

**(2019) 02 DEL CK 0173**

**In the Delhi High Court**

**Case No :** Letter Patent Appeal No. 199, 210, 214 Of 2018, Civil Miscellaneous Application No. 14304, 15103, 15104, 15381, 15382 Of 2018

Bharti Sharma

APPELLANT

Vs

Management Of Rukmani Devi Jaipuria Public School & Anr

RESPONDENT

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**Date of Decision :** 18-02-2019

**Acts Referred:**

Delhi School Education Rules, 1973, — Rule 121

**Citation :** (2019) 257 DLT 757 : (2019) 4 AD(Delhi) 237 : (2019) 174 DRJ 7

**Hon'ble Judges :** S. Muralidhar, J; Sanjeev Narula, J

**Bench :** Division Bench

**Advocate :** Parvinder Chauhan, Nitin Jain, M.Y. Khan, Santosh Kumar Sahani, V. Balaji, Sripradha Krishan, Ashok Aggarwal, Anuj Aggarwal

**Final Decision :** Allowed

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## Judgement

Sanjeev Narula, J

1. The present appeals arising under Clause X of the Letters Patent Appeal are directed against the common impugned judgment dated 5th March 2018 whereby the WP(C) nos. 6155/2016, 6156/2016 and 6513/2016 have been dismissed.

2. While dismissing the writ petitions, the learned Single Judge has upheld the order of the Delhi School Tribunal (hereinafter referred to as "DST") passed in favor of the Appellants. However, at the same time, learned Single Judge has granted liberty to the Respondent-School to conduct de novo inquiry against the Appellants.

### FACTUAL BACKGROUND

3. Since the facts in all the three writ petitions were quite similar and the orders impugned were challenged on more or less identical grounds, the petitions were heard together and decided by a common judgment passed by the learned Single

Judge. The present appeals likewise, challenge the impugned judgment mostly on identical grounds and hence, the same are being decided by a common judgment. However, for the sake of clarity, the essential facts of one of the appeals being LPA No. 199/2018 are being noted separately.

LPA No. 199/2018

4. The Appellant was appointed as Assistant Teacher with Respondent School on 15th July 1994. On the introduction of the 5th Pay Commission, the Schools of Govt. of NCT of Delhi implemented the pay revision w.e.f. 1st January 1996. The Management of the Respondent-School however implemented the pay revision in lieu of 5th Pay Commission belatedly w.e.f 1st April 1997 as against 1st January 1996. The Appellant and some other teachers filed writ petitions seeking its implementation from the cut-off date of 1st January 1996. The said petition WP(C) No. 19668/2005 and 5046/1999 were decided in favour of the Appellant and other employees by this court vide judgment dated 11th January 2010. The said judgment was later upheld by the Division Bench of this Court in LPA No. 286/2010 and 308/2010 vide judgment dated 11th May 2012.

5. Despite the orders of this Court, the Respondent-School failed to grant the Appellant and the other employees the benefit of the 5th Pay Commission, constraining the Appellant to file a contempt petition no. 630/2012.

6. During the pendency of the aforesaid proceedings, apparently the management of the Respondent-School attempted to arrive at a settlement with its employees. Appellant did not accept the said terms. Thereafter, Appellant was served with a memo dated 31st October 2011 wherein allegations were made against her to the effect that she had tampered with her service book. The memo was refuted by the Appellant along with a request to the Respondent-School to provide her with the copies of the alleged tampered service book. The request was turned down by the Respondent.

7. On 7th March 2012, Respondent-School issued a charge sheet and informed the Appellant that a disciplinary committee in its meeting held on 28th February 2012 has resolved to initiate disciplinary action against her. This charge sheet was also duly replied to by the Appellant denying the allegations and charges made against her.

8. The inquiry conducted against the Appellant ultimately culminated into the inquiry report dated 13th March 2013. The Appellant submitted its response/representation on the inquiry report and on its consideration, the Disciplinary Authority, vide order dated 8th April 2013, inflicted upon the Appellant, a major penalty of punishment of "removal from service".

LPA Nos. 210/2018 and 214/2018

9. Likewise, in LPA Nos. 210/2018 and 214/2018, the Appellants Dinesh Chand Sharma and Sadhna Payal were appointed as Physical Training Instructor and Assistant Teacher respectively with the Respondent School and a similar charge-

sheet was issued against them inter-alia alleging tampering of service book, neglecting of duties etc. The said charge sheet resulted in enquiry proceedings and subsequent order of compulsory retirement was passed against both the Appellants.

10. The aforesaid orders were impugned by each of the Appellant before the Delhi School Tribunal. The Tribunal set aside the orders holding that the findings of the Inquiry Officer were without any evidence and perverse. At the same time, it was held that the inquiry proceedings against the Appellants were illegal and arbitrary on the ground that Principal of the Respondent-School had appeared as a witness in the inquiry proceedings against the Appellant and also participated as a member in the meeting of Disciplinary Committee; no nominee of Directorate of Education was present in the Disciplinary Committee; no teachers' representative was included in the Disciplinary Committee; relevant documents were not provided to the Appellant despite a specific request in this regard.

11. In view of the above noted findings, while setting aside the order of removal, the Tribunal directed that Appellant be reinstated with immediate effect with full wages and consequential benefits. With respect to the extent of back wages, it was directed that Appellant should make an exhaustive representation to the Respondents under Rule 121 of Delhi School Education Act and Rules 1973, which was directed to be decided by the Respondents within four weeks of making such representation. The order of the Tribunal was assailed by Respondent No. 1 by way of writ petition no. 6155/2016. The same was decided by the learned Single Judge by way of the judgment impugned in the present petition, wherein inter alia it was held that the penalty inflicted was liable to be set aside.

12. Learned Single Judge upheld the order of the DST and dismissed the petition while granting liberty to the School to conduct a de novo inquiry against the Appellant within 16 weeks, failing which Respondents were directed to reinstate the Appellant with back wages.

13. The order of the learned Single Judge is now impugned in the present appeal.

14. Since there are minor differences in the articles of charges , for the sake of clarity, the essential facts of each case are being noted:-

LPA No.

Date of order of removal/ compulsory retirement

Punishment ordered

Appointed at post

Date of appointment

199/2018

08.04.2013

Removal from service

Assistant Teacher

15.7.1994

210/2018

30.07.2012

Compulsory retirement

Physical Training Instructor

16.7.1990

214/2018

30.07.2012

Assistant Teacher promoted to TGT on 01.04.1984 promoted to PGT on 01.09.1994

9.7.1980

#### SUBMISSIONS OF THE PARTIES

15. Mr. Ashok Aggarwal, learned counsel appearing on behalf of the Appellant in LPA Nos. 210/2018 & 214/2018 and Mr. Parvinder Chauhan, learned counsel appearing on behalf of Appellant in LPA No. 199/2018, at the outset, drew the attention of the Court to the impugned judgment and submitted that the learned Single Judge has upheld the order of DST. They submitted that on account of the aforesaid finding of the learned Single Judge, the only grievance of the Appellant is in respect of the liberty granted to the Respondent-School to conduct de novo inquiry against the Appellants.

16. Elaborating on this submission, they submitted that the effect of the impugned judgment, upholding the order of the DST, is that the findings arrived at by the Tribunal have not been disturbed. They also submitted that the DST had passed the order of reinstatement, setting aside the orders of removal from service/compulsory retirement on the ground that the inquiry conducted by the Disciplinary Committee did not find any material or evidence to sustain the charges. Learned counsels further submitted that in view of the aforesaid findings, it would cause serious prejudice to the Appellants in case they are asked to face the enquiry all over again.

17. The learned Counsel also relied upon the judgment of the Supreme Court in the case of Allahabad Bank v. Krishna Narayan Tewari, (2017) 2 SCC 308 and submitted that even though the learned Single Judge noted the aforesaid judgment, he has not appreciated the same in the correct perspective. In support of this contention, he referred to para 8 of the said judgment, wherein the Supreme Court has held that while remanding the matter to Disciplinary

Authority or to the Inquiry Officer for fresh report, the Court should also examine the question of prejudice likely to be caused to the Charged Officer on account of a fresh inquiry.

18. On the contrary, learned counsel appearing on behalf of the Respondents urged that the directions given by the learned Single Judge to conduct a fresh inquiry, was proper in the facts of the present case. He submitted that the learned Single Judge has passed such a direction on the ground that the charges leveled against the Appellant were of a serious nature and the penalty inflicted upon them was set aside on account of procedural irregularities. He submitted that since the Court held that the inquiry was deficient procedurally, the directions given by the Court remanding the matter back to the authority for fresh inquiry was appropriate and the correct course of action.

#### ANALYSIS & FINDINGS

19. We have given our due consideration to the rival submissions of the parties.

20. In order to decide present appeals, we consider it necessary to examine the findings of the Enquiry officer as noted by the DST. Before we venture there, we would like to note that at the appellate stage, we would have ordinarily refrained ourselves from doing so. However, the facts and circumstances of the present case warrant such a scrutiny. This is primarily for the reason that in the impugned judgment, we find no discussion at all on this aspect. We therefore do not have the benefit of the analysis by the learned Single Judge with respect to the findings of fact discussed by the Tribunal. The legal effect of the Tribunal's observations, that there was no evidence against the Appellants, is critical for deciding the present appeal. This we say for the reason that this issue directly influences the reasoning given in the impugned order for giving the liberty to the Respondents to hold a fresh inquiry. We shall elaborate on this aspect a little later in this judgment. The DST has passed separate orders on the respective appeals filed by the Appellants. However, the conclusion arrived at by the DST that the findings of the Inquiry Officer are perverse, is common to all the orders. The Tribunal has examined the entire evidence produced before the Inquiry Officer and concluded that there was no evidence brought on record to sustain the charges leveled against the Appellants.

21. In order to appreciate the evidence brought on record by the Management to sustain the charges, we have juxtaposed the articles of charges and the findings of the Inquiry Officer as noted by the DST and noted the observations/findings of the Tribunal. The same are being illustrated with the help of a table:

Appellant

Articles of Charges

Findings of DST

LPA 199/2018

Bharti Sharma

1. You have tampered with the official record (Service Book) on 06.09.2011 by writing and pasting certain remarks on page No. 12 of your service book. Hence you have violated Code of Conduct for Teachers, Rule 123 (a) (iv) and (b) (xv), Delhi School Education Act and Rules, 1973.

1. On Charge 1:

Adverse inference should be drawn against the Respondent School because of non-production of page no. 13 of the service book and hence, no inference with regard to making of any cutting, addition, interpolation, over-writing or tampering the service book by the Appellant can be drawn. Thus, Appellant has not tampered the service book.

2. You have been neglecting your duties and often reporting late for duty in the class. You are also lacking in honesty and integrity as per review of your service record for the years i.e. 2008-2009, 2009-2010 & 2010-2011. Despite repeated counseling and admonishment by the Principal of the School from time to time, you have not shown any improvement in your conduct, misbehavior, and discipline. You have, thus, clearly violated Code of Conduct for Teachers, Rule 123 (a) (i) and (c) (i), DSEAR, 1973.

2. On Charge 2:

Respondent School has not produced ACRs of relevant years of the Appellant on the file, which are most relevant documents to decide the Article of Charge no. 2. Thus, finding of the Enquiry Officer qua Article of Charge no. 2, is without evidence and hence, perverse.

3. Final finding:

The impugned order dated 08.04.2013 is illegal and arbitrary hence the same is set aside. Respondents are directed to re-instate the Appellant with immediate effect.

1. You have tampered with the official record (service book) on 06.09.2011 by writing & pasting certain remarks on page no. 12 of your service book in violation of Code of Conduct For Teachers, in violation of Rule 123 (a)(iv) and b(xv), Delhi School Education Act and Rules, 1973,

1. On Charge 1:

I have perused alleged page of the service book. The Appellant has not made any cutting, addition, interpolation, over-writing in the service book. The Appellant has only recorded his protest. According to the Appellant, he had written remarks in presence of Dr. K.G. Rastogi, Manager of the Respondent School. Dr. K.G. Rastogi has not filed his affidavit denying this fact on the judicial file. Thus, writing of remarks does not amount to tampering of service book.

2. You have been neglecting your duties, reporting late on duty often and in the class and lacking honesty and integrity as per review of your service record for the years 2008- 2009, 2009 - 2010 & 2010-2011. Despite repeated counseling and admonishments from time to time by the Principal of the School.

3. You have not taken your duties seriously and failed to overcome your deficiencies in your performance and conduct.; You have, thus, clearly violated Code of Conduct for Teachers Rule 123 (a)(i) and (c)(i), DSEAR, 1973.

3. Final finding: The impugned order dated 30.07.2012 is illegal and arbitrary hence the same is set aside. Respondents are directed to re-instate the Appellant with immediate effect.

LPA 214/2018

Sadhna Payal

1. You have tampered with the official record by writing certain remarks on page nos. 23 & 24 of your service book, in violation of Code of Conduct for Teachers i.e. Rule 123(a)(iv) and (b)(xv), Delhi School Education Act and Rules, 1973.

1. On Charge 1&3:

Page no. 23&24 of service book are not placed on the judicial file. Relevant ACRs not produced. Thus, Articles of Charge 1&3 are without evidence and hence perverse.

2. On 14.11.2011. at about 01.15 p.m. you went to the office of the Principal for inspection of your service book and entered into argument with him without any rhyme and reason and threatened the Management with dire consequences and also uttered the following words;- "SCHOOL WALON NE AGAR MUJH PER KOI ACTION LIYA TOH MEIN SCHOOL KI EENT SE EENT BAJA DOONGI".

2. On Charge 2: Principal of Respondent School appeared and supported the case of Management and Inquiry Officer relied on his evidence to hold Article of Charge 2 as proved. It is proved that Inquiry Officer was biased in favor of Respondent School.

3. You have been neglecting your duties often, reporting late on duty, lacking in initiative revealed in review of your service record for the years 2008-2009, 2009-2010 and 2010-2011. You are advised and requested to improve your behavior and conduct, on several occasions by the Principal of the School, but in vain. You have thus, clearly violated Code of Conduct for Teachers, Rule 123 (a) (i) and (c)(i), DSEAR, 1973.

3. On Charge 1&3:

Page no. 23&24 of service book are not placed on the judicial file. Relevant ACRs not produced. Thus, Articles of Charge 1&3 are without evidence and hence perverse.

4. Final finding: The impugned order dated 30.07.2012 is illegal and arbitrary hence the same is set aside. Respondents are directed to re-instate the Appellant with immediate effect.

22. From the above, it conspicuously emerges that there was in fact no material with the Management to sustain the articles of charges. The DST has therefore rightly concluded that the findings of the Inquiry Officer are perverse, as it is a case of "no evidence". The conclusion of the Inquiry Officer therefore has been rightly set aside. The departmental inquiry is a quasi-judicial procedure (*Roop Singh Negi v Punjab National Bank*, (2009) 2 SCC 570). This means that the charges against an Officer must be proved by consideration of the evidence brought before the Inquiry Officer. The Supreme Court in *Roop Singh Negi* (supra) has also stressed that the Inquiry Officer must give reasons for arriving at a finding of guilt against the Charged Officer. The common charge against all the Appellants is that of tampering of service book. In the case of LPA Nos. 199/2018 and 214/2018, it is indeed shocking to note that this charge was held to be proved in spite of the fact that the document which was alleged to be tampered was never produced before the Inquiry Officer. In LPA No. 210/2018, though the alleged tampered document was produced, however, there was no cutting/addition/interpolation or over-writing in the book and the remarks made therein were only recording his protest. Therefore, the charge of tampering of service book could not under any stretch of imagination be said to be proved. Similarly, the charge with respect to neglecting of duties could not be established without the relevant ACRs being produced before the Inquiry Officer.

23. The findings of the Inquiry Officer therefore are certainly and without any doubt contradictory and irreconcilable. In absence of any evidence of whatsoever kind in support of the conclusions arrived at by the Inquiry Officer, his report was indeed perverse and it was a straightforward case of "no evidence". It has been established through multiple decisions of the Apex Court that the Court/Tribunal may interfere where the proceedings held by a disciplinary authority have been conducted in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on "no evidence". (*BC Chaturvedi v Union of India*, (1995) 6 SCC 749, *Narinder Mohan Arya v United India Insurance Co. Ltd.*, (2006) 4 SCC 713). If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case (*High Court of Judicature at Bombay v Shashikant S. Patil*, (2000) 1 SCC 416). The facts of the case thus warranted the Tribunal to interfere with the findings of the Disciplinary Committee and it has rightly done so.

24. The learned Single Judge has examined the matter only from the stand point of the constitution of the Disciplinary Committee and the procedural irregularities in that regard. The learned Single Judge has held that the Disciplinary



Committee did not have the requisite Coram as neither nominee of Directorate of Education nor teachers" representative was included in the meeting of the Disciplinary Committee. The learned Single has further held that the approval to initiate the disciplinary proceedings against the Appellants was to be given by the Disciplinary Committee which was not properly constituted. The learned Single Judge thus concluded that the initiation of the departmental inquiry was by improperly constituted Disciplinary Committee and even the penalty inflicted did not have proper approval of the Directorate of Education. Thus it has been held that the above noted infirmities are sufficient to nullify the penalty.

25. While the above-noted aspects are correctly appreciated by the Learned Single Judge, we however do not find any discussion with respect to the findings of fact which form the bed rock of the decision of the Tribunal for setting aside the order of removal from service and order of compulsory retirement. No doubt, the Tribunal has also held that the Disciplinary Committee was not properly constituted and consequently held the inquiry to be vitiated. However, more pertinently, it was lack of evidence to sustain the charges that prevailed upon the Tribunal to set aside the findings of the Inquiry Officer holding it to be perverse.

26. The aforesaid findings of fact have been sustained in the writ petitions and the learned Single Judge has upheld the order of the Tribunal. It is to be noted that the order of the learned Single Judge has not been challenged by way of cross objections or cross appeal by the Respondents. The only conclusion from the above is that the order of the Tribunal and the judgment of the learned Single Judge upholding the same remains unchallenged by the Respondents and leads to the conclusion that the aforesaid findings prevail and have attained finality. It has been held in the case of *Biswajit Sukul v. Deo Chand Sharma & Ors*, (2018) 10 SCC 584 that in the absence of appeal/cross-objections qua issues decided in favor of appellant, not having been challenged by the respondent cannot be re-adjudicated by the Appellate Court. Thus, we are not swayed with the contention of the Respondents regarding the gravity of charges against the Appellants. The only question that survives and merits consideration is that, whether the procedural irregularities justified the liberty granted to the Respondents to hold the de novo inquiry.

27. On this issue, the learned Single Judge has referred to the judgment of the Supreme Court in the case of *Allahabad Bank* (supra) and Appellants also relied on the same. It would thus be apposite to note the relevant paras of the said decision.

"8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be

situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised."

28. In the said case, the Supreme Court while summarizing the principle regarding the scope of the judicial review in cases related to departmental inquiry, has reiterated that in cases where the findings of Disciplinary Authority are unsupported by any evidence whatsoever, the writ Court would be justified in examining the matter while exercising judicial review and granting relief in appropriate cases. The relevant portion of the said judgment reads as under:-

"7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment."

29. The dicta of the above judgment is that after setting aside the inquiry report, the Court while deciding the question of remanding the matter to the authorities, would also be required to examine the facts of the case, to determine the appropriate course of action.

30. Where the inquiry is deficient procedurally, the proper course is to remand the matter back to the concerned authority, but this course of action does not have a universal application. There cannot be any straight jacket formula for deciding this point at issue. Appellants have raised this precise question before us. Whether the learned Single Judge was justified in granting liberty to the Respondents for a de novo inquiry? Since, the learned Single Judge has examined the matter only from one angle i.e. the procedural irregularities in the Disciplinary Committee vis-à-vis initiation of disciplinary proceedings and infliction of penalty, he lost sight of the fact that the DST had also given a categorical finding on merits after carefully and meticulously examining the evidence produced before the Inquiry Officer. The observations of DST that the findings were perverse on the ground of "no evidence" have escaped the attention of the learned Single Judge.

31. The Supreme Court in Allahabad Bank (supra) has held that there can be many situations and circumstances that can prevail in the Writ Court to decline the permission to hold a fresh inquiry or fresh order by the competent authority.

32. In the facts of the present case where the Respondents have no evidence in hand, present case is one where the de novo inquiry is not warranted. Besides, in this case, the Appellants were issued the charge sheet in 2012. They have struggled for 7 years and faced the inquiry and proved that there is no material in hands of the management to sustain the charge against them. At this stage, ordering a fresh inquiry would be extremely harsh and unfair to the Appellants and would be wholly inappropriate. We, therefore, in the facts of the present case, set aside the impugned judgment in all the Appeals only to the limited extent that the learned Single Judge has granted liberty to the Respondents to conduct a de novo inquiry against the Appellants.

33. Consequently, we uphold the order of the DST reinstating the Appellants with back wages. The Respondents are directed to comply with the orders of the Tribunal forthwith. Respondents shall also issue consequential orders and ensure the appointment with the monetary/consequential benefits is given to the Appellants within a period of one week from today. In the facts of the present case, we also allow each of the Appellants a cost of Rs. 10,000/- which is directed to be paid by the Respondents within a period of two weeks from today.

34. The appeals are allowed in the above terms. Pending applications are disposed of.