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

+ W.P.(C) 3567/2019

MS. RUCHI MALHOTRA ..... Petitioner  
Through Mr. Anuj Aggarwal and Mr. Tenzing  
Thinlay Lepcha, Advs.

versus

GURU NANAK PUBLIC SCHOOL AND ORS. .... Respondents  
Through Mr. T.K. Tiwari, Adv. for R-1 & R-2.  
Mr. K.P. Tevathia, LA, DOE.

**CORAM:**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

% **09.12.2019**

The petitioner has approached the court by way of the instant petition seeking the following reliefs:

*“i. Quash the impugned order dated 23.10.2017 whereby the petitioner was placed under suspension and direct the respondent no. 1 and 2 reinstate the petitioner in service;  
ii. Quash the impugned order dated 30.10.2018 and direct the respondent no. 1 and 2 to pay the petitioner full subsistence allowance as per Rule 116 of the Delhi School Education Rules;  
iii. issue any appropriate writ, order or direction, directing the respondent no.3 to take appropriate action against the respondent no.1 and 2 in regard to the aforesaid matter;  
iv. pass any such or further orders as may be deemed just and appropriate, in the facts and circumstances of the case and also in the interest of justice, in favour of the petitioner; and  
v. allow the present writ petition with cost, in favour of the petitioner.”*

During the course of hearing, it comes to be pointed out that the services of the petitioner have since been terminated by the respondent school – Guru Nanak Public School and communicated to the petitioner vide letter reference no. GNPS/PPURA/1887 dated 16.08.2019 inasmuch as the

departmental inquiry proceedings initiated against the petitioner have culminated into imposition of punishment of 'removal from service' w.e.f. 24.10.2017. Without getting into the aspect as to whether there could be punishment to take effect retrospectively, as comes to be stated in the said communication dated 16.08.2019, undisputed fact is that the petitioner was put under suspension by the respondent school with immediate effect vide its impugned communication dated 23.10.2017. Mr. Aggarwal, ld. counsel for the petitioner, adverting to such undisputed factual aspect, strenuously contends that the suspension could not survive for a period beyond 15 days, as provided under proviso to sub-section (4) of Section 8 of the Delhi School Education Act, in short, 'the Act, 1973', until and unless, the approval thereof came to be given by the Director of Education as provided thereunder. Sub-section (4) of Section 8 reads as follows:

*(4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director:*

*Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 9, of the employee:*

*Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.*

It is thus the submission of Mr. Aggarwal that even though the punishment of removal from service has come to be imposed, which is under

challenge before the Delhi School Tribunal, the petitioner is entitled to full back wages at least till the period of the imposition of the punishment and communicated to the petitioner vide letter dated 16.08.2019. In support of such submissions, Mr. Aggarwal places reliance upon ***Delhi Public School & Anr. v. Director of Education*** 100 (2002) DLT 530 (FB) and ***Ganesh Ram Bhatt v. Director of Education & Anr.*** 2014 (DLT Soft) 225. ***Ganesh Ram Bhatt's case (supra)*** takes note of the ratio of the judgment passed by the Full Bench of this Court in ***Delhi Public School & Anr.'s case (supra)***, in the following words:

*11. In view of the aforesaid decision of the Full Bench in the case of Delhi Public School (supra), there cannot be any doubt that upon expiry of fifteen days from the date of the order of suspension coming into effect, the said order automatically lapses and thereafter, an employee is entitled to all the consequential benefits. The contention of the learned counsel for the School that the letter dated 13.1.2012 issued by the respondent No.1/DOE during the pendency of the present petition, according approval to the suspension of the petitioner with retrospective effect shall meet the requirements of sub-section(4) of Section 8 of the Act, is found to be devoid of merits. Quite clearly, the Act and Rules do not provide for an eventuality where if the respondent No.1/DOE fails to accord his approval to the suspension, then the same would be deemed to be accorded, there being no deeming provision to the said effect in the Act. In other words, if a positive approval of the suspension of an employee made by the Managing Committee of the School is not granted by the respondent No.1/DOE within the period prescribed under the Statute, then the said suspension would automatically cease to operate at the end of the fifteenth day, reckoned from the date of his suspension. Only in the event of approval being granted by the Director of Education and that too within the prescribed period of fifteen days, would such a suspension be valid for the extended period. Any other interpretation would render the second proviso of sub-section (4)*

*of Section 8 of the Act, nugatory.”*

Ld. counsel for the respondents on being specifically asked as to whether the Director of Education has given any approval of suspension of the petitioner, the response is in the negative. The suspension of the petitioner is thus clearly violative of the statutory provisions of the Act, 1973. Consequently, in the given facts and circumstances and taking note of the specific violation of the provisions of the special enactment i.e. the Act, 1973, the respondent school cannot escape the liability to pay the full back wages till the time of imposition of the penalty, which is under challenge before the Delhi School Tribunal.

For the foregoing reasons, the writ petition is disposed of with a writ of mandamus issued to the respondent school – Guru Nanak Public School to pay the arrears of salary and other perks if any, giving adjustments for the subsistence allowance from the date of suspension till the imposition of penalty vide reference no. GNPS/PPURA/1887 dated 16.08.2019, within eight weeks from today, failing which, the arrears shall carry interest @ 8% per annum. The petition stands disposed off accordingly.

**A. K. CHAWLA, J**

**DECEMBER 09, 2019**

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