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

% Judgment delivered on: 07.11.2023

+ LPA 737/2023 & CM APPL. 57590-93/2023

RUCHIKA RAI MADAN

..... Petitioner

versus

DIRECTORATE OF EDUCATION & ORS Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Rohini Musa and Mr. Ujas Kumar,
Advocates

For the Respondent : Mr. Yeeshu Jain, Addl. Standing
Counsel with Ms. Jyoti Tyagi and Ms.
Manisha Tyagi, Advocates for R-
1/DOE.
Mr. I.S. Alagh, Sr. Advocate with Mr.
Abhinash K Mishra, Advocate for R-2
& 3.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)**

1. This is a Letters Patent Appeal under clause X of Letters Patent Act, 1866 assailing the judgment dated 17.08.2023 passed by the learned Single Judge in W.P.(C) No.1138/2023, captioned “ *Ruchika Rai Madan Vs. Directorate of Education & Ors.*”.
2. The facts germane to the present appeal, shorn of unnecessary details and as noted by the learned Single Judge in the impugned judgement, are as under:-



“2. Factual matrix to the extent necessary and relevant is that pursuant to an advertisement issued by the Society for appointment to the post of Principal in the schools run by it, Petitioner made an application and after being successful in a rigorous round of interview on 09.05.2015 as well as after verification of her documents, including educational and experience certificates, Petitioner was offered appointment vide letter dated 11.09.2015 in pay band 15600-39100 with Grade Pay Rs.7600/- and was directed to join duty immediately by reporting to the Director of the Society at the earliest. Petitioner joined on the same day and submitted a joining letter dated 11.09.2015. By a letter dated 12.11.2015, Society confirmed that Petitioner had reported for duty on 11.09.2015.

3. It is averred in the petition that from the date of appointment till 09.09.2016, Petitioner worked dedicatedly and devotedly and received appreciation and accolades for the tasks assigned and successfully accomplished by her. According to the Petitioner, a few months after her joining she started facing discrimination and harassment and was pressurised to tender resignation. Salary was also not regularly paid to her despite repeated requests. When the Petitioner refused to tender her resignation, the Society issued a letter dated 04.05.2016, alleging that Petitioner had not submitted her certificates pertaining to educational qualifications and experience in violation of Code of Conduct for Teachers set out under Rule 123 of Delhi School Education Act and Rules, 1973 (hereinafter referred to as the ‘DSEAR’) and had taken unauthorized leaves for few days in April, 2016. Petitioner responded by a letter dated 10.05.2016 denying the allegations and by way of abundant caution submitted attested photocopies of all her certificates and testimonials again. Not being satisfied with the documents submitted, the Society again called upon her to provide originals of the degree certificates of B.Com., M.Com. and B.Ed. along with marksheets for each year and



the experience certificates of having served as TGT, PGT and Principal in various institutions by 26.05.2016.

4. It is stated that premised on some internal inquiry, a Report was given on 15.07.2016 containing false allegations against the Petitioner, leading to a show cause notice dated 12.08.2016, to which she submitted a detailed reply on 23.08.2016 refuting and denying the allegations. However, without paying heed to the response of the Petitioner, the Society terminated her services vide order dated 09.09.2016, despite the Petitioner pointing out in the reply that action could only be taken in consonance with DSEAR and that the allegations were false. Finding merit in the stand of the Petitioner that the certificates/testimonials submitted by her were genuine, Society passed an order dated 07.11.2016 recalling the termination order, unconditionally and without any reservation or caveat. By the same order, Petitioner was asked to join her duties with immediate effect.

5. Pursuant to the recall order, Petitioner was allowed to join her duties w.e.f. 08.11.2016 and mark her attendance. However, in less than a week, Petitioner was prevented from entering her office on 12.11.2016. Petitioner ran from pillar to post and represented, both orally and in writing, requesting the Society to permit her to join duties, but to no avail, constraining her to file a writ petition being W.P. (C) 12506/2019. The writ petition was disposed of by the Court vide order dated 11.12.2019 taking on record the submission of the Society that since no vacancy was available in the post of Principal in any School, Petitioner shall be posted in the Education Cell. Posting order/joining letter was handed over to the Petitioner during the hearing in the Court. The manner in which the period between 09.09.2016 to 11.12.2019 would be treated was left to be considered by the Respondents in the first instance. When the order was not complied with, Petitioner filed a contempt petition being CONT. CAS (C) No. 272/2020 and vide order dated 19.06.2020 the Court directed the Society to refix the salary of the Petitioner and pay the emoluments at par with the Principals of other Schools. In purported compliance of the order dated



11.12.2019, Society passed an order dated 04.02.2021 rejecting the claim of the Petitioner for salary and allowances etc., which is also the subject matter of challenge in this petition.

6. While the dispute with respect to the salary and allowances payable to the Petitioner was pending, Society issued an order dated 19.10.2022 suspending the Petitioner. This was followed by a show cause notice dated 16.11.2022 and a charge sheet dated 06.01.2023, which are assailed in the present petition. On 31.01.2023 when the writ petition came up for admission, Petitioner restricted her claim to prayers (A), (B), (C), (E) and (F), with liberty to file a separate writ petition with respect to her claims for revision of pay and allowances under the 6th and 7th CPC.”

3. Being aggrieved of the show cause notice dated 16.11.2022 and the chargesheet dated 06.01.2023, the appellant filed the aforesaid writ petition challenging the same, which was disposed of *vide* the impugned order.
4. That apart, from raising other grounds, primarily the learned counsel for the appellant had categorically argued that being appointed as a Principal by the School, her disciplinary proceedings ought to be squarely covered by Delhi School Education Act, 1972 and the Rules made thereunder in the year 1973. She submits that instead of the Competent Authority under the DSEAR, 1973, the respondent society initiated the inquiry under the Employees Service Regulations, 1992 of Delhi Sikh Gurudwara Management Committee (Staff Service Regulations) which was plainly illegal and ought to have been set aside by the learned Single Judge.
5. Learned counsel submitted that the overwhelming documentary evidence placed on record before the learned Single Judge in the writ



petition clearly pointed out that it was the School's Management Committee which had appointed her and as such, initiation of inquiry by the respondent-Society, which was not the Appointing Authority, was *void ab initio*.

6. She also submitted that she was appointed on the basis of very same documents which were now alleged to be forged and fabricated and as such, according to her, the initiation of the disciplinary proceedings are malicious and vindictive. She submits that in an earlier round of litigation, the respondent had terminated the services of the appellant on the basis of Report rendered on 15.07.2016, falsely recording that her testimonials and credentials are false and fabricated. According to her, all her documents are legally valid documents and the disciplinary proceedings as initiated are wholly illegal, unlawful, unconstitutional and ought to be struck down. On that basis, learned Counsel prays that the impugned order be set aside and consequently, the prayers in the writ petition be allowed.

7. *Per contra*, Mr. Inder Bir Singh Alagh, learned senior counsel appearing for the respondent controverted the arguments of the learned counsel for the appellant. According to the learned senior counsel, since the disciplinary proceedings were at the stage of post issuance of chargesheet, the writ petition itself was not maintainable being premature and relied upon the judgments of the Hon'ble Supreme Court in *Union of India Vs. Ashok Kacker* reported in (1995) Supp (1) SCC 180 and *NGEF Limited Vs. Sathyanarayana A.V. & Ors.* reported in 2007 (15) SCC 538.

8. Learned senior counsel also submitted that the said writ petition



before the learned Single Judge was also not maintainable in view of the Section 32 of the Delhi Sikh Gurudwara Act, 1971 as this Court exercises an “*Appellate Jurisdiction*” under Section 33 of the said Act and relied upon judgments of this Court in ***Satpal Singh Vs. DSGMC*** rendered in **LPA No.619/2011** and ***Arshpreet Kaur Vs. Guru Teg Bahadur Polytechnic Institute & Ors.*** reported in **2017 SCC OnLine Del 6761**.

9. According to Mr. Alagh, the appellant was not an employee of the School as claimed and she was actually appointed by the respondent-Society and had continued in that capacity. On that basis, learned senior counsel submits that the Employees Service Regulations, 1992 of Delhi Sikh Gurudwara Management Committee (Staff Service Regulations) would be applicable to the case of the appellant and not Rule 118 of the DSEAR, 1973. In order to buttress his arguments, learned senior counsel relies upon the judgment of Hon’ble Supreme Court in ***Samarth Shiksha Samiti & Anr. Vs. Bir Bahardur Singh Rathour & Ors.*** reported in **2009 (3) SCC 194**.

10. Learned senior counsel submits that the earlier order of termination was recalled by the respondent-Society since no inquiry was held by it in accordance with law before such termination order was passed, based on the preliminary report dated 15.07.2016. According to learned senior counsel, it was open to the respondent-Society to recall the termination order to rectify the error and initiate inquiry in order to ascertain the authenticity and genuineness of the certificate and testimonials of the appellant. He further submits that there was no delay in issuing the chargesheet. On that basis, learned



senior counsel submits that the present appeal is devoid of any merit and as such, ought to be dismissed.

ANALYSIS AND CONCLUSION:

11. We have heard the learned counsel for the appellant as also learned senior counsel for the respondent and perused the documents on record of the present appeal. We have also examined the detailed impugned judgment of the learned Single Judge.

12. We observe that the learned Single Judge after having carefully examined the documents placed on record including the show cause notice dated 12.08.2016, which was extracted in the said impugned order, had concluded that the issue raised in the said show cause notice was very serious and grave inasmuch as the very documents on the basis whereof the appellant was appointed were doubted as being fake, forged and fabricated. In other words, but for the said documents, the appellant was not otherwise qualified for being appointed as a Principal.

13. We are in agreement with the aforesaid proposition of the learned Single Judge inasmuch as if the testimonials of the appellant submitted to the respondent-Society at the time of consideration of appointment as Principal are genuine, there can possibly be no reason as to why the appellant would lodge any protest thereagainst for mere inquiry. The resistance of the appellant to any such inquiry, though primarily on technical issues, creates suspicion on the authenticity of such documents. We refrain ourselves from making any further observations on the documents itself, lest the same prejudice the case of either of the



parties.

14. Even otherwise, the challenge laid by the appellant in the writ petition to the suspension order, show cause notice and chargesheet issued to her, are ordinarily not assailable by way of a writ under Article 226 of the Constitution of India, 1950. It is also important to consider that a writ court cannot test the correctness or otherwise of the allegations in the chargesheet and as such, the challenge to such show cause notice or even the chargesheet would not ordinarily be maintainable. We can profitably rely upon the judgment of the Hon'ble Supreme Court in ***Union of India & Anr. Vs. Kunisetty Satyanarayana*** reported in **2006 (12) SCC 28** where it was held that a mere show cause notice or chargesheet does not interfere in anyone's right and writ remedy cannot be maintained thereagainst.

15. That so far as the contention of the appellant regarding applicability of the Rule 118 of the Delhi School Education Rules, 1973 is concerned, suffice it to refer to the observations and conclusions recorded by the learned Single Judge in para 43 of the impugned order whereby the entire issue was crystallized as under:-

“43. In view of the aforesaid, this Court cannot subscribe to the argument of the Petitioner that the Society should be precluded from inquiring into the genuineness of the experience certificates furnished by the Petitioner. There is no merit in the contention of the Petitioner that the charge sheet is without jurisdiction as the same has not been issued by the Disciplinary Authority constituted under Rule 118 of the Delhi School Education Rules, 1973. In the impugned show cause notice dated 16.11.2022, it is clarified by the Society that Petitioner is governed by the Employees Service Regulations, 1992 (Staff Service Regulations) of Delhi Sikh



Gurudwara Management Committee. The advertisement, appointment letter, joining letter, show cause notices, impugned charge sheet and the plethora of documents on record clearly point to the fact that Petitioner was an employee of the Society and was selected for appointment as Principal, which is only a posting. Therefore, provisions of DSEAR will be inapplicable and the charge sheet has been rightly issued under the service regulations applicable to the employees of the Society.”

Having regard to the aforesaid observation of the learned Single Judge who had the benefit perusing the entire record, we do not find any reason to take a divergent view and accordingly hold that the overwhelming documents on record clearly point out to the fact that the appellant was indeed an employee of the respondent-Society and was selected as Principal, which is only a posting. Learned Single Judge has rightly concluded that the chargesheet has been correctly issued under the service regulations applicable to the employees of the society.

16. We, therefore, find no reason to interfere with the impugned judgment and as such, dismiss the present appeal being devoid of merit, however, without any order as to costs.

17. Pending applications also stand disposed of.

(TUSHAR RAO GEDELA)
JUDGE

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

NOVEMBER 7, 2023/MS