



2024:DHC:8618-DB



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

+ LPA 1103/2024 and CM APPLs. 65016/2024, 65017/2024 and 65018/2024

HARSHPAL SINGH NEGI

.....Appellant

Through: Mr. Khagesh B. Jha and Ms. Shikha Sharma Bagga, Advocates

versus

**ST. MARYS SCHOOL SAFDARJUNG
ENCLAVE AND ORS**

.....Respondent

Through: Mr. Romy Chacko, Sr. Advocate with Mr. Akshat Singh, Mr. Sachin Singh Dalal and Mr. Joe Sebastian, Advocates

Mr. Gaurav Dhingra and Mr. Shashank Singh, Advocates for R3

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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07.11.2024

C.HARI SHANKAR, J.

1. The appellant instituted WP (C) 12071/2024 before this Court, with the following prayer clause:

“It is respectfully prayed from this Hon’ble Court to be pleased to pass an appropriate writ, or direction to

a) declare the Charge memo dated 23.09.2023 void ab-initio being arbitrary, illegal and contrary to provisions of Delhi School Education Rules, disciplinary rules and includes the charges which had already been settled in the reconciliation meeting between the petitioner and school administration.

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- b) declare the 4 membered DAC constituted by management arbitrary, illegal and in violation to the Rule 118 of Delhi School Education Rules, 1973 and further quash the decisions/orders of DAC including the show cause notice passed by the said DAC as arbitrary, illegal and contrary to law.
- c) To quash the Inquiry report dated 10.05.2024 prepared by Inquiry officer appointed by illegally constituted DAC and also quash entire inquiry proceedings orchestrated by the HOS of school to frame the petitioner to terminate him from the post of PET in the school.
- d) to quash the decision of dismissal of service of the petitioner vide show cause notice dated 07.06.2024 taken by the unlawfully constituted DAC being arbitrary and illegal and based on vitiated inquiry.
- e) Direct the Respondent no. 4 commission to inquire the issuance of certificate of Minority status of the respondent school and to withdraw the same, if the same has been issued in ignorance or if the Respondent society running the school in in contrast to the aim and object of being a minority Institution, thereby to protect the petitioner from reverse discrimination.”

2. The aforesaid writ petition came up for hearing before the learned Single Judge on 3 September 2024. The learned Single Judge disposed of the writ petition in the following terms:

“4. Mr. Romy Chacko, learned Senior Counsel appearing on behalf of Respondent Nos. 1 and 2, on instructions, submits that this writ petition is not maintainable since the Disciplinary Committee of Respondent No.1/School has passed an order on 20.08.2024 imposing the penalty of ‘removal from service’ on the Petitioner and therefore, the remedy of the Petitioner lies before the Delhi School Tribunal¹. This position is refuted by learned counsel for the Petitioner, who submits that no such order has been communicated to the Petitioner.

5. The statement made by learned Senior Counsel on behalf of Respondent No.1 is taken on record. Copy of the order dated 20.08.2024 shall be communicated to the Petitioner as



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expeditiously as possible. Since the services of the Petitioner have been terminated, this petition is not maintainable and the same is dismissed granting liberty to the Petitioner to take recourse to appropriate legal remedy to assail the said order before the Delhi School Tribunal.

6. It is made clear that this Court has not expressed any opinion on the merits of the case and all objections, legal issues and contentions raised in the present petition by the Petitioner including a challenge to the illegal constitution of the Disciplinary Committee, are left open.

7. Writ petition stands disposed of with the pending application.”

3. Against the aforesaid order, the petitioner filed Review Petition 345/2024. By that time, the petitioner had been served with the following termination order dated 3 September 2024:

“03.09.2024

To,

Mr. Harshpal Singh Negi
Physical Education Teacher

Dear Mr. Negi,

This is to inform you that the Disciplinary Committee, in its meeting held on August 20, 2024, decided to impose on you the penalty of removal from service contemplated under Rule 117 (b) (iii) of DSEAR which shall not be a disqualification for future employment in any other recognized private school.

Therefore, your services will stand terminated effective September 4th, 2024.

Yours sincerely,
Dr. Asha Singh
Chairperson- Disciplinary Authority Committee &
Chairperson- Managing Committee
St. Mary’s School”

4. The said Review Petition also stands dismissed by the learned Single Judge by judgment dated 27 September 2024.

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5. Having perused the material on record and heard learned counsel for both sides, with consent of parties, we are taking up this matter for final disposal.

6. In so far as the maintainability of a writ petition against an order of removal, dismissal or termination from service passed against a Teacher governed by the Delhi School Education Act 1973² and the Delhi School Education Rules 1973 is concerned, the law stands settled by the judgment of the Supreme Court in *Shashi Gaur v NCT*³. In that case, the appellant/Shashi Gaur had challenged an order passed under the DSE Act, terminating her services, by way of a writ petition before this Court under Article 226 of the Constitution. The writ petition was dismissed by this Court holding that it was not maintainable and relegating Shashi Gaur to the remedy before the DST. Shashi Gaur carried the matter in appeal, which ultimately travelled to the Supreme Court by way of Civil Appeal 4121/2000, which came to be decided by the judgment under discussion. While upholding the decision of the High Court in that case to relegate the appellant to the DST, the Supreme Court clarified, towards the end of para 8 of the report, thus:

“...Therefore, we do not find any infirmity with the order of the High Court not entertaining the writ application in exercise of its discretion *though we do not agree with the conclusion that availability of an alternative remedy ousts the jurisdiction of the Court under Article 226 of the Constitution.*”

(Emphasis supplied)

² “the DSE Act” hereinafter
³ (2001) 10 SCC 445



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7. The issue of maintainability of a writ petition, where an alternative remedy is available, has also been examined by the Supreme Court in several decisions including *Godraj Sara Lee v Excise and Taxation Officer*⁴, on which the present appeal places reliance. The Supreme Court has held, in that case, that availability of an alternative remedy is not a bar to exercise of jurisdiction under Article 226 of the Constitution of India. That said, the remedy under Article 226 is discretionary, and it is always open to the writ Court in an appropriate case to relegate the party to the alternative remedy if it is equally efficacious, instead of entertaining the writ petition.

8. As such, it cannot be said that the petitioner is foreclosed from filing a writ petition challenging the order removing him from service. The writ petition would be maintainable. However, it would be open to the learned Single Judge, for reasons undoubtedly to be recorded in writing, to hold that, in the facts of the case, the petitioner was required to be relegated to the remedy under the DSE Act, by way of appeal to the DST.

9. In the present case, on 3 September 2024, when the learned Single Judge disposed of the appellant's writ petition, the appellant had not yet been served with a copy of the termination order. Even so, the learned Single Judge held that no writ petition against the termination order would be maintainable, and relegated the petitioner to the remedy before the learned DST. With respect, we are unable to sustain this observation. The learned Single Judge could not have pre-emptively held that no writ petition against the order of termination



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would lie even before the order of termination was served on the respondent and he had a chance to file a writ petition, if he so chose.

10. Even on 27 September 2024, when the learned Single Judge took up the review petition, though the termination order dated 3 September 2024 had been served on him by then, the petitioner had not yet filed any writ petition thereagainst. The learned Single Judge could not, therefore, in our respectful opinion, have foreclosed the petitioner from filing a writ petition, even before it was filed, especially as the Supreme Court has held, in *Sushil Gaur*, that a writ petition would be maintainable, irrespective of whether the writ court would, or would not, choose to entertain it on merits.

11. In our considered opinion, the proper course of action would have been to leave it to the appellant to take a call as to whether to challenge the termination order by way of an appeal to the DST or to file a writ petition. In the event of his choosing to file a writ petition, needless to say, the appellant would run the risk of being relegated to the DST by the writ Court, in case the writ Court feels that no case for exercising extraordinary jurisdiction under Article 226 of the Constitution, in the face of the availability of a statutory remedy of appeal is available, is made out.

12. In these circumstances, the impugned order dated 3 September 2024 in WP (C) 12071/2024 and 27 September 2024 in Review Petition 345/2024 are quashed and set aside. The petitioner would be at liberty to challenge the termination order dated 3 September 2024. In so doing, it would be open to the petitioner to choose his remedy as



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to whether to file an appeal before the learned DST or to file a writ petition under Article 226 of the Constitution of India.

13. In the event that the petitioner chooses the latter, it would for the learned Single Judge to take a call as to whether to maintain the writ petition or to relegate the petitioner to the remedy of appeal under the DST.

14. We express no opinion on this aspect and leave the matter entirely to the discretion of the learned Single Judge.

15. The appeal stands allowed to the aforesaid extent, with no orders as to costs.

C.HARI SHANKAR, J

DR. SUDHIR KUMAR JAIN, J

NOVEMBER 7, 2024/yg

Click here to check corrigendum, if any