

(2023) 08 DEL CK 0168

In the Delhi High Court

Case No : Civil Writ Petition No. 1138 Of 2023, CONT.CAS(C) No. 272 Of 2020, Civil Miscellaneous Application No. 11748, 19161 Of 2020, 17098 Of 2022, 4445 Of 2023

Ruchika Rai Madan

APPELLANT

Vs

Directorate Of Education & Ors

RESPONDENT

Date of Decision : 17-08-2023

Acts Referred:

Delhi School Education Rules, 1973 — Rule 3(1)(i), 3(1)(iii), 118, 120, 123, 123(1)(a) (xvii)

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Delhi Sikh Gurudwara Act, 1971 — Section 32, 33

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4

Citation : (2023) 08 DEL CK 0168

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Kamal Gupta, Sparsh Aggarwal, Paridhi Bist, Yeeshu Jain, Jyoti Tyagi, Manisha, Inderbir Singh Alag, Abinash K. Mishra, Gaurav Kumar Pandey

Final Decision : Disposed Of

Judgement

Jyoti Singh, J

W.P.(C) 1138/2023 & CM APPL. 4445/2023 (for interim directions)

1. By this writ petition, Petitioner seeks a writ of certiorari quashing the suspension order dated 19.10.2022, show cause notice dated 16.11.2022 and charge-sheet dated 06.01.2023 as well as the order dated 04.02.2021, whereby representation of the Petitioner has been rejected. Writ of certiorari is sought for quashing order dated 18.01.2023 and communication dated 23.01.2023, regarding the claim of the Petitioner for subsistence allowance. Writ of mandamus is sought directing Respondent No. 2/Guru Harkishan Public School (New Delhi) Society (hereinafter referred to as the 'Society') to appoint the Petitioner as a Principal in any one of the 12 schools run by it as also a direction to the Society and Respondent No. 3/Delhi Sikh Gurudwara Management

Committee ('DSGMC') to clear all arrears of Petitioner's salary, allowances etc. under 6th CPC w.e.f. 11.09.2015 and under 7th CPC w.e.f. 01.01.2016.

2. Factual matrix to the extent necessary and relevant is that pursuant to an advertisement issued by the Society for appointment to the post of Principal in the schools run by it, Petitioner made an application and after being successful in a rigorous round of interview on 09.05.2015 as well as after verification of her documents, including educational and experience certificates, Petitioner was offered appointment vide letter dated 11.09.2015 in pay band 15600-39100 with Grade Pay Rs.7600/- and was directed to join duty immediately by reporting to the Director of the Society at the earliest. Petitioner joined on the same day and submitted a joining letter dated 11.09.2015. By a letter dated 12.11.2015, Society confirmed that Petitioner had reported for duty on 11.09.2015.

3. It is averred in the petition that from the date of appointment till 09.09.2016, Petitioner worked dedicatedly and devotedly and received appreciation and accolades for the tasks assigned and successfully accomplished by her. According to the Petitioner, a few months after her joining she started facing discrimination and harassment and was pressurised to tender resignation. Salary was also not regularly paid to her despite repeated requests. When the Petitioner refused to tender her resignation, the Society issued a letter dated 04.05.2016, alleging that Petitioner had not submitted her certificates pertaining to educational qualifications and experience in violation of Code of Conduct for Teachers set out under Rule 123 of Delhi School Education Act and Rules, 1973 (hereinafter referred to as the 'DSEAR') and had taken unauthorized leaves for few days in April, 2016. Petitioner responded by a letter dated 10.05.2016 denying the allegations and by way of abundant caution submitted attested photocopies of all her certificates and testimonials again. Not being satisfied with the documents submitted, the Society again called upon her to provide originals of the degree certificates of B.Com., M.Com. and B.Ed. along with marksheets for each year and the experience certificates of having served as TGT, PGT and Principal in various institutions by 26.05.2016.

4. It is stated that premised on some internal inquiry, a Report was given on 15.07.2016 containing false allegations against the Petitioner, leading to a show cause notice dated 12.08.2016, to which she submitted a detailed reply on 23.08.2016 refuting and denying the allegations. However, without paying heed to the response of the Petitioner, the Society terminated her services vide order dated 09.09.2016, despite the Petitioner pointing out in the reply that action could only be taken in consonance with DSEAR and that the allegations were false. Finding merit in the stand of the Petitioner that the certificates/testimonials submitted by her were genuine, Society passed an order dated 07.11.2016 recalling the termination order, unconditionally and without any reservation or caveat. By the same order, Petitioner was asked to join her duties with immediate effect.

5. Pursuant to the recall order, Petitioner was allowed to join her duties w.e.f.

08.11.2016 and mark her attendance. However, in less than a week, Petitioner was prevented from entering her office on 12.11.2016. Petitioner ran from pillar to post and represented, both orally and in writing, requesting the Society to permit her to join duties, but to no avail, constraining her to file a writ petition being W.P. (C) 12506/2019. The writ petition was disposed of by the Court vide order dated 11.12.2019 taking on record the submission of the Society that since no vacancy was available in the post of Principal in any School, Petitioner shall be posted in the Education Cell. Posting order/joining letter was handed over to the Petitioner during the hearing in the Court. The manner in which the period between 09.09.2016 to 11.12.2019 would be treated was left to be considered by the Respondents in the first instance. When the order was not complied with, Petitioner filed a contempt petition being CONT. CAS (C) No. 272/2020 and vide order dated 19.06.2020 the Court directed the Society to refix the salary of the Petitioner and pay the emoluments at par with the Principals of other Schools. In purported compliance of the order dated 11.12.2019, Society passed an order dated 04.02.2021 rejecting the claim of the Petitioner for salary and allowances etc., which is also the subject matter of challenge in this petition.

6. While the dispute with respect to the salary and allowances payable to the Petitioner was pending, Society issued an order dated 19.10.2022 suspending the Petitioner. This was followed by a show cause notice dated 16.11.2022 and a charge sheet dated 06.01.2023, which are assailed in the present petition. On 31.01.2023 when the writ petition came up for admission, Petitioner restricted her claim to prayers (A), (B), (C), (E) and (F), with liberty to file a separate writ petition with respect to her claims for revision of pay and allowances under the 6th and 7th CPC.

Contentions on behalf of the Petitioner:-

7. Society conducted an inquiry into the educational qualifications and experience certificates furnished by the Petitioner and as per the report rendered on 15.07.2016 the documents were contradictory; appeared to be false and fabricated; Petitioner lacked the teaching experience in any capacity as PRT, TGT or PGT requisite for appointment as Principal, Vice-Principal or Head Mistress and the B.Ed. degree required verification from the concerned University. On account of the observations, it was recommended that appropriate action, as deemed fit, be taken by the higher Management of the Society. Based on this report and the inputs received from the authorities issuing the experience certificates, show cause notice was issued to the Petitioner, to which she filed a detailed reply refuting the allegations. Society terminated the services of the Petitioner by order dated 09.09.2016, however, realising that the allegations were false, the termination order was recalled by an order which was unconditional, unqualified and without reserving the right to take disciplinary action on the same set of allegations. Therefore, the impugned charge-sheet predicated on the same allegations cannot be sustained in law.

8. Society is erroneously attempting to read the recall order as if the right to

initiate disciplinary proceedings was implicit in the said order, based on two-fold submissions/assumptions: (a) since no inquiry was held prior to the termination order, as an employer the Society is well within its right to hold an inquiry and ascertain the truth/correctness of the allegations; and (b) while disposing of the writ petition filed by the Petitioner on 11.12.2019, Court had granted liberty to the Respondents to initiate disciplinary proceedings, in accordance with law. The stand of the Society on both counts is fallacious. Show cause notice leading to termination was premised on some inquiry and therefore the chapter once closed cannot be reopened again, especially, when the termination order was recalled without any reservation or rider to proceed again and charge sheet the Petitioner. Liberty to take action in accordance with law did not mean that Society could act in a manner proscribed by law i.e. to hold a second inquiry on same set of allegations, when the first culminated into exoneration and recall of the termination order.

9. The stand now adopted by the Society that the termination order was withdrawn with an intent to hold an inquiry to ascertain the genuineness of the certificates and give fair chance to the Petitioner, is a mere smokescreen and contrary to Society's own stand in other proceedings. In the counter affidavit dated 29.07.2020 filed in CONT. CAS (C) No. 272/2020, there was a reference to the earlier show cause notice, reply thereto, termination order and its withdrawal, but it was not stated that the Society was contemplating a disciplinary action. Issuance of charge sheet is an afterthought to harass the Petitioner and amounts to double jeopardy.

10. Even otherwise, it is clear from the comments/responses from the 3 institutions, which had issued the experience certificates that they were genuine. The original experience certificate issued by G.S. Convent was signed by the then Principal Mrs. Yadav on 22.06.2005 and on 16.08.2016 the Chairperson of the School, endorsed and confirmed that the certificate was true copy of the original. The second experience certificate was from R.D. Public Senior Secondary School and was issued by the Chairman himself under his signatures. The claim of the Society that the Chairman has endorsed that the details on the experience certificate are not true, is a misreading by the Society since the certificate is in fact genuine. The third certificate is from Tecnia International School and it was clarified by the school authorities that Petitioner had worked in the School as Principal from 08.12.2014 to 30.05.2015. Thus, there is no room for doubt that Petitioner had not sought appointment on the basis of forged, false or fabricated documents, as alleged by the Society.

11. Petitioner is governed by the provisions of DSEAR and therefore the charge sheet could only be issued by the Disciplinary Authority constituted in accordance with Rule 118 of DSEAR, which was not done. Various orders passed by this Court in the present petition and the earlier round of litigation reveal that at all times, Respondents admitted and never disputed that Petitioner was governed by DSEAR. The service rules of DSGMC are not applicable to the Petitioner as they

only apply to employees of DSGMC, which the Petitioner is not. It is trite that employees of recognized public schools are entitled to protection of the provisions of DSEAR. [Ref. Mangal Sain Jain v. Principal, Balvantray Mehta Vidya Bhawan and Others, 2020 SCC OnLine Del 2608].

12. Without prejudice to the said submission, there is a huge delay in issuance of charge sheet and this is enough to quash it. Allegations relate to the year 2015 and the termination order passed on 09.09.2016 was withdrawn on 07.11.2016. It is after 07 long years that the charge sheet was issued. Courts have repeatedly held that a delayed charge sheet prejudices an employee and cannot be sustained in law. [Ref. Bhupendra Pal Singh v. Union of India and Others, 2021 SCC OnLine Bom 6073].

13. The vindictiveness and malafides of the Society are evident from the fact that despite recalling the termination order they did not permit the Petitioner to perform the duties between the years 2016 and 2019 though several representations were made by the Petitioner seeking permission to join and resume her duties. The consequence was that Petitioner was not even paid her salary for the said period. Petitioner is thus entitled to full back wages for the entire period in accordance with the law laid down in the judgments of the Supreme Court in Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Limited and Others, (2016) 16 SCC 663, and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Others, (2013) 10 SCC 324. In Delhi Public School & Anr. v. Director of Education & Ors., 2002 SCC OnLine Del 1086, this Court has held that an employer may or may not take work from an employee but is liable to pay the salary and the wages.

Contentions on behalf of the Society:-

14. Present writ petition is not maintainable in view of Section 32 of Delhi Sikh Gurudwara Act, 1971 (hereinafter referred to as the '1971 Act') as this Court has 'appellate jurisdiction' under Section 33 of the said Act and this issue is directly covered by several orders/ judgments of this Court in Satpal Singh v. DSGMC in LPA No. 619/2011; Shri Baidya Nath Yadav v. GTBPI and Anr. in W.P. (C) No. 745/2017; and Arshpreet Kaur v. Guru Teg Bahadur Polytechnic Institute and Ors., 2017 SCC OnLine Del 6761.

15. Writ petition is also not maintainable at this stage being premature as it is settled law that Courts should not interfere at the charge sheet stage and the employer must be permitted to take recourse to the inquiry proceedings. Reliance was placed on Union of India and Another v. Ashok Kacker, (1995) Supp (1) SCC 180; Padam Kumar v. Union of India & Ors., 2016 SCC OnLine Del 5825; and NGEF Limited v. Sathyanarayana A.V. and Others, (2007) 15 SCC 538. It is held in several judgments that at the stage of issuance of a charge sheet or show cause notice, no cause of action can be said to arise in favour of the employee and a challenge thereto is thus barred. [Ref. Union of India and Another v. Kunisetty Satyanarayana (2006) 12 SCC 28 and State of Uttar Pradesh v. Brahm

Datt Sharma and Another, AIR 1987 SC 943].

16. Without prejudice to the maintainability of the petition, Petitioner was not an employee of the school as she was appointed by the Society and continued in that capacity and thus DSEAR will be inapplicable as laid down by the Supreme Court in Samarth Shiksha Samiti and Anr. v. Bir Bahadur Singh Rathore and Others, (2009) 3 SCC 194.

17. The impugned charge sheet is valid and tenable in law since it is an admitted position that the earlier show cause notice and termination order were without holding a departmental inquiry. Petitioner herself in W.P. (C) 12506/2019 stated that she was aggrieved by the defective disciplinary proceedings as the show cause notice etc. were issued without following the due process of law i.e. inquiry. The earlier show cause notice leading to the termination order was based on a preliminary report dated 15.07.2016 but ought to have been preceded by a proper inquiry, which was not done. It was open to the Society to rectify the error and initiate inquiry in order to ascertain the authenticity and genuineness of the questioned certificates and testimonials submitted by the Petitioner and also to give her a fair chance of defending the allegations. The termination order was passed without an inquiry at that stage and thus its recall on a technical ground does not bar holding of an inquiry. The allegations against the Petitioner are serious as they relate to securing appointment to a senior position of a Principal by furnishing false and fabricated documents and thus it is in the interest of the members of public and the institution that truth comes to light and Court should not interdict the inquiry at this stage.

18. Contention of the Petitioner that there is a delay in issuance of charge sheet is misplaced. As soon as a doubt arose on the certificates furnished by the Petitioner, she was asked to submit the originals on 04.05.2016 and a preliminary inquiry was ordered. The report dated 15.07.2016 brought to light some discrepancies in the certificates and immediately on 12.08.2016 a show cause notice was issued. Upon receipt of the reply from the Petitioner and finding the same to be unsatisfactory, her services were terminated on 09.09.2016. The order was recalled on 07.11.2016, as the same was passed without holding an inquiry. Between 2016-2019 Petitioner did not attend her duties and filed a writ petition in this Court being W.P. (C) 12506/2019. While disposing of the petition, Court granted liberty to the Respondents to take action in accordance with law and soon thereafter suspension order was issued, followed by a show cause notice and a charge sheet. On account of Pandemic COVID-19, no action could be taken for nearly two years.

19. Heard.

20. Insofar as the preliminary objection to the maintainability of the writ petition is concerned, the same merits rejection. In the earlier round of litigation when W.P. (C) 12506/2019 was filed by the Petitioner seeking directions to the Society to permit her to join after recall of the termination order and pay the salary, no

objection was raised to its maintainability and in fact it is the Society which is placing heavy reliance on the said order. Society cannot be permitted to approbate and reprobate at the same time.

21. The next issue that needs examination in the present writ petition is the validity of the impugned show cause notice and the charge sheet. Indisputably, a preliminary inquiry was conducted by the Society to look into the educational qualifications as well as the experience certificates furnished by the Petitioner at the time of selection for appointment as a Principal and pursuant thereto a report was rendered by the Director, Education Cell of the Society. The experience certificates were examined and it was observed in the report that the certificates were 'contradictory and appear to be false and fabricated'. It was also observed that Petitioner did not have teaching experience in any capacity i.e. PRT, TGT or PGT and her B.Ed. degree was also required to be verified. Based on the findings, it was recommended that Petitioner did not have requisite/mandatory teaching experience for appointment as Principal and action as deemed fit be taken by the higher Management of the Society.

22. It is equally undisputed that subsequent thereto a show cause notice was issued on 12.08.2016 pointing out deficiencies with respect to her experience certificates and Petitioner was called upon to explain why her services be not terminated. Relevant part of the show cause notice is as follows:-

".....

Whereas we have received the verification reports from all the issuing authorities wherein following comments/replies have been given/endorsed by them:-

(i) G.S. CONVENT:

- The period of service mentioned in the experience certificate i.e. April 2002 to August 2004 does not tally with their records.
- She had worked as receptionist from November 2000 to March 2001
- The genuineness of the signature of the issuing authority in experience certificate cannot be verified. (ANNEXURE-I)

(ii) R.D. PUBLIC SCHOOL: The Chairman of R.D. Public Sr. Secondary School has endorsed his remarks on the experience certificate itself as under:-

- "The above mentioned details are not true as per our knowledge"
- "This is fraud" (The certificate of Experience). (ANNEXURE-II)

(iii) TECNIA INTERNATIONAL SCHOOL: As per Verification Report of Tecnia International School, Mrs.RuchikaRaiMadan had worked as Principal from January 2014 to April 2015 in their school. (ANNEXURE-III)

Whereas it is also observed that you have done your B.Ed. from Pacific Academy of Higher Education & Research University, Udaipur in June 2014, as a regular

Candidate, whereas at the same time you were also purportedly the Principal of R.D. Public School from 02.08.2011 to 15.11.2014 as per your experience certificate. And also the Principal at Technia International School, as per the authentication letter of the school. The period of January 2014 to June 2014 figure's in at three places i.e. as Principal in R.D. Public School, Principal in Technia International School and while doing Regular B.Ed. Course. This too indicates towards false and fabricated information provided by you. As such whether the B.Ed. degree is authentic or not, needs to be justified by you.

Whereas abovementioned facts clearly show that you had submitted Forged, Fabricated and False experience Certificates at the time of your Appointment, by so doing you have Committed a grave crime of fabricating false documents leading to dishonest & serious act of misconduct under Rule 123(1)(a)(xvii) of the Delhi School Education Rule 1973 (DSEAR 1973), thereby leading to the question of your moral turpitude and Criminal Breach of Trust.

Whereas by producing Forged, Fabricated & False Experience Certificates before the Competent Authority of GHPS (ND) Society for getting Appointed as Principal Designate in the School of Guru Harkrishan Public School (ND) Society, you have knowingly & deliberately played a fraud on the competent authority, thereby committed Criminal Breach of Trust & Serious Misconduct thereby entailing appropriate criminal/disciplinary action against you.

Under the facts and circumstances mentioned hereinabove AND as per the directions given to the undersigned by the Hon'ble Chairman, GHPS (New Delhi) Society, you, Mrs. Ruchika Rai Madan, Principal Designate, is hereby called upon to submit your explanation to the undersigned in writing setting forth your defence and stating forth the cause as to why your service should not be terminated on the basis of criminal offence committed by you by submitting false information, forged and fabricated experience certificates before the Competent Authority. Also why disciplinary action should not be taken against you under Rule 120 of the Delhi School Education Rules, 1973, your reply should be submitted to the undersigned within seven days of receipt of this show cause notice failing which it shall be construed that you have nothing to state in your defence in the matter and in that eventuality, the Competent Authority will be at liberty to terminate your services without any notice as well as would take all such actions against you as it may deem fit & proper under the prevailing law of the land."

23. Petitioner responded to the said notice vide letter dated 23.08.2016, denying and rebutting the allegations. Perusal of the reply shows that albeit the Petitioner denied the allegations and also pointed out that she had been appointed after an interview and verification of the documents and the show cause notice was an act of vindictiveness, however, it is significant to note that Petitioner also stated that show cause notice can only be issued by the Disciplinary Committee constituted under the provisions of Rule 118 of DSEAR and therefore due opportunity be given to the Petitioner to clear her position before a lawfully

appointed Inquiry Officer or Disciplinary Committee. In the last paragraph of the reply, Petitioner reiterated her request to be given a proper opportunity to submit her rebuttal on the charges framed in the show cause notice, in the interest of fair play and natural justice.

24. It is a matter of record that no inquiry followed thereafter and straightaway a termination order was issued on 09.09.2016 followed by an office order dated 07.11.2016, recalling the termination order and asking the Petitioner to join duty with immediate effect. It is stated by the Society in the short counter affidavit that the termination order was withdrawn to rectify its earlier untenable stand pertaining to applicability of DSEAR as there is no School Management Committee or Disciplinary Authority and no proceedings can be initiated under the said provisions.

25. The moot question that arises in the present case is whether having recalled the termination order predicated on an earlier show cause notice, the Society can now issue a charge sheet on the same set of allegations.

26. Challenge in the present petition is to the suspension order, show cause notice and charge sheet issued to the Petitioner as well as denial of subsistence allowance. Perusal of the charge sheet shows that the allegations against the Petitioner are that she attempted to secure employment illegally on the basis of fake, forged and fabricated credentials as she was otherwise not qualified for appointment as a Principal. The statement of imputation of charges accompanying the article of charges details the experience certificates submitted by the Petitioner at the time of seeking appointment and the comments/ replies received from the three schools which had issued the three experience certificates, respectively.

27. First and foremost, it is a settled proposition of law that ordinarily a writ petition challenging a charge sheet or a show cause notice is premature and ought not to be entertained. The reason is that a mere charge sheet or show cause notice does not give rise to any cause of action as it does not amount to an adverse order which affects the right of any party unless it is issued by a person having no jurisdiction to do so. A mere show cause notice or charge sheet does not infringe anyone's right and a writ remedy is a remedy to set right the violation of rights of people. [Ref. Kunisetty Satyanarayana (supra)]. It is also settled that the correctness or otherwise of the allegations cannot be tested by the Court at the stage of issuance of charge sheet. Therefore, this petition deserves to be dismissed on this ground alone, being premature.

28. However, since the Petitioner has raised a ground of double jeopardy urging that no charge sheet can be issued on the same set of allegations on which show cause notice was issued and the termination order predicated on it was recalled, Court proceeds to consider the same. It would be important to refer to the judicial precedents on the subject and I may first allude to the judgment of the Supreme Court in Kunisetty Satyanarayana (supra). In the said case, a show

cause notice was issued to the Respondent to show cause why the employment secured on forged caste certificate should not be cancelled. The allegations were denied by the employee in reply to the show cause notice. The Competent Authority passed an order cancelling the caste certificate and directed initiation of action against the Respondent. Subsequently, a charge sheet was issued alleging that the Respondent therein had availed benefit of reservation against a reserved category though he did not belong to the said category and had thus failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant.

29. Respondent challenged the charge memo without responding to the same before the Central Administrative Tribunal and the application was disposed of directing the Respondent to submit his reply to the charge memo. Respondent, however, challenged the order in a writ petition before the High Court and the petition was allowed. This order was challenged in the Supreme Court. It is in this context that the Supreme Court held that ordinarily a writ remedy is not available to seek interference at the charge sheet stage.

30. The contention of the Respondent before the Supreme Court was that the charges had been inquired into earlier and he had been exonerated and thus issuance of a charge memo would amount to double jeopardy. The Supreme Court observed that if the charge which was levelled under the impugned charge memo had earlier been inquired into in a regular inquiry and if the Respondent had been exonerated on that very charge, a second inquiry would not be maintainable. However, the charges under the charge memo had never been inquired into by any Authority and there was no exoneration and thus it was not a case of double jeopardy. In the earlier proceedings, no finding had been recorded that Respondent had not availed of the benefit of belonging to the ST community. The Authorities were all of the opinion that Respondent had gained initial entry into the service as an OC candidate and not as a ST candidate and which is why they issued the charge memo.

31. Examined in the light of the observations of the Supreme Court, from the facts and events of the present case, it is explicitly clear that at the initial stage, Society had issued show cause notice to the Petitioner on 12.08.2016, pointing out that the experience certificates submitted by the Petitioner, in support of her eligibility for appointment as Principal, were sent to the respective issuing authorities on 17.06.2016 for authentication and verification of the details and from the responses received from them, the documents appeared to be forged and fabricated. Reply was sought to the show cause notice, which was sent by the Petitioner. In the reply while denying the allegations, Petitioner sought an opportunity to rebut the allegations and prove her case and stated that in the interest of fair play and natural justice she should be given an opportunity. Relevant part of the reply is extracted hereunder, for ready reference:-

".....

Finally I affirm that whatever documents have been submitted by me are totally correct, true and authenticated by the established institutions, colleges and universities. In the interest of fair play and natural justice I should be given proper opportunity to submit my rebuttal on the charges as framed in the show cause notice."

32. Based on the show cause notice a termination order was issued on 09.09.2016, however, the same was recalled in a short span and Petitioner was called upon to join with immediate effect. Recall was without any representation or appeal by the Petitioner or any Court order. It is explained in the affidavit now filed by the Society that this was to correct the earlier error of not having held an inquiry as well as the mistake of having referred to the provisions of DSEAR which are inapplicable. It is true that no departmental inquiry was conducted prior to the issuance of show cause notice and consequently no finding was rendered that the experience certificates were genuine, thereby exonerating the Petitioner. Considering that the allegations were serious and it was imperative to verify the genuineness of the experience certificates which go to the root of the selection of the Petitioner for appointment as Principal, a conscious decision was taken by the Competent Authority, through a Resolution passed unanimously in the meeting held on 10.10.2022, to issue a charge sheet to conduct an inquiry into the authenticity and genuineness of the experience certificates, in light of the responses received from the Schools which had issued the said certificates. Court agrees with the Society that it is important to ascertain the genuineness of the experience certificates furnished by the Petitioner and an inquiry ought not to be interdicted at the stage of issuance of charge sheet. As there was no inquiry and Petitioner was never exonerated, the plea of double jeopardy is rejected.

33. It needs no emphasis that every employer has a right to verify whether the essential qualifications and other eligibility conditions requisite for an appointment are fulfilled and needless to state that if an employer has any doubt or suspicion on their authenticity or genuineness he cannot be precluded or prevented from making inquiries. Submission of fake or fabricated documents by a candidate at the time of appointment is a serious matter and goes to the very root of the appointment. Supreme Court has time and again held that where an appointment in a service has been acquired by practicing fraud or deceit, it is no appointment in law. In fact, in *Ishwar Dayal Sah v. The State of Bihar and another*, 1986 SCC OnLine Pat 130, the Supreme Court held that if the very appointment is vitiated by fraud, forgery or illegality, even protection under Article 311 of the Constitution of India is not available. In *Rita Mishra and Others, etc. v. Director, Primary Education, Bihar and others, etc.*, 1987 SCC OnLine Pat 159, the Supreme Court held as follows:-

"13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and

is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it."

34. In *R. Vishwanatha Pillai v. State of Kerala and Others*, (2004) 2 SCC 105, the Supreme Court held as follows:-

"19. It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

35. In *Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar*, 2022 SCC OnLine SC 486, the Supreme Court held as under:-

"29. In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service."

36. In 1995, the Supreme Court in *Union of India and Others v. M. Bhaskaran*, 1995 Supp (4) SCC 100, was dealing with workman who had obtained employment in railway service on the basis of forged casual labour service card and in that context the Supreme Court observed as under:-

"6. It is not necessary for us to express any opinion on the applicability of Rule 3(1)(i) and (iii) on the facts of the present cases for the simple reason that in our view the railway employees concerned, respondents herein, have admittedly snatched employment in railway service, maybe of a casual nature, by relying upon forged or bogus casual labourer service cards. The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the employees concerned. Consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on the appellant-employer while getting employed in railway service and had snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer service cards. Learned counsel for the respondents submitted that for getting service in railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual service cards. If that was so there was no occasion for them to produce such bogus certificates/service cards for getting employed in railway service. Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer. In this connection we may usefully refer to a decision of this Court in *Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766] . In that case Sawant, J. speaking for this Court held that when an advertisement mentions a particular qualification and an appointment is made in disregard of

the same, it is not a matter only between the appointing authority and the concerned appointee. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the candidate concerned acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision, if by committing fraud any employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law. Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with all consequential benefits. The removal orders could not have been faulted by the Tribunal as they were the result of a sharp and fraudulent practice on the part of the respondents. Learned counsel for the respondents, however, submitted that these illiterate respondents were employed as casual labourers years back in 1983 and subsequently they have been given temporary status and, therefore, after passage of such a long time they should not be thrown out of employment. It is difficult to agree with this contention. By mere passage of time a fraudulent practice would not get any sanctity. The appellant authorities having come to know about the fraud of the respondents in obtaining employment as casual labourers, started departmental proceedings years back in 1987 and these proceedings have dragged on for a number of years. Earlier, removal orders of the respondents were set aside by the Central Administrative Tribunal, Madras Bench and proceedings were remanded and after remand, fresh removal orders were passed by the appellant which have been set aside by the Central Administrative Tribunal, Ernakulam Bench and which are the subject-matter of the present proceedings. Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of the respondents subject of course to following due procedure of law and in due compliance with the principles of natural justice, on which aspect there is no dispute between the parties. If any lenient view is taken on the facts of the present case in favour of the respondents, then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present cases cannot be permitted."

37. It would be useful to allude to the judgment of the Supreme Court in *Ram Saran v. IG of Police, CRPF and Others*, (2006) 2 SCC 541, where the Court was dealing with removal of an employee after completion of 27 years of service on the ground that he had furnished false information of his date of birth by making alteration in the school certificate to secure appointment as a Constable in CRPF.

Relying on R. Vishwanatha Pillai (supra), the Supreme Court observed as follows:-

"8. The courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] commonly known as Wednesbury case [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (See V. Ramana v. A.P. SRTC [(2005) 7 SCC 338 : 2006 SCC (L&S) 69] .)

xxx xxx xxx

10. Though the case related to a false [caste] certificate, the logic indicated clearly applies to the present case.

11. This is a case which does not deserve any leniency otherwise it would be giving premium to a person who admittedly committed forgery. In the instruction (GO No. 29 of 1993), it has been provided that whenever it is found that a government servant who was not qualified or eligible in terms of the recruitment rules, etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment should not be retained in service. After inquiry as provided in Rule 14 of the CCS(CCA) Rules, 1965 if the charges are proved, the government servant should be removed or dismissed from service and under no circumstances any other penalty should be imposed."

38. An important observation of the Supreme Court in the aforementioned judgment is that Courts should not interfere with Administrator's decision unless it is illogical or suffers from procedural impropriety or shocks the conscience of the Court in the sense that it defies logic or moral standards. Supreme Court has time and again emphasized that fraudulent enrolment goes to the root of the matter and delay would be inconsequential, if employment was secured on forged, false or fabricated documents. It is trite that an employment sought on false documents is non est and void in law and the employer has every right to ensure that the employee has been legally and rightfully appointed. An employment based on false and forged certificates pertaining to eligibility conditions is a fraud not only on the employer but also on the public and continuation of those employees is detrimental to the organization as a whole. Administrative decisions should not be interfered by the Court on an asking by an employee, unless they are wholly perverse or arbitrary such that no prudent person will take that decision.

39. The contention of the Petitioner that the termination order was recalled without any reservation to hold an inquiry, does not appeal to this Court. It is

true that order dated 07.11.2016 does not disclose the reason for recall of the termination order but it is equally true that it does not mention that Petitioner was exonerated of the allegations and the experience certificates were found to be genuine. In fact, in the pleadings before this Court, Petitioner has laboured hard to demonstrate that the responses/comments received from the three institutions which had issued the experience certificates point to the genuineness of the certificates. It needs no gainsaying that this Court cannot substitute itself for an inquiry officer and decide the correctness or otherwise of the allegations or the genuineness of the certificates and needless to state that Petitioner will have all the opportunity to defend herself and prove her innocence in the inquiry.

40. It may also be mentioned that when the Petitioner had filed an earlier writ petition being W.P. (C) No. 12506/2019 seeking directions to the Society to permit her to carry out her duties as a Principal, post the recall of the termination order, Society had raised the plea with respect to the certificates submitted by the Petitioner and Court had left it open to the Society to take action, if any, for the alleged misconduct, in accordance with law. It was strenuously argued on behalf of the Petitioner that this liberty cannot be construed to mean that Society was directed to hold an inquiry or that it was given the freedom to initiate inquiry in violation of law and subject the Petitioner to double jeopardy. Suffice would it be to state that Court had granted liberty to the Society to initiate action, if any, in accordance with law and it cannot be held that issuance of charge sheet is not an action in consonance with law, for the reasons stated above.

41. Though subtly, an argument was also raised that there is delay in issuance of the charge sheet. Society has explained that a letter was given to the Petitioner for submission of the qualification and experience certificates on 04.05.2016. Preliminary report was rendered on 15.07.2016 pointing out discrepancies in the certificates, pursuant to which show cause notice was issued on 12.08.2016. On 09.09.2016 termination order was passed which was recalled on 07.11.2016. Petitioner attended duties in November, 2016 and thereafter filed a petition in 2019. Petitioner was allowed to join duties on 11.12.2019. Pursuant to the liberty granted by the Court, the Society wanted to initiate disciplinary action but could not do so due to Pandemic COVID-19. As the things improved, suspension order was issued on 19.10.2022 to which the Petitioner replied on 23.11.2022 and the charge sheet was issued on 06.01.2023. This Court agrees with the Society that the delay is not such as would vitiate the charge sheet and in any case the delay, if any, has to be counterbalanced with the law that an employment sought on forged or fabricated certificates is void ab initio or non est. In *Ram Saran (supra)*, the Supreme Court upheld the charge sheet even though the employee had rendered 27 years of long service. Therefore, the charge sheet cannot be quashed on the alleged ground of delay.

42. The judgments relied upon by the Petitioner do not come to her rescue. In *State of Assam and Another v. J.N. Roy Biswas*, (1976) 1 SCC 234, the Supreme

Court held that once a disciplinary case has been closed and the official reinstated on full exoneration, Government cannot restart the exercise in the absence of specific power of review or revise, vested by the rules. In the present case, the disciplinary inquiry has been initiated for the first time by the impugned charge memo and is not a case where Petitioner was exonerated in any earlier inquiry. In fact, in this very judgment the Supreme Court has held that no Government servant can urge that if for some technical or other good ground, procedural or otherwise, the first inquiry or punishment or exoneration is found bad in law, a second inquiry cannot be launched. In *State of Uttar Pradesh Through Principal Secretary, Irrigation Department, Uttar Pradesh v. Rakesh Mohan*, (2020) 19 SCC 375, the said proposition of law was reaffirmed. However, in the facts of that case, the Supreme Court found that the Tribunal constituted under Section 4 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 had not only found that there were violations of principles of natural justice but had expressed its opinion on merits and quashed the punishment and in those facts a de novo inquiry was impermissible. In *Nand Kumar Verma v. State of Jharkhand and Others*, (2012) 3 SCC 580, allegations concerned grant of bails on extraneous considerations. Appellant was directed to offer his explanation by the High Court, which he did. His unconditional apology was accepted and condoning the lapses he was transferred to another District. A second explanation was thereafter called for at the time of his promotion which was duly accepted. However, subsequently departmental proceedings were initiated and charge memo was issued pertaining to the same allegations. The inquiry culminated into a finding against the Appellant and a decision was taken to impose a penalty of compulsory retirement. In these facts and circumstances, the Supreme Court held that having accepted the explanations and having communicated the same to the Appellant the High Court could not have initiated the departmental proceedings. On general principles, there can only be one inquiry in respect of a charge for a particular misconduct and if for some technical or good reason the first inquiry or punishment or exoneration is found bad in law, second inquiry cannot be initiated unless the entire inquiry proceedings are set aside by a competent forum on technical ground or procedural infirmity. The facts of the present case do not admit of an argument by the Petitioner that her explanation was accepted and it was communicated to her that the Society was satisfied with the certificates furnished by her and she was exonerated. Recall of the order to this Court appears only as a technicality to rectify the earlier error of passing a termination order without a proper hearing and inquiry in violation of principles of natural justice and no more.

43. In view of the aforesaid, this Court cannot subscribe to the argument of the Petitioner that the Society should be precluded from inquiring into the genuineness of the experience certificates furnished by the Petitioner. There is no merit in the contention of the Petitioner that the charge sheet is without jurisdiction as the same has not been issued by the Disciplinary Authority constituted under Rule 118 of the Delhi School Education Rules, 1973. In the

impugned show cause notice dated 16.11.2022, it is clarified by the Society that Petitioner is governed by the Employees Service Regulations, 1992 (Staff Service Regulations) of Delhi Sikh Gurudwara Management Committee. The advertisement, appointment letter, joining letter, show cause notices, impugned charge sheet and the plethora of documents on record clearly point to the fact that Petitioner was an employee of the Society and was selected for appointment as Principal, which is only a posting. Therefore, provisions of DSEAR will be inapplicable and the charge sheet has been rightly issued under the service regulations applicable to the employees of the Society.

44. Having held that the Society is at liberty to proceed with the inquiry pursuant to the impugned charge sheet, I may pen down a caveat that since the allegations pertain to 2015, every endeavour should be made to complete the disciplinary proceedings as expeditiously as possible and not later than six months from today. Since this Court is not quashing the charge memorandum, it is not necessary to deal with the contentions relating to back wages or other consequential benefits. Decision on this aspect will be taken by the Competent Authority depending on the outcome of the inquiry proceedings. It is made clear that the inquiry proceedings will be held in consonance with the applicable rules and principles of natural justice and every opportunity will be given to the Petitioner as envisaged in law to defend her case effectively.

45. Accordingly, the petition is dismissed leaving it open to the Society to proceed with the inquiry proceedings, if so advised. It is made clear that this Court has not expressed any opinion on the merits of the allegations and/or the charge sheet and the judgments cited above or the observations made are only for the purpose of bringing forth the law laid down by the Supreme Court. No observation in this judgment will have any bearing on the inquiry proceedings if held and the inquiry officer will render his findings independent of the observations and in accordance with law as well as the facts, circumstances and evidence led before him during the inquiry proceedings.

46. Insofar as the claim for suspension allowance is concerned, needless to state that the Society is bound to release the same to the Petitioner in accordance with law. The suspension period will however be regulated as per Rules depending on the outcome of the inquiry proceedings, in case the Society decides to proceed further.

47. Writ petition stands disposed of along with pending application, in the aforesaid terms.

CONT.CAS(C) 272/2020 & CM APPL. 11748/2020, 19161/2020, 17098/2022

48. List before the Roster Bench on 08.09.2023 subject to orders of Hon'ble the Chief Justice.