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

Appeal No.90/2017

IN THE MATTER OF:

1. MS. SUNITA SAHI
   W/O PRAMOD SAHI
   R/O 108 DENA APARTMENTS,
   SECTOR-13, ROHINI,
   DELHI-110085

   THROUGH : **SH. ANUJ AGGARWAL, ADVOCATE** **APPELLANT**

VERSUS

1. SACHDEVA PUBLIC SCHOOL
   THROUGH ITS MANAER,
   SECTOR-13, ROHINI,
   DELHI-110085
   THROUGH : **SH. AMITABH MARWAH, ADVOCATE**

2. SHRI LAXMAN DASS SACHEVA
   MEMORIAL EDUCATION SOCIETY
   THROUGH ITS MANAGER,
   SECTOR, -13, ROHINI
   DELHI-110085

3. THE DIRECTOR OF EDUCATION,
   DIRECTORATE OF EDUCATION,
   GOVT. OF NCT OF DELHI,
   OLD SECRETARIAT,
   DELHI. 110054
   THROUGH : **MS. ASHISH SHARMA, GOVT. COUNSEL** **RESPONDENTS**

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

Dated: 08.03.2018

1. Facts of appointment of Appellant are not in dispute. Appellant was a confirmed employee vide letter dated 20.08.2007, which is as follows:

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"SPS(R) /ADMN, 1/61/2007 *20.08.2017*

OFFICE ORDER

Consequent upon satisfactory completion of the period of probation by the under mentioned teacher, the Management of the school is pleased to confirm the below noted teacher in the scale of pay noted below with effect from the date indicated against her name.

A. ***Confirmed as Assistant Teacher (Yoga) in the scale of pay Rs. 4500-125-7000***

S. NO. ***Name*** ***Date of Confirmation***

Ms. Sunita Sahi *14.08.2007*

Henceforth, if she intends to resign, she shall give three month's notice in writing or deposit/ surrender three month's salary including all allowances in lieu of notice period to the school before relinquishing her post. Similarly the Management shall also be competent to terminate her services by giving three month's notice in writing or three month's salary including all allowances in lieu of notice period. This may be noted by all concerned.

MANAGER/ CHAIRMAN

Copy to :-

1. *The Teacher concerned*
2. *personal file of concerned teacher*
3. *Accounts Branch"*

2. Appellant was terminated from the service vide letter dated 31.07.2017, the same is under:

" SPS(R) /ADMN/T.MISC/2017 *31.08.2017*

Ms. Sunita Sahi
Asstt. Teacher (Yoga)
108, Dena Appts., Sector-13, Rohini
Delhi-110085

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Sub:– ***Relieving order in view of your Medical Certificate dated 24.07.2017 issued by Joint Replacement Team of the Primus Super Speciality Hospital, from where you had undergone Bilateral Knee Replacement.***

This is in continuation of number of complaints from the parents to the effect that you had been using minor students to demonstrate yoga exercises on your behalf due to your medically unfitness arising out of your Bilateral Knee Replacement to perform, demonstrate and take yoga exercises for these minor students.

In response to the School Management's Memo dated 17.07.2017 and further communication dated 22.07.2017 you have chosen to submit a certificate dated 24.07.2017 issued by Joint Replacement Team of the Primus Super Speciality Hospital, from where you had undergone Bilateral Knee Replacement. The medical certificate dated 24.07.2017 submitted by you, reveals that you are not fit to carry out your yoga duties, as Yoga Teacher.

The certificate clearly mentions that " you have been advised to avoid Squatting, Running, Jumping and other high impact Sports activities.

You were given final opportunity vide our letter dated 14.08.2017 to submit medical certificate from a designated Medical Board of any Govt. Hospital within 15 days, mentioning that you are fit to carry out your duties as Yoga Teacher which include squatting However, you have chosen not to avail the final opportunity accorded to you.

In view of the aforesaid circumstances, on the basis of the Medical Fitness Certificate dated 24.07.2017 submitted by you, which itself puts conditions on your performance as Yoga Teacher, the School Management has decided to relieve you from the Services of the school with immediate effect i.e. 31.08.2017.

As regards the settlement of the dues, as per terms of your appointment letter, please find enclosed a Cheque no. 249186 dated 31.08.2017 for Rs. 1,52,880/- towards three months salary in lieu of the Notice period.

The amount towards gratuity, leave encashment etc., if due, as per rules will be released in due course.

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(S.K. SACHDEVA)
CHAIRMAN"

3. Arguments heard. File perused. Ld. Counsel for Appellant addressed his oral arguments while Respondent No.1 & 2 filed their written submissions and also addressed oral arguments. The arguments of Ld. Counsel for the Appellant are that the termination order is illegal because before terminating the Appellant, prior approval, from Directorate of Education has not been taken even Rule 118 and Rule 120 has also not been complied with.

4. The main argument of the Appellant is that before terminating the services of the Appellant, permission of the Director of Education ought to have been taken, reliance is placed upon an order of the Hon'ble Supreme Court dated 13.04.2016 passed in Civil Appeal No. 1020/2011 titled Raj Kumar Vs. Director of Education & Ors., the relevant portion of the order this regard is as under:

> *"The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in the case of Kathuria Public School (supra) by placing reliance on the decision of this Court in the case of TMA Pai (supra), as the subject matter in controversy therein was not the security of tenure of the employees of a school, rather, the question was the right of educational institutions to function unfettered.*

While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management. The Division Bench of the Delhi High Court, while striking down Section 8(2) of the DSE Act in the case of Kathuria Public School (supra) has not correctly applied the law laid down in the case of Katra Educational Society (supra), wherein a Constitution Bench of this Court, with reference to provision similar to Section 8(2) of the DSE Act and keeping in view the object of regulation of an aided or unaided recognised school, has held that the regulation of the service conditions of the employees of private recognized schools is required to be controlled by educational authorities and the state legislature is empowered to legislate such provision in the DSE Act. The Division Bench wrongly relied upon that part of the judgment in the case of Katra Education Society (supra) which dealt with Article 14 of the Constitution and aided and unaided educational institutions, which had no bearing on the fact situation therein. Further, the reliance placed upon the decision of this Court in the case of Frank Anthony Public School Employees Association v. Union Of India & Ors.[11] is also misplaced as the institution under consideration in that case was a religious minority institution. ***The reliance placed by the learned counsel appearing on behalf of the Respondents on the case of TMA Pai (supra) is also misplaced as the same has no bearing on the facts of the instant case, for the reasons discussed supra. The reliance placed upon the decision of the Delhi High Court in the case of Kathuria Public School (supra) is also misplaced as the same has been passed without appreciating the true purport of the Constitution Bench decision in the case of Katra Education Society (supra). Therefore, the decision in the case of Kathuria Public School (supra), striking down Section 8(2) of the DSE Act, is bad in law."***

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5. Section 8(2) and Rule 120(2) of Delhi School Education Act & Rules, 1973 is as under :

"Section 8(2)-Subject to any rule that may be made in this behalf, no employee of a recognized private school shall be dismissed, removed or reduced in rank ***nor shall his service be otherwise terminated except with the prior approval of the Director.***

Rule 120(2)- No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director."

6. Respondent School has not taken any prior approval from the Directorate of Education before terminating the service of Appellant. Hon'ble Supreme Court has decided Raj Kumar's case on 13.04.2016. Impugned order has been passed on 31.05.2017 i.e. much after the judgement of Raj Kumar's case. In these circumstances ratio of law laid down in Raj Kumar's case is fully applicable to the case in hand.

7. The sum and substance of the arguments of the Respondent is that the service of Appellant was terminated as per the terms of appointment letter. The appointment letter is as under:

"No. SPS (R)/ Admn./2006 *Dated:14.08.2006*

MS. SUNITA SAHI

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108, DENA APTS.,
SEC-13, ROHINI, DELHI-110085

Sir, Madam,

With reference to you application and interview, I am to inform you that you have been selected for appointment to the below noted post on the basic pay of Rs. 4500/- P.M. on the following terms and conditions:–

Post ASSISTANT TEACHER(YOGA)
Scale of Pay Rs. 4500-125-7000

1. *Your appointment will be subject to the approval of the Managing Committee of the School.*

2. *In addition to the basic pay mentioned above you will also be paid other admissible allowances Viz. Dearness Allowance, H.R.A., C.C.A, Medical Allowance, etc as per Delhi Admn. Rules.*

3. *Initially, you will be on probation for a period of one year from the date of your joining the post. The probation period can further be extended if your work and conduct is not found satisfactory.*

4. *During the period of probation or extended period of probation, your services may be terminated by giving one month's notice in writing or by payment of one month's salary in lieu of notice by either side.*

5. ***On the expiry of the probation period, you may be confirmed in the post if your work and conduct is found to be satisfactory. After confirmation your services may be terminated by giving three month's notice in writing or by payment of three month's salary in lieu of notice by either side.***

6. *Your first/next increment in this school will fall due only on your confirmation.*

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7. You will be eligible for the benefits of Employees Provident Funds Scheme as admissible to the staff members of this school.

8. In the matter of leave and general conditions of service, you will be governed by the Delhi School Education Act and Rules, 1973.

[P.T.O]"

8. It is submitted as follows in para no. 9 to 16 of the written submissions dated 28.02.2018 filed on behalf of Respondent No. 1 & 2.

"9. Subsequently, a meeting of the Committee of Management which is the Competent Disciplinary Authority was convened on 14.08.2017 wherein it was decided that keeping in view the facts and Appellant wherein the Appellant was, inter-alia, requested once again to appear before a Medical Board of a Government Hospital and obtain a certificate of fitness withing a period of 15 days which the Appellant failed to do.

10. Consequently, the Appellant was relieved of her duties w.e.f. 31.08.2017. She was also paid her dues as per the ANNEXURE which is appended hereto and marked as ANNEXURE – 'A' All the cheques were encashed by the Appellant.

11. It would, thus, be evident that the Appellant has not been terminated for misconduct and as such an inquiry was not mandated nor permission was required to be taken by the Respondents under Section 8 of the Delhi Education Act, 1973 (hereinafter referred to as the 'Act").

12. In this context, reference may be made to Rule 33 of the Model Service Rules for Teachers / Employees which for ready reference is appended hereto and marked as ANNEXDURE – 'B', which, inter-alia, stipulates that an if an employee on account of physical or mental infirmity, inefficiency or incapability to work or if he outlived his utility to discharge his contract of service, his contract may be discharged by one month's notice or pay thereto. In the present case, admittedly, the Appellant was granted three months' severance pay as per the Appointment letter dated 14.08.2007 as well as all other statutory benefits which she has accepted.

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13. The appellant herself admitted at Para D on page 19 of the appeal that she suffers disability.

14. The Hon'ble Supreme Court in a catena of judgments has held that in sufficient. In the present case, admittedly, the Appellant as per the medical certificate furnished by her to the Respondent School discloses that she is not fit to carry on her duties as a yoga teacher and as such not being medically fit, the question of reinstating the Appellant as a yoga teacher cannot and does not arise. Further, as per her appointment letter she has received all benefits including all statutory benefits. As such, nothing further is liable to be paid to the Appellant by the Respondent school. The Appellant craves leave of this Hon'ble Tribunal to refer to and rely upon the said judgments at the time of hearing.

15. It is further submitted that since the Appellant is admittedly incapable of carrying out her duties as a Yoga Teacher, she cannot be reinstated as this would cause prejudice to the interest of the minor students who have enrolled for yoga classes. Further, this not being a case of misconduct but of physical incapacity to carry out duties as per the appointment, which incapacity stands admitted by the Appellant, the question of seeking permission under Section 8 of the Act does not arise.

16. In view of the foregoing, the Appeal is liable to be dismissed."

9. Ld. Counsel for R-1 & R-2 submitted that due to the knee surgery undergone by the Appellant, she has become disabled hence unable to perform the duties of a yoga teacher therefore she cannot be reinstated. In these circumstances, School has a right to retrench her. School has already paid three month's salary to her as compensation. In any circumstances, she cannot be reinstated.

10. According to Respondent No. 1 & 2, Appellant was terminated in terms of condition no. 5 of the

appointment letter but according to condition no. 8 of the appointment letter, service of the Appellant will be governed according to the provisions of DSEAR.

11. Hon'ble Supreme Court in judgement O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. & Ors., in this regard has held as follows:

> *4. State Electricity Board v. Desh Bandhu Ghosh [1985-I L.L.J. 373, Chinnappa Reddy, J. speaking for* ***a three Judge Bench of this Court has observed that a (similar) regulation authorizing the termination of the services of a permanent employee, by serving three month's notice or on payment of salary for the corresponding period in lieu thereof, was ex facie "totally arbitrary" and "capable of vicious discrimination".*** *And that it was a naked "hire and fire" rule and parallel of which was to be found only in the "Henry VIII clause" which deserved to be banished altogether from employer-employee relationship. The regulation thus offended Art. 14 of the Constitution of India and deserved to be struck down on that account. In Central Inland Water Transport Corpn. Ltd. V. Brojo Nath Ganguly and Central Inland Water Transport Corpn. Ltd. V. Tarun Kanti sengupta (supr) a Division Bench of this Court has struck down a similar rule insofar as it authorized termination of employment by serving a notice thereunder as being violative of Art. 14 of the Contitution of India, inter alia, inas much as it was capable of being selectively applied in a vicious manner by recourse to 'pick and choose formula"*

12. A Constitution Bench of the Hon'ble Supreme Court judgement, titled Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress has held as follows:

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"On a conspectus of the catena of cases decided by the Supreme Court the only conclusion follows is that Reg.9(b) which ***confers powers on the authority to terminate the services of permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted, violating principles of natural justice as well as Art. 14 of the Constitution*** *prescribed by their Rules and Regulations must be fair, reasonable and just and not arbitrary, fanciful and unjust.----------*

Right to public employment includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law. It is an integral part of the right to livelihood which in turn is an integral facet of right to life assured by Art.21. Any procedure prescribed to deprive one of such right, must be just, fair and reasonable. Any law or rule in violation thereof is void."

13. Hon'ble Supreme Court in judgement titled as Miss Raj Soni Vs. Air Officer incharge Administration and anr., AIR 1990 Supreme Court 1305, has held that the recognized private schools of Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The management is under statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute, it has no option but to follow

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the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an authority" under Art. 12 of the Constitution of India.

14. Hon'ble supreme Court in Managing Committee of Montfort Senior Secondary School vs. Vijay Kumar and Others, (2005) 7 SCC 472 has held that the services of employees of all the school 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 Delhi School Education Act and Rules-1973.

15. In this regard the Hon'ble Supreme Court in the case Managing Committee of Montfort (Supra) has held as under:

> *"The Supreme court in its judgement in the case of Montfort (supra) has held that an employee of a school has statutory protection and he can only be removed on application of provisions of the Act and the Rules. Para 10 of the said judgement reads as under:-*
> *"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. Sidhajbjai 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, 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*

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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."

16. Hon'ble High Court of Delhi in W.P.(C) No.67/2017 in School Management of Ring Midways Senior Secondary Public School Versus Riva Singh & Anr. decided on 06.01.2017 has held as follows :

"3. All the aforesaid aspects arise from the record and could not be effectively disputed or challenged by the petitioner/school in this Court and thus **once the Respondent no.1 was a confirmed employee and whose services have not been terminated after following the due process of enquiry as required under Rule 118 and 120 of the Delhi School Education Rules and also that admittedly no disciplinary authority was constituted and which took decision to remove the Respondent no.1, and which aspects have to be taken with the fact that no** permission was obtained by the Director of Education for removal of the Respondent no.1, clearly, hence there is no illegality found in the impugned judgement of the Delhi School Tribunal allowing the appeal of the Respondent no.1 and reinstating the Respondent no.1 in the services of the petitioner/school.

4. Dismissed."

17. In view of the above discussion, it is clear that the alleged model rule of conduct framed by the School cannot override the provisions of statute i.e. DSEAR. The Respondent No. 1 & 2 have not complied with the

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relevant provisions of retrenchment. Moreover a teacher is not covered in the definition of "workman". Thus the Appellant cannot be retrenched.

18. R-3 i.e. Department of Education in its reply submitted that no approval has been taken by the department despite order dated 20.05.2016. Respondent School has grossly violated the provisions of DSEAR, 1973.

19. Ld. Counsel for the Respondents relied upon the following authorities in support of his arguments :

1. **Secy. Akola Taluka Education Society and Anr., Vs. Shivaji and Ors., civil appeal no. 1816 of 2007, decided on April 5, 2007 by the Hon'ble Supreme Court.**
2. **Incharge Officer and Anr. Vs. Shankar Shetty, civil appeal no. 7213 of 2010, decided on August 31, 2010 by the Hon'ble Supreme Court.**
3. **Bharat Sanchar Nigam Limited Vs. Bhurumal, civil appeal no. 10957 of 2013, decided on December 11, 2013 by the Hon'ble Supreme Court.**
4. **Madhya Pradesh Administration Vs. Tribhuban, civil appeal no. 1817 of 2007, decided on April 5, 2017 by the Hon'ble Supreme Court.**

20. It is undisputed that Appellant was a confirmed employee. No Disciplinary Committee has been constituted in accordance of Rule 118 of DSEAR. No

charge-sheet was issued to him. No inquiry was conducted against the Appellant. Service of the Appellant was terminated without following the provisions of Delhi School Education Act & Rules, 1973 by the committee of management in the meeting held on 30.08.2017. The relevant minutes of the meeting of the committee of management held on 30.08.2017, produced by the Respondent School, is as under:

"Minutes of the meeting of ***Committee of Management*** *held on 30.08.2017 at 1:30 p.m.*

Shri S.K. Sachdeva, Chairman presided the meeting.

1. *Vide our letter dated 22.07.2017, Ms. Sunita Sahi was advised to appear before the Medical Board of any Govt. Hospital that she was fit to carry out all yoga exercises, which she did not comply.*

2. *As per decision taken in the last meeting held on 14.08.2017, Ms. Sunita Sahi was given one more opportunity and directed to appear before the designated Medical Board of any Govt. Hospital and submit the Medical Certificate that she was fit to perform her duties including squatting which was part of her duties as a yoga teacher.*

3. *She was given 15 days time to submit the required certificate vide our letter dated 14.08.2017. However, she has not submitted the same within the stipulated time.*

4. *Since, Ms. Sunita Sahi has failed this time also to comply with this requirement within the stipulated period of 15 days, following action be taken:*

   (i) ***She be relieved of her duties in the school on account of incapability to perform her duties as a yoga teacher due to conditions mentioned in the medical certificated dated 24.07.2017 issued to her by the Joint Replacement Team of Primus Super Speciality Hospital where she underwent Bilateral Knee Replacement.***

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(ii) *As per terms of her appointment three months salary in lieu of notice period be paid.*

(iii) *The amount towards gratuity, leave encashment, etc. if due, as per rules may be released in due course.*

Sd/- *Sd/-* *Sd/-*
CHAIRMAN *MANAGER* *NOMINEE*

Sd/- *Sd/-*
PRINCIPAL *PTA MEMBER IN MANAGING COMMITTEE"*

21. This Tribunal has also gone through the medical certificate produced by the Appellant, the same is as under:

"Primus
Super Speciality
Hospital

TO WHOMSOEVER IT MAY CONCERN

Mr.s Sunita Sahi 57/F UHID-170452 underwent Bilateral Total knee Replacement in Primus Super Speciality Hospital on 16.05.2016. Implants are functioning well. ***She is fit to undertake her normal duties. She should avoid squatting, Running, Jumping and other high impact sports activities.***

Sd/-
Joint Replacement Team"

From the above quoted medical certificate, it is clear that Appellant is fit to undertake her normal duties. It is advised that she should avoid squatting, running, jumping and other high impact sports activity. It is argued on behalf of R-1 & R-2 that Appellant has become disabled. This argument is absolutely wrong. It is also argued that in para D of the grounds,

Appellant has admitted that she is disabled. This Tribunal has gone through the relevant paragraph. There is no such admission by the Appellant that she has become disabled.

22. From the above quoted minutes of the meeting, it is clear that decision to relieve the Appellant from her duties was taken by the committee of the management and not by the disciplinary committee. Now it is well settled legal proposition that managing committee of the school and disciplinary committee are two different bodies. From the circumstances, it is clear that disciplinary authority neither constituted as per Rule 118 nor disciplinary committee recommended the removal of the Appellant from the duty. No opportunity was given to Appellant to lead evidence in her defence. Principle of natural justice not followed. Opportunity should have been given to Appellant to prove whether she can perform duties of a yoga teacher or not. But no such opportunity was given to the Appellant. Respondent No. 1 & 2, themselves reached to the conclusion that Appellant become disabled hence unable to perform the duty of a Yoga teacher.

23. I have also carefully gone through the authorities relied upon for the Ld. Counsel for Respondent School there is no dispute with the ratio of law laid-down in these authorities. However, the ratio of law, in an authority, is laid down according to the facts and circumstances of that particular case and the same may not be squarely applicable to the fact and circumstances of each case. In the above discussed peculiar facts and circumstances of this case, ratio of law laid-down in the authorities relied upon by Ld. Counsel for Respondent School, is not applicable.

24. In view of the above discussion this Tribunal is of the opinion that impugned order of termination of the service of Appellant without holding inquiry and without following the provisions of Act 8(2) & Rule 118 & 120 of Delhi School Education Act & Rules, 1973 is absolutely illegal and arbitrary hence the same is set aside. R-1 & R-2 are directed to reinstate her within four weeks of passing of this order. Appellant will be entitled for full pay from the date of this order. Appellant will also be entitled for all the consequential benefits.

25. Ld. Counsel for R-1 & R-2 argued that, in these circumstances, Appellant should not be reinstated.

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Appellant had joined the Respondent School in the year 2001. She was removed on 31.08.2016 i.e. after serving the Respondent School for about sixteen years. Now, Appellant has become overage to join any job in other school. The Respondent School cannot be allowed to adopt tactics of use and through an employee who has devoted the prime time of his life serving the School. In case if she is found unable to perform the duties of a Yoga teacher, the Respondent School can accommodate her in administrative staff. In alternative, if the Respondent School is not ready to reinstate the Appellant then Respondent School is directed to pay half salary of the last drawn salary by the Appellant for the remaining period of her service i.e. till the date of her retirement.

26. In these circumstances, appeal is accepted with cost. Cost is assessed at Rs. 1,10,000/- to be paid by R-1 & R-2 by way of cheque in the name of Appellant.

27. 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 R1 and R2 within a period of 4 weeks from the date of this order, as to how and in what manner the

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Appellant will be entitled to complete wages. The Respondent No.1 & 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.

Sd/-

(V K MAHESHWARI)
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL

8/3/18

PLACE: DELHI
DATED: 08.03.2018

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