

(2012) 05 DEL CK 0017

In the Delhi High Court

Case No : Writ Petition (C) No. 3001 of 2012

Seema Tiwari

APPELLANT

Vs

Preet Public Sr. Sec. School and Another

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0017

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Amit Mahakam and Mr. Shashi Shekhar, for the Appellant; Avnish Ahlawat, for R-1 and Ms. Purnima Maheshwari, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.

CM 6461/2012 (exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

W.P. (C) No. 3001/2012

1. Notice issued. With the consent of learned counsel for parties, instant petition taken up for disposal.
2. Vide instant petition, the petitioner is seeking the quashing of the order dated 04.11.2011 passed by learned Presiding Officer, Delhi School Tribunal.
3. It is further prayed, consequently, the petitioner may be reinstated in the services of respondent No. 1 i.e. Preet Public Senior Secondary School, Preet Vihar, Delhi.
4. The article of charge against the petitioner is as under:-

Statement of Articles of Charges framed against Smt. Seema Tewari, Asstt. Teacher, Preet Public Secondary School, Preet Vihar, Delhi - 110092.

Article -I Smt. Seema Tewari, Asstt. Teacher, while functioning in the school has deviated the integrity and adopted malpractices connected with the Annual results of the students for the year 2002-03. She has added answers in the original answer sheets. Besides, she has tempered with the Answer sheets. She has breached the Code of Conduct as laid down in Delhi School Education Act & Rules, 1973.

As such, Smt. Seema Tewari, Asstt. Teacher, is charged with the charge of tempering with the original answer sheets.

Article -II Smt. Seema Tewari, while functioning as Asstt. Teacher has shown deviation of the compliance of Orders and Objectives Suggestions. It was emphasized that none of the teachers will carry the Answer Sheets pertaining to the Examination out of the School premises but she failed to comply with the orders.

As such, Smt. Seema Tewari, is charged with the charge of disobedience.

Article - III Smt. Seema Tewari, while functioning as Asstt. Teacher, has shown carelessness while performing her duties. She had to return 27 answer sheets to Class V A, whereas she returned only 17 answer sheets. Remaining answer sheets were lying in the library.

As such, Smt. Seema Tewari, Asstt. Teacher, is charged with the charge of knowingly and wilfully neglecting her duties.

5. The petitioner thereafter, brought to the notice of the disciplinary authority that she was already served with an advisory note in relation to the Article of Charge at Sr. Nos. I & II above. Upon this, Article-II was deleted vide memo dated 18.10.2004.

6. Next contention of the petitioner was that the managing committee, in its meeting dated 04.02.2004 constituted a disciplinary committee. On 24.06.2004, the disciplinary committee authorised the chairman to frame the charge-sheet and this procedure was not in accordance with the Rule 120 of the Delhi School Education Rules 1973.

7. The petitioner argued before the Tribunal that there is no evidence to show as to whether the said charge-sheet was approved by the members of the disciplinary committee or not. The charge-sheet was issued under the signature of the chairman, manager, head of the school and one of the teacher of the school. The mandatory requirement of presences of Education Officer was not complied with. Therefore, the petitioner raised an objection that the appointment of the inquiry officer was not in her presence and it was not done with the approval of the Education Officer.

8. Another objection raised by the petitioner was that the inquiry officer based

his opinion on the report of the handwriting expert alone and relied thereupon. The said piece of evidence do not incorporate with any evidence. More so, opportunity to cross-examine the handwriting expert was not given to her.

9. It is further argued before the Tribunal that there was no reason for her to temper with the answer sheets as none of the students was related to her. Therefore, there is no allegation of any pecuniary or financial gain by doing the alleged tempering. No students appeared in the witness box to depose against her. The inquiry in question was started after 17 months from the issuance of first memo dated 29.03.2003. At that time, she was on maternity leave and suffering with certain post delivery complications. The inquiry officer did not take all these facts into account. On 08.07.2005 she was not allowed to cross-examine the witnesses and the inquiry report was submitted ex parte on 16.07.2005.

10. The case of the respondent school before the Tribunal was that the petitioner was found negligent in performing her duties when she returned only 17 answer sheets out of 27, entrusted to her. She had no answer about the balance answer sheets which were later on found lying in the library unattended.

11. On 04.02.2004, the managing committee took a decision to initiate a disciplinary proceedings against the petitioner. On 24.06.2004, the disciplinary committee was constituted and its members authorised the chairman to frame the charges. To get the approval of the same, the representative of the Directorate of Education was called and Article of charge was approved in the said meeting.

12. On 08.10.2004, the case was fixed for preliminary inquiry. The petitioner was accompanied by one G.P. Singh as her defence assistant. On the very said date, a decision was taken by the disciplinary committee to amend the charge-sheet. On 08.07.2005, inquiry officer informed the petitioner to cross-examine all the witnesses; however she did not allow. The proceedings continued for number of the hearings. The matter was adjourned as the petitioner was on maternity leave. The inquiry officer submitted his report finally on 16.07.2005. Thereafter, a show cause notice dated 02.12.2005 was issued to the petitioner. She replied thereto. Upon conserving the said notice, disciplinary committee recommended the penalty of removal of petitioner from the service.

13. Mr. Amit Mahajan, learned counsel appearing on behalf of petitioner has argued that the charge-sheet dated 13.08.2004 was superseded by the charge-sheet dated 18.08.2004 wherein the Article of Charge -II was deleted. Thus, inquiry conducted in respect of the charge relating to the tempering of the answer sheets. The disciplinary committee was within its power to drop remaining two charges as the petitioner was already issued advisory note in respect thereof.

14. After considering the submissions of petitioner, the said charges were dropped and thereafter the Tribunal came to the conclusion on the premises that

the petitioner was given an opportunity to cross-examine the handwriting expert; however she chose not to cross-examine him.

15. Learned Tribunal perused the inquiry proceedings and recorded in the impugned judgment that on 08.07.2005 the petitioner despite opportunity to cross-examine, she did not cross-examine the witnesses. She did not disclose any reason for adjournment sought by her and she continued to seek adjournments on one pretext or the other. She was given adjournments during the period she remained on maternity leave. On 16.05.2005, she sought adjournment on the ground that she has go Varindavan for performing pooja to invite the blessings of Almighty for her good health. Prior to this also, she had sought adjournments on medical ground vide her letter dated 08.07.2005.

16. Learned Tribunal has noted the submission of petitioner that she had no motive in tempering with the answer sheets as she was not getting any pecuniary or financial benefit and students were also not related to her.

17. Mr. Mahajan, learned counsel submitted that petitioner wanted to cross-examine the handwriting expert through an expert person, to which she was declined and the witness being the handwriting expert, she was not able to cross-examine him. Therefore, she did not avail her opportunity to cross-examine the handwriting expert.

18. Learned counsel fairly conceded that though the settled law is that the legal expert as a defence assistant cannot be given, until and unless the presenting officer is the legal expert; however in the eventuality when an expert witness appears, the opportunity to cross-examine by the expert witness should be given. She is a lady, therefore, she was not able to cross-examine that witness.

19. I find no force in this contention because of the fact that whether it is a departmental inquiry or the other cases, sometimes the Doctors comes in witness box; therefore, the charged officer or the accused cannot be provided another Doctor to cross-examine, same is the position in case of an advocate or other expert witness. The settled law is, whosoever, the defence representative - either he or the charged officer/accused has to cross-examine the witness.

20. After hearing learned counsel for petitioner and going through the impugned order, I find no discrepancy in the impugned order passed by the Tribunal. Therefore, I concur with the same.

21. Finding no merit in the instant petition, same is dismissed. No order as to costs.