

ANNEXURE P-2

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DELHI SCHOOL TRIBUNAL
PATRACHAR VIDYALAYA COMPLEX
LUCKNOW ROAD, TIMARPUR, DELHI-110 054

Appeal No. 70/2010

IN THE MATTER OF:

1. MRS. CHANDRA RANI
W/O. SH. C. S. TOMAR
R/O. C-1113, DDA LIG FLAT,
EAST LONI ROAD, DELHI-110093

THROUGH SH. ANUJ AGGARWAL &
MS. DIVYA AGGARWAL, ADVOCATES
2. MRS. ARUNA SHARMA
W/O. SH. RAJESH KUMAR GAUR
R/O. D-15, BALRAM NAGAR, LONI,
GHAZIABAD, (UP).
3. SH. PHIROJ KHAN
S/O. SH. MOHAMMAD ALI,
R/O. C-14/179, GALI NO. 14,
OLD MUSTAFABAD, DELHI-110094
4. SH. ARUN KUMAR SHARMA
S/O. SH. CHANDRA SHEKHAR SHARMA
R/O. A-17, SHANTI NAGAR, (SHIV VIHAR)
DELHI-110094
5. MRS. KUMUD SHARMA
W/O. SH. VINOD VASHISHTH
R/O. A-40/10, GAMRI ROAD,
SUBHASH MOHALLA, NORTH GHONDA,
DELHI-110053

APPELLANTS

VERSUS

1. SARDAR PATEL PUBLIC SR. SEC. SCHOOL
KARAWAL NAGAR, DELHI-110094,
THROUGH ITS MANAGER,
SH. M. L. BHATI,
SARDAR PATEL PUBLIC SR. SEC. SCHOOL
KARAWAL NAGAR, DELHI-110094,

THROUGH: SH. U.C. CHOUDHARY, ADVOCATE



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2. SH. ANOOP SINGH
S/O. LATE SH. MANSA RAM.
CHAIRMAN OF
SARDAR PATEL PUBLIC SR. SEC. SCHOOL
KARAWAL NAGAR, DELHI-110094.
 3. MOHD. ZAHID KHAN
THE PRINCIPAL
SARDAR PATEL PUBLIC SR. SEC. SCHOOL
KARAWAL NAGAR, DELHI-110094.
 4. SH. GULSHAN KUMAR ARORA,
ADVISORY OF
SARDAR PATEL PUBLIC SR. SEC. SCHOOL
KARAWAL NAGAR, DELHI-110094.
 5. MANSA SHIKSHA SANSTHAN
THROUGH ITS CHAIRMAN
C/O. SARDAR PATEL PUBLIC SR. SEC.
SCHOOL
KARAWAL NAGAR, DELHI-110094.
 6. SH. UTTAM UDC CLERK,
BHANJA OF SH. ANOOP SINGH
(CHAIRMAN)
SARDAR PATEL PUBLIC SR. SEC. SCHOOL
KARAWAL NAGAR, DELHI-110094.
 7. DIRECTOR OF EDUCATION
(NORTH-EAST ZONE)
OLD SECRETARIAT, CIVIL LINE
DELHI-110054
THROUGH NEMO

RESPONDENTS

APPEAL UNDER SECTION 8 (3) OF THE DELHI SCHOOL
EDUCATION ACT, 1973.

Dated: 19.05.2015

1. The Appellants were teaching in the Respondent School i.e. Sardar Patel Public Sr. Sec. School, Karawal Nagar, Delhi-110094, (hereinafter referred to as R1). The Appellants were appointed on different



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dates by the founder Chairman of the Respondent School Sh. Mansa Ram. The Appellants were working sincerely and honestly. There was no complaints against the Appellants. The Appellants had worked for one year on probation and thereafter the Appellants were continued in service without any hindrance. The Appellants have already served more than 5 years and even some of the Appellants have served more than 9 years or 10 years.

2. The Appellants were not given their due salaries and holidays/ leaves hence they had demanded an equal status and facilities with the other teachers as applicable in NCT of Delhi. Respondents had always tried to avoid the same. The Appellants had approached the Respondents and conveyed to them to release their full salary amount but despite of humble request by the Appellants Respondents had not paid any heed to their genuine request.
3. The Appellant No. 1 was working with the Respondent School since 2000, the Appellant no. 2 was working since 1999 the Appellants no. 3 was working since 2003. The Appellant no. 4 was working since 2004 and the Appellant no. 5 was working since 2005. The



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Appellants were assured by the Management to work with full dedication and devotion as a punctual and sincere teacher, thereafter their grievance to be treated at par with other teachers will be favourably considered. The Appellants were always of firm belief to have equal status like other working teachers in the Respondent School. But the Appellants had observed that the attitude of Respondents was totally negligent to their legal and genuine demands. The Appellants approached to the Directorate of Education and requested for setting up a Committee who shall look into their grievances. Directorate of Education considered the pending grievances submitted by the 8 teachers of the Respondent School including the 5 Appellants and set up a panel to look into their grievances. The said panel submitted its findings, 3 teachers out of the 8 teachers have given equal status but the grievances of the Appellants remain pending.

4. The Appellants have not received any response from the Management of the Respondent School, therefore, they had filed a Writ Petition in the Hon'ble High Court. Hon'ble High Court had issued the notice to the Respondents in the said Writ Petition. After expiry of summer vacations the Appellants were not allowed to



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enter in the school without passing any dismissal/ removal order against them by the Respondent. This act of the Respondents was totally illegal and mala fide.

5. Some of the Appellants have already served more than 5 years and even some of the Appellants have served more than 9 years or 10 years hence their services cannot be terminated without following the mandatory provisions of Rule 117, 118 and 120 of Delhi School Education Act & Rules-1973. However, the Respondents are in habit to appoint new teachers on less salary with a view to exploit the new teachers resulting more exploitation of existing teachers as their age has already crossed the upper age limit for any other employment. It is prayed that the Respondents be directed to reinstate the Appellants as permanent teachers equally with other permanent teachers alongwith full pay and other consequential benefits.

6. Notice of the appeal issued to all the Respondents. R1 to R6, in their joint reply submitted that the Appellants have not come to this Court with clean hands and have concealed the material facts. The Appellants were appointed only for a fixed period of 10 months as per the School requirement on their written applications.



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They had joined the Respondent School vide their joining report, in the first week of July 2009. They were informed vide communication dated 05.05.2010, 06.05.2010 and 08.05.2010 by the Respondent School that their fixed period of engagement will be expired on the given dates. The Appellants have also concealed about the payments of their salary etc as per prescribed scale for the post held by them, respectively. The Appellants have made false submissions that they had been working continuously as regular employees. In fact they were appointed for a fixed period as per requirement of the Respondents without routing them through the statutorily provided, regular recruitment processes as required under Delhi School Education Act & Rules-1973. There case is based on falsehood. As such this conduct of the Appellants amount to interference with the due administration of justice because their approach is dishonest hence they deserve to be summarily thrown out of the court as per the law laid down by Hon'ble Supreme Court in the case of S P Chengalvaraya Naidu vs. Jagannath & Others, AIR 1994 SC Page 853.



7. Appellant No. 1 applied to the school for employment vide her application dt. 01.06.2009. She was appointed

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as TGT (Skt.) on temporary basis for a fixed period for 10 months vide appointment letter dt. 25/06/2009 in response to which she joined the school vide joining report dt. 06.07.2009.

8. The appellant no. 2 applied to the school for employment vide her application dt. 20.06.2009. She was appointed as Asstt. Teacher on temporary basis for a fixed period for 10 months vide her appointment letter dt. 25.06.2009 in response to which she joined the school vide joining report dt. 07.07.2009.
9. The appellant no. 3 applied to the school for employment vide his application dt. 01.06.2009. He was appointed as TGT (English). On temporary basis for a fixed period for 10 months vide appointment letter dt. 25.06.2009 in response to which he joined the school vide joining report dt. 06.07.2009.
10. The appellant no. 4 applied to the school for employment vide his application dt. 01.06.2009. He was appointed as TGT (Maths) on temporary basis for a fixed period for 10 months vide appointment letter dt.



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25.06.2009 in response to which he joined the school vide joining report dt. 06.07.2009.

11. The appellant no. 5 applied to the school for employment vide her application dt. 01.06.2009. She was appointed as Asstt. Teacher on temporary basis for a fixed period for 10 months vide appointment letter dt. 26.06.2009 in response to which she joined the school vide joining report dt. 10.07.2009.
12. Respondent No.1 to 6 also placed on the record their applications, joining reports and appointment letters. Earlier also, the appellants had worked with the school in question temporarily for fixed period as per the requirement of the school. The payment of salary to the appellants had been paid as per prescribed pay scales of the post concerned.
13. It is also submitted that under the exigencies and necessity, it is always open to a school to make appointment for fixed terms / period keeping in view the financial constraints and other relevant /prevalent circumstances.



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14. It is totally false that appellants were paid salary less than the prescribed minimum wages. It is submitted that the appellants were paid salary as per the prescribed pay scales for the posts concerned.
15. The appellants were served with the communications dt. 05.05.2010, 06.05.2010, 05.05.2010, 05.05.2010 and 08.05.2010 respectively intimating the expiry of the fixed period of their respective engagement. The appellants obviously had no reason to come to the school after the aforesaid communications. The school was closed for summer vacations in the relevant year after 15.05.2010 and as such to allege that they were not allowed to enter in the school after the expiry of summer vacations is totally false and concocted one. It is prayed that there is no merit in the appeal. The same may be dismissed.
16. R7 i.e. Directorate of Education in its reply submitted that the Appellants have no cause of action against R7. Respondent No.1 school is a private, unaided, recognized school. R7 has no interference in its day to day business. The Appellants were appointed by Respondents. As per record available with the respondent no. 7 the appellants were appointed in



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Respondent School and the dates mentioned below against their names:

Name	Date of Appointment
Smt. Chandra Rani, TGT (S.Skt)	01.08.2000
Smt. Aruna Sharma, Asstt. Teacher	02.08.1999
Mr. Phiroz khan, TGT (Eng.)	01.09.2001
Mr. Aruna kumar Sharma, TGT (Maths)	02.09.2004
Smt. Kumud Sharma, Asstt. Teacher	17.08.2005

17. The Appellants have filed rejoinder to the reply of Respondents denying all the preliminary objections and additional pleas taken in the reply and reaffirming the stand taken by them in their appeal.
18. Arguments heard file perused. The Appellant as well as R1 to R6 have filed their detailed written submissions in addition to addressing the oral arguments. As the detailed written submissions of the Appellant as well as R1 to R6 are on the file hence I am not incorporating the same in this order on account of brevity.
19. The sum and substance of the arguments of the Ld. Counsel for the Appellant is that the Appellants were treated as ad hoc employees by the Respondent School. Although they were discharging same duties and were performing the same functions as performed



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by regular/ permanent employees. The Appellants have unblemished record of service except few artificial brakes which were illegally given by the Respondent School. The artificial brakes given by the Respondent School to the Appellants amount to unfair labour practice and is contrary to the established principles of the service jurisprudence and provisions of Delhi School Education Act & Rules-1973. This conduct of the Respondents deserves that the present appeal of the Appellants should be allowed with exemplary cost and litigation expenses. All the Appellants have certainly worked for more than 3 years. Some of the Appellants have worked even about 9 or 10 years on their respective posts, therefore, they are confirmed/ permanent/ regular employees in terms of law laid down by Hon'ble High Court of Delhi in various authorities. The services of the Appellants have been terminated without following the provisions of Delhi School Education Act & Rules-1973 and in violation of Rule 118 to 120 of Delhi School Education Act & Rules-1973 hence the same is liable to be set aside. The ratio of law laid down by Hon'ble Supreme Court in Uma Devi's case is not applicable to the facts and circumstances of the present case because the ratio of law laid down in Uma Devi's case pertains to



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regularization of the service of the daily wage employees/ back door entrants/ illegal appointees in public sector undertakings/ government departments. Whereas the Appellants had worked in the Respondent School which is a private school. The Appellants were neither back door entrants nor illegal appointees. Concept of deemed confirmation is altogether different from regularization in services of daily wage employees. It is prayed that the appeal may be accepted.

20. Ld. Counsel for the Appellant relied upon the following authorities in support of his arguments:

1. Sonia Mehta vs. Dayanand Model School & Ors. Writ Petition (C) No.3061/2011, decided on 06.09.2013;
2. Army Public School and Anr. Vs. Narender Singh Nain and Anr. Writ Petition (C) No.1439/2013 decided on 30.08.2013;
3. Apeejay School & Anr. Vs. Govt. of NCT of Delhi & Anr. Writ Petition (C) No.2354/2010 decided on 17.05.2015;
4. Mamta Chaturvedi vs. The Management of New Greenfield Public School and Anr., Writ Petition (C) No.2748/1999 decided on 26.08.2013;
5. Md. Abdul Kadir and Anr. vs Director General of Police, Assam and Ors., (2009) 6 SCC 611;
6. Secretary, State of Karnataka and Others vs. Uma Devi and Others, 2006 (4) SCC 1;
7. Apeejay School & Anr. Vs. Govt. of NCT of Delhi & Anr., Writ Petition (C) No.2354/2010 decided on 17.05.2012;



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8. Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors., 2013 (11) SCALE 268.

21. The sum and substance of the Ld. Counsel for Respondents is that the Appellants had been appointed as teachers only for a fixed periods of 10 months without being routed through the due process of selection. They had joined on different dates i.e. on 06.07.2009, 07.09.2009 and 07.10.2009 in the Respondent School. The Appellants were served by Respondent School with the communication dated 05.05.2010, 06.05.2010 and 08.05.2010 respectively intimating the expiry of the fixed period of their respective engagements. As the engagements of the Appellants were for fixed periods hence after expiry of the same it had come to an end automatically by efflux of the time as such after their disengagement they did not attend the Respondent School.
22. Earlier also the Appellants have worked with the Respondent School temporarily for fixed period as per requirement of the Respondents which is clear from the experience certificates issued to the Appellants by the Respondent School on their requests. Some of which are counter signed by the Directorate of Education.



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The Appellants have not come to this Tribunal with the clean hands. They are guilty of intentionally making false declaration. They have wrongly presented the factual position. There is no merit in the appeal the same may be dismissed with cost. The Ld. Counsel for the Respondents relied upon the following authorities in support of his arguments :

1. Mohan Lal Jhanghala vs. Managing Committee (through its Chairman) CW no. 7567/2001 decided on 09.12.2003;
2. Hanuman Mandir Middle School vs. Ms. Saroj Anand & Ors, 1999 (48) DRJ 814;
3. Ms. Poonam Malhotra (Tamar) vs. Arya Model School and Anr., Writ Petition (C) No.8899/2004 decided on 09.05.2007;
4. Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors., AIR 2006 SC 1806;
5. S. P. Chengalvaraya Naidu (dead) by LRs vs. Jagannath (dead) by LRs, AIR 1994 SC 853.

23. This Tribunal has carefully considered the arguments raised on behalf of the parties and have gone through the records. The Appellant no. 1 Ms. Chandra Rani as per experience certificate dated 03.03.2007, issued by the Respondent School, had served the Respondent School for the period as follows:

"From 01.08.2000 to 31.03.2001
01.09.2001 to 20.04.2002
02.09.2002 to 30.04.2003
01.08.2003 to 30.04.2004
02.09.2004 to 29.04.2005



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04.07.2005 to 28.04.2006
08.07.2006 to 28.04.2007
And 20.07.2007 to continued"

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24. The Appellant no. 2 Ms. Aruna Sharma as per experience certificate dated 28.03.2009, issued by the Respondent School, had served the Respondent School for the period as follows:

"From 02.08.1999 to 25.03.2000
01.08.2000 to 31.03.2001
01.09.2001 to 30.04.2002
02.09.2002 to 30.04.2003
01.08.2003 to 30.04.2004
02.09.2004 to 29.04.2005
04.07.2005 to 28.04.2006
05.07.2006 to 28.04.2007
02.07.2007 to 28.04.2008
And 01.07.2008 to continued"

25. The Appellant no. 3 Sh. Phiroj Khan as per experience certificates dated 20.05.2002 and 10.09.2003, issued by the Respondent School, had served the Respondent School for the period as follows:

"From 01.09.2001 to 30.04.2004
02.09.2002 to 30.04.2003



26. The Appellant no. 4 Sh. Arun Kumar Sharma as per experience certificate dated 05.01.2009, issued by

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the Respondent School, had served the Respondent School for the period as follows:

"From 02.09.2004 to 29.04.2005
 04.07.2005 to 28.04.2006
 15.07.2006 to 28.04.2007
 And 20.07.2007 to 30.04.2008
 Now. 01.07.2008 to till date"

27. The Appellant no. 5 Ms. Kumud Sharma per experience certificate dated 01.05.2009, issued by the Respondent School, had served the Respondent School for the period as follows:

"From 17.08.2005 to 28.04.2006
 20.07.2006 to 28.04.2007
 01.08.2007 to 30.04.2008
 01.07.2008 to 31.03.2009"

28. Lastly the Appellant No. 1 was appointed for 10 months vide appointment letter dated 25.06.2009 and joined the Respondent School vide joining report dated 06.07.2009, Appellant no. 2 was appointed for 10 months vide appointment letter dated 25.06.2009 and joined the Respondent School vide joining report dated 07.07.2009; Appellant no. 3 was appointed for 10 months vide appointment letter dated 25.06.2009 and joined the Respondent School vide joining report dated



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06.07.2009; Appellant no. 4 was appointed for 10 months vide appointment letter dated 25.06.2009 and joined the Respondent School vide joining report dated 06.07.2009 and the Appellant no. 5 was appointed for 10 months vide appointment letter dated 26.06.2009 and joined the Respondent School vide joining report dated 10.07.2009.

29. According to the reply filed by Respondent No.7 i.e. Directorate of Education dates of appointment of the Appellants are as follows:

Name	Date of Appointment
Smt. Chandra Rani, TGT (S.Skt)	01.08.2000
Smt. Aruna Sharma, Asstt. Teacher	02.08.1999
Mr. Phiroz khan, TGT (Eng.)	01.09.2001
Mr. Aruna kumar Sharma, TGT (Maths)	02.09.2004
Smt. Kumud Sharma, Asstt. Teacher	17.08.2005

30. From the above quoted experience certificates of the Appellants filed by them alongwith this appeal it is clear that the Appellants have not worked continuously but there is a brake in their services. According to the Appellants this brake has been artificially given by the Respondent School in order to harass them and with malafide intention not to regularize their services. According to the Respondents the appointment of the



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Appellants were for a fixed period as per the requirements of the Respondent School.

31. The copies of the last appointment letter of the Appellants are placed on the judicial file. I have gone through the same. The similar appointment letters had been issued to all the Appellants. The appointment letter issued to the Appellant No.1 is as under:

"Ref. SPP.SIS

dated 25.06.2009

To

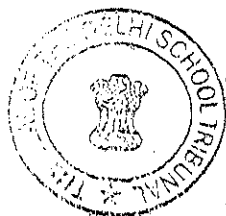
Mrs. Chandra Rani,
LIG Flats East at
Loni Road, Delhi-93

Sub.: Appointment as TGT-SKT in the pay scale of Rs.9300-34800/-

Dear Sir/ Madam

Reference to your application and subsequent interview for the post of TGT - SKT in the aforesaid school, the undersigned feels pleasure to inform that you have been selected as TGT - SKT on the following terms and conditions with affect from the date of joining:

1. That you will be governed by the DSEA and Rules 1973 and as amended from time to time.
2. That your appointment is purely on temporary so basis for a period of 10 months which can be **extended after taking in to consideration the work done by you.**
3. That after the satisfaction of the management committee. You will have to serve on probation period for one year and afterwards your work will be reviewed for the regularization of services ___ probation period can be extended if work is not satisfactory.
4. That your appointment is subject to the production of the ___ medical certificate from M. B. B. S. Doctor at your ___
5. That you will confirm to produce the original testimonials alongwith the true photo copies of each certificate for record.



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(Print of the appointment letters is very-very dim hence few words are not be ligible, therefore, cannot be typed.)

6. *That during the probation period your services can be terminated after giving you 24 hours notice or one months salary. In case your are not interested to continue in the school, you will have to give notice in writing at least one month in advance or one month's salary.*
7. *That no anti-national/ anti government/ anti educational activities will be tolerated and if found guilty your services will be terminated without assigning any reason with immediate effect."*

32. From a careful perusal of the above quoted appointment letter it is clear that the Appellants will be governed by DSEAR-1973. From the term No. '2' of the appointment letter it is clear though the appointments were temporary for the 10 months however the same can be extended after taking into consideration the work done by the Appellants. According to term no. 3 of the appointment letter "after the satisfaction of the Managing Committee the Appellant can be put on probation for one year and afterward work of the Appellant will be reviewed for regularization of the service".

33. From the above discussion it is clear that all the Appellants have worked in the Respondent School at least more than 5 years. However, it is also correct, as argued on behalf of the Respondent School that the services of the Appellants are not in continuity but there



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are gaps in the services of all the Appellants. The Appellant No. 2 was working since 02.08.1999, the Appellant No. 1 was working since 01.08.2000 thus they have put in service of about 10 years or more. No appraisal report of the Appellants produced on behalf of R1 to R6. R1 to R6 even have not pleaded any deficiency in the services of the Appellants during their service tenure. As per term No. '2' of the appointment letter the Appellants were initially appointed on temporary basis for 10 months which can be extended after considering the work done by them. As per term 3 of the appointment letter after the satisfaction of the management, the Appellants can be put on probation. Over and above according to term 1 of the appointment letter services of the Appellants governed by DSEAR-1973.

34. R1 to R6 have not given any explanation as to why the services of the Appellants could not be regularized when there is no deficiency in their services and there is no adverse remarks against them. The Appellants were appointed again and again since long which clearly proves that there is requirement of their services in the Respondent School. The very fact that the Respondent School again and again reappointing the



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Appellants, under the garb of fixed term appointment, proves that they were competent and doing their work diligently in the Respondent School. Had it not been so, why the Respondent School appointed them again and again, since long?

35. According to R1 to R6, they can appoint teachers under the exigency and necessity for fixed term keeping in view the financial constraints and other relevant circumstances. The very fact that the Respondent School is again and again reappointing the Appellants since long, proves that there exists the exigency and necessity for the services and the Appellants and there is no financial constraints, had it not been so, why the Respondent School appointed the Appellants again and again since long.
36. It is also argued on behalf of R1 to R6 that the Appellants were appointed for a fixed period of 10 months without being routed through the due process of selections. It is the fault of the Respondent School and its Management. If the Appellants were not competent, why the Respondent School again and again appointing them since long. Moreover R1 to R6 have not pleaded even a single word against the



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competency of the Appellants. If the Appellants were not competent to be appointed why the Respondent School again and again appointed them. Meaning thereby that Respondent School was appointing incompetent teachers. No school can be permitted to play with the career of the students by appointing incompetent teachers. It is well settled legal proposition that no one can be allowed to take advantage of once own wrong.

37. Provisions of Delhi School Education Act & Rules-1973 are enacted to protect the interest of the employess of the schools. Giving repeated employments by calling the same, only contractual/ fixed term appointment, cannot be treated as contractual/ fixed terms appointments as the same will violate the provisions of Delhi School Education Act & Rules-1973. Gaps created in the services of the Appellants by appointing them again and again since long under the garb of fixed term employment, is sham and artificial action to deprive the Appellants of their regular employment and violative of the statutory mandate.

38. With regard to the artificial brakes given by the employer to the employees, in Para 8 of Hon'ble



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Supreme Court in Md. Abdul Qadir (Supra) has held as follows:

"8. We may next consider the challenge to the procedure of annual termination and reappointment introduced by the circular dated 17.03.1995. The PIF Scheme and PIF Additional Scheme were introduced by Government of India. The scheme does not contemplate or require such periodical termination and re-appointment. Only ex-servicemen are eligible to be selected under the scheme and that too after undergoing regular selection process under the Scheme. They joined the scheme being under the impression that they will be continued as long as the PIF Additional Scheme was continued. The artificial annual breaks and reappointments were introduced by the state agency entrusted with the operation of the Scheme. This Court has always frowned upon artificial breaks in service. When the ad-hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad-hoc appointments under schemes are normally co-terminus with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments. We are therefore of the view that the learned Single Judge was justified in observing that the process of termination and re-appointment every year should be avoided and the appellants should be continued as long as the Scheme continues, but purely on ad hoc and temporary basis, co-terminus with the scheme. The circular dated 17.03.1995 directing artificial breaks by annual terminations followed by fresh appointment, being contrary to the PIF Additional Scheme and contrary to the principles of service jurisprudence, is liable to be quashed."



39. Hon'ble High Court of Delhi in Hamdard Public School vs. Directorate of Education and Anr., Writ Petition (C)

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No.8652/2011 has held that ordinarily probation period qua a teacher ordinarily should not extended beyond three years. In the present case when there is no adverse remarks against the Appellants and even there is no pleading about their inefficiency. Thus their probation in any case cannot be extended beyond three years. So in my considered view after three years of their initial appointments all the Appellants deemed to be confirmed employee. Similar view has been taken by Hon'ble High Court of Delhi in Sonia Mehta's (Supra) case. It is held as follows in this regard in para 7 of Sonia Mehta's (Supra) case:

"The petitioner, even independent of the ratio laid down in the case of Hamdard Public School (Supra) with respect to Rule 105, is entitled to regular services as a teacher in the school, as giving of repeated employments by calling them only contractual, petitioner cannot be treated as a contractual employee, as the same will violate the provisions of Delhi School Education Act and Rules, 1973 and the judgment of the Supreme Court in the case of Management committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors., (2005) 7 SCC 472. All these aspects have been considered by me in detail in the case of Army Public School (Supra) and paras 3 to 8 of which judgment are relevant."

40. Similar view has also been taken by Hon'ble High Court of Delhi in Mamta Chaturvedi's (Supra) case with regard to the ad hoc or contractual employees. The relevant portion of the same is as under:

"Even if the petitioner has been treated as an ad hoc or contractual employee such employment actually can be



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said to be equal to the services of a probationer. I have recently held in the case of Hamdard Public School vs. Directorate of Education and Anr. In Writ Petition (C) No.8652/2011 that the probation period can be upto three years, from three years to five years for the reasons which are justifiable in court, and rarest of rare cases for six years."

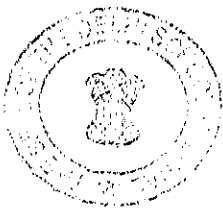
41. Similar view has been taken in Army Public School vs. Narender Singh Nain (Supra) and Satyachakrovarti (Supra).
42. I have also carefully gone through all the authorities relied upon by the Ld. Counsel for R1 to R6, the fact of Mohan Lal (Supra) are entirely different in this case. The Appellant was appointed on 01.05.1995 and his services were terminated on 29.04.1997, meaning thereby he had worked about 2 years. While in the case in hand every Appellants has served the Respondent School, at least, for more than 5 years.
43. In Hanuman Mandir (supra) the Appellant was firstly appointed without following the procedure for appointment. On the basis of which, it is held that he cannot claim his reappointment as of right. In the case in hand, all the Appellants repeatedly appointed at least for 5 times or more and there is no adverse remarks against them.



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44. In Poonam Malhotra (Supra) the Appellant was appointed as Nursery Teacher w.e.f. 15.11.1999 on ad hoc basis which continued upto 31.03.2002 thus the Appellant had served about 2 years and 4 months only, while in the case in hand, all the Appellants have served the Respondent School at least for more than 5 years and there is no adverse remarks against them.
45. Moreover all these authorities are up to the year 2007 i.e. prior to the law laid down by Hon'ble High Court of Delhi in Hamdard Public School (Supra), Management Committee of Montfort Senior Secondary School vs. Vijay Kumar and Others (Supra), Army Public School vs Narender Singh Nain (Supra), Mamta Chaturvedi (Supra) and Satyachakrovarti (Supra) which pertain to the year 2013 to 2015, thus decided recently considering the various previous authorities.
46. I have also gone through the authority of Uma Devi (Supra) which has been forcefully relied upon on behalf of R1 to R6. Facts of this case are entirely different because it pertains to the regularization of the services of daily wage employees/ back door entrants/ illegal appointees in public sector undertakings/ government departments. In the case in hand the Appellants were



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the employees in a private school neither they were daily wage employees nor back door entrants/ illegal appointees in public sector undertakings/ government departments. They have been repeatedly appointed by the same Management/ Respondent School.

47. I have also gone through the authority of S P Chèngalvaraya Naidu (Supra), Ld. Counsel relied upon this authority against the Appellant on the point that they have not come to this Tribunal with the clean hands and have concealed the material fact of the gaps in their services. Basically this authority is on the law of equity, one who seeks equity must do equity. In the case in hand R1 to R6 are themselves involved in illegal practices by giving artificial and sham brakes in the services of the Appellants just to give gaps in services of the Appellants to deprive them of their right of regular employment hence R1 to R6 cannot claim equity and cannot be allowed to take advantage of their own wrongs.

48. In view of above discussion this Tribunal is of the opinion that the gaps given in the services of the Appellants are artificial and sham and are given with the intention to deprive the Appellants from claiming

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regular employment. In view of the various authorities referred above the Appellants were deemed to be confirmed employee after 3 years of their initial employment. The respective termination orders of all the Appellants in this appeal is hereby set aside. R1 to R6 is directed to reinstate all the Appellants in service with all the consequential benefits.

49. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the Appellants are directed to make exhaustive representation to the R1. to R6 within a period of 4 weeks from the date of this order, as to how and in what manner all the Appellants will be entitled to complete wages. The Respondent No.1 to 6 are directed to decide the representation given by the Appellant within 4 weeks of receiving the same by a speaking order and to communicate the order alongwith the copy of the same to the Appellants. Order accordingly. File be consigned to record room.



sd/
 (V.K. MAESHWARI)
 PRESIDING OFFICER
 DELHI SCHOOL TRIBUNAL

PLACE: DELHI
 DATED: 19.05.2015

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