



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

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

+ **W.P.(C) 6919/2018**

ANIL KUMAR SHARMA Petitioner

Through: **Mr. Amresh Anand, Advocate**

versus

BAL VIKAS SAMITI (REGD.) AND ORS. Respondents

Through: **Ms. Jyoti Tyagi, Ms. Manisha and
Mr. Hitanshu Mishra, Advocates for
Mr. Yeeshu Jain, SC for DOE/R-3**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226/227 read with Article 21 of the Constitution of India, 1950 has been filed on behalf of the petitioner seeking the following reliefs:

- “(a) Issue a writ of certiorari and/or any other writ (s), order (s) and/ or direction (s) as this Hon'ble Court may deem fit thereby setting aside the impugned order dated 22.05.2018 passed by the Ld. Presiding Officer, Delhi School Tribunal in Execution Petition 62 of 2015 filed in Appeal No. 23 of 2012 in the matter titled Anil Kumar Sharma v. Bal Vikas Samiti (Regd.) and Another;*
(b) Pass an order of re-instatement of the Petitioner in any other school of the Respondents within the territory of Delhi; (c) Pass an order directing the Respondents to



pay to the Petitioner full backwages at the rates determined in accordance with the provisions of the Delhi School Education Act and Rules, 1973 from the date of his termination till the date of his re-instatement, alongwith interest thereupon;

(d) Pass an order directing the Respondents to pay to the Petitioner damages of and compensation INR 10,00,000 (Rupees Ten Lacs Only) for mental harassment and unnecessary litigation for the past 6 years;

(e) Pass an order directing the Respondents to pay to the Petitioner the costs of litigation which he has incurred in the past 6 years; and

(f) Pass any other and/ or further order (s) and/or direction (s) as this Hon'ble Court may deem fit and proper in circumstances of the present case and in the interest of justice."

2. The Petitioner joined services of respondent no. 2 ('respondent school' hereinafter) managed by respondent No. 1 ('respondent samiti' hereinafter) as a teacher in 1990, however, was terminated from services *vide* an order dated 13th February, 2012 on ground of her involvement in illegal activities within the school premises.

3. Aggrieved by the same, the petitioner challenged the said suspension order before the Delhi School Tribunal ('the Tribunal' hereinafter). After conclusion of the submissions, the Tribunal *vide* order dated 10th July, 2015, held that the services of the petitioner could not have been terminated without compliance with Rules 118 and 120 Delhi School Education Act and Rules, 1973 ('DSEAR' hereinafter). Therefore, the petitioner's termination was declared illegal and the respondent School was directed to re-instate her.



The respondent School was further directed to decide the representation of the petitioner regarding the back wages within four weeks.

4. Thereafter, the petitioner approached the respondent School claiming for the salaries due for time period she was terminated from the School, however, respondent School did not comply with the deadline of 4 weeks.

5. Due to said non-compliance, the petitioner filed execution petition bearing No. 62/2015 before the Tribunal. During the pendency of the execution proceedings, the recognition of the respondent School was withdrawn by the authorities *vide* letter dated 31st March, 2016 on grounds of non-compliance with the rules of recognition. In the meantime, the respondent School also decided the representation filed by the petitioner and awarded the pending arrears, however, the petitioner did not accept the amount decided by the respondent School.

6. The Tribunal *vide* order dated 22nd May, 2018 disposed of the execution petition and held that the petitioner cannot be re-instated as the School has already been derecognized by the authorities, however, is entitled to full payment of salaries as last withdrawn by the petitioner from the date she was directed to be reinstated to date of closing down of the School.

7. Aggrieved by the same, the petitioner has filed the instant petition

8. The learned counsel for the petitioner submitted that the petitioner had raised the issue of low salaries, therefore, making the respondent School hostile against the petitioner and ultimately leading to her termination.



9. It is submitted that the learned Tribunal failed to appreciate the fact that the order dated 10th July, 2015, had attained finality and the respondent School was duty bound to comply with the re-instatement order.

10. It is submitted that the withdrawal of the recognition is a collusive and deliberate action of the Respondent School as they wanted to avoid payment of the back wages and the salaries of its employees and therefore, got the recognition of the School withdrawn.

11. It is submitted that the learned Tribunal failed to appreciate the fact that despite being in existence for last 30 years, the School did not challenge its derecognition before the authorities which clearly indicates collusion of the authorities with the respondent School.

12. It is submitted that the respondent School had misrepresented their financial condition and calculated the salaries after 50% deduction thereby a meagre amount in comparison to the claim made by the petitioner and same cannot be accepted by the petitioner.

13. It is submitted that despite directions to decide the representation within 4 weeks, the respondent School sat on the issue and decided the same after an inordinate delay of 2 years.

14. It is further submitted that respondent school is not the only school managed by the respondent Samiti and the students enrolled with the respondent School were accommodated to the other schools, therefore, the petitioner can also be similarly accommodated to one of the Schools managed and under control of the respondent Samiti.



15. In view of the above arguments, learned counsel for the petitioner prays that the petition be allowed and the reliefs be granted as prayed.

16. No one appeared on behalf of the respondent School, however, this Court has taken into account the averments made in the counter affidavit filed by the respondent School for the disposal of the instant petition.

17. As per material on record, it is submitted that the appropriate remedy for the petitioner would be a civil suit, however, such suit filed by the petitioner would be grossly barred by limitation, therefore, the petitioner has preferred the present petition.

18. It is submitted that the petitioner has failed to offer any explanation for the delay and as per settled principle of law, the jurisdiction under Article 226 cannot be invoked for recovery of an amount when the suit for recovery of the said amount would be barred by limitation.

19. It is submitted that the petitioner along with other terminated employees was indulged in unlawful activities, and had also assaulted the Secretary of the School, leading to a FIR No. 153/2012 lodged against them at PS Kalyanpuri, Delhi. Therefore, the respondent School was constrained to suspend the petitioner and the other employees in order to maintain discipline in the School.

20. It is submitted that the management Committee of the respondent School had convened a meeting to decide the issue of back wages and had decided the arrears accordingly. It is further submitted that the respondent School had decided the said arrears as per terms of Rule 121 of the DSEAR



Act and had granted the back wages at 50% deduction of the last drawn salary of the petitioner.

21. The learned counsel appearing for the DOE submitted that they proforma party in the case and submitted to the effect that the respondent School has already been derecognised by the authorities, therefore, the petitioner cannot be reinstated to the respondent School.

22. Hence, in view of the averments made in the counter affidavit, and the submissions made by the counsel of the DOE, it is prayed that the instant petition, being devoid of any merit, is liable to be dismissed.

23. Heard counsel for petitioner and perused the records.

24. It is the case of the petitioner that he has not been given proper salaries in accordance with applicable rules and the Tribunal failed to properly consider the petitioner's plight regarding the re-instatement and back wages. Therefore, this Court needs to determine if the impugned order passed by the learned Tribunal in the execution petition requires any interference or not. The relevant part of the impugned order is reproduced herein:

“7. DH has filed present petition for the enforcement of the above said order. The representation of the PH regard to the payment of back wages has been decided by the JDs. School has been closed w.e.f. 04.04.2016 hence now. DH cannot be re-insisted. However; in view of the directions of this The Tribunal vide order dated 10.07.2015 DH is to be re-instated in the school from that the date of that order, hence DH is entitled for full salary w.e.f. 10.07.2015 till the date of the closure of the School i.e. 04.04.2016. In these circumstances JDs are



directed to make full payment of the salary to the DH as per his last drawn salary w.e.f. 10.07.2015 till 04.04.2016 within one month from the date of this order failing of which action will be taken against the Manager of the School as per Section 27 of Delhi School Education Act & Rules, 1973. Order accordingly.”

25. On perusal of the above paragraph, it is evident that the learned Tribunal had decided the petition and held that the petitioner cannot be re-instated as the respondent School has already been closed due to de-recognition by the authorities.

26. It is an established fact that respondent School has been derecognized by the authorities and the students enrolled in the School were also accommodated to the different Schools managed and run by the respondent Samiti. Therefore, the Tribunal expressed the inability to direct the respondent School to re-instate the petitioner.

27. Even though the petitioner has alleged collusion on part of the authorities and the respondent School, there is no evidence on record to back claim and therefore, this Court cannot delve into an issue which is not supported by evidence.

28. It is a settled principle that the jurisdiction of the Writ Court is limited to the aspect of whether the proceedings were legally held and if the Courts below had committed any material illegality while passing the impugned order. It is not the prerogative of the Writ Court to determine the factual matrix, rather the scope under Article 226 of the Indian Constitution, even



though very wide, is still limited in certain aspects and it is a well settled principle that the Writ Court cannot delve into the exercise of fact finding.

29. The aforesaid principle has been upheld by the Hon'ble Supreme Court in a catena of judgments. In ***Syed Yakoob v. K.S. Radhakrishnan***, (1964) 5 SCR 64, the Hon'ble Supreme Court crystallized the principles in relation to the scope of power of the Writ Court and held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be



issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168].”

30. In ***Union of India v. P. Gunasekaran*, (2015) 2 SCC 610**, the Hon’ble Supreme Court revisited the question of scope of powers conferred to the High Court under Article 226 of the Indian Constitution and held as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings,



reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. 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) reappreciate 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.”*

31. On perusal of the aforesaid judgments, it is clear that this Court cannot act as an enquiry authority and needs to confine itself to the question of whether the decision rendered by the lower Court is wholly arbitrary and capricious that no reasonable person could have ever arrived at such conclusion.

32. In the instant case, even though the petitioner has alleged collusion between the authorities and the respondent School, it is not the Court's prerogative to investigate the matter and get into the exercise of fact finding. As already established, the scope of the Writ Courts is limited to prevent/check material irregularity in the impugned order and not to get into the details of the event transpired before/during the pendency of the execution proceedings. Therefore, the decision of the tribunal regarding the re-instatement does not warrant any interference of this Court.

33. Now, coming to the aspect of disbursement of back wages. As per material on record, the respondent had determined the back wages in accordance with Rule 121 of the DSEAR Act. The said rule is reproduced herein:

*“121. Payment of pay and allowances on reinstatement
(1) When an employee who has been dismissed, removed
or compulsorily retired from service is reinstated as a*



result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, as the case may be, the managing committee shall consider and make a specified order:-

(a) with regard to the salary and allowances to be paid to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as the period spent on duty.

(2) Where the managing committee is of opinion that the employee who had been dismissed, removed or compulsorily retired from service had been fully exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service or suspended prior to such dismissal, or compulsory retirement from service, as the case may be: Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representations and after considering the representation, if any, made by the employee, direct, for reasons to be recorded by it in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowances as it may determine.

(3) The payment of allowances shall be subject to all other conditions under which Midi allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2)



shall not be less than the subsistence allowance and other admissible allowances.”

34. On perusal of the above rule, it is clear that the issue of determination of the salaries to be disbursed to the terminated employee needs to be decided by the school and the respondent School had calculated the salaries and offered the payment to the petitioner, however, the petitioner did not accept the said payment and claimed higher amount. Therefore, raising rival contentions.

35. In the impugned order the learned Tribunal has granted relief to the petitioner by directing the respondent School for providing full salaries to the petitioner from the date of the order till the date of closure of the School and did not question the decision of deduction of 50% salaries as done by the respondent School. The learned Tribunal passed the impugned order after taking into consideration the decision of respondent School's managing committee. Hence, it does not warrant any interference of this Court. In light of the above discussion, this Court does not find any illegality or perversity with the order of the Tribunal in execution petition which requires interference.

36. Due to closure of school on account of de-recognition, reinstatement is not possible. The issue regarding back wages has already been decided by the managing committee, hence the execution petition was duly rejected.

37. To conclude, the issue of back wages in the instant petition was already decided by the managing committee and since the relevant issue has been duly decided and the impugned order afforded comprehensive



consideration to it, this Court abstains from embarking upon an investigative course of action as no illegality or perversity has been found in the impugned order.

38. In light of the analysis in above paragraphs, this Court does not find any merits in this petition and hence, the same stands dismissed along pending applications, if any.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 21, 2023

gs/av

Click here to check corrigendum, if any