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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6221/2017, CM No. 26852/2017**
JINDAL PUBLIC SCHOOL

..... Petitioner

Through: Mr. Prag Chawla, Adv. with Mr.
Sudeep Sudan, Adv.

versus

GOVT OF NCT OF DELHI AND ANR

..... Respondents

Through: Ms. Prabhysahay Kaur, Adv. for
GNCTD/R-1
Dr. D.S. Kunusar, DEP (Pairvy
Officer) Zone-21
Mr. Saurabh Chadda, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **31.07.2017**

1. The challenge in the writ petition is, to the order of the Delhi School Tribunal dated January 25, 2017 in Appeal No. 53/2014. The appeal was filed by the respondent No.2 challenging her termination from the petitioner School pursuant to an enquiry in terms of charge sheet dated November 26, 2012. There were around eleven (11) charges, which were framed against the respondent No.2.
2. The Tribunal, in its order has primarily allowed the appeal on two grounds i.e (i) an employee can be removed from the service by the

Appointing Authority. In other words, the termination order dated July 14, 2014 was passed by the Disciplinary Authority and not by the Management Committee, i.e., the appointing authority (ii) the complaint, made against the respondent No.2 with regard to imposing corporal punishment and using un-parliamentary language, having been accepted by the respondent no.2, by tendering an apology, a lenient view has been taken and she was let off, no further action could have been taken against her.

3. Mr. Prag Chawla, learned counsel for the petitioner states, insofar as ground (i) above is concerned, the Delhi School Education Act and the Rules made there under contemplate, a penalty can be imposed by the Disciplinary Authority and not the Appointing Authority, which is the Management Committee. I agree with the said submission of Mr. Chawla, inasmuch as, Rule 120 of the Delhi School Education Rules, 1973 contemplates the Disciplinary Authority to impose a penalty against an employee of a School.

4. Mr. Saurabh Chadda, learned counsel for the respondent No.2 concedes to this position under the Rules. If that be so, the finding of the Tribunal in this regard is erroneous and the same is set aside.

5. Insofar as ground (ii) above on which the Tribunal has allowed the

Appeal is concerned, the same is also erroneous for the reason that the apology tendered by the respondent No.2 was not accepted by the petitioner School as was done in the past. If the apology having not been accepted, petitioner School was within its right to initiate enquiry against respondent no.2.

6. During the course of his submissions, Mr. Chadda would submit that the School had not given to the respondent No.2 the complaint alleged to have been received from the parent. That apart, it is his case that the memo issued on September 14, 2012 on which the respondent No.2 had submitted her apology was vague as no date; the kind of a language used have been reflected. According to him, the respondent no.2 has denied the charge. This submission of Mr. Chadda is not appealing for the simple reason, the respondent No.2 had submitted unconditional apology. It is clear no such objections were taken by the respondent no.2, as now sought to be urged by Mr. Chadda. The same appears to be an afterthought. The apology was in the following manner:-

“The beating of a child and unparliamentary language, which I have done, will not be repeated in future. Please forgive me”.

7. That apart, I note, the respondent No.2 has never withdrawn the apology tendered by her on September 14, 2012. The Enquiry Officer, in

his findings has relied upon this apology to prove the charge against the respondent No.2. So, this finding of the Tribunal is set aside.

8. During the course of hearing, Mr. Chadda would submit the respondent no.2 had in her written arguments taken a plea that the termination was not approved by the Director of Education, before it was given effect to, by relying on the judgment of the Supreme Court in the case of *Raj Kumar v. Directorate of Education and Ors Civil Appeal No. 1020/2011 decided on April 13, 2016* which has not been considered by the Tribunal.

10. Mr. Chawla contests the submission by stating a letter was sent by the School on July 14, 2014 for approval. He also states in view of the judgment of the Supreme Court in TMA Pai's case, the approval of the Director is not required. Noting the rival submissions, this Court is of the view that this issue needs to be considered by the Tribunal. I accordingly set aside the order of the Tribunal dated January 25, 2017 and remand the matter to the Delhi School Tribunal for consideration on this aspect. Accordingly, the parties shall appear before the Delhi School Tribunal on 4th September, 2017. It is expected that the Tribunal shall decide the issue as expeditiously as possible, but within a period of three months from the first

date of hearing, i.e., 4th September, 2017. Petition stands disposed of.

CM No. 26852/2017(for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 31, 2017/ak