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

% *Date of Decision: 11th May, 2023*

+ W.P.(C) 5738/2020 & C.M. APPL. 20731/2020

MS. ANJNA LUTHRA Petitioner

Through: Mr. S.K. Gupta, Advocate.

versus

GOVT OF NCT OF DELHI & ORS. Respondents

Through: Mr. Naushad Ahmed Khan,
Advocate for DoE.

Mr. R.M. Sinha, Mr. P.M. Sinha,
Ms. Namita Sinha and Ms. Nandni Harsh,
Advocates for R-3 to R-5.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner quashing the impugned charge-sheet dated 18.01.2020 issued by Dayanand Model School (hereinafter referred to as 'the School')/Respondent No.4 with all consequential benefits.

2. Petitioner was holding the post of Vice Principal of the School which is an unaided School being managed by Respondents No.3 to 5. Pursuant to a preliminary inquiry report dated 15.11.2019, Petitioner was placed under suspension for certain alleged lapses highlighted in the report. Respondents No. 4 and 5 constituted the Disciplinary Committee ('DAC') comprising of the Chairman, Manager of the School, School Representative as member, Director's nominee Mr. Vikas Kulshreshtha and Ms. Anu Gera, Head of a different School, nominated by DoE as member of DAC and on 08.01.2020, the

first meeting of DAC was held. Copy of the draft charge-sheet was supplied to the members for their perusal but final decision was not taken and the meeting was postponed to 13.01.2020. Second meeting of DAC was convened on 13.01.2020, however, DE nominee and Ms. Gera were not available and meeting was rescheduled for 18.01.2020, on which date meeting was convened but DE nominee and Ms. Gera could not attend. Minutes of the meeting dated 18.01.2020 read as follows:-

“..... since both the representatives of DOE have expressed their inability to attend today's meeting in view of Election duty and personal reasons respectively and have returned the draft charge-sheet of Ms. Anjna Luthra, HOS (suspended) without any suggestion/remarks on it and hence, deemed as approved by them.”

3. Acting on the deemed approval, charge-sheet was served on the Petitioner on 18.01.2020. In response, Petitioner sought certain documents and records of the meeting as well as details of the members constituting the DAC. While certain documents were supplied to the Petitioner, the minutes of the meeting or the constitution of the DAC was not furnished to her. Challenging the suspension, Petitioner filed a writ petition in this Court being W.P.(C) 10523/2019, however, in the meantime, DoE directed the School to revoke the suspension order and allow the Petitioner to join as Head of School ('HOS')/Vice Principal within three days.

4. Petitioner avers that she could not file reply to the charge-sheet on account of Pandemic COVID-19 and it was only on 03.07.2020 that she was able to respond to the charge-sheet. According to the Petitioner, DAC was not constituted in accordance with Rule 118 of Delhi School Education Rules, 1973 (hereinafter referred to as 'Rules 1973') and therefore, she approached this Court challenging the charge-sheet. By a detailed order dated 28.08.2020, this Court stayed

further inquiry proceedings on a *prima facie* view that the charge-sheet was not in accordance with Rule 118 and the interim order continues till date.

5. Learned counsel for the Petitioner contends that the charge-sheet is illegal as the same has not been issued in accordance with Rule 118 of Rules 1973. The Rule requires that DAC in respect of an employee of a recognised private school shall consist of Chairman of the Managing Committee of the School, Manager of the School, Director's nominee and a Teacher who is a Member of the Managing Committee as well as Head of the School except where the inquiry is against the HOS, in which case Head of another School will be nominated by DoE. It is submitted that in the present case, the minutes of the meeting dated 18.01.2020 reflect that DE nominee as well as Ms. Gera were not present in the meeting and thus there were no deliberations for approval of the charge-sheet. The concept of deemed approval of charge-sheet put forth by the School is unknown to law and the charge-sheet not having been approved by all members of the DAC in consonance with Rule 118 deserves to be quashed. Reliance is placed on the judgment of the Supreme Court in ***Union of India and Others vs. B.V. Gopinath, (2014) 1 SCC 351***, in this regard.

6. It is further submitted that ordinarily Courts do not interfere in the disciplinary proceedings at the stage of charge-sheet, however, the limited exception to the said principle is where the charge-sheet is without jurisdiction and not approved by the Disciplinary Authority. In this context, reliance is placed on ***Union of India and Another v. Kunisetty Satyanarayana, (2006) 12 SCC 28***. Another serious contention raised by Mr. Gupta, which touches on the aspect of bias of the DAC, is that Ms. Popli was the Manager of the School and had

rendered the preliminary inquiry report and thus she was disqualified from being Member of the DAC.

7. Learned counsel for the School opposes the writ petition by firstly arguing that the charges against the Petitioner are serious and secondly, it is not in the control of the School to ensure the presence of DE nominee or Head of another school. Elaborating the second point, it is argued that School had written to the DoE on 15.11.2019 to communicate the name of the nominee for constituting the DAC, followed by a reminder on 21.11.2019. On 21.11.2019, DoE sent the details of the DE nominee as well as Head of School nominated by DoE. On 28.11.2019, DAC was constituted and thereafter intimation was sent to the nominees for attending the meeting on 08.01.2020. First meeting of the DAC was convened on 08.01.2020 and the draft charge-sheet was supplied to all the members. Meeting was deferred for 13.01.2020 on which date, the DE nominee through telephonic message showed his inability to be present for the meeting. Ms. Gera also sent a communication expressing her inability to attend the meeting on 13.01.2020. Meeting was thus deferred for 18.01.2020, however, neither of the two members attended the meeting on the said date.

8. It is further submitted that although Ms. Anu Gera/HOS nominated by DoE did not attend the meeting on 18.01.2020, she had returned the draft charge-sheet without any modification or objection. Similarly, the DE nominee also did not register any objection to the charge-sheet and therefore there was an implied approval, based on which the charge-sheet was issued to the Petitioner and no illegality can be found with the same. It is emphasized by the learned counsel that the School can only request the DoE to nominate its nominees, but cannot compel them to attend the meetings and

therefore their absence should not lead to quashing of the charge-sheet.

9. Mr. Khan, learned counsel for DoE supports the Petitioner and submits that compliance with Rule 118 of Rules 1973 is mandatory and no exception can be made to the laid down constitution of DAC and the procedure for issuance of charge-sheet. He further submits that DE nominee/Head of school nominated by DoE were not absent without cause. Ms. Anu Gera had a personal difficulty while DE nominee was deputed on election duty and the DAC meeting ought to have been deferred to another date. It is further submitted that there can be no implied approval of the charge-sheet in law and in the absence of approval of the charge-sheet by a DAC constituted as per Rule 118, the impugned charge-sheet cannot be sustained.

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

11. Two short points arise for consideration of this Court in the present writ petition. The first is the scope and ambit of judicial review under Article 226 of the Constitution of India to interfere in disciplinary proceedings at the stage of issuance of charge-sheet and the second is whether the charge-sheet is illegal and vitiated not having been issued in accordance with provisions of Rule 118 of Rules, 1973.

12. Insofar as the first issue is concerned, it is well settled by series of decisions of the Supreme Court and this Court that ordinarily a writ Court would not entertain a writ petition arising out of a challenge at the stage of show-cause notice or charge-sheet, as at that stage, no cause of action arises in favour of the employee since these are not adverse orders which affect the rights of the party and the assertion of any right at this stage is pre-mature. There are, however, limited

exceptions to this rule and one of the carve outs to the general rule of no interference is where the charge-sheet is issued without jurisdiction i.e. not issued by the Competent Authority. In **B.V. Gopinath (supra)**, Supreme Court emphasized the importance of the stages prior to issuance of a charge-sheet in a disciplinary proceeding and held that the Competent Authority to approve a charge memo is the Disciplinary Authority and in absence of the approval by the Disciplinary Authority, charge-sheet becomes *non est* and liable to be quashed. It was highlighted that Disciplinary Authority alone is required to exercise that power otherwise it would go against the established maxim '*delegatus non potest delegare*'.

13. It is trite that the power to issue charge-sheet is only of the Disciplinary Authority and law attaches great sanctity to this stage of the disciplinary proceedings. Therefore, where a charge-sheet is challenged on ground of lack of jurisdiction/competence, in my view, as per the binding dictum of the Supreme Court, it is open to examination to ensure that the departmental enquiry does not proceed on a charge-sheet which is *non est* and without sanction of law. In this backdrop, there is no gainsaying that the question whether the charge-sheet is issued by DAC in accordance with provisions of Rule 118 of Rules, 1973 is open for examination at this stage by the Court in the scope of judicial review under Article 226 of the Constitution of India as this would have a bearing on the legality of the charge-sheet.

14. Case of the Petitioner as set-forth in the petition is simple. It is stated that Rule 118 has not been followed before issuing the charge-sheet as 2 members of the DAC were not present on the date the meeting was held and charge-sheet was issued without their approval. I have perused the Minutes of meeting held on 18.01.2020, which support the factual plea of the Petitioner. Ms. Anu Gera, Head of

another school nominated by DoE and the DE nominee, Mr. Vikas Kulshreshtha were not a part of the DAC on the said date. Relevant part of the Minutes of meeting is as follows:-

“Disciplinary proceedings against Ms. Anjna Luthra, HOS (Suspended):

The third meeting of the Disciplinary Authority committee, constituted to enquire the work and conduct of Ms Anjna Luthra, HOS (suspended) was held on 18th Jan 2020 at 11:00am in the school premises. The following members of committee attended the meeting:

- | | |
|---------------------|----------------------------------|
| 1. Mr. Atul Puri, | Chairman |
| 2. Ms. Indu Popli | Member |
| 3. Ms. Suman Chawla | Member, Teachers' representative |

*The meeting started with the chanting of Gayatri- mantra. Since both the representatives of DOE have expressed their inability to attend today's meeting in view of Election duty and personal reasons respectively and have returned the draft charge-sheet of Ms Anjna Luthra, HOS (suspended) without any suggestions/remarks on it and hence **deemed as approved by them.***

It was decided that the copy of the charge-Sheet, duly signed by all three members present, will be sent to Ms Anjna Luthra today itself via e mail and speed post also for her reply/comments on the same, to be received within fifteen days as mentioned in covering letter.

The next date of meeting will be fixed on receiving the reply from suspended HOS.

The meeting concluded with thanks to the chair.”

15. From the counter affidavit filed by the School, it is evident that when intimation of the meeting of the DAC was conveyed to Ms. Anu Gera, she expressed her inability to attend the meeting on the said date for some personal reasons and had asked the School to have the draft charge-sheet collected from her. From the e-mail dated 17.01.2020, which is also placed on record by the School, it is evident that DE Nominee had expressed his inability to attend the meeting on 18.01.2020 on the ground that he had been deployed for election duty in the Delhi Legislative Assembly Election, 2020. Therefore, it is not a case where Ms. Anu Gera and Mr. Kulshreshtha had refused to be a

part of the DAC or were deliberately absenting and clearly the disability to attend the meeting of DAC was only temporary for that particular day. The moot point that thus arises for consideration is whether DAC can be said to be legally and validly constituted on 18.01.2020 and the incidental question that arises is to the validity of the charge-sheet issued by the said DAC.

16. Rule 118 of Rules, 1973 provides that Disciplinary Committee in respect of every recognized private school, whether aided or not, shall consist of the Chairman of the Managing Committee of the School, Manager of the School, Nominee of the Director in case of aided school or Nominee of the Appropriate Authority in case of unaided school, Head of the School and a Teacher, who is a Member of the Managing Committee nominated by the Chairman. Where the inquiry is contemplated against the HOS, the Head of any other school will be nominated by the DoE. In ***Dr. Swami Ram Pal Singh Mission School v. Shri Harvinderpal Singh Bindra & Anr., 2017 SCC OnLine Del 6928***, a Co-ordinate Bench of this Court was seized of several issues amongst which one was whether provisions of Rule 118 are mandatory. The Court held that appointment of an employee of a school has statutory protection and cannot be terminated except by following due process envisaged under Rules 118 and 120 of Rules, 1973. In ***Mangal Sain Jain v. Principal, Balvantray Mehta Vidya Bhawan and Others, 2020 SCC OnLine Del 2608***, this Court had the occasion to examine the same issue and it was held as under:-

“22. Petitioner has in Grounds (a), (d) and (f) of the present writ petition specifically averred that the Chargesheet was not issued by the Disciplinary Committee as none was ever constituted by the Managing Committee and the Chargesheet as well as the Discharge order was signed only by the Manager and the Principal in their individual capacities. There is no denial to the specific averments of the Petitioner in reply or the written submissions filed by the School and even during the course of arguments, apart from simply stating that principles of natural justice were complied with, nothing has

been said to support that the Disciplinary Committee was ever constituted. No record was produced to contradict the plea of the Petitioner in this regard. In its absence, an inference will have to be raised in favour of the Petitioner that there was no Disciplinary Committee and hence the Chargesheet was not framed as per law. Chargesheet placed on record bears only the signatures of the Principal and the Manager and since nothing is forthcoming to indicate that the action was by or pursuant to a decision of the Disciplinary Committee, the inevitable conclusion is that there was non-compliance of the mandatory provisions of Rules 118 and 120 of DSEA&R. In the absence of there being a Disciplinary Committee, even the Penalty order is without jurisdiction and liable to be set aside.

23. *Law is now as settled as still water that if the disciplinary proceedings are not initiated or conducted as per procedural safeguards formulated under the statutory provisions, being Rules 118 and 120 of DSEA&R, against an employee of the School, the proceedings shall vitiate. The consequential penalty order would then be rendered illegal. This has been so held in Dr. Swami Ram Pal (supra) and there have been repeated affirmations as in the case of Hindon Public School (supra) as well as Rukmani Devi (supra), to refer a few, wherein the penalty orders have been set aside on account of non-compliance of Rule 120 of DSEA&R."*

17. In ***Rosary Senior Secondary School v. Directorate of Education and Others, 2022 SCC OnLine Del 1871***, challenge was laid by the School to an order passed by the Delhi School Tribunal in Appeal No. 11/2017 whereby Tribunal had allowed the appeal and set aside the charge-sheet, appointment of the Inquiry Officer and the penalty of removal of Respondent No. 2. One of the grounds raised by Respondent No. 2 before the Tribunal was that Disciplinary Committee was not constituted as per Rule 118 and the Tribunal found in favour of Respondent No. 2. This Court while examining the order of the Tribunal came to a conclusion in favour of the employee and upheld the order of the Tribunal on two-fold grounds i.e. violation of Rules, 1973 and principles of natural justice as well as perverse findings of the Enquiry Officer beyond the charge framed. In order to come to the said conclusion, the Court took note of Rule 118 and the constitution of the DAC envisioned therein. The Court found that the

charge-sheet was signed by the Manager of the School on behalf of the Managing Committee and not by the DAC which had been constituted for a limited purpose of considering the reply of Respondent No. 2 to the enquiry report and not at the initial stage for approving the charge-sheet.

18. In view of the settled law that provisions of Rule 118 are mandatory and if DAC is not constituted as per the constitution provided in the said Rule or charge-sheet is not approved by the DAC, it would be *non est* and liable to be quashed. As aforementioned in the present case, both the DE Nominee as well as the Head of school nominated by DoE as members of the DAC in consonance with Rule 118 were not a part of the DAC on 18.01.2020 and did not approve the charge-sheet. An argument is raised on behalf of the School that even if these two members were not physically present, in the absence of their objection to the draft charge-sheet, there will be a deemed approval. This argument is to support and defend the Minutes of Meeting dated 18.01.2020, wherein it is recorded that the charge-sheet is deemed to be approved. This contention only deserves to be rejected, as there is no concept of deemed approval of charge-sheet. It needs no emphasis that the exercise of approval of a charge-sheet is not a mechanical exercise and includes application of mind to see if charges are at all made out, in which case the charge-sheet may not be issued at all or may be issued with lesser charges. This would entail deliberations and meeting of minds of the members of DAC and thus the concept of 'deemed' approval is wholly alien to the procedure involving approval of charge-sheet. The impugned charge-sheet is *non est* and deserves to be quashed.

19. Learned counsel for the School has emphatically raised an argument that it is not in the hands of the School to ensure the

presence of DE Nominee or the Head of any other school and all that the School could do was to invite them for a meeting by sending requisite communications, which was done. If after receipt of intimation, both the members of DAC chose not to attend the meeting, the School cannot be faulted. No doubt, the argument is an ingenuous one but in the present case does not aid the School for two-fold reasons. First and foremost, in the present facts, it cannot be stated that the DE Nominee or the Head of another school had refused to be a part of the DAC or were deliberately absenting. Since they were unavailable on 18.01.2020, the ideal and correct course of action for the School was to have deferred the meeting to another date so as to abide by the mandate of Rule 118. Secondly, the School cannot wriggle out of the mandate of a provision as sacrosanct as Rule 118 by merely arguing that it is not in the hands of the School to ensure presence of outside nominees. Surely, if in a given case any nominee fails to attend the DAC meeting without a due cause or justification, the School can request the DoE to nominate another person. In the present case, School has been unable to make out a case that the absence of the DE nominee or the Head of the other School was intentional or that they were deliberately refraining from attending the DAC meetings.

20. In view of the aforesaid, writ petition is accordingly allowed quashing the charge-sheet dated 18.01.2020 with all consequential benefits accruing in favour of the Petitioner. It is made clear that nothing precludes the School to initiate proceedings for the alleged misconduct committed by the Petitioner which was the subject matter of the impugned charge-sheet, if so advised and in accordance with law. I may pen down a caveat that this Court has not expressed any opinion on the merits of the case.

21. At this stage, a submission of desperation is made by counsel for the School that in case the School decides to initiate action for issuing fresh charge-sheet, DoE should be directed to co-operate and nominate the DE Nominee without any delay or resistance. Mr. Naushad Khan, learned counsel appearing for DoE strenuously opposes the submission and states that the DoE was never at fault in the present case and it was the School who violated the procedure prescribed in Rule 118. He nevertheless submits that it is the statutory obligation of the DoE to nominate a DE Nominee as a part of the DAC, as and when requisitioned by a School for the purpose of disciplinary proceedings and if the School in the present case requisitions for nomination of a DE Nominee, in accordance with the provisions of Rules, 1973, the needful shall be done by DoE. This Court entirely agrees with the stand of DoE and accepts the assurance given.

22. Writ petition stands disposed of along with the pending application directing that all consequential benefits of quashing of charge-sheet, at this stage would flow to the Petitioner. Cost of Rs.20,000/- is also awarded in favour of the Petitioner, payable by the School within a period of six weeks from today.

JYOTI SINGH, J

MAY 11, 2023/shivam/kks