$~22

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

% *Date of Decision: 20.09.2024*

\+ **LPA 915/2024 & CM APPL. 52932-934/2024**

THE MANAGEMENT OF
GURU HARKRISHAN PUBLIC SCHOOL AND ORS.....Appellants

Through: Mr V K Garg, Sr. Advocate, with Mr Abinash K Mishra, Mr K S Rekhi, Mr Parv Garg, Mr Pawas Kulshrestha and Ms Avneet Kaur, Advocates.

versus

SUNIL SIKRI & ANR. .....Respondents

Through: Mr Sanjeev Ralli, Senior Advocate with Mr Mohit Mudgal, Mr Shubham Yadav & Mr Praful Nawani Advocates for R1.
Mr Gaurav Dhingra and Mr Shashank Singh, Advocates for R2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J.(***ORAL***)

1. This letters patent appeal has been filed by the appellants against the judgment dated 09.07.2024 passed by the learned Single Judge in W.P.(C) No.13916/2018.

2. Respondent no.1 was appointed as a Post Graduate Teacher (PGT) by the appellants on a provisional basis on 02.07.1984 and his appointment was confirmed on 15.07.1985. On 22.01.1994, respondent no.1 was involved in an incident, pursuant to which he tendered his resignation from the services

of the appellant school. The appellants issued a relieving order on the same day itself. However, immediately on the next day, that is 23.01.1994, respondent no.1 sought to withdraw his resignation on the ground that the relieving order dated 22.01.1994 was vitiated as his resignation was submitted under duress.

3. Respondent no.1 preferred an appeal under Section 8(3) of the Delhi School Education Act, 1973 (hereafter *the DSE Act*) before the Delhi School Tribunal (hereafter *the DST*) against the order dated 22.01.1994 passed by the appellants dismissing the respondent from service. The DST vide an order dated 18.08.2011, allowed the appeal. The DST set aside the order dated 22.01.1994 and directed reinstatement of respondent no.1. The DST also directed for payment of 50% back wages, bypassing the procedure provided under Rule 121 of the Delhi School Education Rules, 1973 (hereafter *the DSER*), which provided that the reinstated employee could approach the management committee of the concerned school for award of back wages. The reasoning of the DST was based upon the decision in ***M/s. Apeejay School v. Presiding Officer, Delhi School Tribunal*** LPA No.493/2002 decided on 16.12.2002**,** and also taking into account that a considerable period had passed since the filing of the appeal.

4. The appellants challenged the DST's order dated 18.08.2011 by filing a writ petition before this court (W.P.(C) 8058/2011). By an order dated 15.11.2011 in the said petition, a conditional stay was granted on the DST's order dated 18.08.2011, subject to deposit of 50% back wages in the Court.

5. Subsequently, by an order dated 06.08.2013, the Court vacated the

stay and directed reinstatement of respondent no.1 within a period of two weeks. The Court also referred the issue as to whether the DST is empowered to direct payment of back wages, in view of Rule 121 of the DSER, whereby the power to do so has been specifically conferred only upon the management committee of the concerned school. The reference was made in view of two conflicting interpretations of Rule 121 DSER in ***The Manager, Arya Samaj, Girls Higher Secondary School & Anr. v. Sunrita Thakur etc.*** 43 (1991) DLT 139 and ***M/s Apeejay School v. P. O. Delhi School Tribunal and Anr.,***(supra). In ***The Manager, Arya Samaj Girls Higher Secondary School &Anr. v.. Sunrita Thakur etc.,*** (supra) it was held that in terms of Rule 121 of the DSER, it is only the management committee of the concerned school, which is empowered to decide on the question of awarding back wages of the employee. On the other hand, in ***Apeejay School v. P. O. Delhi School Tribunal and Anr.*** (supra), the Court had awarded back wages notwithstanding Rule 121 of the DSER, on the ground that the litigation had continued for several years.

6. The larger bench, by an order dated 23.09.2013, affirmed the decision in ***The Manager, Arya Samaj, Girls Higher Secondary School*** & ***Anr. Vs. Sunrita Thakur Etc.*** (supra) while overruling the decision in ***M/s. Apeejay School v. P.O. Delhi School Tribunal and Anr.***, (supra). In view of the aforesaid question being answered by the larger bench, the single judge in W.P.(C) 8058/2011, by order dated 07.10.2013, directed the appellants to take a decision as regards the back wages liable to be paid to respondent no.1.

7. However, by order dated 27.03.2015 in W.P.(C) 8058/2011, the issue

was again referred to a larger bench in view of another conflicting decision in ***The Managing Committee, Hira Lal Jain v. Shri Chander Gupta Sharma & Ors.*** captioned as CWP. No. 7617/2000 (decided on 17.01.2006). In the said case, the learned Single Judge had taken a view, which did not conform to the decision in ***The Manager, Arya Samaj, Girls Higher Secondary School*** & ***Anr. v. Sunrita Thakur Etc.*** (supra).

8. The larger bench, by the order dated 14.05.2015, constituted in view of the order dated 27.03.2015 in W.P.(C) 8058/2011, again affirmed the view laid down in ***The Manager, Arya Samaj, Girls Higher Secondary School*** & ***Anr. Vs. Sunrita Thakur Etc.*** (supra) and accordingly overruled the decision in ***The Managing Committee, Hira Lal Jain v. Shri Chander Gupta Sharma & Ors.*** (supra).

9. The appellant school appealed the aforesaid order dated 14.05.2015 before the Supreme Court of India being C.A. No. 5562/2017. The Supreme Court dismissed this appeal on 28.07.2022, thereby upholding the order dated 14.05.2015 of this Court.

10. In view of the aforesaid decision of the Supreme Court, the appellant school's petition (W.P.(C) 8508/2011) before the High Court finally came to be disposed of by an order dated 12.05.2023. The DST's order dated 18.08.2011 was set aside to the extent of award of back wages as the learned DST did not have the power to award back wages. Respondent no.1 was permitted to approach the competent authority under Rule 121 DSER on the quantum of back wages.

11. In the meantime, a disciplinary authority of the appellant school was

constituted by a resolution dated 21.11.2013. This authority, vide an Order dated 26.09.2015, confirmed the dismissal from service of the respondent no. 1 pursuant to Rule 117(b)(iv) of the DSER, 1973. Thereafter, the respondent no.1 challenged the said order before the DST in the Appeal No. 63/2015. However, the DST dismissed the said appeal by an order dated 21.08.2018.

12. Additionally, respondent no.1 also filed an execution petition bearing Ex. P. No. 66/2011 for execution of the directions regarding reinstatement and payment of back wages as directed in terms of the order dated 18.08.2011 passed in Appeal No. 14/1994 by the DST. The DST, in an order dated 10.10.2018 in the execution petition, while recording that respondent no.1 was reinstated on 04.09.2013, allowed the execution petition and directed the appellants to pay wages along with all the consequential benefits to respondent no.1 for the period from 18.08.2011 to 03.09.2014. There is an obvious error as the issue for determination of the DST pertained to payment of back wages from the date when the respondent no.1 was directed to be reinstated by order dated 18.08.2011 till the date of his actual reinstatement, i.e. 04.09.2013. However, the DST has incorrectly recorded the period for which the back wages were payable till 03.09.2014 instead of 03.09.2013.

13. The aforesaid order dated 10.10.2018 was assailed by the appellants before the learned Single Judge in a writ petition bearing W.P.(C) 13916/2018. The learned Single Judge, by the impugned order, dismissed the above captioned petition, upholding the entitlement of respondent no.1 to full wages for the period of 18.08.2011 to 03.09.2013. Aggrieved by the

same, the appellants have filed the present appeal.

14. In the above context, the short question that arises for consideration of this Court is – whether the period subsequent to the reinstatement of respondent no.1 falls within the scope of Rule 121 of the DSER.

15. Rule 121 of the DSER is reproduced below:-

> "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 he 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."

16. It is apparent from a plain reading of Rule 121 of the DSER that the same only covers the period prior to the reinstatement of the employee. However, it is the appellants' case that Rule 121 would also encompass the period subsequent to the order dated 18.08.2011 passed by the DST in Appeal No.14/1994, whereby respondent no.1 was directed to be reinstated with 50% back wages. This contention is premised on the basis that the appellant had preferred a writ petition being W.P.(C) No.8058/2011 impugning the order dated 18.08.2011 passed by the DST and had secured an interim order dated 15.11.2011, whereby the said order dated 18.08.2011 was stayed.

17. As noted above, by an order dated 06.08.2013, passed in W.P.(C) No.8058/2011, the learned Single Judge vacated the interim order dated 15.11.2011, as the appellants agreed to reinstate respondent no.1, thereby implementing the order dated 18.08.2011 passed by the DST. The said petition was disposed of on 12.05.2023 and the quantum of back wages payable to respondent no.1, was left to be determined by the Management Committee in accordance with Rule 121 of the DSER.

18. There can be no cavil with the proposition that for the period upto 18.8.2011, it would be the management committee which would be required to determine the back wages in accordance with Rule 121 of the DSER. The learned counsel for the appellants contends that the same principle should also apply to the period after 18.8.2011, till date of actual reinstatement. It is submitted that since the said order dated 18.08.2011 was stayed by the learned Single Judge of this Court on 15.11.2011, respondent no.1's entitlement to wages for the period after 18.11.2011 till the date of actual reinstatement, would also fall within the scope of Rule 121 of the DSER.

19. The aforesaid contention is unpersuasive. The consequences of the interim order passed by this Court on 15.11.2011, as a result of which the implementation of the directions dated 18.08.2011 were stayed, and the impact of the vacation of the said interim order cannot be controlled by Rule 121 of the DSER. For this period, that is after 18.08.2011, the entitlement of the respondent No. 1 would be determined by the Court/ DST concerned with implementation of the directions regarding reinstatement.

20. Respondent No. 1 cannot be denied the benefits accruing in its favour as a result of the reinstatement ordered on 18.08.2011 because the implementation of the said order dated 18.08.2011 was stalled on account of a conditional stay order passed by this Court at the Appellant's behest. It is trite that when the Court vacates any interim order, in so far as possible, the party against whom the interim order was passed, is required to be put in the same position as if such order had not been passed. According to the learned senior counsel for the appellants, this principle is not required to be followed in this case. We find no basis for the said contention.

21. In ***Ouseph Mathai and Others v. M. Abdul Khadir*** 2002 1 SCC 319, it was held as under:

> "13. Learned counsel appearing for the respondent-tenants submitted that as there was a stay regarding dispossession of the tenants, the tenants were justified in depositing the rent within one month after the dismissal of their petition under Article 227 of the Constitution of India. It is settled position of law that stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection."

22. The impugned order rightly concludes that issue of back wages for the period after 18.11.2011, that is, from the date when respondent no.1 was directed to be reinstated and the date on which he was actually reinstated, is not covered under the Rule 121 of the DSER. The relevant extract of the impugned order is set out below:-

> "77. As per Rule 121 of DSEAR, the respondent school has the jurisdiction to decide the issue pertaining to the salary and allowances to be paid to an employee for the period of his absence from duty, including the period of suspension preceding his dismissal. Hence, the intervening period does not fall within the ambit of Rule 121 of DSEAR since, as per the said rule, the petitioner school had the power to award salary during the period of 1994 till 2011, before the respondent school was reinstated.
> 78. This Court is the view of that the decision of the learned Tribunal to exclude the period from the date of the reinstatement order until actual reinstatement from the definition of 'back wages' and the jurisdiction of the school's

> management committee under Rule 121 is correct and does not merit any intervention of this Court.
> 79. The learned Tribunal further correctly held that Rule 121 of the DSEAR, which governs the determination of compensation for reinstated employees, is only applicable after the reinstatement becomes final and not before. Thus, it is imperative to note that the intervening period, i.e., the period where an appeal is pending against the order of reinstatement does not fall within the scope of Rule 121 of DSEAR."

23. The learned counsel for the Appellant also sought to fault the order dated 10.10.2018 on the ground that it was passed in execution proceedings. The said contention is also insubstantial. No fault can be found with the Executing Court in issuing appropriate directions for payment of back wages in the light of the vacation of the interim order dated 15.11.2011 in W.P(C) 8058/2011. Moreover, the learned Single Judge has elaborately dealt with the issue and determined the entitlement of respondent No. 1 for the period 18.08.2011 to 03.09.2013.

24. We find no infirmity with the aforesaid view of the learned Single Judge. The appeal is unmerited, and accordingly is dismissed. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 20, 2024/*M*