* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 29th August 2022**

\+ W.P.(C) 1723/2013

JINDAL PUBLIC SCHOOL ..... Petitioner

Through: Mr. Prag Chawla, Advocate

versus

GOVT OF NCT OF DELHI AND ANR ..... Respondents

Through: Mr. Naushad Ahmed Khan, Advocate for DoE
Mr. Pankaj K. Singh and Mr. Ratan K. Shukla, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

O R D E R

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking following reliefs:-

> *"a. Issue a Writ of Mandamus/ Certiorari or any other appropriate Writ, Order and/or direction, thereby, quashing and setting aside the Order dated 31.01.2013 passed by the Ld. Presiding Officer, Delhi School Tribunal in Appeal no. 14/2009 in titled as "Smt. Sunita Varshney Vs. Chairman, Jindal Public School & Ors."..."*

2. The petitioner is a School running for over 25 years where the respondent no. 2 was appointed as an Assistant Teacher vide appointment

letter dated 1st September 1988.

3. It has been alleged by the School that owning to the misconduct of the respondent no. 2, the management of the School issued a Show Cause Notice to her on 18th October 2008 and thereafter, a departmental enquiry was also initiated against her.

4. It is the case of the petitioner that upon the departmental enquiry being initiated against her, the respondent no. 2 voluntarily and with her free consent resigned from the post of Assistant Teacher vide a hand-written resignation on 24th October 2008. The said hand-written letter was forwarded to the Directorate of Education and upon receiving and accepting the same it accordingly, informed the petitioner.

5. The respondent no. 2, thereafter, filed certain applications and complaints against the petitioner School and its management. It has been stated by the petitioner that respondent no. 2 also filed an application before the Directorate of Education, which came to be dismissed on the ground that she had voluntarily resigned from the post of Assistant Teacher from the petitioner School and the said resignation was also duly accepted by the competent authority on 20th November 2008.

6. An appeal against the said dismissal was filed by the respondent no. 2 under Section 8 (3) of the Delhi School Education Act, 1973, contending that the she had never submitted a resignation and any communication made in this regard was forged and fabricated. The concerned Presiding Officer at the Delhi School Tribunal (hereinafter "the Tribunal"), vide order dated 31st March 2013, observed that the resignation relied upon by the petitioner School was not a genuine

resignation and the School was directed to reinstate respondent no. 2 with all consequential benefits and 50% back wages, alongwith simple interest @12% p.a. in case the arrears were not paid within a period of two months.

7. The petitioner is aggrieved by the order dated 31st January 2013 and has approached this Court praying for it to be set aside.

8. Learned counsel appearing on behalf of the petitioner submitted that from the very beginning of her appointment, the respondent no. 2 had been violating numerous provisions enumerated in the Code of Conduct prescribed under the Rule 123 of Delhi School Education Rules, 1973. Many parents also complained about the conduct of the respondent no. 2 with the School authorities and she wilfully and knowingly neglected her duties towards the School and its students.

9. It is submitted that the Tribunal failed to appreciate the true and correct facts while passing the impugned order dated 31st January 2013 and that the same has been passed contrary to the provisions under the Delhi School Education Act, 1973.

10. It is submitted that the Tribunal failed to appreciate that respondent no. 2 submitted her resignation letter with her own free will and without any undue influence, in her own hand writing, and later preferred an appeal against the acceptance of the letter with dishonest intentions and oblique motives. The appeal moved by the respondent no. 2 was not maintainable since under Section 8 (3) of the Delhi School Education Act, 1973, only those employee of a recognized private school to challenge and/or prefer an appeal who is dismissed, removed or reduced

in rank within three months from the date of communication to the employee of the order of such dismissal, whereas the respondent no. 2 was not dismissed or removed from services but resigned from the School on her own volition.

11. It is submitted that the Tribunal failed to appreciate that it could not have given findings on the factual aspects to see whether resignation submitted by the respondent no. 2 was genuine or not. Therefore, the instant petition is liable to be dismissed for the reason of being devoid of merit.

12. The learned counsel appearing on behalf of the respondent no. 1/Directorate of Education the petitioner School authorities had forwarded the resignation of respondent no. 2 alongwith other requisite documents for the approval of RD (South) and same was conveyed to the concerned School vide letter dated 21st November 2008. The respondent no. 2 was duly informed by the Directorate of Education vide letter dated 17th March 2009 that concerned School had informed that her resignation was accepted by the competent authority and School is ready to clear her dues and she may collect the same from the School. Therefore, there remained no discrepancy regarding termination of services of the respondent no. 1 since the acceptance of her resignation letter was duly communicated to her.

13. *Per Contra*, learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the instant petition and submitted that there is no illegality in the impugned order. It is submitted that the petitioner School has failed to comply with the rules and regulations of the Delhi

School Education Act and Rules, 1973. No departmental enquiry was conducted against the respondent no. 2 as per the rules laid down in the Act nor Rules of law or principals of natural justice has been followed by the petitioner while terminating the services of the respondent.

14. It is submitted that the Show Cause Notice dated 18th October 2008 sent by petitioner School to respondent no.2 was vague, general and without any specific allegation. The School failed to produce any record/document even when directed so by the Tribunal vide order dated 30th January 2013 in order to verify the fact that after the alleged resignation on 24th October 2008 and before its acceptance by the competent authority on 20th November 2008 the respondent no.2 was attending to her duties or not.

15. It is submitted that the order of termination was never communicated to the respondent no. 2 and she was made aware only when the principal of the petitioner School did not allow her to enter the premises. It is vehemently submitted on behalf of the respondent no. 2 that the alleged hand-written resignation letter is forged and fabricated and has been created by the petitioner to put the respondent no. 2 under undue pressure and to harass her. Further, the respondent no. 1 in collusion with the petitioner has accepted the forged resignation letter. Moreover, the procedure laid down under Circular No. F 5/2003/8349-61 dated 20th January 2003 issued by Government of NCT regarding acceptance of resignation has not been followed.

16. It is submitted that there is contradiction in the objections raised by the petitioner with respect to the date of her alleged resignation. It is

submitted that the petitioner stated that respondent no.2 submitted her resignation during departmental enquiry which was received on 24.10.2008. Whereas, the School has also alleged that the respondent no. 2 had already resigned and on 17th October 2008 which was within her knowledge. It is submitted that before the Tribunal, the petitioner School admitted that no enquiry was ever initiated against respondent no.2. Neither any chargesheet was ever issued to respondent no.2 in terms of Rule 120(l)(a) the Delhi School Education Rules, 1973. Nor any documents in this regard were produced.

17. It is also submitted that there is a clear finding of the Tribunal that the resignation letter is not genuine and hence, there is no reason for the impugned order to be set aside. It is submitted that the instant petition is liable to be dismissed for being devoid of any merit.

18. Heard learned counsel for the parties and perused the record.

19. Under Article 226 of the Constitution of India, High Courts have the power to adjudicate upon an impugned order along with the power to entertain writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. While adjudicating upon an impugned order, the scope of writ jurisdiction is narrowed to examining the contents of the order which is before the Court. Any consideration beyond assessment of the impugned order, including investigation into evidence and question of facts would amount to exceeding the jurisdiction.

20. The Hon'ble Supreme Court in ***Union of India vs. P. Gunasekaran,*** **(2015) 2 SCC 610**, elaborating upon the extent of exercise of writ jurisdiction, held as under:-

> *"13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*
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> *(i) reappreciate the evidence;*
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> *(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
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> *(iii) go into the adequacy of the evidence;*
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> *(iv) go into the reliability of the evidence;*
>
> *(v) interfere, if there be some legal evidence on which findings can be based.*
>
> *(vi) correct the error of fact however grave it may appear to be:…."*

21. Further, the Hon'ble Supreme Court in ***Sarvepalli Ramaiah vs. District Collector, Chittoor*** **(2019) 4 SCC 500**, made the observations as reproduced hereunder, while examining the scope of Article 226 of the Constitution of India:-

> *"41. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extraordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.*

> *42. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.*
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> *43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact."*

22. Further in ***Sanjay Kumar Jha vs. Prakash Chandra Chaudhary,* (2019) 2 SCC 499**, the following observations were made by the Hon'ble Supreme Court:-

> *"13. It is well settled that in proceedings under Article 226 of the Constitution of India, the High Court cannot sit as a court of appeal over the findings recorded by a competent administrative authority, nor reappreciate evidence for itself to correct the error of fact, that does not go to the root of jurisdiction. The High Court does not ordinarily interfere with the findings of fact based on evidence and substitute its own findings, which the High Court has done in this case...."*

23. Therefore, while examining the challenge to an impugned order, the Court has to limit itself to the consideration whether there is any illegality, irregularity, impropriety or error apparent on record. The law is

clear that a High Court exercising its writ jurisdiction shall not appreciate evidence and must not interfere in the order impugned unless there is a gross illegality or error apparent on the face of record. Hence, this Court will also limit itself to the contents of impugned order dated 31st January 2013.

24. The order of the Tribunal while allowing the appeal of the respondent no. 2 herein made the following observations:-

> *"15. While denying the incident of stopping of the Appellant at the gate by the guard on 17.10.2008, the Respondent School stated in its reply that it was within the knowledge of the Appellant that she had resigned and her resignation was duly accepted by the competent authority. Contention of the Respondent School is that for this reason there was no occasion for the Principal to tell her that her services had been terminated. Now the Respondent School wants this Court to believe that on 17.10.2008 the Appellant had the knowledge of submitting of her resignation and also its acceptance by the competent authority. On the contrary it has taken a stand that it was only on 24.10.2008 that her resignation was received in the school. There are thus grave contradictions in the defence put forth by the Respondent School.*
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> *18. During the course of arguments this Tribunal asked the question as to whether after the submission of the alleged resignation on 24.10.2008 and before its acceptance on 20.11.2008, the Appellant was attending to her duties or not. Whether she was on leave or absent without intimation. For this purpose the Tribunal had directed the Respondent School to place on record the attendance register of the teachers of the school for the relevant period. Ld. Counsel for the Respondent School expressed his inability to*

produce the relevant record (order sheet dated 30.01.2013). An adverse inference has, therefore, to be drawn against the Respondent School. The attendance register would have supported the case of the Appellant that she was not allowed entry to the school on 17.10.2008 and onwards. Salary register too could have clinched the issue showing the payment of salary to the Appellant for the relevant period. The best evidence was available only with the Respondent School and it was not deliberately produced.

19. It is not the case of the Respondent School that on 24.10.2008 the Appellant had not attended to her duties. Appellant's contention is that she was denied entry to the school on 17.10.2008. The Respondent School is silent on the count as to from which date the Appellant started absenting herself from duties.

20. Perusal of the show cause notice dated 18.10.2008 shows that not even a single allegation is specific in nature. No date, month or year of the alleged act of misconduct has been indicated. It goes to show the malafide on the part of the Respondent School.

22. In view of the discussion above, I am of the considered opinion that the version of the Respondent School does not inspire confidence. The resignation relied upon by it is not a genuine one. Appellant was not allowed entry to the Respondent School on 17.10.2008 when she made complaint to the police station on 16.10.2008. The Appellant is, therefore, directed to be reinstated in service with all consequential benefits and back wages to the tune of 50%. She would be paid full salary and other allowances from today. The Appellant shall be entitled to simple interest @12% per annum in case the arrears of back wages are not paid to her within a

period of two months from today. Appeal is accordingly disposed of."

25. The petitioner School made allegations about the conduct and indiscipline of respondent no. 2 before this Court as well as the Tribunal, however, there was no document or material otherwise produced to conclusively evince that the respondent no. 2 wilfully neglected and failed to perform her duties as an Assistant Teacher or that she conducted herself in such a manner that the only plausible consequence was the initiation of departmental enquiry and termination of her services.

26. Further, there is a major contradiction in the statement of the petitioner School with regard to the date of respondent no. 2 leaving the School. While on one hand the petitioner alleged that respondent no. 2 communicated her resignation to the School on 24th October 2008 vide a hand-written letter, on the absolute contrary, the petitioner School was of the view that on 17th October 2008 the respondent no. 2 had the knowledge of submission of her resignation letter and its acceptance by the competent authority at the Directorate of Education. The sharp contrast in the aforesaid statements does not inspire confidence in the version of the petitioner that the respondent no. 2 voluntarily resigned from her post at the School.

27. Moreover, the Tribunal after appreciation of all the facts, circumstances and material before it, was of the view that the hand-written resignation brought before it was not genuine. The filing of complaints by the respondent no. 2 has been admitted by the parties which is a testament to the fact that there existed a grievance of the

respondent no. 2 against the petitioner School even prior to issuance of the Show Cause Notice dated 18th October 2008 and hence, the submission by the School regarding the letter of resignation being submitted to evade the departmental enquiry proceedings does not strengthen the case of the petitioner School.

28. In light of the above facts and circumstances and upon perusal of the impugned order dated 31st January 2013, this Court is of the considered opinion that the observations made by the Tribunal are valid and in accordance with law. This Court finds that observations made by the Tribunal do not suffer from gross illegality or error apparent on face of record. The findings of the Court were in consonance with the facts and material before it. The petitioner School was not able to establish the case against the respondent no. 2 before the Tribunal and accordingly, the impugned order was passed.

29. Therefore, keeping in view the abovementioned position of law and facts as well as the findings of the Tribunal, this Court does not find any merit in the challenge to the impugned order dated 31st January 2013.

30. Accordingly, the instant petition is dismissed along with pending applications, if any.

31. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

AUGUST 29, 2022
dy/ms