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

+ **W.P.(C) 4903/2025 & CM APPL. 22540/2025**

ANAND KUMAR SAXENA

.....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Divya Aggarwal, Ms. Kritika Matta and Mr. Pradeep Kumar, Advocates.

versus

SHRI SANATAN DHARAM SARASWATI BAL

MANDIR SR. SEC. SCHOOL & ORS.

.....Respondents

Through: Mr. V. Balaji, Advocate for DOE

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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17.04.2025

1. The petitioner assails an order dated 31.01.2025, by which the Delhi School Tribunal has dismissed his appeal against termination of his services in the respondent No.1 – Shri Sanatan Dharam Saraswati Bal Mandir (Sr. Sec. School) [“School”] on 24.12.2020.
2. The facts, as stated in the writ petition, are that the petitioner was appointed as a Stenographer cum Typist in respondent No.3 – Society [Samarth Shiksha Samiti (regd.)] [“Society”] on 31.07.1986. He was deputed to serve first in the respondent No.2 - M.C.L Sarswati Bal Mandir (Sr. Sec. School), which is a private unaided school of the Society, by order dated 21.08.1995. He was promoted as an Upper Division Clerk on 24.10.1997, and to the post of Head Clerk on 27.07.2018. He was posted to the respondent No.1 – School, which is



another school under the same society, on 04.05.2020.

3. The admitted factual position is that on 13.05.2020, the petitioner addressed a communication to the Society entitled “*Voluntary Retirement Scheme*”. In the communication, various grievances were raised against his transfer to respondent No.1 – School, and it was stated that he had decided to take “*voluntary retirement*” from the services of the Society. He, therefore, gave notice to the Society on the same date, and requested the Society to accept the notice.

4. According to the petitioner, no action was taken by the Society for a period of seven months, and only by a communication dated 24.12.2020, his request dated 13.05.2020 was accepted. He was directed to contact the Society’s office to collect his Voluntary Retirement Scheme dues or benefits as per the rules. The petitioner attended the Society’s office on 02.02.2021, and collected his gratuity payment of Rs. 10,77,981/-. A communication, to this effect, was issued by the Society, which notes that the petitioner had “*resigned*” from his services w.e.f. 24.12.2020. The letter also bears the petitioner’s signature.

5. By a communication dated 07.08.2021, the petitioner raised various allegations with regard to his termination from service, and sought reinstatement. It was contended that he was entitled to continue in service until he attained the age of superannuation on 31.03.2023. In the said communication, the petitioner acknowledged that, between January 2021 and February 2021, retiral dues were released to him by way of four cheques, amounting to a total of Rs.16,88,010/-. These retiral dues were towards encashment of earned leaves, gratuity and arrears of salary.

6. The petitioner’s representation was not accepted, which led to the



filing of the appeal before the Tribunal. The appeal was rejected by the impugned order.

7. The contention of Mr. Anuj Aggarwal, learned counsel for the petitioner, is twofold. The first is that the petitioner had never “*resigned*” from the services of the respondent – School. He had sought voluntary retirement, for which there is no provision in the relevant rules. Even in the communication dated 24.12.2020, the School purports to accept the petitioner’s request for voluntary retirement, and it is not predicated on any alleged resignation by the petitioner. Without prejudice to these submissions, Mr. Aggarwal submits that even if the severance of the employer – employee relationship in this case is to be treated as a “resignation”, it is of no legal effect as the School did not seek the approval of the Directorate of Education, Government of NCT of Delhi under Rule 114A of the Delhi School Education Rules, 1973 [“*DESR*”].

8. In view of the fact that the petitioner has since attained the age of superannuation on 31.03.2023, Mr. Aggarwal submits that the only effective relief he would be entitled to, if he succeeds in the writ petition, is for a consideration of payment of back wages for the period from 24.12.2020 to 31.03.2023. For this purpose, Mr. Aggarwal relies upon Rule 121 of the *DSER*, which requires the Managing Committee of the School to consider a request for back wages, if an employee is reinstated upon setting aside of an order of dismissal, removal or compulsory retirement.

9. Having considered Mr. Aggarwal’s submissions, I do not consider this a fit case for exercise of jurisdiction under Article 226 of the Constitution. Even if the petitioner succeeds in this writ petition, I am of



the view that he would have no case for grant of back wages, for the period from 24.12.2020 to 31.03.2023. The petitioner admittedly did not work in the School at any point after 24.12.2020. Whatever the nature of the request made on 13.05.2020, which was accepted by the School on 24.12.2020, the petitioner made no effort in this period of over seven months, to withdraw his communication. Even after the School's communication of 24.12.2020, he raised no protest. Instead, he accepted all his retiral benefits in January 2021 and February 2021. This conduct demonstrates that the petitioner had no contemporaneous intention or desire to continue in the services of the School. He took no further action even thereafter, for a period of over six months, until he sent a legal notice to the School on 07.08.2021, and filed the appeal before the Tribunal on 11.08.2021. In these circumstances, even on the petitioner's best showing, I am of the view that he would not be entitled to back wages for the period after 24.12.2020.

10. I have proceeded on this basis in view of the settled legal position that the writ remedy is a discretionary one, and exercise of the writ jurisdiction can be refused, even in the face of some possible illegality or irregularity, if relief is not warranted in equity. The principle has been explained this in the recent judgment of the Supreme Court in *M.S. Sanjay vs. Indian Bank & Ors*¹:-

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9. It is well settled that interference by the Writ Court for mere infraction of any statutory provision or norms, if such infraction has not resulted in injustice is not a matter of course. In the case of *Shiv Shanker Dal Mills v. State of Haryana* reported in (1980) 2 SCC 437, the dealers in that case had paid market fees at the increased rate of

¹ Civil Appeal No. 1188/2025, decided on 29.01.2025.



3%, which was raised from the original 2 per cent under Haryana Act 22 of 1977. The excess of 1 per cent over the original rate was declared ultra vires by this Court in the case of *Kewal Krishna Puri v. State of Punjab* reported in (1980) 1 SCC 416. The excess of 1 per cent over the original rate having been declared ultra vires, became refundable to the respective dealers from whom they were recovered by the Market Committee concerned. The demand for refund of the excess amounts illegally recovered from them not having been complied with, the dealers filed Writ Petitions under Article 32 and Article 226 of the Constitution for a direction to that effect to the Market Committee concerned. The Market Committees contended that although the refund of the excess collections might be legally due to the dealers, many of them had in turn recovered this excess percentage from the next purchasers. While disposing of the petition and laying down guidelines, this Court held as under:

“Article 226 grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects. Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest.”

10. It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not. It is a settled principle of law that the remedy under Article 226 of the Constitution of India is discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties.”

[Emphasis supplied.]

11. For the reasons noted above, I have come to the conclusion that the petitioner himself sought to sever his employment relationship with the



School as far back as 13.05.2020, which was accepted by the School on 24.12.2020, without demur or protest by the petitioner. In fact, he acted upon the same to his benefit, by accepting all his retiral dues, and made no effort at any stage to reimburse those dues. If it was his contention that he was not liable to be terminated at that stage, he could not have taken his retiral benefits or should at least have made a *bona fide* attempt to return the amount remitted to him. In such circumstances, I do not consider that he would be entitled to back wages in any circumstances. As Mr. Aggarwal submits that no other effective relief is sought in the facts of this case, it would be futile to entertain this writ petition.

12. The writ petition, alongwith pending application, is therefore, dismissed.

PRATEEK JALAN, J

APRIL 17, 2025
SS/kb/