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

+ **W.P.(C) 253/2013**

MEEMANSA DIXIT

.....Petitioner

Through: Mr. Alankrit Bhatnagar, Mr. Akshay
Srivastava and Mr. Suryansh Vashisth, Advocates.

versus

**J.P.M. SR. SEC. SCHOOL FOR THE BLIND
AND ORS**

.....Respondents

Through: Mr. Sandeep Prabhakar, Mr. Amit
Kumar, Mr. Vikas Mehta and Mr. Pratap Behera,
Advocates for Respondents No.1 to 3.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER
04.10.2024**

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1. Present writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India seeking the following reliefs:

“a) issue a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction to quash and set aside the impugned order dated 20.11.2012, passed by the Delhi School Tribunal in Appeal No,03/2010 (at page 488) and further be pleased to allow the appeal of the Petitioner;

b) issue a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction to allow the appeal filed by the Petitioner and to quash and set aside the order dated 19.01.2010, passed by Respondent No.1 imposing the penalty of removal from service against the Petitioner; at page 435

c) consequently direct that the Petitioner be reinstated in the post of P.G.T. (English) in respondent No.1 school, with full back wages and all consequent benefits, including continuity of service;



d) any other writ, order or direction which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case.

e) award the costs throughout to the Petitioner.”

2. Petitioner joined Respondent No. 1/J.P.M. Senior Secondary School for the Blind ('School') in the year 1993 and continued in service without a blemish for several years and allegedly, as averred in the writ petition, her problems started in 2003 when Respondent No. 3 joined the School as Principal. Petitioner states that she stood up in favour of another teacher Smt. Sonia Puri and thereafter, she was also victimised and a false charge sheet was issued against the Petitioner on 12.06.2006 alleging that she misbehaved with other colleagues, students and the Principal and was disobedient. It was also alleged that on many occasions she did not perform her duties properly and failed to maintain official records, had poor knowledge of the subject etc. It is averred that Petitioner replied to the charge sheet on 05.07.2006 whereafter the Inquiry Officer ('IO') was appointed and the proceedings commenced. The IO rendered a report holding charges I, III, IV, V and IX as proved, charges II and VI as partially proved and charges VII and VIII as not proved. Based on the report, Disciplinary Authority imposed penalty of 'removal from service which shall not be a disqualification for future employment in any other recognised private school'. Appeal filed against the penalty order being Appeal No. 03/2010 before Delhi School Tribunal ('DST') was dismissed on 20.11.2012 and Petitioner approached this Court assailing the judgment as well as the penalty order and inquiry proceedings.

3. Learned counsel for the Petitioner contends that the inquiry proceedings stand vitiated *inter alia* on the ground that certain crucial documents sought by the Petitioner were denied to her prejudicing her



defence but more importantly, there is a glaring illegality in the proceeding conducted by the IO which goes to the root of the matter and is that on 28.03.2007, IO proceeded with the matter and closed the right of the Petitioner to examine her witnesses in the absence of the Defence Assistant ('DA') noting that Petitioner had failed to present the defence witnesses. It is urged that DA of the Petitioner was a teacher working in another school and in March, 2007, he was deputed on duty with the CBSE as also assigned election duty for which he was to undergo training in the end of March, 2007. For this reason which was beyond the control of the DA or the Petitioner, she requested the IO not only on 28.03.2007 but well before it to defer the proceedings to another date to enable her to avail of effective assistance of the DA in whose absence she could not have examined her witnesses. Learned counsel submits that despite this request, the IO proceeded with the matter erroneously holding that Petitioner had failed to produce the witnesses and did not want to examine herself and adjourned the proceeding for filing written briefs and finally rendered the inquiry report against the Petitioner. This according to learned counsel violates the inquiry procedure as well as principles of natural justice and also reflects the bias of IO against the Petitioner.

4. Mr. Prabhakar, learned counsel for the Respondents, on the other hand, submits that the learned Delhi School Tribunal ('DST') has dealt with all the issues raised by the Petitioner and has not accepted the contentions raised. DST has held that Petitioner did not take up the plea of the DA being busy in the elections and also held that sufficient opportunities were granted to the Petitioner to lead her evidence on four dates as also cross-examine the witnesses of the School. The IO vide order dated 10.11.2006 allowed the



Petitioner to produce 04 witnesses and also summoned the witnesses for their appearance on 29.11.2006. A letter was also sent to the Directorate of Education ('DoE') to allow Mr. K.K. Sharma to appear as DA for the Petitioner. Petitioner cross-examined the various witnesses produced by the School on different dates and was directed to submit her defence statement on 08.02.2007, on which date again PW-9 and PW-10 were produced, their statements were recorded and they were cross-examined by the DA. Petitioner did not submit her defence statement despite further opportunity to do so by 12.02.2007. The next dates for recording statements of defence witnesses were fixed for 20.02.2007 and 21.02.2007 and the IO sent a letter dated 08.02.2007 to the witnesses for their appearance. Petitioner sent a letter to the IO on 12.02.2007 stating that she would submit her defence statement with a written brief. On receiving information of the next dates of hearing being 07.03.2007 and 08.03.2007, Petitioner wrote to the IO conveying the inability of the DA to appear on the said dates and in the month of March because of his prior occupation in CBSE as well as for coordinating the preparation of final annual results for his school. Basis this, IO adjourned the hearings to 28.03.2007 and 29.03.2007. On 28.03.2007, Petitioner appeared but refused to produce defence witnesses in the absence of the DA. Since the inquiry had been pending for about a year and was being delayed, no further opportunity was granted to the Petitioner. The plea that the DA was unavailable on 28.03.2007 is belied by letter dated 27.03.2007 issued by the Returning Officer which shows that the DA was to attend training for election duty only on 29.03.2007 and he was thus available to appear on 28.03.2007.

5. Heard learned counsels for the parties and examined their rival



submissions.

6. By this writ petition, Petitioner assails the impugned order dated 20.11.2012 passed by DST in Appeal No.03/2010 whereby the appeal of the Petitioner laying a challenge to the order dated 19.01.2010 by which she was removed from service by the School/Respondents No.1 to 3, has been dismissed. Petitioner has raised several issues in the writ petition challenging the removal order as well as the inquiry proceedings. However, at this stage, learned counsel for the Petitioner has limited his argument to the ground that Petitioner was not permitted to lead defence evidence despite the fact that she had intimated the IO well in advance that her DA would be unavailable on 28.03.2007, the date on which the 04 defence witnesses were summoned for appearance. It is argued that vide letter dated 05.03.2007 Petitioner had intimated to the IO that her DA, Sh. K.K. Sharma, had expressed his inability to attend the inquiry during the month of March, 2007 because he was pre-occupied in the CBSE and home examination as well as in coordinating in preparing final annual result of his school. Despite this letter, the IO chose to proceed with the matter on 28.03.2007 and closed the right of the Petitioner to lead defence evidence of 04 witnesses, which was a valuable right available to the Petitioner. There is no gainsaying that it was only the Defence Assistant who could have conducted the defence evidence and in the absence of the defence of the Petitioner, grave prejudice was caused as the IO held some of the charges as proved. The reason that the inquiry was pending for nearly 01 year can hardly be a reason for depriving the Petitioner of a crucial right of leading defence evidence, especially, when she could not be blamed for the delay.

7. This Court finds merit in this contention of the Petitioner. It is an



undisputed fact that the Petitioner had informed the IO well in advance vide her letter dated 05.03.2007 that her DA will be unavailable during March, 2007 on account of his pre-occupation which was beyond his control. The DA was involved in the examination process of the school/CBSE as also in the election duty and there is no gainsaying that he could not have given up any of these assignments to attend the inquiry proceedings. Petitioner was equally helpless and could not compel the DA to give up the assigned tasks and attend the proceeding on 28.03.2007. In light of these facts, it is not understood why the IO did not adjourn the hearing to another date, more particularly, when the proceedings were at a crucial stage of defence evidence. The action of the IO in closing the defence evidence, knowing fully well that the DA was unavailable on account of his pre-occupation, beyond his control, is untenable in law and has caused grave prejudice to the Petitioner, who has been deprived of proving her defence against the allegations levelled, which finally resulted in imposition of an extreme penalty of removal from service. The inquiry proceedings, in my view, stand vitiated on this ground alone.

8. In view of the above, the impugned order of DST dated 20.11.2012 in Appeal No.03/2010 as well as the order of removal of service dated 19.01.2010 are hereby quashed and set-aside. School shall re-open the inquiry proceedings from the stage of defence evidence and Petitioner shall be permitted to examine the 04 witnesses mentioned in her list of witnesses. After the examination of the defence evidence, the IO shall proceed further as per Rules and procedure of the inquiry. As assured by learned counsel for the Petitioner, on instructions, Petitioner shall finish the defence evidence on two dates of hearing before the IO and will not seek any adjournment. Since



considerable time has elapsed from the date the inquiry report was rendered by the IO, it would be open to Respondents No.1 to 3 to appoint a new Inquiry Officer in case it is not feasible to continue with the IO who had initially conducted the inquiry proceedings. In case the Petitioner fails to produce and examine the 04 witnesses within the two dates of hearing, it will be open to the IO to close her right to do so. The disciplinary proceedings shall be concluded expeditiously by Respondents No.1 to 3 and in no case, later than six months from today.

9. It is made clear that this Court has not expressed any opinion on the merits of the case and all other objections, contentions and legal issues raised by all parties in the present writ petition are left open, if either party desires to raise them at an appropriate stage.

10. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 4, 2024

B.S. Rohella