



2024:DHC:4501



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

% Judgment delivered on: 24.05.2024

+ **W.P.(C) 9587/2019 & CM APPL. 39452/2019 (Interim Relief)**

POONAM KHURANA

..... Petitioner

versus

DIRECTORATE OF EDUCATION AND ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Deeptakirti Verma, Advocate

For the Respondent : Mrs. Avnish Ahlawat, Standing Counsel, GNCTD with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for GNCTD.
Mr. S.W. Haider and Ms. Pooja Dua, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 39453/2019 (Exemption)

1. Exemption is allowed subject to all just exceptions.
2. Application is disposed of.

W.P.(C) 9587/2019 with CM APPL. 39452/2019

3. This is a writ petition under 226/227 of the Constitution of India,



inter alia, seeking following reliefs:

“(i) issue a writ of mandamus or any other similar writ or order quashing and/or setting aside both the alleged charge-sheets issued by Respondent No. 2 to the Petitioner (being the (first) charge-sheet dated 27.12.2018 as also the (second) undated charge-sheet received by the Petitioner vide speed post on 13.03.2019\ without constitution of a DAC in terms of Rule 118 and further without complying with the requirements of Rule 120 of the DSE Rules;

(ii) issue a writ of mandamus or any other similar writ or order quashing and/or setting aside the appointment by Respondent No. 2 of Sri Shyam Sunder as alleged Inquiry Officer to conduct disciplinary inquiry against the Petitioner;

(iii) issue a writ of mandamus or any other similar writ or order quashing and/or setting aside the alleged suspension of the Petitioner made by Respondent No. 2 School vide Order dated 27.02.2019;

(iv) issue a writ of mandamus or any other similar writ or order directing Respondent No. 1 to take steps to secure payment of wages by Respondent No. 2 School to the Petitioner as per statutory parameters set out in section 10(1) of the DSE Act (including back wages in terms of the order dated 31.10.2018 passed by the Ld. Delhi School Tribunal).”

4. The petitioner was appointed as Arts & Craft Teacher in respondent no.2/school on 08.04.2013. On 05.05.2017, the services of the petitioner was alleged to have been terminated by respondent no.2/school on a challenge by the petitioner, the Delhi School Tribunal vide judgment dated 31.10.2018 set aside the purported termination



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order dated 05.05.2017 and directed payment of direct wages to petitioner too simultaneously. It is stated by the petitioner that she was permitted by the management of respondent no.2/school to rejoin her services with effect from 27.12.2018 and simultaneously, was served with a charge-sheet for the same allegations, for which her services were previously terminated. Subsequently, it is stated that the enquiry proceedings were initiated, which according to the petitioner were sham proceedings. On 27.02.2019, the Manager of the respondent no.2/school issued a suspension order that some disciplinary proceedings were contemplated against her and as such, the order was being issued. Consequent thereto, the petitioner also received by post an undated fresh/different charge-sheet issued under the signature of the Manager of respondent no.2/school on 13.03.2019.

5. On 26.03.2019, the petitioner had filed a protest against the issuance of such charge-sheet with the Principal of respondent no.2/school and simultaneously had also addressed a representation to respondent no.1/Directorate of Education. It is stated by the petitioner that *vide* the reply to the RTI query of the petitioner, the respondent no.1/ Directorate of Education had communicated that neither had the respondent no.2/School requested the department to approve any DAC as required by the law nor had any resolution regarding any disciplinary enquiry for suspending the petitioner had been submitted by the school to the department. It is also the case of the petitioner that the respondent no.1/ Directorate of Education had made it clear that the Competent Authority had not granted any approval *qua* the Suspension Order of the petitioner. The petitioner on 19.05.2019 addressed a complaint to



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respondent no.1/ Directorate of Education bringing to its notice, the actions of the respondent no.2/school which according to the petitioner were illegal, in a) placing her under illegal suspension and conducting illegal enquiry against her and; (b) failing to pay her back wages as per the prescribed statutory scales.

6. It is stated that despite the said complaint, the respondent no.1/ Directorate of Education had not taken any action. It is also further stated that the petitioner had addressed a letter to the respondent no.2/school on 03.06.2019 seeking outstanding wages as per the statutory scales alongwith the chart of calculations of the pending dues according to her. That too, according to the petitioner were never responded. In such circumstances, the petitioner was constrained to file the present petition seeking aforesaid prayers.

7. Ms. Kaushik, learned counsel appearing for the respondent no.1/Directorate of Education submits that the Directorate of Education had been in fact, *vide* its letters dated 25.03.2019, 30.03.2019, 24.04.2019 and 03.05.2019 had communicated with the respondent no.2/school on this issue. She submits that it was only on 24.02.2020 that the respondent no.2/school had responded. It was communicated to the respondent no.1/Directorate of Education that since the matter was pending adjudication before this Court, no action could be taken by the school.

8. Mr. Haider, learned counsel appearing for the respondent no.2/school very fairly submits that the respondent no.2/school is willing to revoke the Suspension Order dated 27.02.2019, the charge-sheet dated 27.12.2018 as also the undated charge sheet received by the



petitioner on 13.03.2019. He submits that the respondent no.2/school may only be granted liberty to proceed in accordance with law against the petitioner in disciplinary proceedings should the respondent no.2/school have any reason to proceed in respect of the previous alleged misconduct.

9. Mr. Verma, learned counsel appearing for the petitioner, has no objection to the submissions made by Mr. Haider, subject to the reliefs as being sought including the financial relief, being granted to the petitioner.

10. In view of the aforesaid submissions, the present petition is allowed. The impugned charge-sheet dated 27.12.2018 and the undated charge-sheet received by the petitioner *vide* the speed post on 13.03.2019 stands quashed and set aside. The suspension order dated 27.02.2019 also stands quashed and set aside. Consequently, the petitioner would be entitled to all financial benefits in terms of Section 10(1) of DSE Act 1973 with effect from the date of suspension till the date of payment.

11. It is also made clear that whatever financial benefits **flow** to the petitioner in accordance with law as granted by the learned Division Bench of this Court in ***Bharat Mata Saraswati Bal Mandir Senior Secondary School vs. Vinita Singh & Ors.***, reported as **2023 SCC OnLine Del 3934**, shall also be granted to the petitioner. The relevant para of the judgment is as under:

“15. To conclude, it is reiterated that the reliefs claimed by the respondents in the writ petition were for payment of full salary as per recommendations of 7 CPC. Section 10 of the DSE Act provides that the scale of pay and



allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of a recognized private school shall not be less than those of the employees of the corresponding status in the government school. The DOE in accordance with the DSE Act, 1973 has issued notification dated 17 October, 2017 directing that all recognized schools shall implement the recommendations of 7 CPC. In view thereof, it is the undisputed position of law that teachers of unaided private schools are entitled to the same pay and emoluments as those of government schools, in terms of the obligation enjoined upon the private recognized schools under the DSE Act, 1973. The schools cannot evade their statutory responsibility and are bound to pay the statutory dues.”

12. The consequential financial benefits in terms of pay allowances and others allowances flowing to the petitioner in terms of Section 10(1) of the DSE Act, 1973 shall be paid to the petitioner within a period of six weeks from today.

13. The petition is disposed of in view of the above terms with no order as to costs.

14. Needless to state that the liberty as sought by respondent no.2/school regarding the disciplinary proceedings *qua* the petitioner, if any, is granted. The petitioner has the full liberty to raise all objections to any such initiation of disciplinary proceedings including the objections of delay on time barred allegations.

TUSHAR RAO GEDELA, J

MAY 24, 2024

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