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

Date of Decision: 21st August, 2026.

CNR No. DLHC010471562019

+ **W.P.(C) 12805/2019, CM APPL. 10514/2023**

RAJINDER KUMAR GUPTA

.....Petitioner

Through: Ms. Sunieta Ojha, Mr. Pragti Bhatia
and Ms. Vasudha Priyansha,
Advocates.

versus

**THE CHIEF SECRETARY, GOVERNMENT OF NCT DELHI
AND ORS.**

.....Respondents

Through: Mr. Mahesh Bhardwaj, Ms. Sandeep
Singh Nainwal and Mr. Vivek Lamba,
Advocates for R-4 and R-5.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, a school teacher, is continuing his legal battles despite his success in the previous round of litigation. His termination from the School in October 2002 was set aside by this Court in February, 2017. The School's intra-court appeal failed; its Special Leave Petition also failed. Yet those orders did not immediately return him to the school classroom, nor did they decide the monetary consequences of the nearly fifteen years during which he remained out of service. The Petitioner was subsequently removed from service, and that later action is not under consideration in the present



proceedings. Reinstatement, therefore, is no longer the operative controversy. The surviving question is confined to whether, and to what extent, the Petitioner is entitled to wages for the interregnum.

2. The interregnum is significant not only for its duration, but also for what followed immediately after the Petitioner succeeded before this Court. Within days, he reported for duty, but was not permitted to rejoin. Contempt proceedings had to be initiated. He eventually joined in August, 2017; even then, the School treated him as a fresh appointee. This Court was required to clarify that reinstatement meant precisely that: restoration to service, not a new appointment. It was only in April, 2018 that the School issued an order reinstating him with effect from the date of his termination in 2002. However, his wages for the intervening period remained unrestored.

3. The claim for those wages was rejected by the Managing Committee by order dated 5th August, 2017, passed on the Petitioner's representation under Rule 121 of the Delhi School Education Rules, 1973¹. That order is under challenge in the present petition. The principal period with which the Court is concerned is 16th October, 2002 to 14th February, 2017, since the School has separately released arrears from 15th February, 2017 onwards.

How the dispute travelled

4. The Petitioner joined New Saraswati Public Secondary School² as an Assistant Teacher on 15th October, 1993. In 1996, he was assigned the position of Assistant Teacher (Computer). His services were terminated by orders dated 16th October, 2002 and 14th November, 2002.

5. The dispute entered the administrative channel almost immediately.

¹ "the Rules"

² "the School"



On 25th February, 2003, the Education Officer examined the matter and directed the School to recall the Petitioner. The communication is unusually categorical:

“Hence, you are directed to recall the teacher to join his duty in the school. All his dues during the period of his wrongful termination be also paid to him...”

6. The same office also recorded that the Petitioner’s work had been satisfactory and that his probation had never been extended. A year later, the Education Officer reiterated that the Petitioner had still not been allowed to join despite earlier directions, described the termination as contrary to the Rules, and directed his immediate joining. The direction was accompanied by a warning that non-compliance could invite derecognition.

7. The matter might have ended there. It did not. On 18th October, 2004, the Directorate granted *ex post facto* approval to the termination on the ground that the Petitioner did not possess the required qualification. The Petitioner eventually carried the matter to the Delhi School Tribunal³, which dismissed his appeal on 31st July, 2009.

8. He then filed W.P.(C) 330/2010. By judgment dated 15th February, 2017, this Court set aside the decision of the DST. The judgment drew a distinction which remains important even today. It noticed that the Petitioner had originally been appointed as an Assistant Teacher in 1993 and observed:

“...even assuming that petitioner could not have been appointed as an Assistant Teacher (Computer) with effect from 1.09.1996... original appointment of the petitioner was as an Assistant Teacher... with effect from 15.10.1993...”

9. The Court thereafter held the termination illegal for breach of Rules

³ “DST”



118 and 120 and concluded:

“Petitioner will stand reinstated in his services as Assistant Teacher with the respondent/school... As regards what are the back wages which are liable to be paid to the petitioner, in view of Rule 121... the petitioner will move to the school with a representation...”

10. The School filed LPA 396/2017. It was in that appeal that the School sought to develop a further contention: that the Petitioner did not possess the requisite qualification even for his original appointment as an Assistant Teacher. The Division Bench noticed the precise state of the earlier record:

“...apart from making a bald assertion that the respondent No.1 did not fulfil the eligibility conditions even for appointment as an Assistant Teacher, [the School] did not elaborate on the said aspect any further. Thus, the writ petitioner/respondent No.1 had no occasion to meet the said averment. It is for this reason that the learned Single Judge has not even gone into the said aspect.”

11. The appeal was dismissed. The Division Bench nevertheless added:

“...we leave it open to the appellants to take action in accordance with law in case respondent No.1 is not qualified to continue even as an Assistant Teacher after complying with the judgment of the learned Single Judge. The appellants shall proceed in compliance of the Delhi School Education Act, the rules and the principles of natural justice.”

12. The SLP filed by the School was also dismissed on 7th July, 2017. The significance of the appellate judgment lies as much in what it did not decide as in what it did. The Division Bench did not hold the Petitioner qualified; equally, it did not hold him unqualified. It expressly noticed why that question had remained unexamined and left it open to the School to undertake that exercise thereafter, but only in accordance with law.

13. Meanwhile, the Petitioner submitted his representation under Rule 121 on 23rd February, 2017. He also informed the School that he would report for joining on 27th February, 2017. The contemporaneous email of 1st



March, 2017 records that he presented himself at the School at 7 a.m. on that date but was denied joining without any stated reason.

14. On 5th August, 2017, the Managing Committee rejected the claim for back wages. The order begins, in fact, at the right place. It recognises that “no work no pay” cannot be applied as a rule of thumb and that the real inquiry is whether the Petitioner’s absence was attributable to the School or to his own conduct.

15. It is thereafter that the reasoning takes a different course. The Managing Committee proceeds on the footing that there is “no dispute” that the Petitioner used a fake certificate to obtain the position of Assistant Teacher (Computer), characterises the conduct as cheating, misrepresentation and forgery, and treats that conduct as the true cause of everything which followed. The reasoning, in substance, is that had the Petitioner not attempted to obtain the computer post on such a certificate, the School would have had no occasion to terminate him, and he would have continued as an Assistant Teacher. His entire absence is consequently attributed to him.

16. The representation was rejected altogether. Even thereafter, reinstatement was not immediate. The Petitioner joined only on 11th August, 2017 during the pendency of contempt proceedings. When it subsequently appeared that the School was treating him as a fresh appointee, this Court recorded on 7th November, 2017:

“A plain reading of the orders passed by the learned Single Judge and the Division Bench of this Court in LPA leaves no doubt that it is a case of re-instatement... These orders, by no means, can be construed to mean that it is a fresh appointment.”

17. The Court also recorded that the School appeared to be creating



obstacles which could exhaust the Petitioner in pursuing his claims. That observation does not decide the present claim for back wages, but it is part of the history in which the claim now falls to be examined.

18. On 5th April, 2018, this Court again clarified that there could be no dispute that “the reinstatement must relate back to the date of termination”. The School then undertook to issue a fresh order accordingly. On 19th April, 2018, it did so:

“Mr. Rajinder Kumar Gupta is reinstated in his service as Assistant Teacher... with effect from 16.10.2002 i.e. the date of termination of his service.”

19. The same order, however, restricted monetary arrears to the period beginning 15th February, 2017.

20. One later chapter of the dispute needs to be noticed, but only to mark the boundary of the present proceedings. After reinstatement, the School initiated disciplinary proceedings pursuant to the liberty reserved by the Division Bench. Those proceedings ultimately resulted in the Petitioner’s removal from service in 2023. The Petitioner sought to amend this petition to challenge that action. By order dated 15th January, 2025, in CM APPL. 43451/2023, the application was withdrawn with liberty to challenge the later termination in accordance with law. That controversy is therefore not before this Court. The subsequent removal is neither affirmed nor examined in this judgment.

Rule 121: scope of the Managing Committee’s duty

21. The objection of the School that a writ petition does not lie against an unaided private school need not detain the Court. This is not an attempt to enforce an ordinary term of a private contract. The order under challenge is



one which the Managing Committee was required to make under Rule 121, a statutory rule governing the service relationship. ***St. Mary's Education Society v. Rajendra Prasad Bhargava***⁴ has recognised that the availability of a remedy under Article 226 in respect of a private body depends upon the presence of a public-law element in the action complained of. The present challenge concerns an action required to be taken under Rule 121 and, therefore, raises such a public-law element.

22. Rule 121 is the statutory starting point for the determination in the present case. It requires the Managing Committee, upon reinstatement, to make a reasoned determination on two related matters: first, the salary and allowances payable for the period of absence; and second, whether that period is to be treated as time spent on duty. The Rule reads as follows:

“121. Payment of pay and allowances on reinstatement— (1) When an employee who has been dismissed, removed or compulsorily retired from service is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, as the case may be, the managing committee shall consider and make a specified order—

(a) with regard to the salary and allowances to be paid to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as the period spent on duty.

(2) Where the managing committee is of opinion that the employee who had been dismissed, removed or compulsorily retired from service had been fully exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service or suspended prior to such dismissal, or compulsory retirement from service, as the case may be :

Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been

⁴ (2023) 4 SCC 498



delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representations and after considering the representation, if any, made by the employee, direct, for reasons to be recorded by it in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowances as it may determine.

(3) The payment of allowances shall be subject to all other conditions under which such allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances.”

The proviso permits reduction for a period of delay directly attributable to the employee, but only after an opportunity of representation and for reasons recorded in writing.

23. In ***Sunil Sikri v. Guru Harkrishan Public School***⁵, the Supreme Court examined the scheme of Rule 121 itself. It held that the power to determine the consequences of reinstatement under Rule 121 is specifically entrusted to the Managing Committee and is not a power which the Tribunal can assume. The provision is not merely enabling; it embodies a “power coupled with duty”. The Managing Committee must consider and pass the specific orders contemplated by Rule 121(1)(a) and (b). Any other view, the Supreme Court observed, would leave the employee “at the mercy of the employer”.

24. More importantly for the present case, ***Sunil Sikri*** explains the manner in which that power is to be exercised. The Managing Committee must apply its mind to all relevant inputs, including the orders which ultimately led to reinstatement, and must act fairly after giving the employee an opportunity. The inquiry is not confined to the amount of salary and allowances; it extends to whether the period of absence is to be treated as



duty. Whether the employee was gainfully employed and whether the proceedings culminating in reinstatement fully exonerated him are matters which properly enter that exercise. If there is full exoneration, Rule 121(2) requires payment of full salary and allowances. Any reduction for delay directly attributable to the employee can be made only in terms of the proviso, after an opportunity of representation and for reasons recorded in writing.

25. The School could ask the question. It could not assume the answer.

26. The Petitioner cannot say that his qualification as an ordinary Assistant Teacher stood finally adjudicated in his favour. It did not. The Division Bench expressly left that question open. Nor did the mere passage of time constrain the School from examining it in accordance with law. If an appointment is found to have been procured by fraud or on the strength of a false certificate going to the root of eligibility, long continuance in service does not cure the defect *R. Vishwanatha Pillai v. State of Kerala*⁶, is clear on that principle. But the consequence follows the finding; it cannot precede it. In *R. Vishwanatha Pillai*, the falsity of the caste claim had been determined by the competent authority and that finding had become final.

27. *Ruchika Rai Madan v. Directorate of Education*⁷, upon which the School has particularly relied, carries the matter no further. The Single Judge recognised the employer's right to verify essential qualifications and to inquire into documents suspected to be forged or fabricated. At the same time, the Court declined to decide the genuineness of those documents itself and left that question to the disciplinary inquiry, where the employee would

⁵ 2022 SCC OnLine SC 926

⁶ (2004) 2 SCC 105



have an opportunity to defend herself.

28. The Division Bench affirmed the aforementioned judgment in LPA 737/2023. It regarded the allegations as serious, but refrained from making any further observation on the disputed documents lest either party be prejudiced. It also reiterated that a writ court cannot test the correctness of allegations contained in a charge-sheet. The principle is therefore quite clear: the right to inquire into an allegation does not carry with it a finding that the allegation is true.

29. That is also precisely the distinction drawn by the Division Bench in the Petitioner's own case. The School was permitted to examine whether he possessed the qualification to continue as an Assistant Teacher. That liberty was given because the question had not been adjudicated earlier. It cannot simultaneously be treated as an adjudication against him.

30. There is another distinction which the impugned order blurs. The first controversy concerned the Petitioner's position as Assistant Teacher (Computer) from 1996 and the diploma relied upon for that purpose. The second concerned something more fundamental and different: whether, in 1993, he possessed the teacher-training qualification necessary even for appointment as an ordinary Assistant Teacher. It was the latter question which the Division Bench found insufficiently pleaded and left open for a lawful future inquiry.

31. The impugned order dated 5th August, 2017, does not observe that distinction. It does not merely refer to the controversy concerning the computer certificate or say that the matter remained open to inquiry. It proceeds on the footing that the allegation already stood established. The

⁷ 2023:DHC:5812



Managing Committee records:

“There is no dispute to the fact that fake certificate was used by the representationist for getting the job of Assistant Teacher (Computer).... This was an act of cheating, misrepresentation and forgery.”

From that premise, the impugned order takes a direct leap to the conclusion that the Petitioner was himself responsible for the entire period during which he remained out of service. That is where its reasoning fails. The question whether the Petitioner was legally entitled to continue as an ordinary Assistant Teacher had been left open by the Division Bench for examination in accordance with law. It was not a question which the Managing Committee could treat as already concluded against him while deciding his Rule 121 representation.

32. Indeed, the impugned order contains a sentence which brings the fallacy into sharper focus. While attributing the Petitioner’s absence to his own conduct, the Managing Committee observes that, had he not sought the computer post, the Management *“had no reason to terminate his service and he would have been continued as Assistant Teacher.”* The order thus proceeds on its own understanding that the episode concerning the computer qualification was what led to the termination, and that otherwise the Petitioner would have continued in his substantive position as an Assistant Teacher.

33. That premise cannot be reconciled with the defence now advanced before this Court. The School now says that the Petitioner’s very entry into service as an Assistant Teacher in 1993 was void and *non est* because he lacked the prescribed qualification. That is not merely a different formulation of the same reason; it is a different foundation altogether. The



order dated 5th August, 2017 did not deny back wages on the ground that the 1993 appointment had already been found void. On the contrary, it proceeded on the footing that, but for the computer-certificate issue, the Petitioner would have continued as an Assistant Teacher. The later disciplinary proceedings may have their own legal consequences, if and when examined in appropriate proceedings, but they cannot be used retrospectively to furnish a new foundation for the decision taken in August, 2017.

34. *Ram Bahadur Pandey v. State of Uttarakhand*⁸ does not carry the School's case further. There, although the teachers' appointments were found to be "not in accordance with the Rules", the Supreme Court nevertheless set aside their termination for breach of the prescribed statutory procedure and directed reinstatement. It denied back wages for the period following termination, but expressly preserved their right to recover any salary remaining unpaid for the period prior to termination and also left the Management free to take disciplinary action in accordance with law. The case thus turned upon an irregularity in the appointments which was already before the Court. Here, when the impugned order was made, there was no corresponding finding that the Petitioner's appointment as an Assistant Teacher in 1993 was invalid; the Division Bench had merely left that question open for examination in accordance with law.

35. The order dated 5th August, 2017 therefore cannot stand. It was open to the School to investigate the Petitioner's eligibility in the manner permitted by the Division Bench. It was not open to it, while dealing with his Rule 121 representation, to assume the result of that future exercise and



make that assumption the basis for denying every monetary consequence of a termination which had already been set aside.

What then should follow?

36. Setting aside the impugned order does not mean that the Petitioner must receive the entire back wages. The judgment dated 15th February, 2017 did not pronounce him free of every controversy concerning his qualifications. So far as the computer post was concerned, the judgment proceeded on the assumption that he did not possess the requisite qualification. More importantly, the Division Bench expressly left open his eligibility even as an Assistant Teacher. This is therefore not a case in which the Court can comfortably say that there was the kind of complete exoneration which makes full salary mandatory under Rule 121(2).

37. But neither can the pendulum swing to the other extreme. The Petitioner's absence was not the result of a voluntary decision not to work. He remained out of service under an order of termination which ultimately could not survive. When reinstatement was ordered, he reported for duty. The contemporaneous communication records that he was turned away. He joined only after contempt proceedings had commenced. The School then treated him as a fresh appointee until this Court intervened again. Ultimately, the School itself issued an order giving effect to his reinstatement from 16th October, 2002. These are not circumstances in which the expression "no work no pay" can, by itself, carry the weight which the impugned order places upon it.

38. There is also no factual difficulty concerning alternate employment. The Petitioner has placed on record a sworn affidavit dated 25th August,

⁸ (2015) 2 SCC 142



2017 stating that he was “entirely unemployed” from 16th October, 2002 to 10th August, 2017 and that he “did not work in any other organisation anywhere in India”. No material has been placed by the School to show otherwise. More tellingly, gainful employment was not the reason on which the Managing Committee rejected his claim in 2017.

39. The governing principles are by now well settled. In ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya***⁹, the Supreme Court explained that reinstatement is restorative in character. At the same time, the award of back wages is not governed by any inflexible formula, and the discretion in that regard must be exercised judicially, having regard to the relevant circumstances, including the nature of the misconduct, if any, found proved, the length of service and other attendant factors. The question of gainful employment during the intervening period is also a relevant consideration. That approach is consistent with the construction of Rule 121 in ***Sunil Sikri***, already noticed above. More recently, in ***Maharashtra State Road Transport Corporation v. Mahadeo Krishna Naik***¹⁰, the Supreme Court reiterated that an award of back wages is not automatic and may be full or partial depending upon the facts.¹¹ The Court further held that where an employee asserts that he was not gainfully employed during the period in question, he cannot possibly be expected to prove a negative; if the employer asserts otherwise, it must place material in support of that assertion.

40. The Petitioner remained out of service for nearly fifteen years under a

⁹ (2013) 10 SCC 324

¹⁰ (2025) 4 SCC 321

¹¹ See also: *Rajasthan SRTC v. Phool Chand* (2018) 18 SCC 299



termination which was ultimately set aside. He reported for duty when reinstatement was ordered, remained unemployed, and no material of gainful employment has been produced. The School itself later gave effect to his reinstatement from 16th October, 2002. At the same time, the proceedings which restored him to service did not close every question concerning his eligibility, and the Division Bench expressly left that issue open. Full back wages would therefore go beyond the record; denial of all back wages would equally proceed upon wrongdoing which had not then been established. In these circumstances, 50% back wages fairly reflects both.

41. The Court finds no good reasons to remit the matter to the Managing Committee for a fresh decision under Rule 121. The Managing Committee exercised that jurisdiction in 2017; its decision has remained under challenge since 2019; and the material necessary to decide the surviving issue is now before the Court. No further factual inquiry has been shown to be necessary.

Result

42. The writ petition is accordingly allowed in the following terms:

- (i) The order dated 5th August, 2017, passed by the Managing Committee of New Saraswati Public Secondary School on the Petitioner's representation under Rule 121 of the Delhi School Education Rules, 1973, is set aside.
- (ii) The Petitioner shall be paid 50% of the back wages and admissible allowances for the period from 16th October, 2002 to 14th February, 2017, calculated with reference to the pay admissible to him as an Assistant Teacher.
- (iii) For the limited purpose of this computation, his pay shall be



notionally progressed by giving effect to the increments and applicable revisions of pay which would have fallen due during the aforesaid period. The monetary entitlement for this period shall, however, remain restricted to 50% in terms of this judgment.

(iv) The direction above is consistent with, and does not disturb, the School's own order dated 19th April, 2018, by which the Petitioner's reinstatement was given effect from 16th October, 2002. Amounts, if any, already paid for an overlapping period shall naturally be adjusted.

(v) The computation shall be furnished to the Petitioner and the amount paid within eight weeks from today. If payment is not made within that period, the amount remaining unpaid shall carry simple interest at 6% per annum from the expiry of eight weeks until payment.

43. Counsel for the Petitioner also referred to salary for September, 2002 and the period up to 15th October, 2002. That claim is conceptually different. Salary for a period actually worked before termination is not "back wages" under Rule 121. The record does show earlier correspondence of the Education Department concerning outstanding salary up to 15th October, 2002. Since the present adjudication is confined to the Rule 121 order, no final determination of that distinct claim is made. It will be open to the Petitioner to pursue it, if it remains unpaid, in accordance with law.

44. Nothing in this judgment examines the legality of the disciplinary proceedings culminating in the Petitioner's subsequent removal from service. In view of the order dated 15th January, 2025, that question lies outside the present proceedings and all rights and contentions of the parties in that regard are expressly left open.



45. The pending application also stands disposed of. There shall be no order as to costs.

SANJEEV NARULA, J

AUGUST 21, 2026

hc/nk