



2024:DHC:2657



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

% Judgment delivered on: 27.03.2024

+ W.P.(C) 406/2024, CM APPL. 1829/2024 & CM APPL. 13031/2024

RUBINDER KAUR

..... Petitioner

versus

GURU NANAK PUBLIC SCHOOL & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Nitin Goel, Mr. Mayank Goel, Ms. Akshita Jain, Ms. Khushboo Yadav, Mr. N.K. Sharma and Mr. R.P. Singh, Advocates.

For the Respondents : Mr. Naginder Benipal, Mr. Ankit Siwacti and Ms. Anjali Pandey, Advocates for R-1.
Ms. Avnish Ahlawat, SC, GNCTD alongwith Mr. N.K. Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-2/DOE.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of

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India, seeking issuance of writ of certiorari, to quash the impugned suspension order dated 14.10.2023 bearing SO No. 004/2023 issued by respondent no.1/School.

2. On issuance of notice, Ms. Kaushik, learned counsel appearing for respondent no.2/DOE has brought before this Court the records pertaining to the petitioner. She submits that though the suspension order was passed on 14.10.2023, the department did not receive the same thus, the question of granting approval to the same does not arise.

3. Mr. Naginder Benipal, learned counsel appearing for respondent no.1/school submits that the suspension order dated 14.10.2023, whereby the petitioner was suspended, was sent by E-mail to the department on the very same day and a reminder was also sent on 28.02.2024, however, in vain. He submits that the respondent No.1 had taken all necessary steps to obtain approval and it is not the fault of the respondent no.1/school in case the DOE does not grant an approval thereon.

4. Present issue entails the consequence of violation of Sub Section (3) and (4) of Section 8 of the Delhi School Education Act, 1973. The same is extracted hereunder :

“8. Terms and conditions of service of employees of recognised private schools.—

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.

(4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be



made except with the prior approval of the Director:

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 9, of the employee:

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.”

5. The petitioner in the present case has filed the present petition challenging the suspension order dated 14.10.2023 whereby the petitioner was placed under suspension by the respondent no.1/school on certain allegations of irregularities in respect of the essential teacher qualifications pertaining to the petitioner. Accordingly, the respondent no.1 through its Manager issued the aforesaid suspension order in exercise of power under Rule 115 read with Section 8(4) of the Delhi School Education Act, 1973 *qua* the petitioner.

6. The petitioner was also placed under similar suspension on a previous occasion which was set aside by this Court *vide* the order dated 22.09.2023. The same is annexed at page 85 to the present petition. The said order referred to the judgement of Supreme Court in the ***Frank Anthony Public School Employees' Association vs. Union of India & Ors.*** reported in AIR 1987 SC 311.

7. Keeping in view the categorical statement made by Ms. Kaushik that no approval thereof at all has been granted, it is axiomatic that the proviso of sub-section (4) of Section 8 would automatically apply to the facts of the present case. The proviso of sub-section (4) of Section 8 of



DSEA, 1973 is extracted hereunder :

“8. (4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director:

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 9, of the employee:

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.”

A perusal of the aforesaid provision makes it clear that the suspension of an employee with immediate effect is subject to the approval of the Director and according to the second proviso, the suspension would not remain in force for more than 15 days from the date of suspension unless the same has been communicated to the Director and approved by him before the expiry of the period.

8. In the present case, as per the statement of Ms. Kaushik, neither of the conditions have been fulfilled. Since the conditions have not been fulfilled, the impugned order of suspension dated 14.10.2023 *vide* SO No. 004/2023 cannot withstand the scrutiny of law and the same is set aside. Consequent to the above, the petitioner would be entitled to all the benefits which will flow logically.

9. Mr. Benipal submits that *vide* the order dated 27.02.2024, the respondents have already imposed a minor penalty upon the petitioner.

10. Learned counsel for the petitioner disputes the same and asserts



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that the penalty as imposed upon the petitioner is not minor since by the said order, the respondent no.1/school has imposed the penalty of demoting the petitioner without following the procedure under Rule 120 of DSEA, 1973.

11. Be that as it may, the aforesaid submissions are not a subject matter of the present petition.

12. The present petition, alongwith the pending application, is disposed of in above terms.

TUSHAR RAO GEDELA, J.

MARCH 27, 2024/ss