Disciplinary Committee. To justify the action



by the Managing Committee and not by Disciplinary Committee, Mr. Vasdev has relied upon the Judgment of a Coordinate Bench of this Court in the case of *Samarth Shiksha Samiti (supra)*, to state that when a higher / larger body of the Managing Committee has imposed the penalty, the same is justified. He also relied upon the judgment in the case of *Pawan Jaishial (supra)* on a similar proposition.

43. In so far as *Samarth Shiksha Samiti (supra)* is concerned, the Court was dealing with the facts wherein respondent No.2 therein was appointed in the year 1972 as Head Master. He was placed under suspension on December 7, 1998. The chargesheet dated April 2, 1999 was signed by Manager of the School on behalf of the Managing Committee of the School. Respondent No.2 in his reply dated April 19, 1999 to the charge sheet took a preliminary objection that the charge sheet was not issued by Disciplinary Committee. Upon receipt of the reply to the chargesheet, the Directorate of Education was requested to make nomination to the Disciplinary Committee. The Directorate of Education appointed Education Officer (District South West) and Principal of SKB, Moti Bagh-I as nominees and a Disciplinary Committee was set up to initiate disciplinary proceedings against the respondent No.2. An Inquiry Officer was appointed by the Disciplinary Committee. The Inquiry Officer submitted his report. The said inquiry report was considered by the Disciplinary Committee by giving an opportunity to the respondent No.2. The Disciplinary Committee after considering the report of the Inquiry Officer and the reply of the respondent No.2 concluded that the charges levelled against respondent No.2 have been proved and proposed a penalty of removal from service of the respondent No.2 and forwarded the documents to the School Management. The School Management vide order dated February 27,



2001 imposed the penalty of removal of the respondent No.2 from the services of the School.

44. Pursuant thereto in an appeal filed by the respondent No.2, the Tribunal on the issue of the chargesheet having not been issued by the Disciplinary Committee was of the view that under Rule 118 read with Rule 120 of the Rules, the charges have to be framed by the Disciplinary Committee which is constituted under Rule 118 and whereas the chargesheet is not issued by the Disciplinary Committee but by the Manager of the School on behalf of the Managing Committee, who was not entitled / empowered to issue the chargesheet. It was further held by the Tribunal that the Disciplinary Committee was constituted after the issuance of charge sheet and no definite charges were framed by the Disciplinary Committee after its constitution. The Tribunal held the proceeds stand vitiated.

45. In the writ petition filed by the School, a coordinate Bench of this Court after noting the words “*as far as may be*” in Rule 120 was of the view that the same appears to suggest that strict compliance of the Rules is not to be insisted upon and deviations as per necessity are permissible. The Tribunal held that the School while writing to the Directorate of Education for appointing its nominees in the Disciplinary Committee had informed of the issuance of the charge sheet to respondent No.2. The Directorate of Education while appointing its nominees was fully aware that the charge sheet has been issued. Similarly, pursuant to the said nomination the disciplinary committee constituted and proceeded on the basis of the same charge sheet and appointed an Inquiry Officer to enquire into the said charges and considered the report of the Inquiry Officer on the charge sheet. All the above is a sufficient ratification of the charge sheet issued by the Manager on behalf of the



Managing Committee of the School. The Court was also of the view that the charges against respondent No.2 are grave. Need must have been felt to immediately proceed against him. The charge sheet appears to have been issued without noticing Rules 118 & 120. However, immediately after objection in this regard having been taken by respondent No.2 steps for constitution of the Disciplinary Committee in accordance with Rule 118 were taken and Disciplinary Committee was constituted, which did not choose to frame a fresh charge sheet and decided to proceed on the basis of the chargesheet already issued. The Court held that the same is sufficient and is a contextual compliance of Rule 120 (*supra*).

46. In *Pawan Jaishial (supra)*, the issue was that the show cause notice dated March 14, 2016 is issued without jurisdiction because it was signed by the Manager of the School without there being a proper Disciplinary Committee under Rule 118 of the Rules. The Court was of the view that the meeting of the Managing Committee dated March 12, 2016 wherein a decision was taken to issue a show cause notice to the petitioner therein was pursuant to a decision taken by the Managing Committee comprising of the members who also constituted the Disciplinary Committee under Rule 118 of the Rules. Hence, the Court held, it cannot be argued that Rule 118 has not been complied with. The Court was of the view that all the members who constituted the Disciplinary Committee were part of the Managing Committee who had taken a decision to issue a show cause notice. Hence the action of the School was upheld.

47. Having noted the issue which arose for consideration in the above two judgments assuming for a moment that the judgments as referred to above would also be applicable to the issue which has been raised by Mr. Vasdev



and the chargesheet cannot be said to be vitiated, the question would be whether the inquiry proceedings have been held in accordance with the Rules and the principles of natural justice to prove the charges and the penalty.

48. I have already produced the findings of the Inquiry Officer on the charge framed against respondent No.2. The Tribunal was of the view that the Inquiry Officer has given findings qua several allegations which were neither part of the show cause notice nor the chargesheet given to the respondent No.2 by the respondent School. The Tribunal was also of the view that the Inquiry Officer has used such language which should not have been used at least against a lady teacher. The Tribunal was of the view that Inquiry Officer has relied upon the report of the handwriting expert, Deepak Jain. No copy of the report of the handwriting expert was provided to the respondent No.2 along with the charge sheet. The handwriting expert did not appear in the witness box. His statement has not been recorded. As no chance to cross-examine him has been provided to respondent No.2 the Tribunal discarded the report of the handwriting expert as relied upon. It was the view of the Tribunal that the language used by the Inquiry Officer indicates that he was biased against respondent No.2. Even on the finding of the Inquiry Officer that Renuka Daniel had put the signatures of the respondent No.2 in the staff attendance register on April 5, 2016 at the instance of the respondent No.2, the Tribunal held the same is not borne from the record, as Renuka Daniel in her statement of April 8, 2016 specifically mentioned that the respondent No.2 did not ask her to sign the register. The Tribunal was of the view that the Inquiry Officer had interrogated the charged officer without recording her statement, which itself is illegal.



49. I agree with the aforesaid conclusion of the Tribunal. The show-cause notice and the chargesheet issued to the respondent No.2 primarily alleged that respondent No.2 had directed some staff members to put her signature in the staff attendance register. Similar is the charge in the chargesheet dated May 31, 2016. But the Inquiry Officer, as is noted from his findings went much beyond the charge framed against the respondent No.2. There is no serious contest on these findings by Mr. Vasdev. The conclusion of the Inquiry Officer is illegal and the same stand vitiated on two grounds being (i) in violation of the Rules of DSEAR and the principles of natural justice; (ii) it is a perverse finding. To that extent, the conclusion of the Tribunal needs to be upheld. The Tribunal is justified in granting the relief to the respondent No.2 in the manner it has been done in the impugned order.

50. I do not see any reason to interfere with the impugned order. The petition is without merit and the same is dismissed. Nothing precludes the petitioner School to initiate proceedings for any misconduct alleged to have been committed by the respondent No.2, other than the misconduct which was the subject matter of the chargesheet in the present case, in accordance with law.

CM APPLs. 860/2018 & 861/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 04, 2022/aky/jg