

14

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

**Appeal No. 60/2015**

**IN THE MATTER OF:**

1. SMT. YASHU SAYAL  
W/O SH. AMIT SAYAL  
R/O H-135, ASHOK VIHAR, PHASE-I,  
DELHI-110052

THROUGH : SH. ANUJ AGGARWAL ALONG WITH MS.  
AARUSHI AGGARWAL, ADVOCATE

**APPELLANT**

**VERSUS**

1. KULACHI HANSRAJ MODEL SCHOOL  
THROUGH ITS PRINCIPAL,  
ASHOK VIHAR, PHASE-III,  
DELHI-110052.  
THROUGH : SH. V.K. KHURANA, ADVOCATE
2. DAV COLLEGE MANAGING  
COMMITTEE,  
THROUGH ITS CHAIRPERSON,  
7, CHITRAGUPTA ROAD, PAHARGANJ,  
NEW DELHI-110055
3. HANSVATIKA DAY BOARDING  
SCHOOL,  
THROUGH SH. SHREEDEEP  
OMCHERI, CHAIRPERSON, G-BLOCK,  
PHASE-I, ASHOK VIHAR, DELHI-  
110052
4. DIRECTORATE OF EDUCATION  
GOVT. OF NCT OF DELHI,  
OLD SECRETARIATE BUILDING,  
CIVIL LINES, DELHI-110054  
THROUGH : SH. ANMOL CHABBRA, PROXY COUNSEL

**RESPONDENTS**

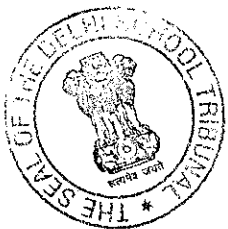
**APPEAL UNDER SECTION 8 (3) OF THE DELHI SCHOOL  
EDUCATION ACT, 1973.**

**Dated: 01.05.2017**

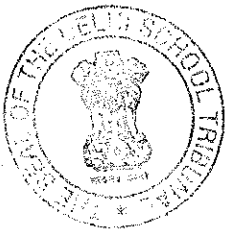
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Delhi School Tribunal  
Delhi

11/5/17



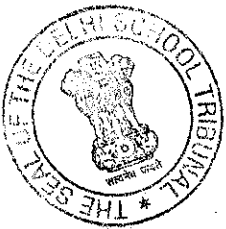
1. Facts of the case in brief, as submitted by the Appellant in the appeal, are that she was appointed as a Nursery Teacher vide appointment letter dated 25.05.21995, on probation for one year, in Kulachi Hansraj Model School (hereinafter referred as R-1 School). Appellant was confirmed on the post of nursery teacher vide confirmation letter dated 14.03.2000 in the R-1 School w.e.f. 04.07.1996. From the date of her initial appointment, she had been continuously working as an employee of Respondent No. 1 School till her service was terminated w.e.f. 02.11.2015. Appellant was never an employee of Hansvatika Day Boarding School (hereinafter referred as R-3 School).
2. Appellant along with other nursery teachers since 2009 had been demanding from R-1 School for implementation of the recommendations of 6<sup>th</sup> Pay Commission in terms of circular by the Directorate of Education. Appellant along with other teachers approached the Hon'ble Court also for seeking redressal on the ground of failure of R-1 School to implement the same.



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Delhi School Tribunal  
Delhi

3. As a well-planned strategy to break the continuity in the service of the employees, in the year 2014, Respondent No. 3 School, despite being under the management of Respondent No. 1 School, directed few nursery teachers to apply for no objection certificate from R-3 School to apply for fresh appointment in R-1 School. The same was objected by all the nursery teachers, however the employees were compelled by the manager of Respondent No. 3 School. The Appellant did the same under protest and without prejudice to her rights vide letter dated 11.08.2014. As a vengeance to punish the Appellant for her justifiable protest against the illegal activity of the R-3 School, R-3 School issued a letter dated 23.01.2015 seeking the explanation of Appellant for not taking leave for attending B.Ed course during the session 2004-05 from Chaudhary Charan Singh University (Meerut). Appellant replied the same on 24.01.2015. On 15.04.2015 Appellant was issued a memorandum whereby allegations of alleged misconduct were leveled against her. Appellant submitted her reply on 23.04.2015, denying all the allegations against her, and also submitted that R-3 School had has no authority issued the said memorandum.

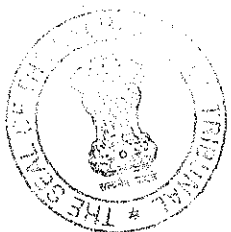


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Delhi School Tribunal  
Delhi

115/17

4. On 06.05.2015 Respondent No. 3 School initiated inquiry proceedings against the Appellant. On 17.10.2015, Appellant was issued a memorandum along with a copy of inquiry report dated 14.10.2015. Vide the said memorandum Respondent No. 3 School had proposed to imposed the penalty of removal of Appellant from the service which shall not be disqualification for future employment. On 23.10.2015, Appellant made a representation to Respondent No. 4 i.e. Directorate of Education requesting Respondent No. 4 to intervene in the matter and to issue necessary directions to R-1, not to terminate the service of Appellant on the basis of so-called disciplinary proceedings initiated against her by Respondent No. 3 School.
5. On 28.10.2015, Appellant sought ten days time to submit her reply to the memorandum dated 17.10.2015. Respondent No. 3 School granted only one day time to submit her reply. In the month of October 2015, Appellant approach the Hon'ble High Court of Delhi against the memorandum dated 17.10.2015 because the disciplinary proceedings had been initiated by R-3 School are void-ab-initio and without any authority. Respondent No. 3 passed the impugned order dated 02.11.2015 of removing the Appellant from the service,



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Delhi

in order to frustrate the proceeding pending before the Delhi High Court vide Writ Petition No. 10353 of 2015 which came up for hearing after termination of the service of the Appellant by R-3 School. The writ petition was withdrawn with the liberty to challenge impugned order dated 02.11.2015 before this Tribunal.

6. The impugned order dated 02.11.2015 passed by R-3 School is illegal because Appellant was never an employee of R-3 School but of R-1 School. Disciplinary authority was constituted in violation of Rule 118 of DSEAR, 1973. Inquiry was not conducted according to the provisions of Rule 118 and 120 of DSEAR, 1973 and following the principle of natural justice. The Appellant had committed no misconduct by doing her B.Ed. as per Rule 123 of DSEAR, 1973. The punishment of removal from the service is disproportionate to the alleged gravity of misconduct. The Appellant was duly qualified for the post of nursery teacher. It is prayed that in these circumstances the impugned order dated 02.11.2015 may be set aside being illegal and arbitrarily.

7. Notice of the appeal issued to all the Respondents. Respondent No.1, 2 & 3 file their joint reply. It is submitted that R-1 School is a recognized private

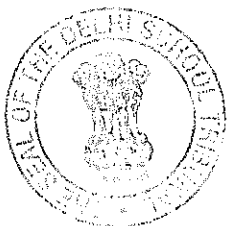


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Delhi School Tribunal  
Delhi

unaided school while R-3 School i.e. Hansvatika Model School is an unrecognized school, where pre primary classes are conducted by untrained teachers. R-3 School had applied for recognition but the recognition was not granted by the Directorate of Education, Govt. of NCT of Delhi. Appellant was appointed as nursery teacher by R-2 i.e. DAV College Managing Committee for its R-3 School, which is unrecognized school, where pre primary classes are conducted. The R-3 School is separate and distinct from R-1 School and is established on a different plot of land and has a different Managing Committee. Appellant while working as nursery teacher at R-3 School was being paid salary by R-3 School. Her PF was also deducted by R-3 School. R-3 School is an unrecognized school, hence is not governed by DSEAR, 1973.

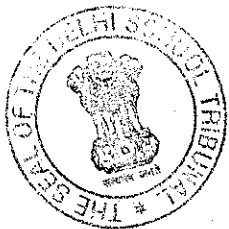
8. Appellant was not qualified at the time when she was appointed, as she had only completed B.A. degree hence could not be appointed in R-1 School. DSEAR provide B.Ed. as a minimum qualification of a teacher at the time of her appointment. Appellant was not having B.Ed. qualification at the time of her appointment. She was an untrained teacher, hence she was appointed in R-3 School only.



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Delhi

9. Appellant had applied for issuance of NOC to the manager of R-3 School for the post of teacher in R-1 School vide her application dated 20.05.2014 in response to an advertisement published in newspaper in the month of May, 2014 by R-1. Appellant was issued an NOC on 29.05.2014 by the manager of R-1 School for applying for the post of primary teacher in R-1 School. Appellant had appeared in the interview conducted by the interview board constituted by R-1 and was selected for the post of primary teacher in the R-1 School. An appointment letter dated 17.10.2014 was issued to her by R-1 School.
10. On perusal of her record, it had transpired that while she was working in R-3 School, she had obtained B.Ed. degree, claiming to be regular student attending regular classes at the College of Information Technology constituted at Greater Noida without taking any leave, whereas she had been regularly performing her duty in the school. Hence, it was not possible for her to attend regular classes of B.Ed. The Appellant obtained her degree of B.Ed. by mis-leading the university. The said act of the Appellant involved moral turpitude, breach of trust, and exhibiting a conduct unbecoming of a teacher. Appellant was charge-sheeted for the said



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misconduct. An inquiry was held following the provisions of DSEAR and principle of natural justice. The Inquiry Officer held Appellant guilty of misconduct in his inquiry report dated 14.10.2015. A memorandum dated 17.10.2015 issued to the Appellant along with the copy of inquiry report which was replied by her on 28.10.2015. The reply was considered by the management and vide letter dated 02.11.2015, a penalty of removal from service which shall not be a disqualification for future employment, was imposed on the Appellant with immediate effect. There is no merit in the appeal, the same may be dismissed.

11. Respondent No. 4 i.e. Directorate of Education in its reply submitted that Appellant has no cause of action against R-4 as there is no relationship of employer and employee between the Appellant and R-4.
12. The Appellant has filed rejoinder to the reply of Respondent No.1, 2 & 3 denying all the preliminary objections and additional pleas taken in the reply and reaffirming the stand taken in the appeal.
13. Arguments heard file perused. Ld. Counsel for the Appellant as well as Respondents addressed their



detailed oral arguments. Ld: Counsel for the Appellant as well as R-1 to R-3 have filed their written submissions which are on the record. As the detailed written submissions of the concerned parties are on the record hence I do not consider it proper to incorporate the detailed arguments of the parties in this order on account of brevity.

14. The sum and substance of the arguments of the Ld. Counsel for the Appellant is that she was an employee of R-1 School while she had been removed from the service vide impugned order by R-3 School which is illegal and void-ab-initio. The Alleged misconduct of obtaining B.Ed. degree during the employment is no misconduct under Rule 123 of DSEAR, 1973. Inquiry was not conducted according to the provisions of DSEAR and principles of natural justice. Disciplinary Committee was not constituted as per Rule 118.
  
15. The sum and substance of the arguments of R-1 to R-3 is that this Tribunal has no jurisdiction to entertain this appeal as R-3 School, is an unrecognized school. As per provisions of DSEAR, 1973 only employees of recognized school can file appeal in this Tribunal. Appellant had conducted serious misconduct inviting



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Delhi School Tribunal  
Delhi

moral turpitude by illegally obtaining B.Ed. degree without attending the classes and by misrepresenting the university. The inquiry was conducted as per provisions and following the provisions of DSEAR and principle of natural justice. Appellant was given full opportunity of being heard. There is no merit in the appeal, the same may be dismissed.

16. This Tribunal has carefully considered all the arguments raised on behalf of both the parties. It is correct that R-3 School is an unrecognized school, but now it is well-settled legal proposition that provisions of DSEAR also applies even to unrecognized school in Delhi. In this regard Hon'ble High Court of Delhi in *WP(C) No. 1781/2013 decided on 14.03.2017. titled Shaheed Udham Singh Smarak Shiksha Samity (Regd.) & Ors. Vs. Mrs. Usha Tyagi & Ors.* as held as follows:

"6. Learned counsel for respondent no.1 argues that in view of the Division Bench judgment of this Court in the case of *M/s Samarth Shiksha Samiti (supra)* which holds the judgment in *LPA No. 825/2013 dated 12.08.2015 (rendered in appeal in this case) as per incuriam, this Court should act as per the ratios in the cases of *M/s Samarth shiksha Samiti (supra)* and *Social Jurist (supra)* and not as per ratio in the case of *Shaheed Udham Singh Smarak Shiksha Samiti (Regd.) and Ors. Vs. Smt. Santosh Verma & Anr.* Counsel for the petitioner however*



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argues that the judgement dated 12.08.2015 in LPA No. 825/2013 has become final between the parties as this judgement dated 12.08.2015 has not been challenged by the respondent no.1 before the Supreme Court.

7. I have thought long and hard on the issue. The issue really is not with respect to whether it is the judgement dated 12.08.2015 in LPA No. 825/2013 passed in appeal against the judgement dated 12.08.2015 in LPA No. 825/2013 passed in appeal against the judgement in this case which is binding or whether the judgement of the Division Bench in M/s Samarth Shiksha Samiti (supra) in LPA No. 857/2015 dated 15.02.2016 is binding, but the issue is that what binds this Court is the ratio of the earliest judgement of the Division Bench of this Court on the issue being at hand, and which issue is decided by the judgement in the case of Social Jurist (supra). The Division Bench in the judgement in the case of M/s Samarth Shiksha Samiti (supra) has also held that the judgement in the case of Social Jurist (supra) being prior in point of time to the judgement in the case of Shaheed Udham Singh Smarak Shiksha Samiti (Regd.) (supra) will prevail, and also so observed by this Court in the judgement dated 12.07.2016 in Smt. Praveen Bhatnagar's case (supra). It is also an undisputed position that the judgement delivered by a Division Bench of this Court in the case of Social Jurist (supra) was challenged before the Supreme Court and the challenge before the Supreme Court failed, and thereby there is finality to the ratio of Social Jurist's case (supra), and which ratio holds that the Delhi School Education Act and Rules will apply even to unrecognized schools in Delhi such as the present petitioner no.3/school.



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Delhi School Tribunal  
Delhi

7/5/17

8. In view of the aforesaid discussion, and since ultimately this petition has to be decided on the ground that whether the Delhi School Tribunal had or did not have the jurisdiction to pass the impugned judgement dated 25.11.2010, and which jurisdiction petitioner no.3/school argued the Delhi School Tribunal did not have because petitioner no.3/school was an unrecognized school, and since in terms of the aforesaid discussion and the ratio in the case of Social Jurist (supra) will prevail and not the ratio of the judgement in LPA No. 825/2013, accordingly this Court is legally bound to hold that the Delhi School Tribunal can decide appeals filed by the employees of unrecognized schools against orders terminating their services."

17. Appellant has placed various documents with regard to her appointment in the R-1 School. Her appointment letter dated 25.05.1995 was issued by the R-1 School, relevant portion of the same is as under:

**KULACHI HANSRAJ MODEL SCHOOL**  
**ASHOK VIHAR, DELHI**  
(MANAGED & CONTROLLED BY D.A.V. COLLEGE MANAGING  
COMMITTEE, NEW DELHI)

Ref. No. 9/85/95

Dated: 25.05.1995

To,

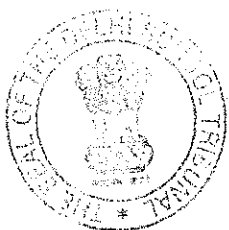
Ms. Yashu  
H-197, Ashok Vihar, Phase-I  
Delhi-110052

Sub: APPOINTMENT OF TEACHING/NON-TEACHING  
STAFF  
(FOR REGULAR APPOINTMENTS)

Dear Sir/Madam,

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Delhi



*With reference to your application & consequent interview for the post of a teacher/N.T.T. in Kulachi Hansraj Model School, Ashok Vihar, Delhi held on 25.05.1995. You are hereby informed that you have been selected for the post of N.T.T. on a basic salary of Rs. 1200/- in the pay-scale Rs. 1200-2040 plus usual allowances admissible in that school, under the rules of D.A.V. College Managing Committee, New Delhi*

*This appointment is subject to the terms and conditions given below:-----*

18. Appellant had also been confirmed vide letter dated 14.03.2000 by R-1 School, the same is as under:

**"KULACHI HANSRAJ MODEL SCHOOL  
ASHOK VIHAR, DELHI**

Ref No. 14020/2000

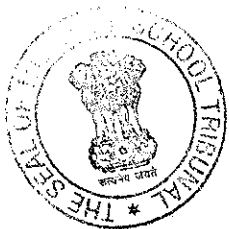
Date: 14.03.2000

MS. YASHU  
NURSERY TEACHER.

*This is to inform you that you have been confirmed in your post w.e.f. 04.07.96 as per approval communicated vide D.A.V. College Managing Committee, New Delhi letter no. KHRMs/Ashok vihar/G 5/22973 dated 07.10.99.*

Sd/-  
PRINCIPAL

19. Appellant has placed on the file annual provident fund statement for the year 1995-96, 1996-97, 1997-98 and 1998-99. In all these statement name of the institution is mentioned as Kulachi Hansraj Model School the relevant portion of the annual provident fund statement for the year 1995-96 is as under:



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Delhi School Tribunal  
Delhi

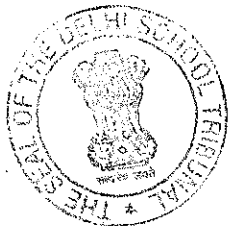
"ANAND ANGLO VEDIC COLLEGE, TRUST &  
MANAGEMENT SOCIETY  
EMPLOYEES PROVIDENT FUND  
CHITRA GUPTA ROAD, NEW DELHI-110055  
Annual Provident Fund statement for the year 1995-96  
YASHU Designation \*\*\*\*\*

Name of Institution Kulachi Hans Raj Model School (301) A/c No.  
21492"

20. Appellant has also placed copy of form 16 with regard to tax deduction from her salary for the assessment year 2004-05, it was also issued by Kulachi Hansraj School, Ashok Vihar. Appellant has also placed on file copies of various pay slips issued to her by the Kulachi Hansraj Model School. Appellant has also placed on the file copies of various certificates and annual report/ achievement record/ progress report/ of various students of her class, having her signatures, issued by Kulachi Hansraj Model School.

21. Appellant has also filed copy of the judgement of WP(c) 3573/2015 titled Kirti Jain Vs. Kulachi Hansraj Model School and Ors. filed by another similarly placed teacher in the Hon'ble High Court, having the same facts, involving the same question of law and fact. Para No. 3 and 6 of the same are as under:

"3. Respondent no.1/school has filed its counter affidavit denying that petitioner was a teacher with the respondent



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Delhi School Tribunal  
Delhi

no.1/school. The contention of the respondent no.1/school is that petitioner was in fact appointed as a teacher not with the respondent no.1/school but with the Kulachi Hansvatika Day-Boarding School. On behalf of the respondent no.1/school, reliance is placed upon the provident fund form signed by the petitioner wherein petitioner is shown to be the teacher not in the respondent no.1/school but in Kulachi Hansvatika Day-Boarding School. Reliance is also placed upon three letters, first undated, section dated 08.08.2005 and the third dated 29.06.2006 to argue that these letters show that petitioner was not an employee of the respondent no.1/school but of the Kulachi Hansvatika Day-Boarding School. These three letters relied upon by the respondent no.1/school.

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6. I have already reproduced above the letters dated 23.06.1997 and 16.03.1999 which are issued by the respondent no.1/school and these letters are admitted documents because it is not the case of the respondent no.1/school that petitioner has forged and fabricated these documents. The letter dated 23.06.1997 and the confirmation certificate dated 16.03.1999 show that both these letters have been issued by the respondent no.1 i.e. Kulachi Hansraj Model School. The first part of the letter dated 23.06.1997 also shows that petitioner had applied for the post of Nursery Teacher with the respondent no.1/school and to which post she was appointed i.e. as a Nursery Teacher of the respondent no.1/school. I therefore cannot agree that there is a disputed question of fact once the letters of the respondent no.1/school dated 23.06.1997 and 16.03.1999 are admitted by the respondent no.1/school itself. Petitioner was therefore a teacher appointed by and to the respondent no.1/school.



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Delhi School Tribunal  
Delhi

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22. Considering all the facts and circumstances as discussed above this Tribunal is of considered opinion that Appellant was an employee of Kulachi Hansraj Model School and not of R-3 school.
23. Service of the Appellant was terminated by Hansvatika Day Boarding School i.e. R-3 School, the relevant portion of the same is as under:

**"HANSVATIKA DAY BOARDING SCHOOL  
G-BLOCK, PHASE-I, ASHOK VIHAR, DELHI-110052**

142/15

Dated : 02.11.2015

*You had been charge sheeted for grave and serious misconduct vide charge sheet No. 51/15 dated 15.04.2015 calling upon your explanation and in response thereof your explanation had been carefully considered and was found unsatisfactory. Accordingly, it was decided to hold a domestic enquiry by appointing an independent impartial Inquiry Officer to look into the charges and give his findings.*

*The Inquiry Officer has held the inquiry proceedings from time to time and has granted ample opportunities to you by observing the principle of natural justice and the relevant rules as applicable.*

*The Inquiry Officer has submitted the report along with his findings, which has been carefully considered.*

*While going through the inquiry proceedings, documents and the evidence, the Management is satisfied that the principle of natural justice, relevant rules have been meticulously observed. The findings of the Inquiry Officer reveal that the aforesaid charges have been proved against you.*

*The charges are of grave nature which involve moral turpitude breach of trust and also subversive of discipline exhibiting the conduct unbecoming of an employee. A copy of the enquiry report was supplied to you alongwith memorandum dated 17.10.2015 and you were required to show cause within 10 days of receipt of said Memo as to why the penalty "Removal from service which shall not be a disqualification for future employment" be not imposed upon you.*

*You did not reply within stipulated period and instead sought further extension of time. Though the time granted was sufficient, yet in the interest of justice further opportunity was afforded to you and you were granted time upto close of 01.11.2015.*

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Delhi School Tribunal  
Delhi





However you did not submit any reply within the extended period also and you again sought 10 more days time to submit your reply. The management is of the view that no further time should be granted and you are deliberately delaying your response.

Thus the Management concurs with the findings of the Inquiry Officer. Management is therefore of the considered opinion to impose upon you the penalty of "Removal from service which shall not be a disqualification for future employment" with immediate effect.

Sd/-  
(Shreedeeep Omchen)  
Chairman  
For and behalf of  
Disciplinary Committee

Ms. Yashu Saya, H-135, Phase-I Ashok Vihar, Delhi-110052"

24. All the disciplinary proceedings starting from the show cause notice dated 23.01.2015 onward were conducted by R-3 School. The show cause notice dated 23.01.2015 is as under:

**Hansvatika Day Boarding School**  
G-Block, Ashok Vihar, Phase-1, Delhi-110052  
(Run & Managed by DAV College Trust & Management Society)  
Ph : 011-47344758

Date: 23<sup>rd</sup> January, 2015

Ms. Yashu Sayal,  
Pre-Nursery Teacher,

Dear Madam,

You had vide your letter dated 30.05.2006 informed the school that you have qualified B.Ed. Examination held during session 2004-2005 from Chaudhary Charan Singh University (Meerut) appeared through College of Information Technology, Greater Noida.

The college has further informed that the B.Ed. course is regular course of one year duration and its classes are held regularly from 9:30 a.m. to 4:30 p.m.

We find from our record that you have not taken leave for attending the aforesaid B.Ed. course of regular mode.

You are requested to submit your explanation within 3 (three) days of receipt of this letter.



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Delhi School Tribunal  
Delhi

7/5/11/

Sd/-  
(Mrs. Sneh Verma)  
Manager

25. All other inquiry proceedings were conducted by R-3 School. Impugned order of removal dated 02.11.2015 was issued by the R-3 School.
26. In these circumstances, this Tribunal is of opinion that when the Appellant was an employee of R-1 School, R-3 School can neither initiate inquiry proceedings against her nor can terminate/ remove the Appellant from the service. The impugned order dated 02.11.2015 of the removal of Appellant and all other proceedings are void-ab-initio. In these circumstances, appeal of the Appellant is accepted with cost and impugned order dated 02.11.2015 hereby set aside. Cost is assessed as Rs. 33,000 to be paid by R-1 & 2 to the Appellant. R-1 & 2 are directed to reinstate the Appellant within one month from the date of this order. Appellant will be entitled for full salary from the date of this order. Appellant will also be entitled for all the consequential benefits.
27. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the

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Appellant is directed to make exhaustive representation to the R1 and R2 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.1 and 2 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.

*sdl-*  
**(V K MAHESHWARI)**  
PRESIDING OFFICER  
DELHI SCHOOL TRIBUNAL

PLACE: DELHI  
DATED: 01.05.2017



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