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

Appeal No.71/2016

IN THE MATTER OF:

1. MRS. ABHA GUPTA
W/O SH. RAHUL GUPTA
R/O C-13/6, SECTOR-3.
ROHINI,
DELHI – 110085
THROUGH : SH. ANUJ AGGARWAL, ADVOCATE

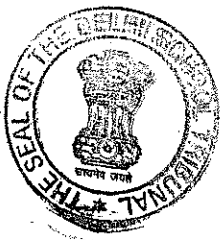
VERSUS

1. COMMERCIAL SENIOR SECONDARY
SCHOOL
THROUGH ITS PRINCIPAL
24, DARYA GANJ
NEW DELHI – 110002.
THROUGH : NAMO
2. DHARAMPAL SATYAPAL CHARITABLE
TRUST
THROUGH ITS MANAGER
24, DARYA GANJ
NEW DELHI – 110002.
3. DIRECTOR OF EDUCATION
THE DIRECTORATE OF EDUCATION
OLD SECRETARIAT, DELHI-110054
THROUGH ITS DIRECTOR/ DY. DIRECTOR
THROUGH : SH. RAJ KUMAR MITTAL, ADVOCATE

RESPONDENTS

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

Dated:05.05.2017



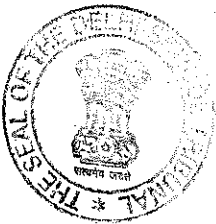
1. Facts of the case as submitted by the Appellant in
appeal are that she had joined the service in the

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Commercial Senior Secondary School, 24 Darya Ganj, (hereinafter referred as Respondent School) w.e.f. 07.07.2008 as PGT (Commerce). Later on Appellant was confirmed as PGT (Commerce) in the school. The school is a recognized, Aided Pvt. School run by Respondent No.2. Appellant had uninterrupted, unblemished, meritorious record of service to her credit. Vide letter dated 08.06.2012 School had appreciated the hard work and sincerity of the Appellant.

2. On 08.11.2011 Appellant proceeded on duly sanctioned maternity leave which expired on 05.05.2012. After summer vacations Appellant resumed her duty, however on 09.07.2012 Appellant proceeded on half day casual leave on account of illness of her child. From 09.07.2012 Appellant could not attend her duty as her newly born child was only four months old and Appellant had to feed the newly born child frequently i.e. after every 40/50 minutes. The feeding activities could not be carried out while attending the school. Appellant had written a letter to the school authorities explaining the aforesaid circumstances. Vide letter dated 18.07.2012 to the school, Appellant requested School to grant her leave which was admissible to her. In these circumstances



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Appellant could not attend her duty upto 11.04.2014 due to reasons which were beyond her control. The said absence of Appellant from the duty was neither intentional nor deliberate, but was, in consonance with the maternity leave rules, as existed, at that point of time.

3. School had served letter dated 19.07.2012 followed by letters dated 31.07.2012, 13.03.2013, 14.03.2013 calling upon the Appellant to join duty in the school.
4. When the situation improved Appellant vide letter dated 12.03.2014, informed the school that she wish to resume her duty in the month of April, 2014. Vide letter dated 11.04.2014 Appellant submitted her joining report to the Principal of the Respondent School, but the Appellant was illegally not allowed to join her duty. Appellant was neither issued any show-cause nor any charge-sheet. No disciplinary action was taken against her. In these circumstances refusal to allow her to join her duty in the school, virtually amounts to the termination of her service.
5. School had handed over a letter dated 07.04.2014 to the Appellant and informed the Appellant that her case had been forwarded to the Directorate of Education,



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Govt. of NCT of Delhi and she will be informed about the decision of the Managing Committee later on.

6. Vide letter dated 03.02.2015 Appellant again requested School to allow her to resume her duty. Vide letter dated 25.02.2015 School informed the Appellant that a reminder had been sent to Directorate of Education to expedite the matter. Vide letter dated 19.06.2015 Appellant again made representation to the School to allow her to join duty. Vide letter dated 04.07.2015 School informed the Appellant that after receiving the reply from Directorate of Education appropriate directions will be issued to her. Thereafter vide letter dated 30.03.2016 Appellant again requested Respondent School to allow her to join duty. Vide letter dated 30.03.2016 school informed the Appellant that the school is waiting the reply from Directorate of Education, hence it is not possible for the school to allow the Appellant to join her duty as PGT (Commerce). Vide letter dated 30.03.2016 Appellant again requested the school to allow her to join duty. Vide letter dated 02.04.2016 Appellant again requested the Respondent No.3 to allow her to join duty. Vide letter dated 05.08.2016 Appellant again made a detailed representation to R-1 to allow her to join her



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duty, but neither the Respondent School allowed her to join the duty nor paid her any subsistence allowance.

7. The impugned action of Respondent School, of not allowing the Appellant to join her duty w.e.f. 11.04.2014 amounts to otherwise termination of her service illegally. It is prayed to declare the refusal of school to allow the Appellant to join her duty, which amount to otherwise termination from the service w.e.f. 11.04.2014, illegally, arbitrary and unjustified and to direct the Respondent No.1 and 2 to reinstate the Appellant alongwith full back wages and all the consequential benefits.
8. Notice of the appeal was issued to all the Respondents. Respondent No.1 and 2 in their reply submitted that Appellant has not come to this Tribunal with the clean hands and concealed the material facts hence not entitled for any relief. Present appeal is not maintainable as neither the Appellant was dismissed, nor reduced in rank or removed from the service.
9. Appellant had not joined the school even after many notices issued to her by the school. Appellant was absent from her duty without any intimation to the school since 10th April, 2012. Appellant had not pre-



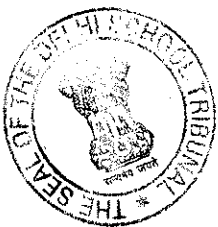
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sanctioned her child care leave which is mandatory as per rules, thus Appellant has no cause of action to file the present appeal.

10. The maternity leave of Appellant expired on 5th June, 2012 but even after the expiry of maternity leave Appellant had not resumed her duty since 9th July, 2012 whereupon the school had served various letters to the Appellant to join her duty but Appellant had not even replied the same. Appellant had applied for child care leave on 18th July, 2012 without prior sanction. Appellant had already been informed that CCL is to be pre-sanctioned but the Appellant did not care. School had informed on 10.04.2013 to the Education Officer, Zone-27 for constitution of a Disciplinary Committee to take action against her as the school can not take any disciplinary action without the sanction of Directorate of Education. Subsequent reminders dated 19.12.2013, 30.07.2014 and 21.08.2014 were sent to the Officer to expedite the matter. All other allegations made in appeal against R-1 & R-2 have been denied. It is prayed that there is no merit in the appeal. The same may be dismissed.

11. Respondent No.3 in its reply submitted that school is a Govt. aided school. The officer of Dy. Director of



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Education, zone-27 had already issued directions to the Respondent No.1 & 2 to allow the Appellant to join her duty vide letter dated 29.08.2016. Appellant has resumed her duty as PGT (Comm.) since 03.09.2016. All other allegations made in the appeal against Respondent No.3 have been denied.

12. Appellant filed rejoinder to the reply of Respondent No.1 & 2 denying all the preliminary objections and additional pleas taken therein and reaffirming the stand taken by the Appellant in her appeal.
13. Arguments heard, file perused. Ld. Counsel for Appellant addressed his detailed oral arguments and also filed written submissions which are on the record. None has addressed arguments on behalf of Respondent No.1 & 2, however Ld. Counsel for R-3 addressed his detailed oral arguments. This Tribunal has considered all the arguments raised on behalf of concerned parties and have gone through the record.
14. The sum and substance of the arguments of Ld. Counsel for Appellant is that Appellant proceeded on maternity leave which was duly sanctioned by the school. From 09.07.2012 onward Appellant could not attend her duty because of the reasons beyond her



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control as her newly born baby was not well and required frequent feeding. On 11.04.2014 Appellant submitted her joining report but she was not allowed to join her duty, thereafter Appellant made several representations to the school as well as to Directorate of Education but without any effect.

15. Appellant was a confirmed employee. She was not given any show cause notice. No charge-sheet was issued to her. No inquiry was conducted against her. But the Management of the School illegally and arbitrarily vide resolution dated 29.08.2013, pertaining to the meeting of the Managing Committee of the School held on 22.08.2013, illegally resolved to terminate the service of Appellant, in violation of Rule 118 and 120 of Delhi School Education Act & Rules, 1973 and against the principle of natural justice. School, mischievously, had not informed the Appellant about her alleged termination vide resolution dated 29.08.2013, misled her and not allowed her to join the duty on the pretext of referring the matter to the Directorate of Education. The act of all the Respondents was illegal and against the provisions of Delhi School Education Act & Rules, 1973. The impugned order of termination of Appellant may be set



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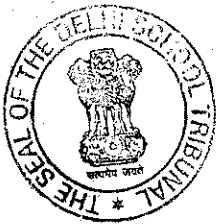
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aside and Respondents be directed to re-instate the Appellant alongwith full back wages and all the consequential benefits.

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

1. DTC vs. Raj Pal, Delhi High Court (DB) LPA No.75 of 2016; Decided on: 05.02.2016 MANU/DE/0971/2016
2. The Management of M/s. K.G.Khosla Compressors Ltd. Vs. Nirmal Chawla and others, Delhi High Court, Civil Writ Petition No.23 of 1976 Decided on: 28.09.2001 95 (2002) DLT491, MANU/DE/1083/2001
3. Managing Committee Daisy Dales Sr. Section School and Anr. Vs. Rajinder Singh Malik and Ors. Delhi High Court W.P. (C) 7267 of 2000 Decided on 10.03.2011, MANU/DE/0819/2011
4. Hindustan Times Ltd. Vs. Arun Kumar and Ors., Delhi High Court, LPA 509/2010 decided on 27.04.2016, MANU/DE/1066/2016 231 (2016) DLT 194
5. The Management of S.E.S. Baba Nebhraj Sr.Secondary School and Anr. Vs. Smt. Raj Kumari Khanchandani and Anr., Delhi High Court, WP (C) No.1605 of 1996, decided on 13.05.2011 MANU/DE/2347/2011 181 (2011) DLT 204,

17. None has appeared on behalf of R-1 & R-2 to address the arguments, however later on written submissions have been filed on their behalf. It is submitted in the written submissions that Appellant and R-3 i.e. Directorate of Education are inclusion. Appellant had voluntarily abandoned her job, hence now she cannot



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claim in relief in this appeal. However, Ld. Counsel for R-3 argued that Appellant had abandoned her job, however the moment matter came in the notice of R-3, Respondent School was directed vide order dated 29.07.2016 to allow the appellant to join her duties. R-1 & R-2 had allowed the Appellant to join her duty in the school w.e.f. 03.09.2016. Therefore, now Appellant has no cause of action to pursue the matter.

18. This Tribunal has carefully considered all the arguments raised on behalf of both the parties and have gone through the records. It is undisputed fact that Appellant was a confirmed employee. No show cause notice was ever issued to her. No charge-sheet was issued to her. No inquiry was conducted against her. No disciplinary action was taken against her. R-1 & R-2 vide resolution dated 29.08.2013, qua the meeting of Managing Committee of the School held on 22nd August, 2013, resolved to terminate the service of the Appellant. Relevant part of the resolution is as under:

“COMMERCIAL SENIOR SECONDARY SCHOOL
(Managed by Dharampal Satyapal Charitable Trust)
24 DARYA GANJ, NEW DELHI-110002”

PROCEEDINGS of the meeting of the Managing Committee of the Commercial Senior Secondary School held on Thursday the 22nd August 2013 at 11:30 a.m. in the premises of Anglo Sanskrit Victoria Jubilee Senior Secondary School, Darya Ganj, New Delhi-110002.



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(b) To consider decision made by Managing Committee

The members of the Managing Committee considered the case of Mrs. Abha Gupta. She has been working as PGT (Commerce) since 7th July 2008. She absented herself from duty from 10th July 2012. During her service period from 7th July 2008 to 9th July 2012 she availed 386.5 days leave (Casual-31.5, EL-1; Sick-39; CCL-104; Leave without Pay-31 & Maternity leave of 2nd child -180) out of total working days of 880. She applied for child care leave (CCL) on 18th July 2012 without prior sanction. She was informed that child care leave is to be got pre-sanctioned but she didn't care. It appears that she is not interested in job. The students are suffering because of her absence. After taking into consideration the report of the Vice-Principal(HOS)of School, the following resolution was adopted:

“RESOLVED, that the Directorate may be approached to terminate her services and allow the School to appoint a new teacher, so, that the studies of the student do not suffer.”

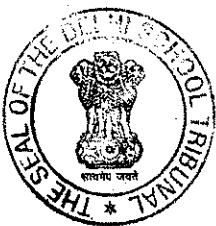
The meeting ended with a vote of thanks to the Chairperson.

Commercial Senior Secondary School
24, Darya Ganj, New Delhi-110002

(I.C. AHUJA)
SECRETARY
Managing Committee (Schools)

Dated: 29th August 2013”

19. Appellant vide her letter dated 12.03.2014 requested the R-1 & R-2 to allow her to join her duty in the school. Respondent School vide letter dated 07.04.2014 informed her that she will be informed about the decision of the Managing Committee of the Meeting after it take place. Shrewdly enough school had not informed the Appellant about the resolution dated 29.08.2013 and about her termination. The letter dated 07.04.2014 is as under :



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"Ref No. : CSSS/D/49/2014
07.04.2014

Dated:

Through Speed post with AD

Dear Mrs. Abha Gupta

With reference to your letter dated 12.03.2014 received on 14.03.2014 requesting resuming duties w.e.f. month of April 2014, I am directed to inform you that your case has been forwarded to the Directorate of Education, GNCT of Delhi.

You will be informed about the decision of Managing Committee meeting after it takes places.

(Pradeep Kumar)
Vice-Principal

Mrs. Abha gupta
PGT (Commerce)
C-13/06, Section-3,
Rohini, Delhi-110085."

20. With reference to letter dated 03.02.2015 of Appellant School had issued her letter dated 25.02.2015 the same is as under :

"School ID: 2127086 CSSS/2015/D/85 Dated:
25.02.2015

Mrs. Abha gupta

With refer to your letter dated 03.02.2015 received on 04.02.2015 regarding joining it is informed that a reminder has been recently sent to Directorate of Education to expedite the matter as your case had been already forwarded to Directorate of Education earlier.

You will be informed about decision of Managing Committee after receiving reply from Directorate of Education.

Pradeep Kumar
(Vice-Principal)"



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21. With reference to letter of Appellant dated 19.06.2015 Respondent School issued her letter dated 04.07.2015, the same is as under :

"Ref No. : CSSS/88/D/2015 Dated:
04.07.2015

Through Speed post with AD

Dear Mrs. Abha Gupta

With reference to your letter dated 19.06.2015 received on 23.06.2015, it is informed that a letter was sent to the Additional Director (Schools) on 09.10.2014 and now a letter is recently sent to the Deputy Director of Education (Distt. Central) on 30.06.2015 to expediate the case. After receiving the reply from Directorate of Education, your case will be referred to the Managing Committee and you will be informed about your case then & thereafter.

(Pradeep Kumar)
Vice-Principal

Mrs. Abha gupta
PGT (Commerce)
C-13/06, Section-3,
Rohini, Delhi-110085."

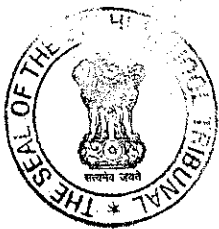
22. In none of the above letters Respondent School had disclosed the Appellant about the decision of her termination vide resolution dated 29.08.2013. With reference to letter dated 30th March, 2016 of the Appellant, School first time informed her that it was not possible to allow her to join her duties in the school.

The relevant letter is as under :

"Ref. No. : CSSS/2016 Dated:
30.03.2016

Dear Mrs. Abha Gupta

With reference to your letter dated 30th March 2016, it is to inform you that the matter for disciplinary action against your act for remaining absent from School for longer period of time, the



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matter has been referred to the Directorate of Education. We are waiting for the reply from the Directorate of Education regarding above matter.

So it is not possible for me to allow you to join the School duties as PGT (Commerce) without permission from the school Management.

*(Pradeep Kumar)
Vice-Principal*

*Mrs. Abha gupta
PGT (Commerce)
C-13/06, Section-3,
Rohini, Delhi-110085."*

23. From the above discussion it is clear that Respondent School had concealed the material fact of the alleged dismissal of the Appellant from the service and tried to mislead her.

24. Ultimately Appellant filed the present appeal. Notice of the appeal was issued to the Respondent for 31.08.2016. On 31.08.2016 Sh. I.C.Aneja, Manager of the School, appeared in this Tribunal and submitted that Appellant was a confirmed employee, she has neither been terminated nor suspended. The matter was referred to Directorate of Education for initiating the disciplinary action. But till date no order has been received from the Directorate of Education. His statement was recorded on oath. The same is as under:

"Statement of Sh. I.C. Ahuja, Manager of Commerical Senior Secondary School on oath alongwith Sh. Gagan Gupta, Counsel without oath:



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The Appellant Ms. Abha Gupta is a confirmed PGT (Commerce) working in the Respondent School however, since 2012 the Appellant abandoned her job by not attending her duty. However, **till date no termination order or suspension order has been passed against her. The matter was referred to the Directorate of Education for initiating disciplinary action but till date no order has been received from the Directorate of Education for initiating disciplinary action against the Appellant.** Respondent School is a government aided school. In these circumstances the Appellant is not allowed to join her duty."

25. The matter was adjourned for 09.01.2016. On 09.01.2016, Ms. Chitra Gupta, Dy. Director of Education, Zone-27 appeared in the court and submitted that **Appellant was a confirmed employee vide letter dated 29.08.2016, Respondent School is directed to allow the Appellant to join her duty in the school. Her statement was also recorded on oath. The same is as under :**

"Statement of Ms. Chitra Gupta, on SA DDE, Zone-27:

Appellant in this case is a confirmed employee of Respondent school vide order dt. 29.08.2016 Respondent school is directed to allow the Appellant to join her duties. I am placing photocopy of letter dated 29.08.2016 on file in this regard.

RO & AC
Chitra Gupta
DDE Zone-27
01.09.2016.

(V K MAHESHWARI)
PO(DST)
01.09.2016"

Respondent School had allowed the Appellant to join her duty w.e.f. 03.09.2016.



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26. Appellant had also written a letter to Dy. Director of Education on 12.01.2016 in this regard, the same is as under :

"From: Abha gupta, C-13/06, Sector-03, Rohini, Delhi-110085

Date:12.01.2016

To,

*The Deputy Director of Education (Distt. Ce
Directorate of Education
Jhandewalan, Delhi.*

Dear sir,

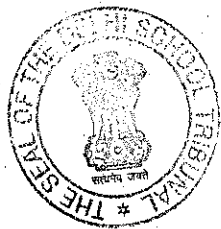
Kindly refer to letter no. CSSS/88/D/2015 dated 04.07.2015 (Photocopy enclosed) of the Principal, commercial Senior Secondary School, 24, Daryaganj, New Delhi confirming:

- 1. That a letter was sent to the Additional Director (Schools) on 09.10.2014.*
 - 2. That a letter is sent to the Deputy Director of Education (Diss. Central) on 30.06.2015. The Principal of the above said school is till awaiting your reply as there is no intimation to be from the Principal of Commercial Senior Secondary School, Daryaganj, New Delhi till date.*
- Sir, under the circumstances I enclose the following:*
- a. My registered letter dated 12.03.2014*
 - b. My application in person dated 11.04.2014*
 - c. my registered letter dated 03.02.2015*
 - d. my registered letter dated 19.06.2015*

alongwith a request to issue suitable directions to the principal, Commercial Senior Secondary School, Daryaganj at the earliest, under intimation to me.

(Abha gupta)

- CC. *1. The Additional Director (School), Directorate ODF Education, C*
- 2. The chairman, Commercial Senior Secondary School.*
- 3. The Manager, Commercial Senior Secondary School.*
- 4. The Principal, Commercial Senior Secondary School."*



But even the Dy. Director has not taken any action.

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27. Rule 123 of Delhi School Education Act & Rules, 1973 deals with the code of conduct of teachers. Rule 123 (a) VII deals with the absence of teachers without leave, the same is as under :

"(Vii) remain absent from the school without leave or without the previous permission of the head of the school:

Provided that where such absence without leave or without the previous permission of the head of the school is due to reasons beyond the control of the teacher, it shall not be deemed to be a breach of the Code of conduct, if, on return to duty, the teacher has applied for and obtained, ex post facto, the necessary sanction for the leave;"

From the proviso as quoted above, it is clear that if the absence of a teacher was due to the reasons beyond his control the same shall not be deemed as breach of code of conduct.

28. In the case in hand, it is clear that Appellant had proceeded on duly sanctioned maternity leave. Thereafter she had joined the school but her newly born baby had developed some complications which required frequent feeding. Therefore, she could not attend her duty in the school. It is apparent that the reasons of her absence were beyond her control. When the situation improved she requested the school to allow her to join her duty in the school but the school



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illegally and arbitrarily refused her to join duty in the school.

29. It is undisputed that Appellant was a confirmed employee. No show cause notice was issued to her. No charge-sheet was issued to her. No inquiry was conducted against her as to why she had not attended her duty. In these circumstances, the decision of the Managing Committee vide resolution dated 29.08.2013 qua the meeting of Managing Committee of the school held on 22nd August, 2013, as quoted above, in this order, with regard to terminate her service and to appoint a new teacher in her place is absolutely illegal and against the provisions of Delhi School Education Act & Rules, 1973.

30. It is more painful that when the school had decided so on 29.08.2013, why it was not conveyed to the Appellant and why she was kept in dark. Appellant had repeatedly requested the Respondent School to allow her to join the duty but school had not disclosed this fact in the various letters written to the Appellant on behalf of school by the Vice-Principal. Vice-Principal of the school vide his letter dated 30.03.2016 had ultimately informed the Appellant that she will not be



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allowed to join the duty as PGT without the permission of the school management.

31. Even Respondent No.3 has not taken any step to resolve the dispute. Respondent School is an aided school receiving 95% grant-in-aid qua the salary of the staff. In these circumstances this Tribunal is of the opinion that Respondent No.1, 2 and 3 had illegally, arbitrarily not allowed the Appellant to join her duty in the school. Thus illegally deprived her of her wages/livelihood.
32. In view of the above discussion the decision taken by the Management of the School in its meeting dated 23.08.2013 to terminate the service of the Appellant without following the provisions of Delhi School Education Act & Rules, 1973 is set aside being illegal, Respondent No.1, 2 & 3 are directed to re-instate the Appellant alongwith all the consequential benefits. Absence of Appellant w.e.f. 09.07.2012 till 12.03.2014 will be treated as the kind of leave due to the Appellant. Appeal is accepted with cost. Cost is assessed as Rs.33,000/- to be paid by R-1 & R-2 to the Appellant. As the Appellant has joined duty w.e.f. 03.09.2016, as per order of Dy. Director of Education dated



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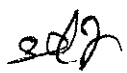
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29.08.2016, hence, the Appellant will be entitled for full wages from 03.09.2016 onwards.

33. From the above discussion it is clear that the Respondents have illegally and arbitrarily not allowed the appellant to join her duty, thus deprived of her livelihood illegally. However, in view of Rule 121 of Delhi School Education Act & Rules, 1973 this Tribunal has no jurisdiction to grant her back wages. 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 R-1 to R-3 School within a period of 4 weeks from the date of this order, as to how and in what manner she will be entitled to complete wages. The Respondent No.1 to 3 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 Appellant. Order accordingly. File be consigned to record room.



PLACE: DELHI
DATED: 05.05.2015


(V K MAHESHWARI)
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL

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