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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7659/2010**SUNIL KUMAR AGARWAL**

..... Petitioner

Through: Mr. S. Saeed A. Qadri and
Ms. Kareena Fareed, Advocates
(Ph. 9711609709, e-mail:
saeed1qadri@gmail.com)

versus

AIR FORCE SCHOOL AND ANR

..... Respondents

Through: Mr. Nikhil Palli and Ms.
Kaunain Fatima, Advocates for
R-1
Mr. Satyakam, Additional
Standing Counsel, GNCTD
with Ms. Pallavi Singh,
Advocate (Ph. 7300767116, e-
mail:
adv.pallavisingh@gmail.com)

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****25.07.2023****MINI PUSHKARNA, J.**

1. The present writ petition has been filed for quashing the order dated 05.08.2010 passed by Delhi School Tribunal in Appeal No. 61/2009, whereby dismissal order against petitioner dated 14.10.2009 issued by respondent no. 1 school, has been upheld.
2. Petitioner worked as Laboratory Attendant in the Chemistry Department of respondent no. 1 school, having joined the school on





22.11.1983.

3. A complaint dated 08.05.2009 was received against petitioner. As per the complaint, on 08.06.2008, when the complainant Mrs. Subhadra visited the school to appear in a written test for selection to the post of TGT-Physical Education, petitioner impersonated himself as PGT Chemistry in the school and lured her to pay him a sum of Rs. 2,00,000/- so that he could get her appointed as TGT-Physical Education by using his good contacts with the Managing Committee of the school. As per the complaint, petitioner visited her house with one Mr. Anand Kumar Jain, in the evening of 08.06.2008 and accepted a payment of Rs. 2,00,000/- i.e. Rs. 50,000/- in cash and Rs. 1,50,000/- by cheque from her. The petitioner gave her a cheque of Rs. 2,00,000/- dated 31.07.2008 as guarantee, which was dishonoured on presentation on the ground of insufficient funds.

4. Consequently, a Memorandum dated 29.06.2009 was issued to the petitioner proposing to hold inquiry against him. Petitioner submitted his written statement in defence, which was not accepted. An inquiry was initiated based on the complaint of aforesaid Mrs. Subhadra.

5. Following four charges were levelled against the petitioner:

- i. Article I: He impersonated as PGT Chemistry with an intention to take advantage of his false status.
- ii. Article II: He demanded and accepted money from Ms. Subhadra for getting her appointed as TGT (Physical





Education) at the Air Force School.

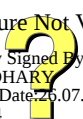
iii. Article III: He issued cheque nos. 933671 for Rs.2,00,000/- and 810117 for Rs.1,50,000/- to Ms. Subhadra which were dishonoured.

iv. Article IV: He took loans/incurred debts beyond his repayment capacity.

6. During the course of enquiry, all the charges against petitioner were proved, except the first charge of introducing himself as PGT Chemistry to Mrs. Subhadra. Inquiry report dated 09.09.2009 was served upon petitioner to which he submitted his representation dated 12.10.2009. Petitioner's representation was found to be unsatisfactory and a penalty of dismissal was imposed on him vide order dated 14.10.2009.

7. An appeal was filed by petitioner before Delhi School Tribunal challenging the dismissal order dated 14.10.2009. By impugned order dated 05.08.2010, learned Delhi School Tribunal dismissed the appeal of petitioner, thereby upholding the dismissal of petitioner. Thus, the present writ petition has been filed.

8. On behalf of petitioner, it is contended that a frivolous and motivated complaint was made by Mrs. Subhadra who attempted to bully the petitioner to pay back the loan amount of Rs. 2,00,000/- lent by her to petitioner. With a view to extort the amount, Mrs. Subhadra filed a false complaint, which was made nearly one year after the alleged incident. The complaint was misconceived and was





deliberately levelled against petitioner, with dishonest intention to speedily recover the loan.

9. It is the case on behalf of petitioner that the Disciplinary proceedings initiated by respondent no. 1, were in violation of the Delhi School Education Act and Rules, 1973. The respondent no. 1 in a hurry to impose the penalty, has not complied with the provisions of Section 8(2) of the Delhi School Education Act, 1973 (DSE Act), which mandates that a dismissal order can only be passed after taking prior approval of the Directorate of Education (DOE).

10. It is further submitted that petitioner has not been held guilty of Article I and charge against petitioner for impersonation has not been proved. Thus, it is contended that if the petitioner has not been held guilty of Article I, there is no question of finding him guilty of other Articles. When the Enquiry Officer has found petitioner as not guilty of charge under Article I, then the findings related to IInd and IIIrd Article of charges are erroneous, as these are directly and essentially linked to article of Charge I. It is contended that the imposition of major penalty of dismissal is not only unjust, but is disproportionate to the misconduct that was alleged in the Article of charges.

11. On the other hand, on behalf of the school, imposition of the penalty against petitioner has been justified. It is submitted that except the first charge of introducing himself as PGT Chemistry to the complainant, all the other three charges were proved against petitioner. One of the charges against petitioner was that he had been



taking loans beyond his re-payment capacity, which was in violation the Code of Conduct of Staff, as specified in Rule 123 of the Delhi School Education Rules, 1973 (DSER).

12. It is further contended on behalf of the School that no prior approval of DOE was taken before passing the dismissal order against petitioner, since at the time of passing of the dismissal order dated 14.10.2009, DOE was not entertaining any application seeking approval for taking disciplinary action against employees of private unaided schools, in view of the judgment in the case of ***Kathuria Public School Vs Directorate of Education***¹, which held the field at that point of time. As per the said judgment, no prior approval of DOE was required by private unaided schools before taking any disciplinary action against their employees. Hence, no approval was taken from the DOE before terminating the services of petitioner. Thus, it is prayed that the present writ petition may be dismissed.

13. Having heard learned counsels for the parties and after perusal of the record, it is manifest that the charges against petitioner except charge no. I, were proved. The article of Charge no. II related to the representation made by petitioner to the complainant to the effect that he had good contacts with the Managing Committee. He represented that he could get her appointed as TGT (Physical Education) if she paid him an amount of Rs. 2,00,000/-. Article III of the charge related to issuance of a cheque dated 31.07.2008 of Rs. 2,00,000/- to the

¹ 2005 SCC OnLine Del 778

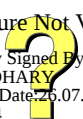




complainant as guarantee for getting her appointed after receiving the amount of Rs. 2,00,000/- from her.

14. The Article II and III of the charges, which relate to transactions of money between petitioner and the complainant, were proved during the enquiry proceedings. During the course of the enquiry, petitioner herein admitted to meeting the complainant Mrs. Subhadra in the school, as petitioner had also come as a candidate for interview. In his defence, petitioner submitted that he already knew Mrs. Subhadra, the complainant, through a common friend, Sh. Anand Kumar Jain. Petitioner admitted to the receipt of Rs. 2,00,000/- from the complainant, which petitioner defended as a loan having been taken by him from the complainant. As per petitioner, the said amount of Rs.2,00,000/- was received by him by way of two cheques for Rs.50,000/- on 13.02.2008 and for Rs. 1,50,000/- on 10.06.2008. The defence before the Enquiry Officer as raised by petitioner that since the complainant wanted speedy recovery of the loan, she concocted a false story against petitioner, was rejected by the Enquiry Officer. Thus, it was held that though the charge of impersonation as Chemistry teacher was not established against petitioner, however, the other charges with respect to taking money from the complainant were proved.

15. Documents on record disclose that the present is not a case of no evidence before the Enquiry Officer. On the basis of evidence before him, the Enquiry Officer held the charges against petitioner as





proved. Law in this regard is well settled that court in exercise of its powers cannot venture into re-appreciation of evidence or interfere with the findings of the Enquiry Officer, if the proceedings are conducted in accordance with law. The court will not go into sufficiency or adequacy of evidence before the Enquiry Officer. Thus, if an enquiry has been held in accordance with the procedure established by law in consonance with the Principles of Natural Justice, the findings cannot be interfered. There is nothing on record to suggest that opportunity of proper hearing was not provided to the petitioner.

16. In view of the aforesaid, it is clear that the charges against the petitioner except charge no. 1, were established.

17. This brings us to the next issue raised before this Court regarding the school not having taken prior approval of DOE before passing dismissal order against petitioner. It is to be noted that respondent school has clearly admitted that no prior approval of DOE was taken before termination of the service of petitioner. It is settled law that in terms of Section 8(2) of the DSE Act, approval of the DOE is mandatory before passing an order of termination or dismissal of an employee. The respondent school being a recognised unaided private school is also bound by the provisions of the DSE Act which mandates prior approval of the DOE before termination of an employee.

18. Division Bench of this Court had earlier in the case of *Kathuria*





Public School (supra) had struck down Section 8(2) of the DSE Act and had held that it was not mandatory for the recognised private unaided schools to seek prior permission before taking any action of termination or dismissal of employees. The said judgment was overruled by Supreme Court in the case of ***Raj Kumar Vs Directorate of Education and Others***², wherein it has been held as follows:-

“50. The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] by placing reliance on the decision of this Court in T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , as the subject-matter in controversy therein was not the security of tenure of the employees of a school, rather, the question was the right of educational institutions to function unfettered. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.

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55. The respondent Managing Committee in the instant case did not obtain prior approval of the order of termination passed against the appellant from the Director

² (2016) 6 SCC 541



of Education, Govt. of NCT of Delhi as required under Section 8(2) of the DSE Act. The order of termination passed against the appellant is thus, bad in law.”

19. The aforesaid judgment in the case of *Rajkumar (supra)* has been followed by the Supreme Court in its subsequent judgment in the case of ***Marwari Balika Vidyalaya Vs Asha Srivastava and Others***³, wherein it has been held as follows:-

“13. In Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed : (SCC p. 560, para 45)

“45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent school. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.”

³ (2020) 14 SCC 449



14. This Court has laid down in Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short “the DSE Act”) was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.”

20. Similarly, in the case of ***Gajanand Sharma Vs Adarsh Siksha Parisad Samiti and Others***⁴, the Supreme Court has reiterated the principles that in case of termination of an employee of a recognised institution, prior approval of the DOE or an Officer authorised by him in this behalf has to be obtained.

21. Consequently, it is manifest that no employee of a recognized private school shall be dismissed, removed or reduced in rank or his services be otherwise terminated, except with the prior approval of DOE.

22. As regards reliance by respondent on the judgment in the case of ***Red Roses Public School vs. Reshmawati & Ors.***⁵, the same would

⁴ 2023 SCC OnLine SC 54

⁵ 264 (2019) DLT 498 (DB)



not come to the aid of respondent. The said judgment held that giving effect to decision in *Rajkumar case (supra)* from an anterior date would lead to reopening of cases and claims, which are already settled in terms of *Kathuria Public School (supra)*. However, in the present case, the said position regarding dismissal of the petitioner, cannot be held to be settled, as this Court is still adjudicating on the said issue.

23. As regards the applicability of the judgment of Supreme Court in the case of *Rajkumar (supra)* to cases where dismissal order was passed prior to the said judgment, this Court in the case of ***Mangal Sain Jain Vs Principal, Balvantray Mehta Vidya Bhawan and Others***⁶ has held as follows:-

“29. An important issue that arises at this juncture and needs to be dealt with is the applicability of the judgment of Raj Kumar (supra) to the present case, as the Petitioner herein was discharged on 21.04.2008, while the judgment was delivered by the Supreme Court on 13.04.2016. This conundrum also stands resolved by a Co-ordinate Bench of this Court in Meena Oberai (supra). In the said case, the Petitioner was terminated by an order dated 21.07.2009. One of the pleas raised before the Court was that the judgment of the Supreme Court was delivered in 2016 and could only have a prospective effect, thereby disabling the Petitioner to derive the benefit of the law laid down therein.

30. A judgment of this Court in Red Roses Public School v. Reshmawati, 2019 SCC OnLine Del 10937 was brought to the notice of the Court, wherein the Division Bench was of the view that the judgment in Raj

⁶ 2020 SCC OnLine Del 2608



Kumar (supra) would not apply to cases in which the employee was removed or terminated from service, prior to the rendering of the decision in Raj Kumar (supra). Judgment of Division Bench was distinguished and it was noted that the concern of the Division Bench was that if the judgment of Raj Kumar (supra) was to apply from an anterior date, it would lead to reopening of the claims which stood settled in terms of Kathuria Public School (supra), while in the case before the said Bench the proceedings were still pending and it could not be said that applying the ratio of Raj Kumar (supra) would unsettle or reopen any claims which stood settled. Court also noticed that reading of the judgment in Red Roses Public School (supra) revealed that the attention of the Court was not invited to the judgment rendered by the Supreme Court in Marwari Balika Vidyalaya v. Asha Srivastava, 2019 SCC OnLine SC 408. In the said case, the services of the Respondent were terminated on 20.02.2001 i.e. prior to the decision in Raj Kumar (supra). Even so, relying on Raj Kumar (supra), Supreme Court upheld the setting aside of the termination order on the ground that requisite approval of the higher authorities had not been obtained. Relevant portion of the judgment in Meena Oberai (supra) is as under:

“53. It is apparent, from a reading of the aforesaid passages, as extracted, from Red Roses Public School, that the Division Bench of this Court chose to apply the law, enunciated in Raj Kumar (2016) 6 SCC 541 prospectively, on the ground that giving effect to the decision in Raj Kumar (2016) 6 SCC 541 from an anterior date would lead to reopening of claims which stood settled in terms of Kathuria Public School (2005) 123 DLT 89. Inasmuch as the present proceedings are pending, as on date, before this Court, it cannot be said that following Raj Kumar (2016) 6 SCC 541 would result in unsettling,





or reopening of, any claim of the petitioner, which stands settled. The main consideration on which the Division Bench, in Red Roses Public School, chose not to follow Raj Kumar (2016) 6 SCC 541 may not, therefore, apply in the present case.

54. That apart, a reading of the decision in Red Roses Public School reveals that the attention of this Court was not invited, in the said case, to the judgment rendered by the Supreme Court in Marwari Balika Vidyalaya. Marwari Balika Vidyalaya 2019 SCC OnLine SC 408 was also a case in which the services of the respondent Asha Srivastava were terminated on 20th February, 2001, prior to the rendition of decision in Raj Kumar (2016) 6 SCC 541. Even so, relying on Raj Kumar (2016) 6 SCC 541, the Supreme Court upheld the setting aside, of the termination of the respondent Asha Srivastava, on the ground that requisite approval, of the higher authorities, had not been obtained.”

31. As held by a Co-ordinate Bench of this Court in Meena Oberai (supra), if the proceedings are pending and the benefit of a judgement is given to a party, it cannot be said that it would unsettle or reopen any claim of the Petitioner, since the claim is yet to be settled. In Marwari Balika Vidyalaya (supra), Supreme Court has upheld an order setting aside a Termination order passed in 2001 in view of the decision in Raj Kumar (supra).

32. Having gone through the judgement in Marwari Balika Vidyalaya (supra) and Meena Oberai (supra), I am of the view that though the Discharge order in the present case dates back to 21.04.2008, the ratio of the judgement in the case of Raj Kumar (supra) would clearly apply to the present case. The impugned order is admittedly passed





without the prior approval of the Director of Education and being in violation of the mandate under Section 8(2) of the DSEA&R, is bad in law.”

24. In view of the aforesaid, dismissal order against petitioner having been passed without prior approval of the DOE, cannot be sustained.

25. The next question that arises for consideration is as regards the relief which petitioner would be entitled in view of the aforesaid finding.

26. In view of the detailed discussion in the preceding paragraphs, it is clear that respondent has violated the provisions of Section 8 (2) of the DSE Act, which mandate that prior approval of the DOE is essential before passing order of termination or dismissal of an employee.

27. However, this Court cannot be oblivious of the fact that right from 2005 till the year 2016, the judgment in the case of *Kathuria Public School (supra)* held the field. As per the said judgment, private un-aided schools were not required to take any prior permission from the DOE before taking any disciplinary action against their employees. The said judgment was overruled only in the year 2016 by Supreme Court in the case of *Rajkumar (supra)*, wherein it was held that provisions of Section 8 (2) of DSE Act for seeking prior approval of DOE were mandatory even for private un-aided schools. Thus, when respondent passed dismissal order against the petitioner herein on 14.10.2009, judgment in the case of *Kathuria Public School*





(*supra*) was in force. At that point of time in the year 2009 when dismissal order was issued against petitioner, the DOE was not entertaining any application for grant of prior approval in terms of the judgment in *Kathuria Public School (supra)*. In view thereof, no prior approval was taken by the school in the present case.

28. This Court notes that the DOE had issued an order dated 20.05.2016 stating that after the decision of the Supreme Court in *Rajkumar case (supra)*, prior approval of the DOE should be obtained from the date of judgment in *Rajkumar case (supra)*, i.e., from the year 2016 onwards. The position is, thus, clear that even the DOE in terms of the judgment in the case of *Kathuria Public School (supra)*, did not insist or grant prior approval to the private un-aided schools prior to them taking disciplinary action against their employees.

29. This court further notes that during the pendency of the present petition, the petitioner has reached the age of superannuation.

30. Considering the aforesaid detailed discussion, while holding that action of respondent school in passing dismissal order against petitioner cannot be sustained, in the facts and circumstances of the case, it is held that ends of justice would be met if petitioner is directed to be paid compensation in lieu of reinstatement and back wages. As held time and again, reinstatement is not an automatic consequence of setting aside the dismissal order and each case turns on its own facts. Consequently, it is directed that compensation of Rs.2,00,000/- (Rupees Two lakhs) be released to the petitioner by





respondent no.1 school within a period of six weeks from today, failing which, the same shall carry simple interest @ 9% per annum from the date of filing of the petition till payment.

31. The present writ petition is disposed of in terms of the aforesaid directions.

(MINI PUSHKARNA)
JUDGE

25th July, 2023
c/au

