

**(2022) 12 DEL CK 0135**

**In the Delhi High Court**

**Case No : Civil Writ Petition No. 16400 Of 2022**

Himani Malhotra

APPELLANT

Vs

Indraprastha College Of Women And Ors

RESPONDENT

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**Date of Decision : 22-12-2022**

**Acts Referred:**

**Citation : (2022) 12 DEL CK 0135**

**Hon'ble Judges : Jyoti Singh, J**

**Bench : Single Bench**

**Advocate : Jai Bansal, Tarun Satija, Rajesh Gogna, Priya Singh, Mohinder J.S. Rupal, Apoorv Kurup, Swati Bhardwaj, Ojaswa Pathak**

**Final Decision : Disposed Of**

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## **Judgement**

Jyoti Singh, J

1. Present writ petition has been filed seeking the following reliefs:-

"a. Issue an appropriate writ, direction or order in the nature of a Mandamus directing the Respondents to decide the appeal of the Petitioner within Three months;

b. Issue an appropriate writ, direction or order in the nature of a Mandamus directing the Respondents to pay the subsistence allowance @75% to the petitioner during the pendency of the appeal;

c. Pass any further or other order (s), direction (s) which this Hon'ble Court deems fit, necessary and expedient in the interest of justice."

2. Brief facts necessary for deciding the limited issue that arises in the present writ petition are that Petitioner was appointed as Assistant Professor on 28.09.2010 in the Department of Physical Education against a permanent post on basis of the marks in the "National Eligibility Test (NET) Certificate", initially on probation of one year.

3. It is the case of the Petitioner that out of sheer vendetta against the Petitioner, a show cause notice dated 28.07.2012 was issued to her by the College Principal levelling various allegations, to which a reply was submitted on 06.08.2012. Thereafter, a suspension letter was issued on 21.08.2012, placing the Petitioner under suspension, followed by a charge-sheet on 23.07.2013. The disciplinary proceedings culminated into a penalty of removal from service w.e.f. 15.06.2022, imposed vide order dated 28.06.2022. Petitioner has assailed the penalty by filing an appeal on 29.07.2022 before the Appeal Committee constituted by the Chancellor of the Delhi University under Ordinance XII-A.

4. The grievance of the Petitioner in the present petition is limited to a direction to the Respondents to decide the appeal within three months and also to pay subsistence allowance at the rate of 75% during the pendency of the appeal. In order to substantiate the plea for grant of subsistence allowance, learned counsel for the Petitioner places reliance on Rule 9(1) of Ordinance XII-A, which reads as follows:

"9.(1) Any dispute arising in connection with the termination of the services of the teacher, except when on probation, by the Governing Body shall be referred to the arbitration of an Appeal Committee of three independent persons appointed by the Chancellor, who shall have power to inquire into all the facts of the case and to interpret the terms of this agreement, and their decision shall be final and binding on both parties. The Appeal Committee shall give its final decision within a reasonable time:

Provided that during the pendency of the appeal, the teacher shall continue to draw such salary or subsistence allowance, as the case may be, as he was drawing immediately prior to the termination of his/her services."

5. It is the contention of the Petitioner that since the appeal has been filed on 29.07.2022 and it is not in the hands of the employee to have the same placed before the Appeal Committee, a liberal interpretation must be given to Rule 9(1) and the Petitioner should be paid subsistence allowance with effect from the date of filing of the appeal.

6. Per contra, learned counsels for the University and the College respectively, submit that the Appeal Committee does not exist as a matter of routine and is constituted as and when an appeal is filed invoking Rule 9(1) of Ordinance XII-A. Mr. Gogna, further submits that subsistence allowance can only be paid during the pendency of the appeal and that stage would only arise when the Appeal Committee is constituted and the matter is taken up for hearing.

7. This Court finds substance in the contention of the Respondents that the appeal can be taken up for hearing only when the Appeal Committee is constituted. However, it cannot be overlooked that the Petitioner has filed the appeal on 29.07.2022 and it is not in Petitioner's control to have the appeal listed and at the same time, she is being deprived of even the subsistence allowance, for which she is entitled under Rule 9(1) of Ordinance XII-A.

8. In the totality of facts and circumstances, this Court requests the Hon'ble Chancellor to direct the constitution of the Appeal Committee as expeditiously as possible so that the appeal filed by the Petitioner can be placed before the Committee. Respondent No. 1 is directed to take requisite steps for processing the case of the Petitioner for subsistence allowance simultaneously.

9. The order shall be conveyed to the Office of the Hon'ble Chancellor by the Respondents so that further steps can be taken in the matter.

10. Writ petition is disposed of in the aforesaid terms.