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**(2004) 02 DEL CK 0011**  
**In the Delhi High Court**  
**Case No : CW 4715 of 2000**

Ms. Monica Jawa

APPELLANT

Vs

Director of Education

RESPONDENT

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**Date of Decision :** 12-02-2004

**Acts Referred:**

**Citation :** (2004) 110 DLT 139 : (2004) 73 DRJ 349 : (2004) 3 SLJ 257

**Hon'ble Judges :** Pradeep Nandrajog, J

**Bench :** Single Bench

**Advocate :** D. N. Vohra, for the Appellant; Aditya Madan and M. Kumar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Radeep Nandrajog, J.—Petitioner is an employee of respondent no.2. She was appointed as a primary teacher. Respondent no. 2 school is a recognized school under the Delhi School Education Act, 1973 and, Therefore, provisions of the said Act and the Delhi School Education Rules, 1973 apply to the school.

2. The grievance of the petitioner is that pursuant to the recommendations of the Vth Pay Commission which were adopted in the year 1997 by the Government of NCT of Delhi, wage revision was effected for the teachers teaching in government schools. In terms of Section 10 of the Act, the scales of pay of teachers employed under recognized private schools cannot be less than those of the employees of the corresponding scales in schools run by the appropriate authority i.e. Government of NCT of Delhi. With the adoption of said pay scales in the government schools, respondent no.2 school became obliged to revise the pay scale of the petitioner by giving to her the replacement scales as per the recommendations of the Vth Pay Commission, implemented by the Government of NCT of Delhi. The school did not give the said replacement scale to the petitioner. She demanded the replacement scales and out of malice, the management of respondent no.2 school started harassing her. It is pleaded that memos were issued to the petitioner on 20.4.1998, 3.8.1998, 13.9.99 and

20.9.99 to create grounds for initiating disciplinary action against her.

3. Petitioner alleges that a charges sheet was issued to her on 30.10.1999. Following misconducts were alleged against her:-

1. You indulged in malpractice in the Admission Test held on 4th April, 1998 which you did admit on the spot whereas you did refute the same subsequently.

2. You have committed sustained neglect in correcting the class/home work done by the students and you were asked to explain vide Memo No.MAMS/99-2000/223 dated 3.8.99, whereas, you did not file any reply thereto amounting to acceptance thereof.

3. You failed to follow the working instructions/procedure while marking your attendance in the visitors register and also represented false and distorted facts on 17.9.1999.

4. You had admitted in the staff meeting on 3.8.99 about repetition of the Vth class paper for the year 1998 in the year 1999, whereas, on seeking Explanation, you had refuted the charge of the said neglect of duty, wrongly and falsely. Whereas, you have been found guilty thereof in the enquiry conducted by Ms. Divya Pushkarna and Mr. Rakesh BhardwaJ.

5. You have committed repeated breach of code of conduct expected out of a teacher, leading to loss of confidence.

4. A second charge sheet was issued to her on 13.3.2000, listing the following misconduct:-

1. That you illegally and without any sufficient cause entered the examination room on 7.4.1998, where the Admission Tests was being held for the session 1998-99 and helped some examinee in order to enable him to get admission. This is a misconduct on your part.

2. That you have always neglected and remained sluggish in the performance of your duties and did not take interest in correcting the class work/home work done by the students and even you deputed some students to correct the home work of the other students in order to give an eye wash of work being done by you. In this connection, you were also warned so many times verbally by the Principal but to no use. This act on your part is a very serious and major mis-conduct of negligence and non performance and also to neglect the ultimate object of the institution of imparting the best education to the students.

3. That you remained absent without permission and without any sanctioned leave from the Principal from 17.9.1999 to 20.9.1999 and in order to extract money for the period of your absence, you signed the visitors register of the school and when you were asked to explain the same, you leveled false and bogus allegations against the Principal, that she has ordered you not to come to the school. By doing this you not only tried to extract money illegally from the school, but also indulge in insubordination and disrespect on your seniors.

4. That you were required to prepare question paper of Class-V of subject English for the examinations of the year 1999. Instead of preparing a question paper, you just copied from the question paper of the year 1998 of the preceding year (Previous year) with little variations in order to deceive the authorities. This you have done because you had already taught and got prepared the students of the questions appearing in examination paper 1998 and you wanted to show a good result to the authorities in order to enhance your promotion chances. This act on your part is a serious mis-conduct and a deceitful behavior for personal gains and the same is also against the code of conduct of a teacher.""

5. Yet another charges sheet was issued to her on 20.4.2000. The charges alleged against the petitioner in the charge sheet dated 28.4.2000 are a verbatim copy of the charges alleged against her under the charge sheet dated 13.3.2000. Petitioner alleges that issuance of the three charge sheets for the same offences is proof enough of malafides. Petitioner states that respondent no. 2 cannot hold a de-novo enquiry.

6. Alternative submission made is that the charges alleged against the petitioner did not constitute misconduct and, Therefore, the charge sheets be quashed. Petitioner prays that order dated 8.7.2000 whereby the enquiry officer has been appointed should be quashed.

7. Mr. Rakesh Tiku, learned counsel appearing for the school has stated that under Rule 118 of the Delhi School Education Rules, 1973, the Disciplinary Authority is to be constituted, whenever an enquiry has to be held against an employee of a recognized school. Rule 118 reads as under:-

""Disciplinary authorities in respect of employees

The disciplinary committee in respect of every recognised private school, whether aided or not, 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 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; nominate by the Chairman of such managing committee.""

8. Counsel contended that after the first charge sheet was served upon the petitioner on 30.10.1999, a legal notice was received from the petitioner's counsel where under, inter alia, following was demanded from the school:-

""By way of this notice, I, Therefore, call upon you, the addressee no.1 and 2, to kindly provide my client with a copy of the deliberations of such a disciplinary

committee and also the name of the nominee of the Directorate of Education who has been the members of such a disciplinary committee.'"

9. It was realized by the management of the school that while Constituting the disciplinary committee, nominee of the Directorate of Education was not co-opted on the disciplinary committee and in that view of the matter, the charge sheet dated 30.10.1999, since it was cleared by a disciplinary committee not validly constituted was non-est and was withdrawn. The disciplinary committee was reconstituted by co-opting the nominee of the Directorate of Education and this disciplinary committee cleared the charge sheet which was served upon the petitioner, being charge sheet dated 13.3.2000. Before proceedings could be initiated there under, it came to the notice of the management that the Principal of the school was a material witness to prove the case of the management. Since under Rule 118, the head of the school was statutorily to be a member of the disciplinary committee, the Principal of the school was included in the disciplinary committee which cleared the charge sheet dated 13.3.2000. But when it waned that the Principal was a material witness of the management, doctrine of necessity required reconstituting of the disciplinary committee. Principal could not be a witness for the management and at the same time, a member of the disciplinary committee. This required further reconstitution of the disciplinary committee by replacing the Principal of the school from the disciplinary committee. It was so done. The reconstituting disciplinary committee re-deliberated on the matter and the charge sheet dated 28.4.2000 was issued.

10. It was, Therefore, not a case of de-novo enquiry contended counsel for the school. As regards the allegations of malafide, learned counsel, Sh. Rakesh Tikku, contended that the recommendations of the Vth Pay Commission came to be adopted in the year 1997 by the Directorate of Education and were made retrospectively applicable. Government may have the funds to apply to pay scales with retrospective effect but the schools had to manage their affairs from the tuition fee collected. The retrospective application of the Vth Pay Commission recommendations was never denied by the school. The management implemented the Vth Pay Commission recommendations although belatedly but as far as the arrears were concerned proceeded to liquidate the same in installments. In any case, same was applicable to all the staff employed under the school and there was no question of singling out the petitioner. As regards the contention that the charges do not constitute misconduct, learned counsel relied upon Rule 123 of the Delhi School Education Rules, 1973.

11. Petitioner has not filed any rejoinder to the counter affidavit filed by the respondent No.2 school.

12. A perusal of the charge-sheet issued to the petitioner on 30.10.1999 shows that the basic ingredients thereof constituted the basic ingredients of the second charge-sheet issued to her on 13.3.2000. Further, as noted above, charge-sheet dated 13.3.2000 and the charge-sheet dated 28.4.2000 are a verbatim copy of each other. It has not been denied by learned counsel for the petitioner during

arguments that when charge-sheet dated 30.10.1999 was served upon the petitioner she caused to be served upon the school a legal notice dated 14.12.1999, inter alia, calling upon the school to disclose the name of the nominee of the Director of Education on the disciplinary committee. Mr. Rakesh Tikku, learned counsel appearing for the school has explained that then said notice was served it came to the notice of the school that the disciplinary committee constituted had not co-opted on it a nominee of the Director of Education. Therefore, rightly so, the school gave up the charge-sheet dated 30.10.1999, in the, reconstituted the disciplinary committee, which committee framed the charge-sheet, being the charge-sheet dated 13.3.2000. Here too, an error was noticed, in that, without realizing that the principal of the school was a material witness against the petitioner, the disciplinary committee was mechanically constituted under Rule 18. Head of the school was to be a member of the disciplinary committee under sub Rule IV of Rule 118. When this was noticed, the disciplinary committee was reconstituted and it was the further reconstituted disciplinary committee which reconsidered the material and issued the charge-sheet dated 28.4.2000. Indeed, witness of the management i.e. the principal of the school could not be a member of the disciplinary committee. A situation of necessity required the school to reconstitute the disciplinary committee and as a consequence thereof to have got reconsidered the material by the reconstituted disciplinary committee. I, Therefore, find nothing illegal in the action of the school in dropping the first two charge-sheets and issuing the charge-sheet dated 28.4.2000. I fail to understand as to on what basis the petitioner alleges that a de-novo enquiry could not be held. Admittedly, the charge-sheet dated 30.10.1999 and 13.3.2000 were dropped because of the defect in the constitution of the disciplinary committee which had framed the charge-sheets. No enquiry was conducted pursuant thereto. It is Therefore not a case of de-novo enquiry.

13. I find no mala fides in the action of the school to take disciplinary action against the petitioner. Merely because the petitioner and the other teachers had raised the issue with the Director of Education pertaining to their wage revision does not mean that the action against the petitioner is mala fide. Why should the school single out the petitioner when all the teachers of the school had raised the issue of pay revision? It is not the case of the petitioner that she is a union leader of the teachers' union and is, Therefore, being targeted. As stated by the petitioner herself the charge-sheets were preceded by issuance of memorandums to her.

14. The memorandum dated 20.4.1998 where the petitioner was alleged of entering the class room unauthorized on 7.4.1998 where admission tests were being held was responded by the petitioner on 21.4.1998. She admitted of making entry in the examination room without authority but said that she had gone there just to see the question paper and not to help or guide any candidate. It is not the case of the petitioner that she was deputed on invigilation duty on 7.4.1998 and, prima facie, she had no authority to enter the examination hall

and she had no authority to see the question paper when the admission test was on. Similarly, other memorandums were issued to the petitioner from time to time for which she had given her Explanation. It was Therefore entirely for the management of the school to decide whether in view of repeated lapses/ malpractices alleged against the petitioner should or should not she be charge-sheeted. In any case, it cannot be said that there is no material to proceed against the petitioner.

15. Petitioner admittedly being an employee of a recognised school is governed by the Code of Conduct. Rule 123 lays down the Code of Conduct. Said rule reads as under:-

""123 Code of Conduct for teachers - (1) The Code of Conduct for the teachers of the recognised schools including unaided minority schools, shall be as follows:-

(a) No teacher shall -

(i) knowingly or willfully neglect his duties;

(ii) .....

(iii) .....

(iv) indulge in, or encourage, any form of malpractice connected with examination or any other school activity;

(v) make any sustained neglect in correcting class-work or home-work done by students;

(vi) while being present in the school, absent himself (except with the previous permission of the head of the school) from the class which is required to attend;

(vii) remain absent from the school without leave or without the previous permission of the head of the school: ""

16. Four charges have been alleged against the petitioner. Sub Clause (iv) of Rule 123(1) (a) is attracted to the first charge. Sub Clause (v) thereof is attracted to the second charge. Sub Clause (vii) thereof is attracted to the third charge and Sub Clause (i) thereof is attracted to the 4th charge. It cannot, Therefore, be said that the charges alleged against the petitioner do not constitute misconduct under Rule 123 of the Delhi School Education Rules, 1973.

17. I find no merit in the writ petition. The same is accordingly dismissed. However, there shall be no orders as to costs.