

**(2013) 05 DEL CK 0076**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 6646 of 2012 and CM 17520 of 2012

Shalu Mahendroo

APPELLANT

Vs

Delhi Public School and Others

RESPONDENT

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**Date of Decision :** 07-05-2013

**Acts Referred:**

Delhi School Education Act, 1973 — Section 8(4)

**Citation :** (2013) 05 DEL CK 0076

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Saveta Chaudhary and Mr. Jatin Rajput, for the Appellant; Puneet Mittal, Nitin Sharma and Mr. Ankur Aggarwal, Advocates for Respondents 1 to 4 and Mr. Amiet Andley, Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Valmiki J Mehta, J.—This writ petition is filed by the petitioner, an employee of the respondent No. 1-school, seeking to challenge the suspension order dated 03.10.2012. Two grounds have been urged before me to challenge the suspension order. Firstly, it is contended that the suspension order of the petitioner is bad because no prior or post facto approval was taken of the Director of Education as per Section 8(4) of the Delhi School Education Act, 1973. The second argument is that the suspension order is bad because it is mala fide and the school is unnecessarily harassing the petitioner.

2. So far as the first argument is concerned, the same stands decided against the petitioner inasmuch as it has been held in two judgments of the Division Benches of this Court in the cas Kathuria Public School Vs. Director of Education and Another, DB Delhi Public School and Another Vs. Shalu Mahendroo and Others, hat no prior or post facto approval is required for suspension of an employee/teacher of an unaided private school. Respondent no. 1 is an unaided private school. Thus the argument raised on behalf of the petitioner with respect to requirement of approval of Director of Education is, therefore, rejected.

3. So far as the issue that the suspension order is bad because it is mala fide and the school is unnecessarily harassing the petitioner is concerned, I may state that these aspects are to be examined on merits in the departmental proceedings. A reference to the chargesheet issued in this case shows that the petitioner is guilty of repeated acts of misdemeanour and misbehavior in the school, and the same are sufficient grounds to suspend the petitioner. Suspension does not mean that the charges against the petitioner are correct and the petitioner will have complete opportunity to rebut the charges in the enquiry proceedings, however, with regard to challenge to suspension it is clear that only in the rarest of rare case where the charges are totally and wholly ex facie false would the issue arise of challenging a suspension order. The detailed imputations of charges are annexed with the Article of Charges and since they are very long containing many incidents of different dates I am not reproducing the imputation of the charges in the present order. The law is that the object of suspension is not only to see gravity of misconduct and indiscipline but also that a message be given to other employees that there cannot be indiscipline in an organization and in spite of misdemeanour/misconduct the employee can yet get away during the pendency of the enquiry proceedings by continuing to work. The law in this regard is contained in the judgment of the Supreme Court in the case State of Orissa Vs. Bimal Kumar Mohanty, which observed as under:-

It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations inputted to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or enquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation

and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.

(underlining added)

4. In view of the above, I do not find any reason to interfere with the impugned suspension order dated 03.10.2012 and the writ petition and all pending applications are accordingly dismissed, leaving the parties to bear their own costs. Learned counsel for the petitioner does not press any other relief as prayed for in the writ petition and confines his arguments only to above stated two grounds. Nothing contained in this order is the reflection on the merits of the case of either of the parties and merits of the case will be decided in the departmental proceedings.