



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

% **Date of order: 21st July, 2023**

+ **W.P.(C) 286/2012**

BHUSHAN TRIPATHI Petitioner

Through: Appearance not given

versus

SAMARTH SHIKSHA SAMITI (REGD) AND ORS

..... Respondents

Through: Mr.Rajesh Gupta and Mr.Harpreet
Singh, Advocates
Ms.Latika Chaudhary, Advocate for
R-6

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner by way of the present petition under Articles 226 and 227 of the Constitution of India has sought the following reliefs:

“(a) accept the present writ petition, issue an appropriate writ or writ of mandamus and directions for allowing the appeal, thereby quash/set aside the impugned order dated 18.05.2011 (Annexure P in appeal no.43/2003, passed by Delhi School Tribunal, order of dismissal from service dated 04.11.2003 (Annexure P-1), passed by respondent no.1, order of suspension dated 05.03.2002 (Annexure P-4) and enquiry



report dated 27.06.2003 (annexure P-13) with all consequential benefits; and

(b) the petitioner be further ordered to be reinstated in service with all consequential benefits of the arrears of pay, allowances and increments etc.

(c) To call for the records from Delhi School Tribunal in respect of Appeal no.43/2003 and the records from the respondents for perusal and scrutiny.

(d) Cost of the petition may also be allowed in favour of the petitioner and against the respondents.

(e) Pass any other such further orders(s), which this Hon'ble Court deem fit and proper in favour of the petitioner in the facts and circumstances of the case as well as in the interest of justice."

BACKGROUND

2. The relevant facts necessary to be reiterated for proper consideration of the instant petition are discussed hereafter:

a. The respondent no. 1, Samarth Shiksha Samiti, is a registered society running various recognised schools in Delhi, one of which is Sanatan Dharam Saraswati Bal Mandir, West Punjabi Bagh, New Delhi, i.e., respondent no. 2 before this Court. The petitioner started working at the respondent no. 2 School on 1st October, 1990 as a music teacher and was teaching students up to class X.

b. On 11th June 1992, the services of the petitioner were



terminated. Pursuant thereto, the petitioner approached the Delhi School Tribunal by way of filing Appeal bearing No. 28/91 challenging the order of termination of services. The said appeal was allowed in favour of the petitioner and the School was directed to reinstate the petitioner in service.

c. During the course of his employment, upon a complaint by parents of a girl student of Class VI, certain allegations of cruelty, sexual harassment and outraging the modesty of a girl student were levelled against the petitioner. According to the allegations, on the intervening day of incident, i.e., 13th February 2002, the petitioner called upon the complainant girl student to the home science lab of the School and when she was alone, he told her that he liked her, proposed to her and forcefully kissed her hand. It was also alleged that the petitioner threatened the girl student to prevent her from disclosing this incident to anybody. The girl student, on 14th February 2002, told her parents about the incident that her music teacher had misbehaved with her and abused her.

d. Subsequent to a written complaint made by the parents of the girl student to the Vice Principal of respondent no. 2 School, a Show Cause Notice was issued to the petitioner regarding the incident on 13th February 2002. The petitioner denied all allegations levelled against him and attributed the complaint to be a result of a deep-rooted conspiracy to remove him from the School.



e. The petitioner was then placed under suspension from 5th March 2002 on contemplation of a departmental inquiry against him. Subsequently, the Director of Education, respondent no. 6 in the instant petition, also accorded its approval to the suspension order on 2nd April 2002.

f. A chargesheet containing article of charges was prepared and served upon the petitioner vide Memo dated 20th December 2002 and the petitioner was asked to submit his statement of defence. The petitioner denied the allegations against him in his written statement as well. Witnesses were examined from both the sides at the time of inquiry proceedings.

g. On 16th July 2003, the petitioner was served with the inquiry report and was asked to show cause as to why the penalty of dismissal may not be imposed upon him. To the said notice, the petitioner made a representation.

h. Ultimately, on 4th November 2003, the petitioner was dismissed from services.

i. Aggrieved by the dismissal order, the petitioner again approached the Delhi School Tribunal challenging the same in Appeal No. 43/2003, which came to be dismissed vide order dated 18th May 2011.

j. The petitioner is now before this Court seeking the reliefs as



stated above.

SUBMISSIONS

3. The learned counsel appearing on behalf of the petitioner submitted that the allegations levelled against the petitioner were false and concocted and a conspiracy was being hatched against him by the respondent no. 2. False allegations were levied against him in response to his legitimate demands for fixation of his pay as per the IV and V Pay Commission, which he was legally entitled to. It is submitted that the petitioner was being paid according to the pay scale of a primary teacher, even though he was entitled for pay scale of TGT, due to which the petitioner had previously also been arbitrarily and illegally terminated from service.

4. It is further submitted that even after his reinstatement vide judgment of the Delhi School Tribunal in Appeal No. 28/91, when the petitioner raised demands regarding the payment as per the appropriate pay scale, the respondent no. 2 did not pay any heed to the same.

5. It is submitted that the impugned order of dismissal dated 4th November, 2003 was passed by the General Secretary of the respondent no. 1, which is not the competent disciplinary authority in respect of the petitioner according to Rule 118 of the Delhi School Education Act and Rules, 1973, (hereinafter “DSEAR”), which states that any disciplinary action against the petitioner, being an employee of a recognized private school, can be taken only by the disciplinary authority of the recognized private school.



6. It is further submitted that Sh. D.K. Singhal, the Manager of the respondent no. 2 School, who passed the suspension order dated 5th March, 2002, was examined as a witness, MW-5, in the departmental enquiry which was in violation of the law and the principles of natural justice. Reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in ***Rattan Lal Sharma vs. Managing Committee, Hari Ram Co-Ed Higher Secondary School & Ors.*** to support the averments.

7. It is submitted that that the learned Tribunal failed to consider that the petitioner was neither afforded any opportunity for personal hearing nor was he given the complete documents pertaining to his case before an action was initiated against him by the respondents. It is submitted that the same is violative of Article 311 of the Constitution of India, Rule 120(1)(a) of the DSEAR read with Rule 14(4) of CCS (CCA) Rules as well as the principles of natural justice.

8. It is further submitted that the respondent no. 5 erred in declining, through a non-speaking order, the request of the petitioner to seek the assistance of a legal practitioner in the departmental inquiry, since the allegations levelled against the petitioner were serious in nature and involved complicated questions of facts and law. Hence, as such the petitioner remained unrepresented which also resulted in gross violation of the principles of natural justice. The learned Counsel for the petitioner placed reliance on several judgments of the Hon'ble Supreme Court of India to give force to his arguments. It is submitted that the learned Tribunal failed



to consider that the petitioner was not adequately represented at the time of his inquiry proceedings.

9. It is further submitted that the report of the respondent no. 5 is not based on evidence and hence, in light of the decision of the Hon'ble Apex Court in ***Kuldeep Singh vs. Commissioner of Police & Ors. (1999) 2 SCC 10***, it is perverse and is amenable to judicial scrutiny. It is also submitted that the inquiry report lacks clarity, is biased and non-speaking and therefore, is contrary to law settled.

10. The learned counsel for the petitioner further submitted that the learned Tribunal failed to appreciate that the inquiry authority as well as other authorities of the respondent no. 2 had already been prejudiced against the petitioner and hence, no fair opportunity was ever granted to the petitioner to present his case.

11. It is submitted that no charges levelled against the petitioner were proved and it is also clear that the case of the petitioner is a case of no evidence. It is also submitted that no reasons have been provided for the dismissal of the petitioner from the service and hence, all the orders impugned before this Court are liable to be set aside.

12. *Per Contra*, the learned counsels appearing before Court on behalf of the respondents vehemently opposed the instant petition and submitted that there is no irregularity or illegality in the impugned orders.

13. Vide order dated 13th November 2018 in the instant matter, the right



of respondents no. 1 to 5 to file Counter Affidavit was closed. Moreover, respondent no. 6, i.e., the Director of Education, is a proforma party and as such has not laid out any objections in its Counter Affidavit. Hence, there are no objections on record. However, during the course of hearing objections have been raised on behalf of the respondents to the submissions made in the petition as well as those made before the Court on behalf of the petitioner.

14. Heard the learned counsel for the parties and perused the record.

ANALYSIS AND FINDINGS

15. The petitioner has sought to challenge all the orders passed against him from the stage of suspension till the stage of dismissal of appeal by the Delhi School Tribunal. However, the scope of intervention and interference by this Court under Article 226 of the Constitution is limited, especially in case of service matters where disciplinary, inquiry and even appellate authorities have already played their part.

16. In the instant case, the respondent School had received a complaint by the parents of a girl studying at the respondent no. 2 School, the true translated contents of which are reproduced hereunder, while redacting the name of the girl:

*“Respectfully, it is submitted that my daughter is studying in your school in Class VI-B. On 13.02.2002, Wednesday, a teacher named Bhushan called my daughter from her class Jyotsana also accompanied *****, on which teacher snubbed her and sent her back by saying as to why she has come. After*



that girl went away, some work was assigned regarding putting the plates there and thereafter, he told to give him a kiss, whereupon the girl got scared and said Sir, what are you saying, then he replied, doesn't matter and asked not to tell anybody, then he caught her hand and kissed. He also threatened that if she informed anybody, it will not be good.

17. The contents of the complaint show that there were serious allegations against the teacher involving a minor female student. Taking cognizance of the complaint, the Vice Principal of respondent no. 2 made the following communication to the Principal:

*“On Friday, 15.02.2022, mother of ***** (Student VI-B) and relative visited you for complaining against the behaviour of Sh. Bhushan Ji, Music Teacher. You called me and ordered to hear the complaint. Mother of the student and relative were very sad and sorrow on the behaviour of Sh. Bhushan Ji. I sent them back after assuring to conduct proper enquiry of the matter. Simultaneously, I talked to the student and enquired about the genuineness of the truthfulness of the complaint. The photocopy of the complaint submitted by the mother and father of the student is enclosed with this letter for your appropriate instructions and actions. In the light of the seriousness of the issue you are requested to take immediate necessary action, so that the faith of the parents towards the school and samiti be maintained. From the action taken by you, the probable loss of image to school and samiti can be prevented.”*

18. A bare perusal of the communication reveals that the intimation of the complaint was forwarded to the Principal of the School and the necessary action thereto was decided to be taken by the School immediately after receiving the complaint, considering the gravity of the allegations against the



petitioner. Accordingly, the respondent no. 2 took the appropriate steps against the petitioner by issuing a Show Cause Notice to him. The true translated copy of the said Show Cause Notice dated 21st February 2002, appended to the petition, stated as under:

*“A complaint has been received from the parents of *****
 ***** , a student of class VI-B of our school. A copy of the said
 letter is being given to you.*

*You are requested to submit the reply of the same before
 leaving the school.”*

19. On 5th March 2002, another communication was made to the petitioner intimating him about the decision to hold an inquiry. The contents of the said communication are reproduced hereunder:

*“A case of cruelty towards student, outraging the modesty of
 girl student and sexual harassment against ***** of
 class VIth B was reported by her parent to Vice-Principal, Smt
 Sunita Gaur on 18.2.2002 who reported it to the Principal
 alongwith her report.*

*A copy of the complaint was given to you for immediate
 reply.*

*On receipt of your explanation, a preliminary enquiry
 was held by the Principal.*

*As per the allegations contained in the complaint by the
 parent, your reply and preliminary enquiry, a prima-facia, the
 above allegations has been substantiated against you.*

*The disciplinary authority is proposing to institute an
 enquiry in to the allegation. Pending this enquiry you are
 hereby placed under suspension w.e.f. 5/3/2002 afternoon under
 section 115 (d) of Delhi School Education Act 1973 till further
 orders.”*



20. It is evident from the above that the petitioner was duly informed every step of the way about the measure taken by the respondents in furtherance of the complaint received against him and was also provided with all the relevant details including the copy of the complaint. The above communications also show that the petitioner was given opportunities to place his case before the concerned authority and his reply and representations were also considered before making a decision. It was only after a preliminary inquiry was held that the petitioner was placed under suspension.

21. An approval to the suspension was also obtained by the Director of Education, which was received vide communication/order No. DE/48/131/(6)/Z-15/2002/498 dated 2nd April 2002.

22. The petitioner, while communicating his objections to the suspension order passed by the respondents against him as well as the allegations levelled pertaining to the female student, denied all claims raised against him and also stated in his reply/representation that he had been suspended only to satisfy the feeling of vengeance by the respondents since the petitioner had filed a suit against them upon his dismissal from services the first time in the year 1992, whereafter the Delhi School Tribunal had directed the School to reinstate the petitioner and also against the respondents in the year 1998, pertaining to fixation of pay of TGT Staff. It was also stated in the reply/representation dated 9th July 2002, that despite passing of three months from the date of suspension the inquiry proceedings



were not concluded and hence, the petitioner prayed that an order be passed dropping the inquiry proceedings against him and allowing the grant of subsistence allowance in his favour.

23. In the Statement of Article of Charges, only one Charge was framed against the petitioner which is reproduced hereunder:

“Article - I

*That the said Shri Bhushan Tripathi, while functioning as Music Teacher under the Shri Sanatan Sharam Saraswati Bal Mandir during the year 2002 committed gross misconduct, misbehaviour, in as much as he caused cruelty towards a girl student, ***** of Class VI-B, outraging her modesty and sexual harassment against her on 13.02.2002 in the school premises.*

Thus by his aforesaid act, the said Shri Bhushan Tripathi, Music Teacher acted in a manner unbecoming of a teacher of Shri Sanatan Dharam Saraswati Bal Mandir and showed grave misconduct on his part.”

24. Upon framing the charge and having conducted a preliminary inquiry, the following statement was made regarding imputation of misconduct, cruelty towards student, outraging modesty of a girl:

“Article – I

*That the Music Teacher named Shri Bhushan Tripathi called for ***** daughter of Shri ***** who is studying in your school in Class VI-B on 13.02.2002. another student Jyotsana also came with ***** but the teacher rebuked the former and sent her back saying as to why she had come there. After having all the other girls left, she was asked to perform some work of putting plate there and then asked for a kiss. As a result of this ***** got scared and said “Sir, what*



are you saying”? Then he replied “Doesn’t matter”, and asked for a promise that she will not inform anybody about this. He then caught her hand and kissed her and also threatened that “if she informed anybody, it will not be good”, as reported by the parent if the student.

Sir, you tell that in case any student commits such type of misconduct we make complaint to the teacher. If the teacher is such what would be the fate of school and nation. If our child is not safe in school where he will find herself safe? An appropriate action should be taken against such teacher failing which he can repeat such grave misconduct, as reported by the parent of the school.

That Shri Bhushan Tripathi, Music Teacher by his aforesaid act committed grave misconduct and acted in a manner which is subversive of discipline and cruelty towards students and unbecoming of a teacher of Shri Sanatan Dharam Saraswati Bal Mandir thereby making himself liable for disciplinary action”

25. Evidently, the concerned authority was of the opinion that the nature of allegations and the misconduct of the petitioner was of the nature which was unbecoming of a teacher. It was noted that an appropriate action was required to be taken in order to ensure the safety and security of the students of the school.

26. The inquiry proceedings were then held, the proceedings of which were duly recorded and have been placed before this Court. A perusal of the relevant inquiry proceedings shows that ample opportunity was given by the respondents as well as the Inquiry Officer to the petitioner to represent himself. Witnesses were also examined and cross-examined from both the sides. The Inquiry Officer made the final Inquiry Report on 27th June 2003,



holding the charges against the petitioner to be proved. The relevant portion of the Inquiry Report is reproduced hereunder. Regarding the witness statement of the victim minor female, the Inquiry Officer noted as under:

“Portion of her hand was kissed by Shri Bhushan Tripathi.

*Kumari ***** (MW3) who is the victim of the incident has stated that she is now studying in 8th standard in Shri Sanatan Dharam Saraswati Bal Mandir. The incident took place on 13th February 2002 when she was called for by Bhushan sir in 8th period in home science lab. She alongwith her best friend Jyotsna reached there. Then Bhushan sir rebuked Jyotsna and said that she had not been sent for. He had sent for ***** because he had some work with him. Jyotsna went back. She (MW3) asked as to what was the work upon which she was asked to place certain bowls and plates in physics lab. When she came back after placing bowls and plates there, she was asked to see outside whether somebody was coming or not. She saw and informed the sir that nobody was coming. Then sir, said that he loved her, he liked her and asked for a kiss. Upon this she (MW3) got scared and then said, sir, what are you saying this? upon this Bhushan sir said that he will not force her to give kiss if the same but she was not prepared to give she should not tell anybody. Thereafter, he suddenly caught her hand, she tried to separate but he kissed her hand forcibly. Bhushan sir, also said thereafter that if he hears about this, she will see the consequences. She (MW3) was sent back and her weeping could not be controlled. She was asked by Jyotsna as to what happened when she reached her class, but she did not tell her anything. Thereafter, she told her everything when she asked again. This witness has further stated that she did not take her food properly after reaching home and laid down. She was also asked by her father as to what had happened. Her mother also asked her in the evening when she came back as to why she (MW3) was sad. She said nothing. Next day when she*



went home from school then also she was asked by her father, and mother when she (MW3) came back in the evening. Then she told her mother while weeping and her mother told her father.

In cross-examination the witness has expressed her inability to tell the exact time but has affirmed the date and 8th period. The witness has further replied that she was asked by Bhushan sir to keep bowls and plates for the arrangement of food for C.B.S.E. examiners who had come on 13th February 2002 for physical education paper of XIIth class and food had been arranged for them in physical lab. The suggestion put by the concerned employee to this witness to the effect that she and one or two more children besides Jyotsna were rebuked has been denied by the witness. This witness has stated affirmatively that her right hand was kissed. In another reply to the question of the concerned employee the witness has also stated affirmatively that upper portion of back side of her hand had been kissed.”

27. The Inquiry Officer noted that there were consistencies in the statement of the witness/victim and that she had confirmed that the petitioner had kissed the back of her hand. After delineating the statements of witness at length, the Inquiry Officer gave his findings as under:

“I have heard the arguments. Perused the documents and evidence on record carefully.

*The crux of the charge-sheet/memorandum is that kumari ***** was called by the concerned employee; she was asked by him to put plates; she was asked to see outside whether someone was coming; she was asked for a kiss; she got scared; the concerned employee caught her hand and kissed. In this context. There is no fatal discrepancy among the statements of Shri Satya Pal Narang (MW 1), Smt. Richa Narang (MW2) and Kumari ***** (MW3) who is the victim of the incident has specifically replied to a question put by the concerned*



employee that upper portion of back side of her right hand was kissed by the concerned employee. There is absolutely no suggestion to this witness that she made a statement at the instance of her parents. Similarly there is also absolutely no suggestion to Shri Satya Pal Narang (MW1) and Smt. Richa Narang (MW2) to the effect that they made a complaint at the instance of management or Smt. Sunita Gaur (MW4).

*Mr. Satya Pal Narang (MW1) has stated that he was told by his wife Smt. Richa Narang (Mw2) about the incident on 14th February 2002. Smt. Richa Narang (MW2) has also stated in her statement that she came to know about the incident on 14th February 2002 from her daughter kumari ***** (MW3), but Shri Satya Pal Narang (MW1) has replied in cross-Examination that her wife along with a neighbor came to school on 13th February 2002. On account of the aforesaid discrepancy. The concerned employee has described the statement of Shri Satya Pal Narang (MW1) as false. To my mind this discrepancy is not fatal. This discrepancy can be said to have occurred due to slip of tongue or lapse of memory or under stress and emotion, for it is well settled principle of fact/law that when people observe/hear, under stress and emotion, an occurrence from different angles with different temperaments, capacity to observe/state, intelligence and memory power, discrepancies are bound to occur. They show only the untortured veracity of the witness. On the other hand, if there are no discrepancies in such cases, confederacy and concoction before hand may also be suspected. After taking the evidence of Shri Satya Pal Narang (MW1), Smt. Richa Narang (MW2) and kumari ***** (MW3) as a whole, all the circumstances attending it, into consideration, find that the discrepancy is not really such as make the events deposed to by the aforesaid witnesses improbable. Besides, it would also be relevant to mention that Shri Satya Pal Narang (MW1) during his cross-examination got excited and stated. "He wanted to come to school during prayer time and beat him (concerned employee)". This excitement also*



*lends support to the occurrence of incident. There is also no question and/or suggestion to kumari ***** (MW3) that other students were present; her hand was not kissed; she was not called; Jyotsna did not come along with her. In the absence of the aforesaid natural and probable questions which ought to have been put to Kumari ***** (MW3), her statement appears strong and cannot be discarded. Further, no management would expose its integrity and repute in the eyes of parents/public at large by leveling allegations of outraging the modesty of its school girl just to take vengeance from its employee because of litigation.”*

28. The Inquiry Report also dealt with the issue of vengeance and conspiracy raised on behalf of the petitioner, and observed as under:

“The concerned employee challenged his termination in the year 1991 and the Hon'ble School Tribunal returned verdict in his favour on 11th June 1992. the case relates to about 11 years back. Another case pertaining to T.G.T. grade and arrears has been filed by the concerned employee in the year 1998 and the same is pending. This case also relates to about five years back. To my mind, the decision in the former and pendency of the later case has no nexus with the chargesheet especially when MW-1, MW2 and MW3 are not aware of the litigation as admitted by the concerned employee in his cross examination. Exhibit WW1/2 is letter dated 18th November 200 written by the concerned employee to the principal of the school in respect of misbehaviour committed by the vice-principal with him in the presence of Shri Narender Atal Ji but the said Narender Atal has not been produced by the concerned employee in the inquiry to substantiate his allegations. Exhibit WW1/2 is a letter dated 24th February 2002 written by the concerned employee to the manager through the principal in respect of objectionable words uttered by Smt. Sunita Gaur (MW4) in respect of his dress and requested for intervention. In this context, the



statement of Shri Purshotam (WW6) throws some light on the alleged objectionable words who has stated that Smt. Sunita Gaur (MW4) commented about the dress of the concerned employee that he was wearingg Kurta like that of Tabla Players. This witness has given the detail in respect of the alleged objectionable words but this has not been clearly mentioned by the concerned employee in his complaint dated 24th February 2001 (Exhibit-WW1/2). The witness (WW5) has also stated that Smt. Sunita Guar (MW4) uttered the said words in joke but might have appeared objectionable to the concerned employee. Exhibit-WW1/3 is a reminder dated 29th March 2001 in pursuance of earlier complaints. The said reminder reveals that an attempt was made to sort out the difference between Smt. Sunita Gaur (MW 4) and the concerned employee, but he was not satisfied. It would also be useful to make reference to the representation dated 9th July 2002 (Exhibit-MWS) of the concerned employee in which nothing has been stated by him of the complaints Exhibit WW1/1, Exhibit-WW1/2 and Exhibit-WW1/3. However, these complaints find place in written statement of defence dated 29th December 2002 and the same leads to the conclusion that the concerned employee made an attempt to improve His stand which is afterthought. with regard to the contentions raised by the concerned employee in his written statement of defence that Smt. Sunita Gaur (MW4) was used as a specific medicine by the Management in order to hatch conspiracy against him and procured a false compliant from the parents of the girl by doing certain negotiation with each other does not inspire any confidence in as much as no such suggestion to question has been put by the concerned employee to Smt. Sunita Gaur (MW4) in cross-examination there is also otherwise nothing to this effect on the file. Moreover, the reply made by Smt. Sunita Gaur (MW4) to a question put by the concerned employee in cross-examination that he (concerned employee) had tendered apology verbally to her as he had lodged false complaints at the instance of the



Principal and had also expressed his willingness to touch her feet for apology, had she so desired, has not been controverted by him. Hence, the allegations leveled by the concerned employee against Smt. Sunita Gaur(MW4) do not appear to be plausible and cannot be made basis for disproving the charges.

Shri D.K. Singhal MW5) cannot be said to have joined the conspiracy as contended by the concerned employee in as much as he wrote letter in discharge of his official duty, received the reply etc., placed on the file. Mere allegation of the concerned employee against this witness cannot take the place of proof.”

29. The Inquiry Officer was the opinion that the allegations of conspiracy did not have any merits since there was nothing that could be brought on record to say that the School or its authorities were trying to hatch a conspiracy against the petitioner. After making detailed observations and findings, the Inquiry Officer concluded as under:

“For the reasons stated herein above and after having gone through the contents of letter dated 20th December, 2002 accompanied by a memorandum and appendix I to IV (supra) a reply/written statement of defence dated 29th December, 2002 of the concerned employee and on a careful analysis and appraisal of documents and evidence on record and arguments, I have arrived at the conclusion that charges leveled by the Management vide charge-sheet/memorandum (supra) leveling charges against its employee Shri Bhushan Tripathi has been proved beyond any doubt.

It is held accordingly.”

30. The Inquiry Officer took all necessary steps to ensure that fair inquiry proceedings are conducted before arriving at any conclusion and as such he ensured that both the parties are heard and are given equal opportunity of



putting its case forward. After holding extensive proceedings, the Inquiry Officer was of the opinion that the charges against the petitioner herein were proved. While coming to this conclusion, he considered the charges framed against the petitioner, the documents necessary for adjudication, the witnesses produced, examined and cross-examined during the proceedings, including the girl students, her parents, the Vice Principal to whom the complaint was made, and all such witnesses found relevant, the written statement of the petitioner and only after such consideration, made the detailed final Inquiry Report.

31. The Inquiry Report extensively dealt with all the documents considered by the Inquiry Officer. Further, the examination and cross-examination of each witness from both the said was deliberated upon, which is evident from the contents of the report. He was able to arrive upon the conclusion that certain minor discrepancies could have been due to slip of tongue or due to memory, however, there was no such discrepancy that went to the root of the allegation to render the witness statement uncredible. The Inquiry Officer held that the charges against the petitioner were proven beyond any doubt.

32. Accordingly, the Inquiry Officer gave his findings to the Disciplinary Authority, whereafter, upon the contents of the Report and opinion rendered by the Inquiry Officer, the decision was in the hands of the Disciplinary Authority.

33. Subsequent thereto, the respondent furnished the notice dated 4th



November 2003, whereby the petitioner was dismissed from services by stating as under:

“In furtherance to show cause notice/letter no. SBM/PB/2003-2004/1694 dtd. 16.7.03 and the reply thereto dtd. 4.8.2003 submitted by you, the disciplinary authority has considered your reply and has found the same to be not satisfactory. The disciplinary authority has agreed with the findings rendered by the inquiry officer in his report dtd. 27.6.2003. The disciplinary authority has sent us the entire record of the disciplinary proceedings including your reply dtd. 4.8.2003 alongwith the approval accorded by the Director of Education under Rule 120(2) of the Delhi School Education Rules, 1972 of the proposed major penalty to be imposed under Rule 117(b)(iv) conveyed by the Dy. Director of Education, Distt. West-A, New Delhi vide letter no. 1478 dtd. 28.10.2203 and we, being the appointing authority, have thoroughly gone through and fully considered the same. We agree with the findings of the inquiry officer that the charges levelled against you stood fully proved and we also concur with the satisfaction recorded by the disciplinary authority that you are not a fit person to be retained as a teacher in the S.D. Saraswati Bal Mandir, Punjabi Marg, New Delhi. It has been decided that you should be dismissed from service forthwith and accordingly you are hereby dismissed from service with immediate effect.”

34. The concerned respondents took into consideration the nature of allegations against the petitioner, his reply to the Show Cause Notice issued by the respondents as well as his defence statement, the Inquiry Report dated 27th June 2003, the observations made therein, the opinion of the Disciplinary Authority and only then passed the dismissal order. As such there is nothing in the proceedings, the Inquiry Report or the order of



dismissal from service which suggests that the inquiry proceedings were not held fairly or that the findings of the Officers and authorities were any irregular or illegal.

35. When the petitioner herein challenged the aforesaid dismissal order before the Delhi School Tribunal, observing the grounds of challenge, the learned Tribunal, while referring to the law settled by the Hon'ble Supreme Court, noted that the Tribunal, being the Court adjudicating a challenge to a dismissal order arising out of inquiry proceedings, has a limited scope of interference and hence stated as under:

“11. The main thrust of the Appellant in his appeal is on the contradictions and inconsistencies in the statements of various witnesses the Appellant has not pointed out any specific incident in his statement indicating contradictions or inconsistencies. Be that as it may, it is not for the court to substitute its opinion with the opinion of the inquiry Officer. Court cannot reappreciate the evidence already appreciated by the Inquiry Officer.”

36. Thereafter, the Tribunal made the following observations on the limited aspect of the impugned order before it:

“14. Next main grounds of appeal is that the Appellant was not given the defence assistance of a person of his choice. It is settled law that it is not mandatory to provide the assistance of a legally qualified person. The Appellant out of his free will chose on Sh. Jainendra as his defence assistant. It was for the Appellant to ensure the presence of the said Sh. Jainendra on all the dates in the inquiry proceedings. He was given an opportunity to engage another defence assistant on the date when the defence



assistance Sh. Jainendra did not attend the proceedings. Now it does not lie in the mouth of the Appellant that he was not provided a proper defence assistance.

15. *The Appellant has contended that there was a deep rooted conspiracy in filing the present complaint. The plea raised is devoid of merits as no girl student shall level an allegation regarding molestation or sexual harassment for the allurement of a small concession in the school fee. In any case, the Appellant was given full opportunity to cross-examine the victim as well as her parents. Nothing has been brought out on record showing a conspiracy as alleged by the Appellant.*
16. *Perusal of the record shows that the Appellant was supplied with the copies of the inquiry report alongwith all the relevant documents while the penalty of dismissal from service was proposed to be imposed. Appellant has failed to indicate as to copies of which documents were not supplied to him at that time. The objection thus raised by him is devoid of merits.*
17. *It is not the case of the Appellant that the penalty of dismissal from service is disproportionate to the misconduct proved. The Appellant has failed to establish that the domestic inquiry suffered from any illegality or even an irregularity.*
18. *For the aforesaid reasons, I am of the considered view that the appeal is devoid of merits. The same is hence dismissed. ...”*

37. The Tribunal after considering the submissions of the parties, the article of charges made against the petitioner, the inquiry conducted against the petitioner, and the grounds invoked before the Tribunal against the impugned order of dismissal. After considering the material and hearing the



parties from both the sides, the Tribunal was of the view that the petitioner failed to show that there was any conspiracy being hatched against him by the respondents. The Tribunal rightly noted that a minor girl or her parents would not make claims of such nature only to sustain the conspiracy against the petitioner by the School. The petitioner also failed to show that he was not adequately represented and further that all the necessary documents pertaining to his case were not provided to him.

38. It has been argued on behalf of the petitioner that he was not permitted to represent himself through a counsel, which issue was also raised at the time of inquiry proceedings, however, both the Inquiry Officer as well as the Tribunal to this effect noted that, *firstly*, in the interest of justice, the petitioner was given adequate representation and he was permitted to choose any employee to represent him and, *secondly*, at occasions when the concerned employee was not represented, the inquiry was adjourned since it was not found reasonable to proceed *ex-parte* against the petitioner.

39. The learned Tribunal further noted that there was no claim raised by or on behalf of the petitioner that the penalty and punishment imposed upon him was disproportionate to the misconduct alleged and proven against him. Therefore, after appreciating the entirety of the facts and circumstances before it, the Tribunal arrived at the conclusion that the petitioner had failed to show that there was any illegality or irregularity in the inquiry proceedings held against him.



CONCLUSION

40. As settled by the law laid down by the Hon'ble Supreme Court, the powers with the writ court, especially in the cases of disciplinary inquiries, the scope of intervention is fairly narrow. This Court can neither reappreciate evidence nor sit in appeal over the inquiry proceedings or even the proceedings before the Tribunal. The limited consideration is regarding the contents of the impugned order and the findings of the Tribunal to ascertain whether there is any material irregularity which goes to the root of the matter or error apparent on the face of the record in the findings of the Tribunal. Furthermore, the enquiry and disciplinary proceedings may not be delved into and adjudicated upon by this Court while exercising powers under Article 226/227 of the Constitution of India. To this effect, the Hon'ble Supreme Court in the judgment passed in ***Union of India vs. P. Gunasekaran*, (2015) 2 SCC 610**, while expressly laying down the scope of interference in disciplinary action, held as under:

“12. ... In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*



- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) reappraise the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

41. As per the limited considerations, the observations of this Court, in view of the analysis and findings given in the foregoing paragraphs, are as under:



- I. The enquiry was held by the competent authority.
- II. While conducting the enquiry, the entire procedure was duly followed by furnishing all necessary notices, opportunities, holding evidence of witnesses etc. The Inquiry Officer concerned held the proceedings in a fair and reasonable manner and placed a detailed Inquiry Report before the Disciplinary Authority and hence, the enquiry was held according to the procedure prescribed.
- III. There was no violation of the principles of natural justice as at all times, the petitioner was given the opportunity of being heard. The petitioner was given time to furnish his reply to the Show Cause Notice, to file his statement of defence and was given opportunity to be adequately represented.
- IV. The authorities were not disable from reaching a fair conclusion by any extraneous to the evidence and merits of the case.
- V. There is no evidence to the effect that the authorities allowed themselves to be influenced by irrelevant or extraneous considerations.
- VI. The conclusion drawn was upon consideration of all the material facts, circumstances, documents, testaments etc. and hence, was not so wholly arbitrary and capricious that no reasonable person could ever have arrived at such a conclusion.



VII. There is nothing to suggest that the disciplinary authority had erroneously failed to admit the admissible or material evidence or that it had erroneously admitted inadmissible evidence which influenced the finding

VIII. Lastly, the instant case and the findings of fact were certainly not based on no evidence.

42. Considering the objections raised before this Court, the submissions made on behalf of the concerned parties, the findings by the Delhi School Tribunal and the contents of the impugned order, this Court is of the considered view that the petitioner has failed to show that the impugned order warrants interference from this Court. There is neither any illegality that goes to the root of the matter nor any error that is apparent on the face of record. Therefore, this Court does not find any merit in the challenge to the order dated 18th May 2011 passed by the Delhi School Tribunal passed in Appeal No. 43/2003.

43. Accordingly, the instant petition being devoid of any merit, is dismissed along with pending applications, if any.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 21, 2023
SV/MS

Click here to check corrigendum, if any