

(2019) 09 DEL CK 0080

In the Delhi High Court

Case No : Civil Writ Petition No. 1929 Of 2017, Civil Miscellaneous Application
No. 8573 Of 2017

Apeejay School

APPELLANT

Vs

Ved Prakash Lakhera & Anr

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Delhi School Education Act and Rules, 1973 — Rule 118, 121, 123, 123 (I)(vii), 123(I)
(xviii), 123 (I)(xvi)
Delhi School Education Act, 1973 — Section 11

Citation : (2019) 9 AD(Delhi) 400

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : H.L. Tikku, Yashmeet Kaur, S.N. Tripathi, Ved Prakash Lakhera, Mohit
Agarwal, Rajendra Prasad

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. Vide the present petition, the petitioner seeks setting aside the impugned order dated 18.01.2017 passed by the Delhi School Tribunal in Appeal No.07/2014.

2. Case of the respondent is that he had joined the service of Respondent School as TGT (Physics) on 06.08.1984. He was confirmed w.e.f 01.07.1990 vide confirmation letter dated 01.07.1990 issued by the then Chairman of the petitioners school. Since the day of appointment till his removal from the service, respondent no.1 had put in 26 years of service with an unblemished and impeachable record. The said respondent being M.Sc. in Physics (PGT), was assigned to teach senior classes 11th and 12th from the academic session 1988-1989. Although the respondent no.1 was assigned to teach senior classes but he was not given the PGT grade. Respondent no.1 represented on 19.11.1990 and 28.04.1992 for giving him PGT pay-scale to the management of

school but the management of the petitioner School withdrew the respondent no.1 from the senior classes in spite of serving for four years, without any reason. The said respondent raised the issue of denial of promotion to him in the meeting held in September, 2008 in which representative of Directorate of Education was also present.

3. Further case of the respondent no.1 is that the management of petitioner's School had not implemented the recommendations of the 6th pay commission even though the petitioner School was charging enhanced fees from the students. In the staff meeting held on 29.06.2009, the respondent no.1 raised this issue which accelerated the vindictive actions of the petitioner and started laying trap to implicate the respondent no.1 in a false case of sexual harassment but could not succeed. Thereafter, the principal of school, Sh. A.P Sharma and Head Mistress Neeta Mansuka under a conspiracy to victimise the respondent no.1 by hook or crook, started instigating the students to create disturbance in his class and use derogatory language against him so as to create an opportunity to frame the respondent no.1 in case of beating of students. On 10.11.2010, respondent no.1 was taking 7th period in his Class VIII-B and some 10-12 boys were missing from the class. They came after 15-20 minutes. On inquiry, they told respondent no.1 that they had been called by MW-2, Ms.Mansuka, Head Mistress. Respondent no.1 asked them to bring a chit from Ms.Mansuka that they were called by her, thereafter, he would allow them to enter the class. They returned after sometime without any chit. Respondent no.1 asked them to stand outside in the Verandah. While other students stood outside, 3 of them including Prateek Sharma of respondent no.1 class and Ankit Kumar student of another class VIII-A, which is adjacent and who had been punished by teacher of his French class to stand outside kept on entering the class, and used derogatory and abusive language against respondent no.1. After the period was over, respondent no.1 asked 3 students of his class as well as Ankit Kumar to come to Principal's office. However, Ankit Kumar ran away. Respondent no.1 took the other three students to the principal. When respondent no.1 and 3 boys were in the Principal's office, Ms. Hansuka came with Ankit Kumar inside the Principal's office putting her hands around his shoulders tutoring him something. She complained that respondent no.1 had caught hold of Ankit's neck so hard due to which his nail mark was caused on his neck. Respondent no.1 explained that Ankit had run away from the class and the allegation that respondent no.1 had caught him by neck causing nail mark is false. Moreover, there was no nail mark on Ankit's neck. The petitioner school contacted the guardians (MW-4 & MW-

5) of the two boys viz. Ankit Kumar and Prateek Sharma respectively on 10/11.11.2010 and concocted a case of respondent no.1 beating Ankit Kumar on 11.11.2010 and Prateek Sharma on 12.11.2010 for which undated complaints were obtained from the 2 students and from their parents. In execution of the plan, a call was made to respondent no.1 from the Principal's office at about 4.15 P.M. on 11.11.2010, Ankit's father (MW-4) came with a complaint that respondent no.1 had beaten his son.

4. Further case of respondent No. 1 is that on 12.11.2010 when respondent no.1 reported to the principal (MW 5), he threatened him "IS BAAR TO AAP PHANS GAYE HAIN, AAP KI NAUKARI JAYEGI".

After about 15-20 minutes, Ankit's father MW-4 accompanied with his wife and 2 other persons reached in the school. The Principal put classes of respondent no.1 under arrangement and asked him to remain in his office. However, the said respondent reiterated that he had never beaten Ankit Kumar or any other student and allegation was false. MW 5 issued a Memo and asked for immediate reply. In addition, MW-5 procured a complaint from Prateek Sharma and his mother that respondent no.1 had beaten Prateek on 12.11.2010 while he was taking him to the Principal's office for not having brought his Science book on 11.11.2010. But the fact is that respondent no.1 had no period in Prateek's class on 12.11.2010. Even otherwise, on 12.11.2010, respondent no.1 was confined to Principal's room almost the whole day in connection with Ankit's case. If respondent no.1 had beaten Prateek while taking him to the principal, Prateek should have complained to the Principal immediately and not later on. The story of beating Prateek Sharma on 12.11.2010 was part of the same conspiracy and equally fabricated, false and concocted to fasten the respondent no.1 with yet another charge of beating students.

5. Third allegation leveled against respondent no.1 was that he was found by MW-5 giving Physics practical to his daughter who was not studying in petitioner School, in Physics lab, without permission from the principal and was absent from his class VII-D during the 4th period.

6. Respondent no.1 was served a chargesheet on 25.03.2011 containing three articles of charges. Neither statement of allegations were provided with the charge-sheet nor any document on the basis of which charges were framed. However, documents were supplied on 25.05.2011 during the course of inquiry. The Inquiry Officer was not an independent person. He was permanent Inquiry Officer of Apeejay Group of Schools and was playing the tune of his masters in order to keep his post retirement assignment secured.

7. Further case of respondent no.1 was that the witnesses were influenced and tutored to depose against respondent no.1. The two students whom the respondent no.1 had allegedly beaten were not produced in the witness box during the inquiry. Respondent no.1 was not allowed to engage a defence assistant. Four defence witnesses of respondent no.1 were maliciously prevented from giving evidence. The inquiry officer refused to issue letters to them to appear in the inquiry proceedings. The said inquiry officer himself filled up the gaps in the management's case. Disciplinary Committee pre-determinedly decided to hold an Inquiry against the respondent no.1.

8. In addition, Both MW-5 (principal of the school) and MW2 (head mistress of the Respondent School) were member of Disciplinary Committee and were also appeared as witnesses in the inquiry. MW5 was also a complainant with respect

to charge no.III. PW-2 was an instigator for charge no.I. MW-2 & MW-5 had made contacts with the parents of the concerned students and guided them. MW-2 and MW-5 being member of the Disciplinary Committee were considered the complaint, approved suspension of the respondent no.1, decided to initiate disciplinary action, framed the charges and issued charge-sheet in the meeting held on 03.03.2011. They were complainants, instigators, investigators, witness and prosecutor. In these circumstances, the impugned order was illegal and the punishment awarded to the respondent no.1 is also highly disproportionate with the charges.

9. In view of above facts, learned Tribunal opined that the impugned order of termination has been passed in contravention and against the principle of natural justice, thus, the same was illegal and accordingly set aside. Consequently, directed to reinstate respondent no.1 within a period of one month from the date of the order.

10. Accordingly, respondent no.1 will be entitled for all consequential benefits and full wages from the date of the order. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules, 1973, respondent no.1 was directed to make exhaustive representation to the School within a period of 4 weeks the date of the order, as to how and in what manner, respondent no.1 would be entitled to complete wages.

11. The petitioner school was directed to decide the representation of respondent no.1 within four weeks from the receipt of the same by a speaking order and to communicate the same along with the copy of the order to respondent no.1.

"QUESTIONS OF LAW

i) WHETHER in the facts of the present case when the enquiry is held by independent person and the Principal of the School had already stated that he will not participate in decision making process on the enquiry report, can it still be said that there is violation of principles of natural justice?

ii) Whether even enquiry conducted by independent person and the enquiry report given by such independent enquiry officer be said to be vitiated since the Principal (who is a member of the Disciplinary Committee by virtue of Rule 118 of the Delhi School Education Rules) appeared as a witness?

i) WHETHER the Tribunal should not consider the nature of charge leveled on the employee and fact that the school, parents and students may not be able to bestow confidence in the delinquent employee again before directing reinstatement?

ii) WHETHER the Delhi School Tribunal has the jurisdiction to interfere with a finding of fact arrived at by the disciplinary authority after appreciating the record of the enquiry proceedings?

12. Mr.H.L. Tikku, learned senior counsel appearing on behalf of the petitioner

submits that two complaints and incident of 04.12.2010 were placed before the disciplinary committee's meeting held on 03.03.2011. In the said meeting, it was decided as under:

"...it was informed to the members by the Principal that he is witness to the incidents so whether he should issue chargesheet or remain in Disciplinary Committee or not. It was decided by the Disciplinary Committee that it is a statutory requirement for the Principal/Manager to remain in the Disciplinary Committee. It was also decided by the members that after receiving the reply to the charge sheet, if Mr. Ved Prakash denied the charges, the enquiry will be conducted by an independent person and for that a letter will be issued by Principal/ Manager on behalf of the Disciplinary Committee. However, it was decided by the Disciplinary Committee that if charge stood proved against Mr. Ved Prakash and action if any to be against him after receiving inquiry report then the Principal will not give his view on the same..."

13. Rule 118 of the Delhi School Education Rules, 1973, provides as under:

"Disciplinary authorities in respect of employees The disciplinary committee in respect of every recognized private school, whether aided or not, shall consist of -

- (i) The Chairman of the managing committee of the school;
- (ii) The manager of the school;
- (iii) A nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;
- (iv) The head of the school, except where the disciplinary proceedings is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director;
- (v) A teacher who is a member of the managing committee of the school, nominated by the Chairman of such managing committee."

14. Accordingly, charge sheet dated 25.03.2011 was issued by the Disciplinary Committee (signed by the Principal) to the Respondent No. 1 herein containing the following charges for the breach of code of conduct for teachers contained in Rule 123 (I)(xvi)(xviii) and (vii) of DESR:

"(i) On 11/11/2010, student Ankit Kumar was standing outside his class room in class period no. 7th. You were passing thereby. By that time someone has shouted on which you came back and asked Ankit Kumar as to who has shouted by way of holding his neck so badly that your nail marks were visible on his neck and you beat him. In this regard a memo dated 12.11.2010 was also issued to you and you accepted your aforesaid act."

(ii) On 12/11/2010, you beat student Prateek Sharma a of class 8(B) when he was going with you to the principal's room. You were taking him to the principal's room because he had not brought a book. You punched him on his back in the

corridor and slapped him on the head and also told him that you would kill him and remove him from the school.

(iii) On 04.12.2010 you had to attend period No. 4th of Class No. VII D. You were not in the class. Thereafter it was found that you were in the physics laboratory with a girl. Upon inquiry it was found that she was your daughter and you were teaching physics practical in the physics laboratory without principal's permission. You were asked to go and attend the class. Thereafter you came to take your class. You felt sorry for that and also took permission to take your daughter back to your home."

15. The Rule 123 of Delhi School Education Rules, 1973 (hereinafter referred to as "DSER"), read as under :

"123. Code of Conduct for teachers

(1). The Code of Conduct for the teachers of the recognized schools including unaided minority schools;

shall be as follows :-

(a) No teacher shall :-

(vii) remain absent from the school without leave or without the previous permission of the head of the school: Provided that where such absence without leave or without the previous permission of the head of the school is due to reasons beyond the control of the teacher, it shall not be deemed to be a breach of the Code of Conduct, if, on return to duty, the teacher has applied for and obtained, ex post facto, the necessary sanction for the leave."

(xvi) behave, or encourage or incite any student, teacher or other employee to behave, in a rowdy or disorderly manner in the school premises;

(xviii) be guilty of misbehavior or cruelty towards any parent, guardian, student teacher or employee of the school."

16. He further submits that respondent no.1 responded to the chargesheet vide response dated 11.04.2011 wherein the charges nos. 1 and 2 were not admitted, however, charge no.3 was partly admitted. The Disciplinary Committee received the response, but was not satisfied with the reply given, as such, Sh. S.N. Dhingra, (Retd. Dy Labour Commissioner, Delhi) an independent person, was appointed on 26.04.2011 as Inquiry Officer. The inquiry was commenced on 07.05.2011. In the meantime, on writ petition filed by the respondent no.1, seeking defense assistant, the inquiry was kept in abeyance after 24.01.2012 and resumed in May 2013. The petitioner's school led its evidence by producing 5 witnesses, who were cross examined by the respondent no.1 and said respondent produced 3 witnesses, who were cross examined by the petitioner. After going through the evidence, the Inquiry Officer gave his report dated 01.09.2013 whereby he came to the conclusion that all the three charges were proved. The Disciplinary Committee on the basis of the inquiry report issued

show cause notice dated 25.10.2013 to the respondent no.1 for deciding the quantum of punishment, which was responded by the respondent no.1 vide its reply dated 08.11.2013, whereupon the order dated 06.02.2014, was passed against the respondent no.1 by imposing lessor punishment of removal from service. Aggrieved by order dated 06.02.2014 the respondent no.1 appealed to the Delhi School Tribunal invoking Section 11 of the Delhi School Education Act, 1973.

17. Learned senior counsel further submits that the constitution of the Disciplinary Committee is beyond reproof as the same is as per statutory requirements laid down in Rule 118 of the Delhi School Education Rules, 1973 which provides as under:

"Disciplinary authorities in respect of Employees

The disciplinary committee in respect of every recognized private school, whether aided or not, shall consist of -

- (i) The Chairman of the managing committee of the school;
- (ii) The manager of the school;
- (iii) A nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;
- (iv) The head of the school, except where the disciplinary proceedings is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director;
- (v) A teacher who is a member of the managing committee of the school, nominated by the Chairman of such managing committee."

18. As per the aforesaid provision, sub-clause (iv) "head of the school" to be a member of the disciplinary committee, who happens to be the Principal of the school in this case and the requirement of the said statute could not be evaded and at the same time, he is witness as the complaints in respect of charge nos.1 and 2 were made to him and he is witness to charge no.3, thus, the doctrine of necessity had to be invoked which is an exception to the principle of bias. Besides, the Principal has given a statement before the charge sheet was issued and also affirmed on oath in his examination in chief before the Inquiry officer, "...Since I am witness in this enquiry so I will not participate in the decision making process after receipt of the enquiry report from the enquiry officer in the interest of justice, I have already informed the members of the Disciplinary Committee about it". Thus, he was not involved in the proceedings. However, learned Tribunal wrongly held that MW-2 Ms.Neeta Mansuka and MW-5 Sh.A.P. Sharma were the members of disciplinary committee.

19. Learned senior counsel submitted that MW 2, Ms. Neeta Mansuka was only a witness and ceased to be a member of the Disciplinary committee. The members of Disciplinary Committee as duly disclosed to the Respondent No.1 during the

proceedings held on 11.6.2011 were as under: a) Mrs. Sushma Berlia, Chairperson.

b) Mr. A P Sharma, Principal/Manager.

c) Ms. Achla Anand, Teacher, member of the managing committee of the School nominated by the Chairperson of the managing committee.

d) Ms. Renu Sharma, Nominee of the Director of Education.

20. Learned senior counsel for the petitioner further submitted that bias would have arisen only after the charge sheet was issued and during the enquiry proceedings or consideration of enquiry report. However, there cannot be any bias at the stage of issuance of memo, or signing the letter for appointment of Inquiry officer or signing of the chargesheet. The decision to issue charge sheet and appoint independent inquiry officer was that of the Disciplinary Committee. Upto the stage of issuance of charge sheet, the decision making process has not even commenced. After the issuance of charge sheet the enquiry was held by independent person, who gave his report on 01.09.2013.

21. It is also submitted that inquiry report was considered by members of the Disciplinary Committee being:

a) Mrs. Sushma Berlia, Chairperson

b) Ms. Achla Anand, Teacher, member of the managing committee of the School nominated by the Chairperson of the managing committee

c) Ms. Renu Sharma, Nominee of the Director of Education.

The principal did not give his views. As such there was no bias in the present case and hence the impugned order is liable to be set-aside.

22. To strengthen his argument, counsel for the petitioner has relied upon the case of Perimal Kumar Dutta vs. APJ School and Ors.: 2010(117) DRJ

591 whereby this court observed that "considering Rule 118 of Delhi School Education Rules, 1973 there can be no doubt that the principle of necessity applies to the case. The principal of the school is statutorily required to be part of the disciplinary committee and cannot recuse herself of that responsibility."

23. Further relied upon the case of Perimal Kumar Dutta vs. APJ School & Ors.: 2010 VI AD(Delhi) 620 whereby this court observed that "when the Principal herself has given in writing that she would not be participating when there would be discussion of the disciplinary authority with regard to delinquent employee, there is no violation of principles of natural justice and the doctrine of bias is not attracted."

24. Counsel for the petitioner also relied upon the case of Ms.Usha Bhandari vs. New Green Field School & Ors. decided on 20.02.2013 passed by this court whereby observed that "Smt. Ved Kumari, the manager of the school was earlier

a member of the disciplinary committee and had issued the chargesheet containing the articles of charges, and had appeared as a witness in the case, however, when the order of the disciplinary authority was passed, she was removed from the disciplinary committee and the disciplinary committee did not comprise of Smt. Ved Kumari. Therefore, she was not was not part of the disciplinary committee which passed the impugned order against the petitioner therein. Once Smt. Ved Kumari was not part of the disciplinary committee, then, there does not arise the question of applicability of the principle of no one being a judge in his own cause and of an issue of the likelihood of bias affecting the orders passed by the disciplinary authority."

25. I have heard learned counsel for the parties and perused the material available on record.

26. It is not in dispute that MW-2 Ms.Neeta Mansuka and MW-5 Sh.A.P.Sharma were not the members of the disciplinary committee and they had considered the complaint, approved suspension of the respondent no.1, decided to initiate disciplinary action, framed the charges and issued charge-sheet in the meeting held on 03.03.2011. However, they appeared as witnesses in inquiry against respondent no.1. Moreover, MW-5 had also appointed the IO and the said MW-5 signed memos of calling for explanation of the respondent no.1. He had also signed order of suspension and charge-sheet.

27. With regard to the doctrine of necessity, Division Bench of this court in the case of The Managing Committee Vidya Bhawan Mahavidyaiaaya vs. Directorate of Education and Ors.: ILR (2006) I Delhi 403, held as under:

"(A) "Natural Justice - Waiver -Respondent No. 2 appointed as Upper Division Clerk in school run by appellant - Levelled allegations against appellant by writing a letter to the Prime Minister - Letter referred to management of School - Respondent No. 2 suspended - regular enquiry conducted - Disciplinary Committee constituted under rule 1 18 of the Delhi Education Rules, 1973 - Remove from service recommended - Approval accorded by Directorate of Education - Service terminated - Challenged before Delhi School Tribunal - Two witnesses who deposed against respondent No. 2 in enquiry proceedings also acted as members of Disciplinary Committee - Tribunal held that termination vitiated due to bias and violation of principles of natural justice 4 Impugned order quashed - Respondent No. 2 ordered to be reinstated with all consequential benefits - Writ petition-Dismissed by Ld. Single Judge _ LPA _ Appellant pleaded that respondent No.2 not raised pleas of bias and violation of natural justice at any stage during enquiry proceedings - Respondent No. 2 took objections as to violation of principles of natural justice in representation submitted to Chairman of Disciplinary Committee - Violation of principles of natural justice necessarily include plea relating to bias - Respondent No. 2 raised plea of violation of principles of natural justice before Tribunal - Investment of two members of Disciplinary Committee as witnesses in enquiry proceedings vitiated impugned order due to violation of principles of natural justice.

(B) Doctrine of necessity - Respondent No.2, employed as UDC with appellant School, made complaint to Prime Minister against school - Regular enquiry conducted - Disciplinary Committee constituted - Removal from service recommended Approval given by Directorate of Education - Respondent No.2 challenged order of removal before Delhi School Tribunal Two members of Disciplinary Committee i.e. Manager a teacher representative of School authorities acted as members of Disciplinary Authority - Tribunal set aside order of removal of service on violation of principles of natural justice - Writ petition - Dismissed by Ld. Single Judge - LP/- Appellant pleaded that manager and a teacher representative who appeared as a witness during enquiry also sit as member of Disciplinary committee under doctrine of necessity due to Rule M8 of the Delhi School Education Rules, 1973 - Manager of school and teacher representative vitally interested with cause propounded against respondent. No. 2- - Biased in favour of appellant Rule 118 only laid down procedure as to how Disciplinary authority in respect of employee to be constituted - person cannot act as a judge as well as a witness in same case - Justice should not only be done but also seem to have been done - No necessity to give strict interpretation to Rule 118 which would amount to violation of principles of natural justice."

28. In the case of Ratanlal Sharma vs. Managing Committee, Dr. Hariram (Co-Education) High Secondary School & Ors: (AIR 1993 SC 2155), the Hon'ble Supreme Court has held that "no one can be a judge in his own cause and in Ramesh Ahluwalia vs. State of Punjab & ors (2013(4) SLR 63(SC) held that where principal of the school was a member of the disciplinary committee and a witness of the management, the order passed by the disciplinary committee removing the delinquent employee from service cannot be sustained on this short ground."

29. Qua the article of charge no.3, MW-1 stated the time when the respondent no.1 came to her in the physics lab would be anything between 9 am to 10 am and it was the 2nd period going on. After she went out and came back after a little while she saw principal MW-5 standing in the lab and talking to the respondent no.1 and reprimanding him as to why he was not attending his class.

30. The time table of the school is as follows:

1st period (8:30 AM to 9:10 AM)

2nd period (9:10 to 9:45AM)

3rd period (9:45AM to 10:20AM)

4th period (10:20AM to 10:55AM)

31. According to the version of MW-1, the alleged incident and the respondent no.1 encounter with the principal in the Lab, should have happened around 10 AM which would be the 3rd period and not 4th. The respondent no.1 had no class during the third period which was his free period.

32. The respondent no.1's 4th period started only at 10:20 am. Therefore, the allegation of MW5 that he saw the respondent no.1 absent from class 7-D during the 4th period is contradictory and false. Similarly, as regards giving practical to respondent no.1 daughter, the said respondent was not provided any instrument and material by the Lab Assistant, therefore, the charge that he was giving practical to his daughter at any time. Thus, it is totally cooked up, concocted and false story. It is important to note that MW-1 in her evidence has nowhere stated that she saw respondent no.1 giving Physics practical to his daughter.

33. In view of the facts recorded and the legal position discussed above, I find no illegality and perversity in the order dated 18.01.2017 passed by the Delhi School Tribunal.

34. The arguments advanced by counsel for the petitioner and the judgments relied upon are not relevant in the facts and circumstances of the present case.

35. Finding no merit in the present petition and the same is, accordingly, dismissed with no order as to costs.

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36. In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.