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

Appeal No. 63/2013

IN THE MATTER OF:

1. SMT. AMARJEET KAUR
R/O A-12, JAI SHIV APARTMENTS
WEST ENCLAVE, PITAMPURA,
NEW DELHI - 110034

THROUGH : ASHOK AGGARWAL & ANUJ AGGARWAL
ADVOCATE

APPELLANT

VERSUS

1. G.D. GOENKA PUBLIC SCHOOL
VASANT KUNJ,
NEW DELHI - 110070

THROUGH : MS. KADAMBARI SINGH PURI AND
MS. ABHA SINHA, ADVOCATES

2. THE DIRECTOR OF EDUCATION
GOVERNMENT OF N.C.T. DELHI
OLD SECRETARIAT, CIVIL LINES,
DELHI - 110054

THROUGH : MOHIT SOOD, ADVOCATE

3. THE G.R.GOENKA EDUCATION SOCIETY
THROUGH ITS CHAIRMAN
SECTOR-B, VASANT KUNJ
NEW DELHI - 110070

RESPONDENT

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

Dated: 27.01.2015



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1. It is submitted by the appellant in the appeal that she was initially appointed by R-1 as Physical Education Teacher/Basket Ball Coach on 10.08.2006 on probation for one year. She was confirmed as a Physical Education Teacher w.e.f. 10.08.2007 vide letter dated 27.08.2007 on successful completion of probation period. Since then appellant had been continuously working as PET and discharging her duties sincerely and dedicatedly. She was given a merit certificate on 26.04.2013 qua her work in the Respondent School.
2. Appellant had proceeded on maternity leave w.e.f. 25.10.2012. While on maternity leave appellant received a letter dated 09.04.2013 whereby Respondent No.1 had informed her that Management had decided to discontinue her services in the Institution in accordance with the terms and conditions of her appointment. She was served three months notice for termination of her services w.e.f. the date of the said letter i.e. 09.04.2013.
3. It is submitted that impugned letter dated 09.04.2013 is illegal, arbitrary and in contravention to the provisions of Delhi School Education Act & Rules, 1973, thus bad in law.



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4. Appellant was a confirmed employee. She was having statutory protection. Her service can not be terminated without following the Rule 118 & 120 and other Provisions of Delhi School Education Act & Rules, 1973 and without holding a proper inquiry. Termination of appellant was vindictive and was linked with the maternity leave having been availed by her from 25.10.2012 to 22.04.2013. Appellant made a representation on 27.05.2013 to the Directorate of Education against her illegal termination. It is prayed that termination letter dated 09.04.2013 may be set aside being illegal and arbitrary and Respondent No.1 and 3 are directed to re-instate the appellant with full back wages and all the consequential benefits.
5. Notice of this appeal issued to all the respondents. Respondent No.1 & 3 filed their joint reply, it is submitted in the reply that present appeal filed by the appellant is barred by limitation. Appellant has been terminated in terms of her service contract dated 08.07.2006 which was duly accepted by her. The service contract could have been terminated by either side by giving 90 days prior notice. Having accepted the terms of the appointment, the appellant is estopped

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from raising any objection to the termination order which in conformity with the contractual terms of the appellant. All other grounds taken in the appeal are specifically denied on behalf of the respondents.

6. Appellant filed rejoinder to the reply of R-1 & R-3 denying all the preliminary objections and additional pleas taken in the reply and reaffirming the ground taken in the appeal.
7. Arguments heard. File perused. Ld. Counsel for the Appellant and R-1 and R-3 addressed their oral arguments. Ld. Counsel for appellant also filed his detailed written submissions which are on the file.
8. The sum and substance of the arguments of Ld. Counsel for appellant is that appellant was a confirmed employee. Thus, she was having statutory protection. Her service can not be terminated without following the provisions of Delhi School Education Act & Rules, 1973 particularly Rule 118 & 120. In this case, neither any show-cause notice was issued to the Appellant nor any inquiry was conducted. Service of the Appellant straightway discontinued vide impugned order/letter dated 09.04.2013 w.e.f. 09.07.2013.



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9. Ld. Counsel for Appellant placed reliance on the authorities in support of his arguments :

1. Anita Aidinyantz (Ms.) Vs. Dr. Ken. R.Gnanakan, Chairman Evangelical Trust Association of South India and Ors. {Manu / Appellant / 0317/1996; (1998) III LLJ 1060 Appellant}
2. The Manager, Government Branch Press and Anr. Vs. D.B. Belliappa {(1979) 1 SCC 477}
3. J.K. Synthetics Ltd. Vs. K.P.Agarwal and Anr. {(2007) 2 SCC 433}

10. The sum and substance of arguments of Ld. Counsel for Respondent No.1 and 3, is that the appeal is barred by limitation, hence, liable to be dismissed on this very ground alone. Appellant is bound by the contract of service. In terms of contract of service, her service can be terminated after serving three months notice or after paying three months pay in lieu of notice. Past record of the appellant was not good. Therefore, in the larger interest of the students, service of the appellant was terminated. In support of her arguments Ld. Counsel for Respondent No.1 & 3 placed reliance T.M.A. Pai Foundation & Ors. Vs. State Of Karnataka & Ors in writ petition (C) 317/93 decided on 31.10.2002.

11. This Tribunal has carefully considered all the arguments raised on behalf of both the parties and have gone through the record.



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12. Hon'ble Supreme Court of India in N. Balakrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222, with regard to the condonation of delay has held that unless there is deliberate, malafide or gross negligence, reasonable delay should be condoned. It is held as follows by the Hon'ble Supreme Court in this regard:

"13. *It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of applicant the Court shall compensate the opposite party for his loss.*"

In the above authority it is further held as follows in this regard:

- "10. *The reason for such a different stance is thus : The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situation is not because on the expiry of such time a bad cause would transform into a good cause.*
11. *Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered.*



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Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that ever legal remedy must be kept alive for a legislatively fixed period of time."

13. In the present case no malafide or illegal motive or deliberate negligence in filing this appeal can be attributed to the appellant.
14. Present appeal has been filed in this Tribunal on 30.09.2013, while the service of the Appellant was terminated w.e.f. 09.07.2013. Appellant has challenged her termination in this appeal w.e.f. 09.07.2013. Thus, the appeal is within time from the date of termination of her service.
15. The appellant was appointed vide letter dated 08.07.2006, the same is as under :

"8th July, 2006

Mrs. Amarjeet Kaur
A-12, Jai Shiv Apt.
West Enclave Pitampura
New Delhi - 110085

Dear Madam,

With reference to your application and subsequent interview, I have pleasure in offering you an appointment on following terms and conditions.

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1. Nature of Job : Basket Ball Coach
2. Basic Pay: Rs.5675/- (Rupees five thousand six hundred seventy five only) p.m. in the scale of Rs.5500-175-9000, plus allowances as admissible.
3. Your appointment will be subject to and governed by Service and Conduct Rules of Delhi School Education Act & Rules, 1973 as well as that of the G.R. Goenka Education Society (Regd.) presently in force and /or as amended from time to time.
4. Your appointment is on probation for one year and the date of joining. During the period of probation /extended period of probation, service can be terminated by either side, without assigning any reason. By giving 30 days' notice or paying 30 days' salary in lieu thereof to the other party. However, upon confirmation, services can be terminated by either side by giving 90 (ninety) days' prior notice or 90 (ninety) day's salary in lieu thereof.
5. You will not accept any assignment elsewhere, whole-time or part-time, without the prior written permission of the Management.
6. You will be required to submit a relieving certificate from your present employer, if any.
7. You will be produce a certificate of medical fitness from a Medical Officer acceptable to the Management.
8. Whenever required, it will be expected of you to come early and / or stay back after School hours or on a holiday, for performing School duties.
9. If the above terms and conditions are acceptable to you, kindly return the duplicate copy of this letter duly signed by you in token of acceptance and report for duty by 01.08.2006.

Yours faithfully,

Sd/-

(A.P.Mathur)
Manager"

16. The appellant was confirmed vide letter dated 27.08.2007, the same is as under :

Date: 27th August, 2007

To: Mrs. Amarjeet Kaur
PET

Dear Mrs. Kaur,

On successful completion of your period of probation, we have pleasure in confirming you in your appointment as a Physical Education Teacher in this School w.e.f. 10.8.2007.

Kindly return a copy of this letter duly signed in acknowledgement.

Yours sincerely,
Sd/-
(D.M.Sharma)
Principal

Cc: APM
Accts.
P/File



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17. Service of the appellant was discontinued vide letter dated 09.04.2013 w.e.f. 09.07.2013. The letter dated 09.04.2013 is as under :

"9th April, 2013

To: Mrs. Amarjeet Kaur
P.E.T.

Dear Mrs. Kaur,

We regret to inform you that the Management has decided to discontinue with your services in this institution. In accordance with the terms & conditions of your letter of appointment, you are hereby served with 3 months notice for termination of your services with effect from the date of this letter.

We take this opportunity to thank you for being with us and wish you good luck in all your future endeavours.

Yours faithfully,
Sd/-
(A.P.Mathur)
Manager

Cc: Principal
Vice Principal
Accounts"

18. From the bare perusal of letter dated 09.04.2013, it is clear that appellant who was a confirmed employee, terminated by serving three months notice only without holding any inquiry and without complying with the Provisions of Rule 118 & 120 of Delhi School Education Act & Rules, 1973 for imposing a major penalty of termination.

19. Ld. Counsel for Respondent relying upon, TMA Pai authority, argued that relationship between the Management and the Employees of a private unaided



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Educational Institute, is of contractual in nature. Hence, in terms of conditions, in the appointment letter, service of appellant was discontinued, in the larger interest of the students as her previous record was not good.

20. This Tribunal has carefully gone through the TMA Pai authority. Hon'ble Supreme Court in this authority has not laid down the ratio of law that the relationship in the private unaided educational institute between the Management and Employees is of contractual in nature.

21. Hon'ble Supreme Court in Management committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors., (2005) 7 SCC 472 SC after considering various authorities including Frank Anthony's case, St. Xavier's case has held that the services of the employees of all schools including minority, unaided, schools are no longer contractual in nature but are statutory and the removal of an employee of all such schools including minority, unaided schools can only be in terms of statutory regime provided under Delhi School Education Act & Rules-1973. In this regard it



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is held as follows by the Hon'ble Supreme Court in para 10 of Management committee of Montfort Senior Secondary School (Supra):

"In St. Xaviers' case (supra) the following observation was made, which was noted in Frank Anthony's case (supra):

"A regulation which is designed to prevent mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajibhai Subhai (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it."

The effect of the decision in Frank Anthony's case (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and,



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therefore, "the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in Frank Anthony's case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities unaided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV". The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights. In Premier Automobiles Ltd. V. Kamlekar Shantaram Wadke of Bombay and Ors. (1976 (1) SCC496), it has been observed that if a statute confers a right and in the same breath provides for a remedy for enforcement of such right, the remedy provided by the statute is an exclusive one. If an employee seeks to enforce rights and obligations created under Chapter IV, a remedy is available to him to get an adjudication in the manner provided in chapter IV by the prescribed forum i.e. the Tribunal. That being so, the Tribunal cannot and in fact has no power and jurisdiction to hear the appeal on merits and only way is to ask the parties to go for arbitration.

A reading of the aforesaid para leaves no manner of doubt that the services of employees of all schools including minority unaided schools are no longer contractual in nature but are statutory and the removal of an employee of all such schools including of a minority unaided school can only be in terms of the statutory regime provided under the Delhi School Education Act and Rules, 1973."

22. Similar view has been taken by a Division Bench of Hon'ble High Court of Delhi in LPA 774/2010 titled as

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CBSE Versus Mount Carmel School Society & Ors.
decided on 15.01.2016

23. Hon'ble High Court of Delhi in Daya Nand Adarsh Vidyalaya Vs. Deepa Chibber & Anr. In W.P.(c) No.1009/2012 dated 19.09.2013 has held that the teachers and employees of school having Statutory protection can not be removed except following the procedure laid down under Act and Rules, Rule 118-120 of Delhi School Education Act & Rules, 1973 which requires conducting of a departmental inquiry after serving article of charges by Disciplinary Authority, thereafter passing an order on the basis of report of Inquiry Officer.
24. In view of the above discussion this Tribunal is of the opinion that termination of the appellant vide letter dated 09.04.2013 w.e.f 09.07.2013, without complying with the Rule 118 & 120 of Delhi School Education Act & Rules, 1973, is illegal. Therefore, this appeal is accepted and the termination of appellant w.e.f. 09.07.2013 is hereby set aside.
25. Respondent-1 and 3 are directed to re-instate the appellant with immediate effect. Appellant will be



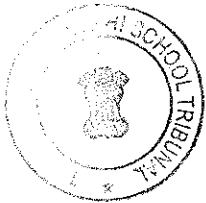
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entitled for full wages from the date of this order
alongwith all the consequential benefits

26. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the Appellant is directed to make exhaustive representation to the R2 School within a period of 4 weeks from the date of this order, as to how and in what manner the Appellant will be entitled to complete wages. The Respondent No.2 School is 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 Appellant. Order accordingly. File be consigned to record room.



sdt
(V K MAHESHWARI)
PRESIDING OFFICER.
DELHI SCHOOL TRIBUNAL

PLACE: DELHI
DATED: 27.01.2016

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