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

Reserved on: 16 February 2026

Pronounced on: 29 May 2026

+ LPA 266/2017
REKHA SABHARWALAppellant

Through: Mr. Aditya Singla, Ms. Supriya Juneja, Ms. Arya Suresh Nair and Mr. Arvind Menon, Advs. along with Appellant in person.

versus

MANAGEMENT OF SAAI MEMORIAL GIRLS
SCHOOL & ORSRespondents

Through: Mrs. Palak Rohmetra, Adv.

+ LPA 268/2017 & CM APPL. 13928/2017
REKHA SABHARWALAppellant

Through: Ms. Aditi Gupta and Mr. Akash Deep, Advs. along with Appellant in person.

versus

DIRECTORATE OF EDUCATION & ORSRespondents

Through: Mrs. Palak Rohmetra, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% **29.05.2026**

C. HARI SHANKAR, J.

1. These appeals assail judgments dated 6 February 2017 passed by a learned Single Judge of this Court in WP (C) 1130/2010 and WP



(C) 7331/2008. Except for the fact that the *dramatis personae* in these appeals are the same, and the writ petitions were decided on the same date, there is no similarity between these two appeals. We, therefore, proceed to deal with them individually.

LPA 266/2017

A. Facts, and the *lis*

2. As we are of the opinion that this appeal is required to be allowed on a preliminary ground, we do not propose to dwell in detail into the facts. A brief recital thereof would, therefore, suffice.

3. Disciplinary proceedings were instituted against the appellant, then serving as Assistant Teacher with the Saai Memorial Girls School¹ by issuance of a charge sheet dated 16 October 2006, containing various allegations against her, including inefficiency in discharging her duties, misbehaviour with colleagues, and the like. The Articles of Charge, as elaborated in the statement of imputations of misconduct in the charge-sheet, read thus:

Statement of imputation of misconduct and misbehaviour in
support of articles of charges framed against Smt. Rekha
Sabharwal, Asstt. Teacher

Article-I

Saai Memorial School is an English Medium School known for quality education in the locality. Smt. Rekha Sabharwal, Asstt. Teacher was asked to teach English and environmental studies to the students of Class-III. It was observed that She had wilfully

¹ “School”, hereinafter



neglected in her performance of duties. A number of parents lodged complaints regarding her quality of teaching and behaviour. Complaints of parents further stand corroborated with the quality of checking of exercise books/notebook of students by Smt. Rekha Sabharwal and performance report of Consultant (Primary Education) dated 7.8.06 shows that Smt. Rekha Sabharwal does not know basics of English-language and is not fit for teaching the English Medium Students of Primary Class.

Article II

On 10.8.06, when Principal of School alongwith Consultant (Primary Education) checked her way of teaching, Smt. Rekha Sabharwal abused and misbehaved with the Principal of School.

Article III

She is in habit of misbehaving with fellow teachers and other staff of School and Mrs Jasvir Kaur on 1.07.05, Mrs Vandana Nagi (TGT) on 14.08.06 and Mrs Mithlesh, Class IV on 21.3.06.

Article IV

School holds Parents Teachers meeting periodically to have interaction of parents with Teachers regarding performance of students. Smt. Rekha Sabharwal who was deputed to teach students of Class III-B, refused to attend the parents of Class III-B on Parent Teacher Meeting held on 26/8/06.”

We may note, however, that there was no allegation touching on the integrity of the appellant as an employee of the School.

4. The charge-sheet was accompanied by a List of Witnesses who would depose in favour of the Management, all of whom were parents of children studying in the School.

5. The charge-sheet was issued by the Manager of the School, though it purported to convey the decision of the Disciplinary



Authority² constituted under Rule 118³ of the Delhi School Education Rules, 1973⁴.

6. The Saai Memorial Girls School is a private unaided School.

7. The appellant tendered a reply to the chargesheet on 31 October 2006, denying the allegations against her. Following this, by Order dated 7 November 2006, again purporting to convey the decision of the DA though issued by the Manager of the School, retired officer of the Delhi Government was appointed as the Inquiry Officer⁵ to enquire into the charges against the appellant.

8. The IO recorded the statements of Mrs. Indu Sinha as MW⁶¹, Mrs. Ritu Singh as MW2, Mrs. Suman Chawla as MW3, Mrs. Jasbir Kaur as MW4, Mrs. Poonam Sharma as MW5, Mrs. Sunaina Dawara as MW6, Mrs. Poonam Mittal as MW7 and Mr. Lokesh Jain as MW8. The witnesses were cross-examined by the appellant.

9. On 28 November 2006, the appellant was asked to provide details of documents which she desired to cite, or witnesses whose

² "DA" hereinafter

³ 118. **Disciplinary authorities in respect of employees**

The disciplinary committee in respect of every recognised private school, whether aided or not, shall consist of:-

- (i) the chairman of the managing committee of the school;
- (ii) the manager of the school;
- (iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;
- (iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director;
- (v) a teacher who is a member of the managing committee of the school; nominated by the Chairman of such managing committee.

⁴ "the DSE Rules" hereinafter

⁵ "IO" hereinafter

⁶ Management Witness



evidence she desired to lead, in her defence. The appellant furnished a bundle of papers which, she submitted, were required to be considered by the IO. The IO allowed her to submit the documents with her defence brief. The appellant further submitted that the complainants of the documents enlisted at S. Nos 9 to 15 of the List of Documents annexed to the chargesheet were also required to be examined. She sought copies of the said documents. The IO directed the Presenting Officer to prepare a complete set of copies of the documents and supply it to the appellant so that she could cross-examine the authors thereof, if she so desired. The enquiry was adjourned to 26 December 2006.

10. On 26 December 2006, however, the following Record of Proceedings was entered by the IO:

“The CO has informed that she has already submitted her defence reply to the chargesheet as such at this stage now she has nothing to say in her defence in writing or verbally. She has made a request that she should be given date for submitting her defence brief. She has opted for the purpose 27.1.07, when she will submit her defence brief, but prior to the defence brief the PO will submit the prosecution brief in writing which will be attached to the Inquiry officer and a copy thereof shall be endorsed to the charged officer under registered cover. The PO is granted date of 11.01.2007 for submitting the prosecution brief as stated above.”

11. Consequent on completion of evidence and submission of brief by the School and the appellant, the IO submitted his report dated 17 February 2007, holding Articles I to III of the Articles of Charge against the appellant to have been proved and Article IV to have been partly proved. Based on the Inquiry Report, an undated Show Cause Notice was issued to the appellant, proposing to remove her from



service and requiring her to show cause thereagainst. The appellant submitted her reply to the show cause notice on 6 March 2007 .

12. By order dated 29 March 2007, issued by the Manager of the School, the decision of the Managing Committee of the School to impose, on the appellant, the penalty of removal from service, was communicated to the appellant. The order specifically stated that it had been issued in accordance with the judgment of this Court in *Kathuria Public School v. Director of Education*⁷.

13. The appellant appealed, against the said decision, to the Delhi School Tribunal⁸, which, *vide* judgment dated 31 July 2009, dismissed the appeal. Aggrieved thereby, the appellant approached this Court by means of WP (C) 1130/2010 which stands dismissed by a learned Single Judge of this Court *vide* judgment dated 6 February 2017.

B. Rival Contentions before the learned Single Judge, and findings thereon

14. Before the learned Single Judge, the appellant contended that (i) having themselves been complainants against her, the Principal and Vice-Principal of the School could not have deposed against the appellant, as held by the Division Bench of this Court in *Managing Committee Vidya Bhawan Mahavidyalaya v. Directorate of Education*⁹ (ii) the Inquiry Report and the punishment order passed by

⁷ 123 (2005) DLT 89 (DB)

⁸ “DST”, hereinafter

⁹ ILR (2006) 1 Delhi 403 (DB)



the DA were non-speaking, (iii) the appellant was not allowed to file documents in her favour, (iv) the allegation that the appellant was not a good teacher was factually incorrect and (v) the punishment of removal from service was grossly disproportionate to the charges against the appellant.

15. Apropos these submissions, the learned Single Judge has held as under:

(i) Though it was true, as held in *Vidya Bhawan Mahavidyalaya*, that a person could not double up as complainant as well as a witness in the enquiry proceedings, this infirmity affected only Article II of the Articles of charge against the appellant. Article II was severable from the other Articles of charge which, by themselves, too, justified the decision of the DA.

(ii) Regarding the submission that the Vice Principal Mrs. Jasvir Kaur was part of the disciplinary committee, and also deposed in the enquiry proceedings, Article III stood established even by the depositions of other teachers with respect to the rudeness and misbehaviour of the petitioner, and the fact that she did not perform her duties appropriately. Again, even if Article III were to be severed from the Articles of charge against the appellant, Article I was serious enough to justify the decision of the DA.

(iii) Article I alleged that the appellant did not have the



requisite knowledge of English and was not, therefore, suited to teach primary classes in the School. This allegation, along with Article III, sufficed to justify the decision to dispense with the appellant's services.

(iv) The Inquiry Report was detailed and reasoned. The DA agreed with the IO and was not, therefore, required to again pass a detailed order.

(v) The order of the DST established, on facts, that the appellant had been given adequate opportunity to file documents in her support, which she did not utilize.

(vi) The complaints of the parents also established that the appellant was not good at teaching.

In the light of these findings, the learned Single Judge has, by the judgment dated 6 February 2017 under challenge in the present appeal, dismissed the writ petition.

C. Rival Contentions before us, and Analysis

16. We have heard Mr. Aditya Singla, learned Counsel for the appellant and Ms. Palak Rohmetra, learned Counsel for the School, at length.

I. Breach of Section 8(2) of the Delhi School Education Act,



1973¹⁰

17. The first submission of the appellant is that the order of dismissal from service could not have been passed without written approval from the Director of Education as required under Section 8(2)¹¹ of the DSE Act.

18. Though it does not appear that this contention was taken before the learned Single Judge, we permitted it to be raised, as it is jurisdictional in nature and is not dependent, for its adjudication, on any disputed facts.

19. The respondents, by way of response thereto, place reliance on the judgment of a Division Bench of this Court in *Kathuria Public School*. The appellant contends that the decision in *Kathuria Public School* was overruled by the Supreme Court in *Raj Kumar v. Director of Education*¹², which was followed by one of us, sitting singly, in *Meena Oberoi v. Cambridge Foundation School*¹³.

20. All these decisions have been noted by us in our decision in *Asha Rani Gupta v. Ravindera Memorial Public School*¹⁴, which attempts to chart the precedential history and, we humbly feel, does so with a reasonable degree of accuracy. We may, nonetheless, briefly recapitulate it:

¹⁰ “the DSE Act” hereinafter

¹¹ 8. **Terms and conditions of service of employees of recognised private schools.—**

(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his services be otherwise terminated except with the prior approval of the Director.

¹² (2016) 6 SCC 541

¹³ 265 (2019) DLT 401, “Meena Oberoi-I”, hereinafter

¹⁴ 2024 SCC OnLine Del 7143



(i) ***Kathuria Public School***, rendered by a Division Bench of this Court, held that Section 8(2) of the DSE Act did not apply to private unaided schools.

(ii) In ***Raj Kumar v. Director of Education***¹⁵, the Supreme Court held ***Kathuria Public School*** to have been wrongly decided.

(iii) The Supreme Court, thereafter, followed, and applied, retrospectively, the decision in ***Raj Kumar***, in ***Marwari Balika Vidyalaya v. Asha Srivastava***¹⁶.

(iv) Another Division Bench of this Court, in ***Red Roses Public School v. Reshmawati***¹⁷, observed, in passing, that the judgment of the Supreme Court in ***Raj Kumar*** could apply only prospectively, but without noticing ***Marwari Balika Vidyalaya***.

(v) One of us (C. Hari Shankar, J), sitting singly, took stock of the above precedential history, and, following ***Raj Kumar*** and ***Marwari Balika Vidyalaya***, held, in ***Meena Oberoi-I***, that an order of removal of an employee of a private unaided school could not be passed without the prior approval of the Directorate of Education as required by Section 8(2) of the DSE Act.

¹⁵ (2016) 6 SCC 541

¹⁶ 2019 SCC OnLine SC 408

¹⁷ 2019 SCC OnLine Del 10937



(vi) This position was reiterated, later, by a Division Bench of this Court in *Asha Rani Gupta*. We, with humility, reproduce the following paragraphs from *Asha Rani Gupta*:

“16. In view of the judgment of the Supreme Court in *Raj Kumar*, it is obvious that the order dated 6 June 2013, dismissing the appellant from service, cannot sustain.

17. The entire gamut of case law has been considered by this Court in *Meena Oberoi*, which has subsequently been followed in other decisions including *Mangal Sain Jain v. Principal, Balvantray Mehta Vidya Bhawan*¹⁸. The submission that, in view of the then existing law in *Kathuria Public School*, orders of dismissal and removal of employee of private unaided school from service without obtaining prior approval of the DOE, passed before the rendition of the decision in *Raj Kumar*, ought not to be reopened, was considered. It was also noted that a Division Bench of this Court had, in its decision in *Red Roses Public School v. Reshmawati* chosen not to follow *Raj Kumar* in respect of decisions rendered prior thereto, on the ground that applying *Raj Kumar* from a date prior to its rendition would result in reopening of claims which stood settled in terms of the then existing law in the shape of the judgment in *Kathuria Public School*. The decision in *Red Roses Public School*, it was however noted, had been rendered without the Court having been informed of the judgment of the Supreme Court in *Marwari Balika Vidyalaya v. Asha Srivastava*, in which the Supreme Court had applied *Raj Kumar* retrospectively, to invalidate an order of termination of an employee of private unaided school passed in 2001 without obtaining prior approval of the DOE.

18 As such, this Court, in *Meena Oberoi*, adopted the view that the decision of the Division Bench in *Red Roses Public School* was effectively per incuriam, as it was contrary to the prior judgment of the Supreme Court in *Marwari Balika Vidyalaya*.”

Thus, *Asha Rani Gupta* has considered *Red Roses Public School*. It has been noted in *Asha Rani Gupta* that the Division Bench in *Red Roses Public School* was not shown the judgment

¹⁸ 2020 SCC OnLine Del 2608



of the Supreme Court in *Marwari Balika Vidyalaya* which followed the decision in *Raj Kumar* and applied it retrospectively. In that view of the matter, as we have held in *Asha Rani Gupta, Red Roses Public School*, to the extent it observes that the decision in *Raj Kumar*, would apply only prospectively is clearly *per incuriam*.

21. Besides, it is well settled that it is not open to a Court, lower in the judicial hierarchy, to avoid following a judgment of the Supreme Court on that ground that it applies only prospectively. The judgment of the Supreme Court can be said to apply prospectively only if the judgment itself says so. Else, the Supreme Court under Article 141 of the Constitution of India declares the law and a declaration of the law has to be treated as a declaration of law as it always stood. It is trite that the judgments of the Supreme Court apply retrospectively unless the judgments itself state otherwise. The decision in *Raj Kumar* does not state that it would apply only prospectively. *Marwari Balika Vidyalaya* in fact followed *Raj Kumar* and applied it retrospectively.

22. Apropos this submission of the appellant, the School responds that the decision in *Raj Kumar* applies only prospectively.

23. For the reasons already outlined hereinabove, this submission cannot be accepted.

24. Incidentally, we may note that, in its written submissions, the School has referred to the judgment of a Division Bench of this Court



in *Meena Oberoi v. Director of Education*¹⁹ which, according to the School, holds that Section 8(2) applies only prospectively. We have searched high and low but have not come across the decision in *Meena Oberoi-II* as cited by the School. The decision at **2020 SCC Online Del 1478** is *Amarjeet Singh v. State of NCT of Delhi*, which is a criminal matter. In fact, it appears that the LPA preferred against the judgment in *Meena Oberoi-I* is still pending before a Division Bench. *Meera Oberoi-II* appears, therefore, to be mere wishful thinking.

25. The order dated 7 November 2006 dismissing the appellant from service, having been issued without the prior approval of the DOE, violates Section 8(2) of the DSE Act and is, therefore, liable to be set aside.

II. The sequitur

26. The School contends, however, that, even if the order dismissing the appellant was passed by an incompetent authority and was, therefore, liable to be set aside, reinstatement would not be the inevitable sequitur.

27. However, apart from merely advancing it as a proposition, the School has not cited any authority in its support. It is axiomatic, in logic and in law, that, if an action is set aside, the *status quo ante* is restored. The normal sequitur to setting aside of an order of dismissal from service is reinstatement, except where there are supervening

¹⁹ 2020 SCC OnLine Del 1478, “Meena Oberoi-II”, hereinafter



considerations such as a case in which the employee has been in gainful employment elsewhere after being dismissed. No such case is pleaded by the School. Besides, the Supreme Court, in **Raj Kumar** as well as **Marwari Balika Vidyalaya**, directed reinstatement of the employee concerned, with back wages in both cases. In **Surendra Kumar Verma v. Central Govt Industrial Tribunal**²⁰, it was held that “plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen”. We see no reason, in the present case, to hold otherwise.

III. Nemo judex in causa sua²¹

28. It is next contended, by Mr. Singla that the Principal of the School and Ms. Jasvir Kaur deposed as witnesses against the appellant, were also part of the DA. Articles II and III of the Articles of Charge against the respondent directly alleged misbehaviour, by the appellant, with the Principle and Ms. Kaur, respectively. The complaint addressed by Ms. Kaur to the Principal on 1 July 2005 was, in fact, the genesis of one of Article III. They could not, therefore, have been part of the DA, especially as they had also deposed against the appellant in the inquiry. He submits that this was impermissible, as it breaches the *nemo judex in causa sua* principle.

29. The learned Single Judge has accepted this submission of the appellant, to the extent of holding that it could vitiate the findings

²⁰ (1980) 4 SCC 443

²¹ No man can be a judge in his own cause



against the appellant in respect of Article II of the Articles of Charge. He has, however, invoked the doctrine of severability to hold that the other Articles of Charge were severable and were not, therefore, affected. Article III, he holds, was not dependent on the statement of Ms. Kaur alone, but was corroborated by statements of other MWs as well.

30. Mr. Singla has sought to contend that the doctrine of severability cannot apply where the complainants and witnesses in the inquiry were also part of the Disciplinary Committee which acted as the DA.

31. We agree with Mr. Singla that the DA could not have included the Principal and Ms. Jasvir Kaur as members, as that would clearly breach the *nemo judex in causa sua* doctrine. The charges against the appellant included allegations of misbehaviour against the Principal and Ms. Kaur. There cannot, therefore, be any objection to their having deposed in the inquiry, being the alleged victims of the misbehaviour by the appellant. Having done so, however, they could not have been part of the DA. The apprehension of bias which the appellant could legitimately harbour would, therefore, stand assuaged by requiring the DA to be reconstituted without including the Principal or Ms. Kaur.

IV. On the merits of the findings on the Articles of Charge

32. To what stage, however, does that take the case back?



33. The charge-sheet dated 16 October 2006, from which the proceedings germinated, was unquestionably issued by a competent authority, as it was issued by the Manager, conveying the decision of the DA constituted under Rule 118 of the DSE Rules. The appointment of the IO and the PO, by order dated 7 November 2006 was also, therefore, legal and proper.

34. On the individual Articles of Charge against the appellant, the learned Single Judge has himself agreed that the finding of the IO on Article I could not sustain, as the Principal and Vice Principal, who were the complainants, also deposed against the appellant. The School has not chosen to challenge that part of the impugned judgment, which must, therefore, be regarded as having become final.

35. The learned Single Judge proceeds, however, to hold that, even on the surviving Articles of Charge, the decision to dismiss the appellant from service could sustain. In our considered opinion, that is a decision which must be left to the DA. It might well be that the DA forms the opinion that, once the finding of the IO on Article I of the Articles of Charge was found to be unsustainable, the remaining Articles of Charge, even if proved, would not warrant the extreme penalty of removal from service.

36. Apropos the efficiency of the appellant as an English teacher, which constitutes the basis of Article IV of the Articles of Charge against the appellant, however, Mr. Singla has advanced a contention which is required to be examined seriously. He submits that the appellant was a holder of BA degrees in History and Hindi along with



a B. Ed. Degree and was, in fact, appointed as a Hindi teacher. There was, he submits, no complaint whatsoever against the discharge, by the appellant, of her duties as a Hindi teacher. By an order dated 2 August 2006, the appellant was directed to regularly teach EVS²² and English to students of Class III. The appellant represented against this to the Principal on 4 August 2006, also complaining of mental harassment which she was being subjected. It is only thereafter that the appellants performance was found, suddenly, to be unsatisfactory, and allegations of misbehaviour with the Principal and other faculty members began.

37. Ms. Rohmetra has sought to contend that the appellant was never appointed as an English teacher, but was required, at the time of her appointment, to teach all subjects.

38. We are not certain that this response answers the submission of Mr. Singla. Admittedly, the appellant did not process any graduation or post graduate degree in English. She was a graduate in Hindi and history and, at the time of her appointment, it is reasonable to believe that the School was aware of her educational qualifications. It was apparently because of the fact that she was holding a Bachelor's degree qualification in Hindi that the appellant was made to teach Hindi to the students for 3 ½ years. Ms. Rohmetra does not dispute Mr. Singla's contention that there was no complaint about the appellants performance as a Hindi teacher during this period. Complaints surfaced only after she was, by the order dated 2 August 2006, suddenly directed to teach English and EVS to Class III

²² Environmental Science



students. While it may be true that the level of English taught to Class III students would not be very high, the School has proffered no explanation as to why a teacher, holding a graduation in Hindi with no qualification in English, and who was teaching Hindi for 3 ½ years, was suddenly asked to teach English.

39. Given the fact that

- (i) there is no explanation as to why the appellant was suddenly directed to start teaching English, and
- (ii) there was no complaint against her, regarding the manner in which she discharged her duties, or even her behaviour, till 2 August 2006 and thereafter,

we are of the opinion that the IO would have to holistically re-examine all Articles of charge against the appellant. We cannot ignore the fact that the appellant was alleging harassment by the School. Though we are hesitant to return any conclusive finding on this aspect, we expect the IO, in the *de novo* proceedings that we intend to direct, to holistically examine all aspects of the matter, including the aspect of who the oppressor is, and who the oppressed.

40. In that view of the matter, we feel that the entire inquiry, into the Articles of Charge against the appellant, is required to be conducted *de novo*. For this purpose, the DOE would be required to appoint an entirely independent IO, as we are certain that the IO earlier appointed would, after two decades, no longer be available to conduct the Inquiry. Till that exercise is undertaken, the directions contained in this judgment would continue to operate.



V. Re. the plea that Inquiry Report and order of DA were unreasoned

41. It had been sought to be contended by the appellant, before the learned Single Judge, that the Inquiry Report dated 17 February 2007, as also the punishment order dated 29 March 2007, were unreasoned.

42. As we have deemed it appropriate to direct the *de novo* enquiry, it is not necessary for us to comment on the Inquiry Report dated 17 February 2007 of the IO.

43. However, we find that the order dated 29 July 2007, whereby the DA imposed the punishment of removal from service on the appellant, is completely unreasoned. All that it records is that a Show Cause Notice had been issued to the appellant, to which she responded. Once the appellant had so responded to the show cause notice, the DA assumed the role not merely of a DA expressing his agreement, or disagreement, with the findings of the IO, but of an adjudicating authority adjudicating on the show cause notice. Ideally, the appellant ought to have been given an opportunity of hearing by the DA, before a decision was taken on the show cause notice. In any event, the least that justice required was coverage, in the decision on the show cause notice, of the points raised by the appellant, and a dispassionate consideration thereof. That, sadly, is totally lacking in the order dated 29 July 2007 which cannot, therefore, sustain in law.

44. In the *de novo* proceedings that we are directing, therefore, it



would be ensured that, if occasion arises for issuance of any show cause notice to the appellant by the DA, the order that is subsequently passed by the DA thereon would be properly reasoned and speaking, and would deal with all contentions raised by the appellant both before the IO as well as before the DA.

45. In the event of any of the Articles of Charge being found to be proved against the appellant, the DA would also have to take into consideration the aspect of proportionality, viz., whether the indiscretions attributed to the appellant were so serious as warranted removal from service.

46. In the interests of justice, we further direct that the appellant would be granted an opportunity of hearing before a decision is taken by the DA. The decision, needless to say, would have to be reasoned and speaking, dealing with all issues raised by the appellant.

47. In the event of the DA deciding to impose any of the penalties envisaged in Section 8(2) of the DSE Act, such decision would have to be preceded by approval, *a priori*, of the DOE, as required by the provision.

VI. In the interregnum

48. In the interregnum, the appellant would be entitled to be reinstated in service, with all benefits including continuity of service. As we have our misgivings regarding the manner in which the School has proceeded against the appellant, we also deem it appropriate to



grant the appellant 50% back wages, for the period she has remained out of service.

49. This would, however, remain subject to the *de novo* decision to be taken by the DA. The appellant would also have to furnish an affidavit to the School to the effect that, after her removal, she has not been in any gainful employment elsewhere.

50. In case the appellant has crossed the age of superannuation, the retiral benefits of the appellant would be computed and payable to her in the above terms.

51. It also goes without saying that, if the appellant continues to remain aggrieved by the *de novo* decision which would be taken, her remedies in law would remain reserved.

52. The appeal is, therefore, disposed of in the following terms:

(i) The impugned judgment dated 6 February 2017, the judgment dated 31 July 2009 of the DST, the order dated 7 November 2006 of the DA, and the Inquiry Report dated 17 February 2007, are quashed and set aside.

(ii) The appellant is, therefore, entitled to be reinstated in the service of the School, if she has not crossed the age of superannuation. She would be entitled to continuity in service as well as fixation of her pay as if she had remained in service beyond her termination.



(iii) The appellant would also be entitled to back wages, but limited to 50%.

(iv) In case the appellant has crossed the age of superannuation, she would be disbursed her retiral benefits on the same basis.

(v) Inquiry proceedings, on the charge-sheet dated 16 October 2006, would be conducted *de novo*, in accordance with the observations and directions contained in this judgment.

(vi) In the event of the DA intending to proceed against the petitioner, the DA would strictly act in accordance with Section 8 of the DSE Act and other applicable statutory provisions.

(vii) The observations and findings contained in this judgment would be borne in mind both by the IO as well as the DA.

(viii) Should the appellant continue to remain aggrieved by the decision of the DA, her remedies in law would remain reserved.

53. There shall be no orders as to costs.

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54. In this appeal, we are in entire agreement with the learned Single Judge.



55. The writ petition, from which this appeal emanates, alleged that payment of her salary was being made to the appellant, by the School, by cheque, and a considerable part thereof was taken back in cash. A complaint, addressed by the appellant in that regard was made subject matter of an enquiry, culminating in an Inquiry Report dated 15 December 2006, which did not find substance and the allegation.

56. The learned Single Judge has observed, in the impugned judgment, that payment of salary was made to the appellant by cheque, against her signatures, crossing the revenue stamp in the register of the School. The appellant did not dispute her signature. The learned Single Judge has also observed that no other teacher came forward to support the appellant.

57. In such circumstances, the learned Single Judge has rejected the writ petition, holding that it raised disputed questions of fact which could not be decided in writ proceedings.

58. We agree.

59. We are aware of the fact that there did exist, in certain institutions, an unsavoury practice of payment of salary by cheque and taking back, by the institution, of part of the salary in cash. Any such practice, if followed, is completely illegal, and the institution in question would be civilly and criminally liable. It would be, however, for the employee who makes such an allegation to substantiate it. If the allegation is denied, and if there is no conclusive material available, on the basis of which the allegation can be said to have been



established, the appropriate forum, which the employee would have to approach, would not be a writ court.

60. Needless to say, we should not be treated as having expressed any opinion on the allegations made by the appellant, or the correctness or otherwise thereof.

61. We agree, therefore, that there was no conclusive material on the basis of which, in proceedings under Article 226 of the Constitution of India, the allegations by the appellant could be said to have been proved. Though Mr. Singla has drawn our attention to various pages from the record, they are mere allegations. We do not deem it necessary to make reference thereto.

62. This appeal is, therefore, dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

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