

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP(C) No. 3198/2010**

Pronounced on: 2nd July, 2010

GURVENDER SINGH SAINIPetitioner

Through: Mr. Raj Kumar Sherawat, Advocate.

Versus

SCHOOL MANAGEMENT OF GURU HARKRISHAN
PUBLIC SCHOOL & ORS.

....Respondents

Through: Mr. Shagun Mehta and Mr.
Karandeep Singh, Advocates for
R-1 and 2.
Mr. Elgin Matt John and Ms.
Kavery Das, proxy counsel for Ms.
Anju Bhattacharya, Advocate for
R-3.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

MANMOHAN SINGH, J.

1. The petitioner has filed the present Writ Petition against the three respondents i.e. School Management of Guru Harkrishan Public School, Delhi Sikh Gurudwara Management and Directorate of Education under Article 226 of the Constitution of India for quashing of termination order dated 05.02.2010 received on 27.04.2010. Further directions are sought by the petitioner to reinstate him with full back wages and consequential benefits.

2. The case of the petitioner is that the petitioner was appointed as Physical Education Teacher (PET) vide appointment letter dated 17.08.2000 and his services were confirmed on

20.11.2001. Since the petitioner was denied proper pay-scale as per Section 10 of Delhi School Education Act he filed a Writ Petition (Civil) No. 18084/2005 before this court for seeking direction to the school for payment of salary in the proper pay-scale and other benefits from the date of appointment. The said Writ Petition filed by the petitioner was allowed and the court directed the school to pay the petitioner's salary in the pay scale of Rs. 5500-175-9000 from the date of his appointment along with the increments and other benefits. The respondent was directed to pay the said amount within two weeks. But according to the petitioner the school Management has not complied with the said order dated 12.07.2006 passed by the court.

3. The grievance of the petitioner is that subsequent to the order passed by the court he was harassed by the School Management and was not allowed to mark his attendance and he filed the second Writ Petition being WP(C) No. 2559/2007 before this court. However, the said matter was resolved between the parties with the intervention of the Division Bench by passing the order dated 03.10.2008 in LPA No. 299/2008 and the school was directed to pay salary and dues in terms of the settlement.

4. On 16.09.2009, the petitioner asked the respondent for implementation of the sixth pay commission to the school but the school management did not consider the same and issued a memorandum and show cause notice to the petitioner. The contents of the show cause notice reads as under:

“Mr. Gurvinder Singh Saini, PET, was directed on 27.10.2009, 09.1.2009 and 11.11.2009 to submit the self attested

copies of his Certificates and Degrees of his academic qualifications.

He was also directed on 13.10.2009 and 23.10.2009 to open up his Savings Bank Salary Account at Punjab & Sind Bank, Hari Nagar, New Delhi.

He was also directed on 13.11.2009 to mention the amount submitted to the then Chairman Late Sardar Jaspal Singh Manchanda, in his presence, as certified by Mr. K.C. Dash, PRT which was collected from the students for sponsored programme conducted in our school on 12.08.2008 for the NGO (Indian Health Education and Welfare Society).

Mr. Gurvinder Singh Saini, is hereby informed that he has not yet complied to the above said Orders. He is once again directed to comply with all the above orders within three days from the receipt of this Show Cause Notice failing which disciplinary action will be initiated against him.”

5. The said show cause notice was duly replied by the petitioner on 02.12.2009. The petitioner also filed the Writ Petition before this court seeking implementation of the sixth pay commission. The petitioner was placed under suspension by the school management on 03.12.2009. The petitioner received a letter dated 24.12.2009 issued under the signature of the Principal whereby he was directed to present himself before the preliminary enquiry on 02.01.2010. The relevant contents of the said notice reads as under:

“Refer to School letter No. GHPS/HN/987/09-10 dated Dec. 18, 2009 in which you were directed to present yourself before the Inquiry Committee on 24th Dec. 2009 at 10:00 A.M., whereas it is regretted to inform you that you have not presented yourself at the appointed date and time.

Now you are once again directed to present yourself before the Inquiry Committee in

the School Office on Saturday, the 2nd
January 2010 at 10:00 A.M.”

6. On 04.01.2010, the petitioner sent an application for release of subsistence allowance alongwith the certificate of unemployment as per Rule 115 of the Delhi School Education Rules, 1973. The petitioner, after sending the said letter received a letter dated 08.01.2010 from the school directing him to collect the cheques of his salary for the months of September and October, 2009. However, as per the petitioner he was not allowed to enter the school.

7. The petitioner on 22.01.2010 received another letter dated 14.01.2010 along with charge sheet dated 08.01.2010 which was without any Article of Charges or list of witnesses and list of documents. On 10.02.2010, the petitioner challenged the aforesaid charge sheet dated 08.01.2010 before this court by filing of the petition being WP(C) No. 887/2010 with advance copy to the respondent. It appears from the order dated 10.02.2010 that the said Writ Petition was withdrawn by the petitioner with liberty to take all the pleas which have been taken by the petitioner in the said Writ Petition in reply to the charge sheet issued by the respondent. The petitioner was allowed to take up all the pleas available in reply to the charge sheet and further directions were issued to the concerned authority to consider all the pleas taken up by the petitioner during the course of the inquiry. The said Writ Petition was dismissed as withdrawn. On the same day, it appears from the record, that the petitioner sent the reply of the charge sheet on 10.02.2010 itself by speed post to the Principal of the school. Simultaneously, the petitioner also filed an appeal under

Article 116 of Delhi School Education Rules, 1973 to the Director of Education informing that the School Management has not released the subsistence allowance to the petitioner. Since the appeal was not disposed of, the petitioner thereafter filed another Writ Petition before this court being WP(C) No. 2414/2010 which was adjourned to 04.05.2010 as the Hon'ble Judge was sitting in the Division Bench. The contention of the petitioner is that in order to make the Writ Petition infructuous and also in defiance of order dated 10.02.2010 passed in WP(C) No. 887/2010 and without considering the reply of the charge sheet as directed by the court in the said Writ Petition, he was terminated from the services by a back dated termination letter dated 05.02.2010 received by him on 27.04.2010 by Regd. Post.

8. I have heard the learned counsel for the parties. The learned counsel for the respondent no. 1 has admitted that it has received the reply to the charge sheet dated 14.01.2010 in pursuance to the order dated 10.02.2010 passed in WP(C) No. 887/2010. However his contention is that when the reply was received the petitioner was already terminated by letter dated 05.02.2010. The said contention of the respondent nos. 1 and 2 is strongly denied by the petitioner who has argued that the said termination letter is a back dated letter which was received by the petitioner only on 26.04.2010 by speed post. The court, during the course of arguments, has enquired from the learned counsel for the respondent nos. 1 and 2 that after the receipt of reply to the charge sheet in pursuance of order dated 10.02.2010, had the respondent no.1 intimated to the petitioner that the reply of the

petitioner is irrelevant as he had already been terminated on 10.02.2010. The learned counsel for the respondent nos.1 and 2 has fairly conceded that the said intimation about the termination after receipt of the reply was not given to the petitioner. His further submission is that the respondent nos. 1 and 2 were not aware about the order passed on 10.02.2010 in WP(C) No. 887/2010 nor it received the complete set of documents in advance as alleged by the petitioner. His further contention is that the petitioner was appointed as PET in the pay scale of Rs. 4500/- as per the contract of service executed between the petitioner and respondent no.1 at the time of appointment and the petitioner has disclosed the said fact in the petition in order to gain undue advantage. Thus, the Writ Petition is not maintainable.

9. The petitioner has not denied the said fact that he has signed the documents of service with the respondent. According to him, it is against the law and is not tenable for various reasons and one of them is that his service was confirmed on 20.11.2001 and he continued to work till the date of termination. His submission is that the objection raised by the respondent in the present petition is not the subject matter and in fact the respondent No.1 has not complied the order dated 10.2.2010 passed by this Court in W.P.(C) No.887/2010, thus the present petition has been filed.

10. After considering the facts and circumstances of the matter, I am of the considered view that the respondent no.1 has no alternative but to consider the reply filed by the petitioner to the charge sheet dated 14.01.2010 in compliance with the order

dated 10.2.2010 passed in WP(C) No. 887/2010. The said directions are admittedly not complied by respondent no.1. The justification given by the respondent no.1 that by that time the order was passed, the petitioner was already terminated has no force, as apparently it appears from the said letter that the same was issued subsequent to the orders passed on 10.02.2010 and was received by the petitioner in April, 2010.

11. Considering the overall facts and circumstances of the matter the present petition is partly allowed and the impugned order of termination dated 05.02.2010 is quashed. The respondent no.1 is directed to consider the reply to the charge sheet issued by the respondent against the petitioner before the concerned authority and the concerned authority shall also consider the same during the course of enquiry. The respondent shall issue proper notice for the appearance of the petitioner before the enquiry officer in this regard.

12. The Writ Petition and all the pending applications are accordingly disposed of. Record of WP(C) No. 887/2010 be sent back.

MANMOHAN SINGH, J.

JULY 02, 2010

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