

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

Appeal No. 17/2018 & 18/2018

IN THE MATTER OF:

1. SH. KARAMBIR  
S/O LATE SH. ROOP CHAND  
R/O H. NO. 131, POOTH KALAN,  
DELHI-110086
  
2. SH. AMIT KUMAR  
S/O LATE VIKRAM SINGH,  
R/O H. NO. P-1/1049, GALI NO. 8,  
SULTAN PURI, DELHI-110086  
THROUGH : SH. ANUJ AGGARWAL, ADVOCATE

**APPELLANTS**

VERSUS

1. GURU NANAK PUBLIC SCHOOL  
THROUGH ITS MANAGER  
PUSHPANJALI ENCLAVE,  
PITAMPURA, DELHI-110034  
  
THROUGH : SH. TARUN KUMAR TIWARI, ADVOCATE
  
2. SHRI GURU SINGH SABHA  
THROUGH ITS PRESIDENT/  
CHAIRMAN,  
PUNJABI BAGH,  
DELHI-110027
  
3. DIRECTOR OF EDUCATION,  
DIRECTORATE OF EDUCATION,  
GOVT. OF NCT OF DELHI  
OLD SECRETARIATE BUILDINGS,  
CIVIL LINES, DELHI-110054

**RESPONDENTS**

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

Dated: 20.11.2018



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1. Vide this common order I shall dispose of two appeals as the common questions of law and facts are involved in both these appeals and Respondents are also same in these appeals.
2. Appellant in appeal no. 17/2018, Karambir, was appointed as a Driver on 23.11.2006. He has been terminated vide letter dated 14.09.2017 passed by the Respondent.
3. Appellant in appeal no. 18/2018, Amit Kumar, was appointed as a Peon on 25.06.2009. He has been terminated vide letter dated 14.09.2017 passed by the Respondent because one of the female employee lodge one FIR dated 13.09.2017 under Section 354-A/354D/34 against him.
4. Ld. Counsel appearing on behalf of the Appellant assails the impugned order essentially on two limbs. The first submission is that Respondent School has terminated the service of Appellants, who are the permanent employees of the school without following the rules and procedure as per provisions of Rule-118 & 120 in DSEAR.



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5. The second submission is that the termination order is illegal because before terminating the Appellants, prior approval, from Directorate of Primary Education has not been taken.
6. Appellants further prayed that Respondents be directed to reinstate the Appellants in service in continuity of their service along with full back wages/ salary and all the consequential benefits as the Rule 121 of the Delhi Education Act is not application in this case.
7. In support of his arguments Ld. Counsel for Appellants relied upon the following authority;
  - (i) **Raj Kumar Vs. Directorate of Education & Ors.**  
(AIR) 2016 SC 1855.
8. Respondent School has not filed the reply but addressed the oral arguments only. Per contra, Ld. Counsel for the Respondent School submitted that the School has terminated the services of the Appellants considering the charge of molestation for which the Appellants are being prosecuted by the police. As a matter of fact, Appellants were irresponsible employees and their behaviour towards other female employees was not good for which the answering Respondent



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received several complaints, therefore, the present appeals deserve to be dismissed.

9. R3 i.e. Directorate of Education in its reply submitted that R1 School is private, recognized, unaided school. Section 8(2) of DSEAR 1973, is mandatory hence permission of the Directorate of Education should be taken before terminating the services of Appellants.
10. However, the prayer of the department is that the present appeals may be dismissed with exemplary cost.
11. During the course of hearing, I put four specific queries to the counsel for the Respondent No.1 & 2 which are as under:
  - i. Whether the Constitution of the Disciplinary Committee is as per rule 118 and to show as to how Articles of Charges were framed against the Appellants by the Disciplinary Committee.
  - ii. Whether there is any order of the Appointment of the Inquiry Officer and is there any inquiry report against the Appellants.
  - iii. Whether there is any Minutes/ Resolution of Meeting of the Managing Committee regarding



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termination of the Appellants along with approval of the department.

iv. Whether any prior approval of Directorate of Education was taken as per Section 8(2) of DSEAR before terminating the service of Appellants.

12. Neither of the queries is answered nor could any document be pointed out to this Tribunal, to satisfy the queries. Sh. Tarun Kumar Tiwari Ld. Counsel for Appellants and Sh. S.S. Bhandari, Additional Manager for Respondent School, fairly stated that without prejudice to the rights of the Respondents, opportunity to take action against the Appellants in accordance with the provisions of the DSEAR be granted. Let that be done in accordance with law without prejudice to the rights of the Appellants.

13. Perusal of the impugned order shows that the Appellants were terminated from their service for the reason that they are being prosecuted by the Police and FIR U/S 354 I.P.C. is also registered against them. If it is so then certainly, it is a case of alleged misconduct. Penalty of termination from service is one of the major penalties provided in Rule 117 of Delhi



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School Education Act & Rules, 1973 (hereinafter referred to as the Rules). Rule 120, of the Rules provides that no major penalty shall be imposed without holding a domestic inquiry and the procedure for which has been provided therein. No prior approval from the Directorate of Education is taken by the Respondent School before terminating the service of Appellants. Even Directorate of Education, in its reply, specifically submitted that termination of Appellants is bad as no prior approval has been taken from the Directorate of Education.

14. The services of the Appellants were terminated because of alleged misconduct. As discussed above the penalty of termination from service could not be imposed without holding a departmental inquiry/ prior approval of the department. The Respondent School committed grave error on both these counts.

15. On the other hand while replying to the brief facts, department has admitted that Respondent School has violated the provisions of Delhi Education Act and Rules, 1973.



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16. When the provisions of the DSEAR violated by the School then how the appeals are liable to be dismissed? After perusal of the reply filed by the department, I am sorry to say that the first preliminary objection of the department that the appeals of the Appellants are not maintainable and are liable to be dismissed.

17. Before this Tribunal, Department deputed Legal Assistants, Dy. Education Officer/ Education Officer & Govt. Counsel and their replies are duly signed by the concerned Dy. Directors. The reply filed in these appeals is highly vague and contradictory. Because of such acts, it badly reflects upon the conduct of concerned officers and Govt. Counsels and earned a bad name for the department.

18. It be brought to the notice of the Director of Education to consider the reply seriously before filing the same in any court of law.

19. In view of the above, both appeals are accepted and Respondents No. 1 and 2 are directed to re-instate the Appellants within a period of 4 weeks. Appellants will be entitled for all the consequential benefits. They will



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be entitled for full wages from the date of this order onwards.

20. The argument of the Ld. Counsel for Appellants that in case of a reinstatement of Appellants, Rule 121 of the DSEAR is not applicable, as in the case in hand the Respondent School has not initiated any enquiry against the Appellants, is without any merit. This argument is rejected as the Hon'ble High Court in the matter of Guru Harkishan Public School Vs. Director of Education has held that the powers of granting back wages to the reinstated employee is with the managing committee.

21. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the Appellants are directed to make exhaustive representation to Respondents No. 1 & 2 within a period of 4 weeks from the date of this order, as to how and in what manner the Appellants will be entitled to complete wages. The Respondents No.1 & 2 are directed to decide the representation given by the Appellants within 4 weeks of receiving the same by a speaking order and to communicate the order alongwith the copy of the same to the Appellants.



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22. After considering the gravity and seriousness of the allegations made against the Appellants, Respondent No. 1 & 2 are at liberty to take action against them as per law on the same cause of action as early as possible preferably to be concluded within 6 months. Order accordingly, parties are left to bear their own costs. A copy of this order be placed on both files.



PLACE: DELHI  
DATED: 20.11.2018

*sdf*  
(V K MAHESHWARI)  
PRESIDING OFFICER  
DELHI SCHOOL TRIBUNAL

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