

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

% **Decided on: 30.11.2017**

+ **LPA 620/2017 & CM NO. 34163/2017 (condonation of delay of 193 days in filing of appeal)**

ANIRUDH KUMAR PANDEY Appellant

Through: Mr. Anuj Aggarwal, Advocate along with Mr. Tenzing Thinlay Lepcha, Advocate.

versus

MANAGEMENT OF MODERN PUBLIC SCHOOL & ORS.

..... Respondents

Through: Mr. Neeraj Malhotra, Sr. Advocate along with Mr. B.C. Pandey, Mr. S.P. Kamrah, Mr. Rupal Lutara and Mr. Abhinandan, Advocates for respondent No. 1 and respondent No. 2.

Mr. Satyakam, ASC for GNCTD along with Mr. Akshay Agarwal, Advocate for Directorate of Education/R-3.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

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1. Vide this appeal, the appellant has impugned the order dated 27.01.2017 by which the learned Single Judge of this Court in W.P.(C) No.

6873/2008 set aside the judgment of the Delhi School Tribunal dated 26.08.2008, holding that the appellant's resignation dated 12.09.2000 became final on being accepted by the Managing Committee on 12.09.2000 itself and the appellant could not have withdrawn his resignation by his subsequent letters since the letters of withdrawal were written after the acceptance of the resignation by the respondent no.1/School.

2. Undisputed facts show that the appellant was in the employment of School since 04.10.1994 as TGT (Music). While on duty on 11.09.2000, he was handed over a memo dated 09.09.2000 with regard to the charges for outraging the modesty of girl students and misbehaving with lady teachers. He was directed to submit his explanation within 24 hours. Instead of submitting the explanation within 24 hours, the appellant submitted his resignation dated 12.09.2000, resigning from his service with immediate effect. The said resignation was accepted by the Managing Committee of the respondent No.1/School on the same date and it was sent for the approval of the Director of Education (hereinafter referred to as "DoE") on 15.09.2000 who accorded the approval on 15.11.2000. The services of the appellant were dispensed with by the School w.e.f. 12.09.2000.

3. The appellant had challenged the said termination of the service by way of the Appeal No. 25/2000 before the Delhi School Tribunal. The Tribunal, thereafter, on the basis of the pleadings before it, considered the issue relating to the date of acceptance of the resignation i.e. whether it was accepted on 12.09.2000 or 15.11.2000 and the issue whether the appellant was forced to resign on 12.09.2000 or he had submitted his resignation on 12.09.2000 voluntarily. The Tribunal, after considering the arguments addressed and the documents placed before it, reached to the conclusion that before the resignation could have been approved by the DoE in terms of Rule 114A of Delhi School Education Rules, 1973, the appellant had withdrawn his resignation and therefore, the respondent no. 1/School was directed to reinstate the appellant w.e.f. 12.09.2000. No findings on the issue whether the appellant was forced to submit his resignation or not was given by the Tribunal.

4. The respondent No. 1/School challenged the findings of the Tribunal in W.P(C) No. 6873/2008. The Single Judge passed the following order 27.01.2017:-

“ 7. In view of the above, this writ petition is allowed. Impugned judgment of the Delhi School Tribunal dated 26.8.2008 is set aside by holding that in view of the specific language of Rule 114A the respondent no. 3’s

resignation dated 12.9.2000 became final on being accepted by the Managing Committee on 12.9.2000 itself, and the respondent no. 3 thereafter could not have withdrawn his resignation by his letters dated 17.9.2000 (which was in fact a blank document sent under envelope to the petitioner no. 1/school on 12.9.2000. Also, I do not find that there could have been any reason for denial of the approval of resignation by the Director of Education because in fact after duly considering the stand of the respondent no. 3 of alleged forcible resignation, the Director of Education has given approval for acceptance of the resignation on account of there existing serious issues of respondent no. 3 outraging the modesty of minor girls studying in the petitioner no. 1/ school and which approval of Director of Education will relate back to 12.9.2000 when the resignation was accepted by the Managing Committee of the petition no.1/school.

8. Writ petition is therefore allowed as stated above, leaving the parties to bear their own costs.”

5. The first and foremost argument of Mr. Anuj Aggarwal, learned counsel of the appellant is that the resignation was not voluntary but it was extracted under coercion and duress. The appellant had also filed a police complaint on 09.09.2000. It is further argued that the fact that the School gave only 24 hours to reply the show cause notice dated 09.09.2000 served upon him on 11.09.2000, itself shows that undue pressure was put upon him. The appellant intended to give a reply dated 12.09.2000 to the show cause notice but the School Management refused to accept it. It is argued that the acceptance of the resignation by the Managing Committee within three

hours of its submission shows the element of force and coercion which was played upon him for extracting the resignation. The appellant immediately filed a police complaint on 12.09.2000 itself and withdrew his resignation vide his letters dated 17.09.2000, 19.09.2000 and 28.09.2000.

6. Mr. Aggarwal further argued that the resignation was withdrawn by the appellant before the approval given by the DoE. The resignation therefore was validly withdrawn in terms of Rule 114A. It is further argued that in terms of Rule 114A of Delhi School Education Rules, 1973, the resignation can be said to have been validly accepted only after the approval is accorded by the DoE. The acceptance of the letter of resignation by the Managing Committee alone without the approval of the Director, is not a valid acceptance. It is argued that before the approval was granted by DoE i.e. on 15.11.2000, the appellant had withdrawn his resignation letter vide its letters dated 17.09.2000, 19.09.2000 and 28.09.2000 and hence the termination of his services by the School is illegal and the learned Single Judge has erred in holding otherwise. It is further argued that the resignation is a matter of intention i.e. a complete intention to relinquish and that the sequence of events in this case clearly shows that the appellant had no such intentions. It is submitted that the impugned order is contrary to the law laid down by

another Single Judge Bench of this Court in *Mala Tandon Thukral vs. Director of Education* in W.P.(C) No. 7356/2008; decided on 28.01.2010. Mr. Aggarwal further argued that the Managing Committee comprises of only one person i.e. Manager of the School and she is not competent to accept the resignation in terms of the law declared by this Court in the case of *Urmil Sharma vs. Director of Education, 1996 III AD (Delhi) 48.*

7. Relying on the findings of this Court in the case of *Govt. of NCT of Delhi & Ors. vs. Naresh Kumar Kataria, 199 (2013) DLT 613*, it is argued that the Management of the School has acted with bias and pre-determined mind to terminate his services. It is further submitted that the allegations in the show-cause notice dated 09.09.2000 were never proved against the appellant nor any enquiry was held. It is further argued that he was never communicated the acceptance of his resignation. He further argued that the process of the resignation is complete only when the acceptance of resignation is duly communicated to the employees. It is argued by learned counsel for the appellant that in circumstances of this case, the action of the School whereby relieving the appellant from service on account of his resignation letter dated 12.09.2000 is illegal and, therefore, prayed to be reinstated to the service.

8. On the other hand, it is argued by Mr. Neeraj Malhotra, learned counsel on behalf of respondent No. 1/School that the School has received various complaints of sexual harassment from the girls who were attending his music class and of misbehavior from the teachers and after an enquiry, a show cause notice dated 09.09.2000 was given to the appellant on 11.09.2000 and he was asked to submit his reply within 24 hours. He instead of submitting his reply within 24 hours, in order to avoid any enquiry into such serious allegations of molestation of young girls, submitted his resignation on 12.09.2000 which was accepted by the Managing Committee on the same very date i.e. 12.09.2000 and the decision of Managing Committee was sent for approval of DoE vide letter dated 15.09.2000 and the approval was accorded by 15.11.2000.

9. Mr. Malhotra further argued that under Rule 114A of Delhi School Education Rules, 1973, the process of acceptance of the resignation of an employee of a recognized private school is complete as soon as the resignation is accepted by the Managing Committee of the School within 30 days. The Managing Committee is required to accord its acceptance within 30 days. It is further argued that the appellant had submitted his resignation with request to accept it with immediate effect and, therefore, the Managing

Committee had immediately accepted his resignation. It is argued that the Managing Committee is not required to consult the DoE nor it requires its prior approval for acceptance of the resignation. The Managing Committee is competent under Rule 114A of Delhi School Education Rules, 1973 to accept the resignation. It merely needs the approval of its act of acceptance of the resignation letter from DoE and the DoE plays a limited role in that. It is further argued that the proviso to this Rule further supplements the plea of the respondent No. 1 / School that the approval of the Director is not *sine qua non* for the acceptance of the resignation letter. The language used in proviso clearly states the intention of the Legislature that the approval of DoE is not necessary for acceptance of the resignation letter and as soon as the resignation letter is accepted by the Managing Committee and sent for approval of DoE, and if no approval is conveyed by the DoE within 30 days, the Legislature clarifies that such approval shall be deemed to have been accorded. It is argued that the Managing Committee therefore has been given the authority under this Rule to accept the resignation letter and as soon as it has accepted it, the process of acceptance is complete. It is argued that in this case, the letter of resignation was accepted on 12.09.2000 itself and once it was accepted, the appellant could not have subsequently

withdrawn it. It is further argued that the findings in the cases *Mala Tandon Thukral (supra)*, *Urmila Sharma (supra)* and *Govt. of NCT of Delhi (supra)* are given on the facts in those cases, which are different from the facts of the present case and thus findings are distinguishable. It is submitted that the impugned order does not suffer from any infirmity and the appeal is liable to be dismissed.

10. We have given thoughtful consideration to the rival contentions of the parties and have perused the record.

11. The admitted facts are that a show cause notice dated 09.09.2000 was served upon the appellant which reads as under:-

MEMO

*Mr. Anirudh Kumar Pandey,
Music Teacher
AL-113, Shalimar Bagh,
Delhi-110088*

*Sub: Show Cause
Gentleman,*

Complaints have come to our notice that you had been indulging in indecent behaviour and immoral conduct with some of the girl students of this school in your day to day dealing with them within the music room and elsewhere as under:-

1. You will call them near you and immorally touch their body, private parts and pinch them.

2. *You had been immorally trying to hug them in order to violate their chastity.*
3. *You will pass indecent remarks about them.*
4. *You had been making indecent advances towards them causing great harassment, repugnance and mental and physical cruelty to them.*

These are only some of the instances of moral turpitude and there are many more which will be brought to your notice in a detailed charge sheet to follow.

Please show cause why disciplinary action be not taken against you receipt of this memo failing which it shall be presumed that you have not explanation to offer and the necessary action with follow.

You are informed accordingly.

*SD/-
(A.L. KAPUR)
MANAGER”*

This memo was served upon the appellant on 11.09.2000 and he was asked to submit his reply within 24 hours. Admittedly, the appellant had submitted his resignation on 12.09.2000. It is also apparent that the appellant has not submitted any reply to the show cause notice. He, although, contends that he prepared the reply and the respondent No. 1/School refused to receive it, however, there is nothing on record to show that he made any attempt to send his reply by post or otherwise. His contention before the Tribunal was that the School refused to accept his reply. Besides this contention, there is nothing on record to substantiate his

plea, that he submitted his reply to show- cause notice within 24 hours and the School refused to receive it. The resignation letter of the appellant reads as under:-

To
Director/Principal
Modern Public School
Shalimar Bagh Delhi-88
Sub: Resignation from service.
Sir,

I wish to resign from my post of music teacher because at home my mother has not been keeping well for the last one and half year.

Therefore, in order to enable me to serve my mother, **my resignation may be accepted as soon as possible.** I shall be grateful for this.

Dated 12/9/2000
Time 12.10 pm.

Yours
Anirudh Pandey
Music teacher
Modern public school
Shalimar Bagh Delhi-88

Forwarded to the Principal for Necessary action.

Sd. 12.9.2000
Forwarded to the manager for placing it before the managing committee.

Sd/Principal 12/9/2000
Received on behalf of the Managing committee of the school/society

Sd. Alka Kapur
Manager 12/9/2000”

(emphasis supplied)

12. The resignation letter is unconditional and vide this resignation, he has urged the School to accept it “as soon as possible.” The record shows that it was submitted to the Principal of the School and the Principal forwarded it to the Manager for placing it before the Managing Committee and thereafter it was put up before the Managing Committee and was put up for consideration in the emergency meeting scheduled for 12.09.2000 at 3 p.m. Besides other agendas, which related to the complaints of students, parents and teachers regarding indecent and immoral behavior of the Music Teacher, the appellant, the resignation letter of the appellant was also considered by the Managing Committee during the hearing of these other items fixed in the agenda for discussion, the Manager pointed out that the appellant had submitted his resignation and had requested his relieve from the post at the earliest. The decision of the Managing Committee is reproduced hereunder:-

*“**Item-1.** Dealt with the complaints of certain students, parents and teachers regarding indecent and immoral behaviour of Mr. Anirudh Kumar Pandey, Music Teacher of this School.*

The Manager pointed out that Mr. Anirudh Kumar Pandey has already resigned by his letter of resignation dated 12.09.2000 at 12.10 PM and has requested to be relieved immediately. The matter concerns the grave moral turpitude of the teacher of the school. If it is further pursued and subjected to a domestic/legal enquiry, it may expose out tender students,

teachers and parents to ridicule, dirty revelations and avoidable harassment to all concerned. The members were, therefore, of the unanimous opinion that the matter be not pursued any further as it will also affect the reputation of the school and the teacher be allowed to resign and go without pursuing the matter further on this score.

Members, therefore, unanimously decided that the resignation submitted by the teacher be immediately accepted subject to the approval of Director of Education, Delhi.

It was accordingly-

“Resolved that resignation letter dated 12.09.2000 submitted by Mr. Anirudh Kumar Pandey, Music Teacher of this school be immediately accepted subject to the approval of the Hon’ble Director of Education, Delhi”.

“Further Resolved that the Manager, Sh. A. L. Kapur, be authorised and he is hereby authorised to take all necessary steps to get the approval of the Hon’ble Director as early as possible”.

(emphasis supplied)

13. The issue before us is as to whether in view of the Rule 114A of Delhi School Education Rules, 1973, the resignation letter of the appellant can be said to have been accepted on 12.09.2000 when it was duly accepted by the Managing Committee or on 15.11.2000 when the approval was accorded by DOE. It is a settled proposition of law that once a letter of resignation is accepted, it cannot be withdrawn and the withdrawal of resignation is permissible only before its acceptance. Rule 114A of Delhi School Education Rules, 1973, deals with the

resignation by an employee of a recognised private school. The relevant provision is produced as under:-

“Rule 114A. Resignation- The resignation submitted by an employee of a recognized private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director.

Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period.”

14. The plain language of this provision clearly stipulates that whenever the resignation is submitted by an employee, it shall be accepted by the Managing Committee of a recognised private school within a period of 30 days from the date of submission of resignation letter. Thirty days is the outer limit given to the Managing Committee to accept such resignation letter. It does not mean that the Managing Committee has to defer its decision for 30 days. The Rule requires that the Managing Committee shall take its decision within 30 days. The language of the resignation letter of the appellant clearly shows that he had desired its acceptance at the earliest. He submitted his resignation to the Principal and the Principal forwarded it to the Managing Committee through Manager which was subsequently put up in the meeting held on 12.09.2000 at 3 p.m and was considered during the discussion of Item No. 1 in the agenda

scheduled for that day. The Minutes of Meeting clearly shows that the Item No. 1 related to the complaints of certain students, parents and teachers regarding indecent and immoral behaviour of Mr. Anirudh Kumar Pandey, Music Teacher of the School. It was during the discussion of this agenda that it was brought to the notice of the Managing Committee that instead of replying to the show cause notice, the appellant had submitted the resignation and he had desired its acceptance at the earliest. It was under these circumstance that the Managing Committee accepted the resignation on 12.09.2000 itself and subsequently sent it for the approval of the DOE. In the case of **Bajaj Hindustan Limited vs. State of U.P. and Ors, (2016) 12 SCC 613**, the Supreme Court has discussed the meaning of expression “approval”, “prior approval”, “previous approval” or “permission”. The Court has held in paragraphs 11 and 12 reproduced as under:-

“ 11. In Black’s Law Dictionary (Fifth Edition), the word “ approval” has been explained thus:

Approval- The act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another.

Hence, approval to an act or decision can also be subsequent to the act or decision.

12. In U.P. Avas Evam Vikas Parishad (supra), this Court made the distinction between permission, prior approval and approval. Para 6 of the judgment is quoted hreinabove:

6. This Court in *Life Insurance Corpn. Of India v. Escorts Ltd.* (1986) 1 SCC 264, considering the distinction between “special permission” and “general permission”, previous approval” or “prior approval” in para 63 held that:

63.....we are conscious that the word ‘prior’ or ‘previous’ may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29 (1) of the Act.

Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act.”

15. It is clear that the language used in Rule 114A of Delhi School Education Rules, 1973, is “with the approval of Director.” The Rule does not require that the resignation has to be accepted by the Managing Committee “with the prior approval” nor does it require that the Managing Committee should accept it “with the permission” of DoE. It simply states that the approval of the Director has to be sought. The approval therefore has to be post acceptance of resignation letter. The act of the Managing Committee holds good till the DoE disapprove their action and if it is not so disapproved and the approval is granted, then the act of the Managing Committee hold good from the date of its decision itself. This interpretation of the Rule is further ratified by the deeming provision contained in the Proviso of the said Rule, which clearly states that if no communication is

received from DoE, the approval shall be deemed to have been accorded. Consequently, it is the decision of the Managing Committee which is final and approval can be accorded *ex post facto*.

16. Mr. Aggarwal, learned counsel for the appellant has argued that acceptance was never communicated to the appellant before he submitted his withdrawal of the resignation letter and, therefore, the acceptance of the resignation letter cannot be termed to have become effective from the date it was accepted but from the date the acceptance was communicated to the appellant. The appellant since had withdrawn his resignation letter before communication of such acceptance, the termination of its services pursuant to the said resignation letter is invalid. The question whether the resignation letter becomes effective from the date of its acceptance or from the date when such acceptance is communicated to the resigning employee had come up before the Supreme Court in the case of **North Zone Cultural Centre and Another vs. Vedpathi Dinesh Kumar** reported at (2003) 5 SCC 455. The Apex Court has held that the resignation of an employee becomes effective on acceptance even if the acceptance is not communicated to him. The relevant paragraph is extracted below:-

“16. Therefore, it is clear that non-communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the withdrawal.”

17. The settled proposition of law is that once the resignation is accepted, the subsequent withdrawal of the resignation is not permissible. In this case, the resignation of the appellant was accepted on 12.09.2000. The withdrawal of resignation letter by him subsequently is not permissible.

18. The argument of learned counsel for the appellant that he was forced, pressurized and coerced to submit his resignation is a question of fact. Although, the appellant had raised this contention before the Tribunal but he had not led any evidence before the Tribunal to substantiate his contention and no finding on this question of fact was given by the Tribunal and also the appellant has not challenged the order of the Tribunal on its failure to give findings on the issue raised by him that he was forced, coerced or pressurized to submit the resignation, before any competent authority.

19. Even otherwise, there is nothing on record to substantiate the contention of the appellant that he was coerced or forced or pressurized to submit his resignation. The facts and the circumstances of this case clearly show that the appellant submitted his resignation on receiving a show cause notice dated 11.09.2000 on the allegations of sexual harassment and molestation of the young girls attending his music classes and also misbehavior with female teachers. He was asked to submit his explanation to this show cause notice within 24 hours i.e.

by 12.09.2000 but he instead of submitting any explanation to the show cause notice tendered his resignation.

20. The appellant has relied on the case of *Mrs. Mala Tandon (supra)*. The findings in this case are distinguishable on the facts of the present case. In the case of *Mrs. Mala Tandon (supra)*, the resignation dated 05.12.2007 was withdrawn by Mala Tandon vide her letter dated 07.12.2007 and since the School had failed to substantiate that the resignation was accepted by the Managing Committee on 06.12.2007 i.e. before its withdrawal vide letter dated 07.12.2007, this Court has given its findings on those facts of the case. The facts therefore are clearly distinguishable. In the present case, the respondents have clearly shown that the Managing Committee had accepted the resignation of the appellant on 12.09.2000 before he had submitted his letter of withdrawal of resignation.

21. The appellant has also relied on the findings of this Court in the case of *Govt. of NCT of Delhi (supra)*. The findings are given on the fact of that case which are different from the facts in this case. That case relates to the termination of the services and does not relate to the termination of services on the resignation letter of an employee. The findings in the *Govt. of NCT of Delhi (supra)* are not applicable on the facts of the present case.

22. The appellant has also relied on the findings of this Court in the case of *Urmil (supra)*. The findings in that case were also given on the facts of that case which are distinguishable. In that case, the resignation letter was accepted by the Manager and not by the Managing Committee and therefore the Court reached to the conclusion that there was the violation of the provision of Rule 114 A of Delhi Education Rules, 1973. In the present case, it was the Managing Committee who had accepted the resignation letter; hence, in this case there is due compliance of Rule 114A of Delhi School Education Rules, 1973.

23. In view of the above discussion, it is apparent that the impugned judgment does not suffer from any illegality or infirmity and needs no interference. The appeal has no merit.

24. Article 39 (f) of the Constitution of India mandates the State to secure “ *that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*”

This mandate given by the Constitution is to protect the children from all kinds of exploitation and abuse. Abuse of any kind is a great threat and is a matter of serious concern. The School is an institution of learning where the child is prepared and groomed for the Society. It is the duty of every School to provide

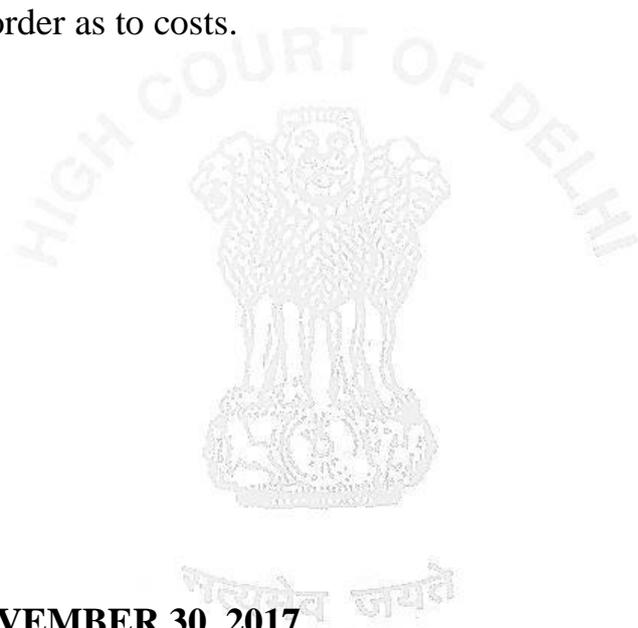
safe and healthy atmosphere for the psychological, cognitive and behavioral development of the children. When it does not happen this way, it not only shatters their faith and trust but also tarnishes the physical, psychological, cognitive and behavioral development of the children. Any kind of abuse upon the children either at School or at any other place leaves such deep impact on them that it becomes difficult for them to come out of it. They carry the feeling of anguish and torment throughout their lives within them and William Faulkner is right when he says that *“The past is never dead. It’s not even past.”* The impact of such heinous crimes upon the children are long-lasting and they enter into teenage and adulthood carrying this hurt deep into them and it is not easy for them to recover from the impact of such crimes. This completely destroys their personality and life. Children spend considerable time of their day at School. It is the responsibility of the School Management to provide safe and secure environment to the children and also to prevent them from any danger or harassment. The Management of the School should ensure that the adults who work in the School do not pose a risk to children. If the children face any harassment or untoward behavior and they report to their school administration, it is their duty to deal with such matters strictly.

25. In the present case, the manner in which the school authorities have handled the number of sexual harassment complaints received from young girls and their parents, really shocks our conscience. Instead of forwarding such complaints to the appropriate authorities for legal action, they felt satisfied by issuing a show-cause notice calling upon the explanation probably preparing to take disciplinary action against the appellant. They must have felt relieved when the appellant submitted his resignation. This attitude of the school authorities encourages the wrongdoers and discourages the Samaritans or the brave girls who takes the courage to make complaints to school authorities. They took no legal actions on the complaints of sexual harassment of young girls received from them rather they brushed them under the carpet. It is also an incumbent duty of all to build a protective net around the children who have suffered any physical or emotional abuse. The lenient approach in such cases would certainly adversely affect the psychology of the children who carries such sexual abuses of their childhood to their teenage and then to their adulthood without having a satisfaction that the person who had abused them had been punished as per the law.

26. Accordingly, we direct the school authorities to forward all the complaints received by them relating to sexual harassment of the young girls to the police so that necessary action can be taken on those complaints. We are aware that much

time has elapsed, but the offence still stare stark at our face and we cannot close our eyes just by disposing this appeal. The school authorities are also directed to extend their full cooperation with the police. The Court shall be informed about the action taken within two weeks from today.

27. The appeal along with pending applications is disposed of in these terms, with no order as to costs.



**DEEPA SHARMA
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

NOVEMBER 30, 2017

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