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

Appeal No. 92/2017

IN THE MATTER OF:

1. MS. SIMMI KATHPAL
W/O SH. SANJAY KATHPAL,
R/O 292, SHALIMAR VILLAGE,
DELHI-110088
THROUGH : **SH. ANUJ AGGARWAL, ADVOCATE** **APPELLANT**

VERSUS

1. SHRI HANUMAN MANDIR PUBLIC SCHOOL,
THROUGH ITS PRINCIPAL/ HEAD MISTRESS,
BLOCK 37, SHAKTI NAGAR,
DELHI-110007
THROUGH : **SH.SHIV CHANRAN GARG &**
SH.GOPAL TYAGI

2. SHRI HANUMAN MANDIR COMMITTEE,
THROUGH ITS MANAGER,
BLOCK-37, SHAKTI NAGAR,
DELHI-110007

3. THE DIRECTOR OF EDUCATION,
DIRECTORATE OF EDUCATION,
GOVT. OF NCT OF DELHI
OLD SECRETARIATE BUILDING,
CIVIL LINES, DELHI-110054
THROUGH : **SH. ATUL RATHI, ADVOCATE** **RESPONDENTS**

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

Dated: 05.02.2019

1. This appeal is filed against the order dated 21.10.2017 of Khushiram Singhla, Manager, terminating the

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Appellant's service from Sh. Hanuman Mandir Public School w.e.f. 21.10.2017.

2. 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 Appellant, who is the permanent employee of the school without following the provisions of Rules-116, 118 & 120 and Section 8(2) of DSEAR,1973.

3. The second submission is that the termination order is illegal because non-payment of substances allowances which has violated the so-called inquiry.

4. Appellant further prayed that Respondents be directed to reinstate the Appellant in service in continuity of her service along with full back wages/ salary and all the consequential benefits.

5. Per contra, Ld. Counsel for the Respondent School submitted that the School has not terminated the service of the Appellant but the Shri Hanuman Mandir Committee has terminated the service of Appellant considering the charge of embezzlement for which the

Appellant is being prosecuted by the Inquiry Committee. Appellant did not participate in the inquiry proceedings intentionally. Even, this Tribunal has no jurisdiction to entertain and try the present appeal as Sh. Hanuman Mandir School is a primary wing which is unaided, unrecognized, private school. Therefore, the present appeal deserves to be dismissed.

6. R3 i.e. Directorate of Education in its reply submitted that R1 School has acted in complete violation of Section 18 & 19 of the Right to Education Act and ratio of law laid down by the Division Bench of Hon'ble High Court of Delhi in LPA No. 857/2015 titled as M/s. Samarth Shiksha Samiti (Regd.) and Anr. Vs. Shakuntala Maggo and Ors.

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

1. **Raj Kumar Vs. Directorate of Education & Ors. (AIR) 2016 SC 1855.**
2. **M/s. Samarth Shiksha Samiti (Regd.) and Anr. Vs. Shakuntala Maggo and Ors., in LPA No. 857/2015.**
3. **Delhi Abibhavak Mahasangh – Vs. Union of India & Ors. 76(1998) Delhi Law times 457 (DB) Delhi High Court, decided on 30.10.1998.**
4. **Sardar Patel Vs. Chandra Rani & Ors. {PA 763/2015, Decided on 29.10.2015; Delhi High Court (DB).**

5. Central Secretariat Club vs. Geetam Singh (2017 (244) DLT 571)

6. Parveen Bhatnagar vs. Sanjivayya Memorial Trust, New Delhi (Regd.) & Ors. (Decided on 12th July, 2016, WP(c) No.7590/2014; Delhi High Court).

7. Jagdamba Prasad Shukla vs. State of UP & Ors., Manu/SC/0524/2000.

8. Ld.Counsel for school relied upon the following authorities in support of his arguments:-

1. The Principal and others Vs. The Presiding Officer and others, AIR 1978 SC 344 decided on 09.01.1978.

2. LPA no.825/2013 Shaheed Udham Singh Smarak Shiksha Samiti & Ors. Vs. Smt. Santosh Verma & Anothers decided on 12.08.2015.

3. Shashi Gaur Vs.NCT of Delhi and Others decided on July, 21.2000 (2001) 10 Supreme Court Cases 445.

4. Samarth Shiksha Samiti and Anrs. Vs. Bir Bahadul Singh Rathore & Ors., AIR 2009 SC 1990.

5. Sanjivaryya Memorial Trust & Anr. vs.Anju Harit & Anr., 2017(166) DRJ 583(DB).

6. Raj Kumar Vs. Directorate of Education & Ors. (AIR) 2016 SC 1855.

9. This Tribunal has carefully considered all the arguments raised on behalf of parties and have gone through the record, both the parties have also filed their written submissions.

10. Ld. Counsel for Respondent School forcefully argued that the Hon'ble Supreme Court in the matter of The

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Principal & Ors., Vs. Presiding Officer, AIR 1978 SC 344, decided that unrecognized school is not under the preview of Delhi School Tribunal. The Hon'ble High Court of Delhi has taken a different view in several authorities and the same are as under:

i. A Division Bench of Hon'ble High Court of Delhi in CWP No. 3723/1997 directed as follows :-

> "The Government should consider extending Act and Rules with or without modifications to all schools from Nursery onward, on the basis of which referred order dated 23.3.1999 was issued has not been overruled either by Hon'ble High Court or by Hon'ble Supreme Court."

ii. In view of the above direction Govt. of NCT had issued the order dated 23.3.199 which is as follows :-

> "Government of NCT of Delhi (Directorate of Education) in pursuance to the directions of Hon'ble High Court in CWP No. 3723/1997, issued an order bearing No. 19072-15871 dated 23.03.1999 declaring that all pre-primary schools being run as branches of recognized school shall be deemed as one institution for all purposes. The text of the said order is reproduced below:
>
> In pursuance of the direction of Hon'ble High Court of Delhi in CWP No. 3726/1997, to curb the commercialization, to check the malpractices and to streamline the education of pre-primary level, I, S. C. Poddar, Director or Education in exercise of the powers so conferred upon me under sub-section 1 of section 3 of Delhi School Education Act, 1973 read with Rule 43 of Delhi School Education Rules, 1973 order with immediate effect that:-
>
> 1. All pre-primary schools being run by the registered societies/ trusts in Delhi as branches of recognized Schools by the appropriate authority in or outside the school premises shall be deemed as one institution for all purposes.
> 2. All such pre-primary schools running as branches of recognized schools shall comply with the direction of

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the Hon'ble High Court in CWP No. 3723/97, provisions of Delhi School Education Act, 1973 and the Rules made thereunder and the directions/ instructions issued by the Directorate of Education from time to time.

3. No student shall be admitted in pre-primary class by whatsoever name it may be called unless he had attained the age of 4 years as on 30th September of the academic year in which admission is sought.

Sd/-
(S.C. PODDAR)
DIRECTORATE OF EDUCATION"

iii. In the matter of Samarth Shiksha Samiti Vs. Shakuntla Maggo & Ors., LPA No. 857/2015, the Hon'ble Division Bench held as follows:

> 13. This Court is of the opinion that Shaheed Udham Singh Smarak Shiksha Samiti (supra) cannot be regarded as a binding authority for more reasons than one. First, it did not examine, closely - at least a reading of the judgment does not establish so- the reasoning which led the previous Division Bench in Social Jurist (supra) to hold that unrecognized schools too were regulated by the Act. Apart from the definition of "schools", Section 3, Section 52, Rule 44 and Rule 50, that judgment also noted that the power of taking over management, applied widely to all schools, regardless of recognition. This was a clear pointer to the overarching State interest in ensuring that schools secured recognition. Even the provision in Section 3 (6) brings home this concern: "(6) Every existing school shall be deemed to have been recognised under this section and shall be subject to the provisions of this Act and the rules made thereunder". LPA 857/2015 & LPA 1/2016.
>
> 14. Apart from the binding nature of Social Jurist (supra), the declaration in which has attained finality, it seems abhorrent to

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> this Court, that when the State has assured every child education, which is guaranteed as a fundamental right no less, and the fruition of which has led to the enactment of an elaborate mechanism under a special Parliamentary legislation (Right to Education Act), it can nevertheless be considered perfectly reasonable to say that some institutions which choose to not be regulated, can be held to be so. Compliance with the law is the norm, and violation is deemed deviant, inviting penal sanction. However, allowing such "outlaws" is to undermine those that abide by the law. In the vital area of education, it is not possible to countenance the submission of such outlaws that they stand outside the pale of regulation and are to be "let alone" to do what they please, by way of imparting what they deem to be education, in whatever terms they choose and through personnel holding such qualifications that they (and not the law) deem appropriate.

iv. Similar view has been taken in the matter of Sanjivavya Memorial Trust & Anr. Vs. Anuj Harit & Anr., LPA No.464/2016 by Hon'ble Division Bench.

11. In view of the above discussion, now it is well-settled legal proposition that provisions of DSEAR are fully applicable to unrecognized school also.

12. Respondent School for all purposes governed by the provisions of Delhi School Education Act & Rules –

1973. Therefore, there is no merit in the objection raised by the Respondent School.

13. The other question raised by Ld. Counsel for Respondent School is that the termination of the service of Appellant is not covered under section 8(3) of DSE Act.

14. In the case of **Shashi Gaur** Vs. **NCT of Delhi and Others,** (2001) 10 SCC 445, the Hon'ble Supreme Court distinguished the case of **Principal and Others** vs. **Presiding Officer and Others,** AIR (1978) SCC 344, and held that:

> *"an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceedings, but also against "termination otherwise" except, where the service itself comes to an end by efflux of time for which the employee was initially appointed. In other words 'termination otherwise', not covered by the expressions 'dismissal', 'removal' or 'reduction in rank' was also taken care of. The expression 'termination otherwise' includes in its ambit the cases where the employer has terminated from the services not because of disciplinary proceedings but for other reasons."*

15. Ld. Counsel for Respondent further argued that the Appellant was an employee of the Society and not of the School, hence this Tribunal has no jurisdiction to entertain this appeal. This Tribunal has carefully gone through the documents. Respondent has not placed any document showing that Appellant was the

employee of the society while there are several documents produced by both the parties wherein it is mentioned that Appellant was the employee of the School. In view of the above discussion this Tribunal is of opinion that Appellant was an employee of the School.

16. It is undisputed that appellant was a confirmed employee. Hon'ble Supreme Court in the case of **Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors., (2005) 7 SCC 472** has held as under

> *"that the teachers and employees of schools have statutory protection and they cannot be removed except by following the procedure laid down under the Act and Rules especially Rules 118 to 120 of the Delhi School Education Rules, 1973 which require conducting of a departmental enquiry after serving Article of Charges and the Disciplinary Authority thereafter passing an order on the basis of report of the Enquiry Officer."*

17. Para 10 of the judgment in the case of **Montfort Senior** Secondary **School (supra)** is relevant and the same reads as under:-

> "10. 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 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. Sidhajbhai Sabhai (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 un-aided 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....."**

It may be noted that the Supreme Court in the case of **Montfort Senior Secondary School (supra)** gave the benefit of statutory protection to teachers and employees of schools even for a minority unaided school and aforetiorari the observations also apply to non-minority schools.

18. Appellant was a confirmed employee and her service was terminated vide order dated 21.10.2017 without holding any proper enquiry or without constituting disciplinary committee following the Provisions of Rule 118 and 120 of DSEAR, 1973 and without the approval of the Director of Education, hence this appeal filed by the appellant is accepted consequently the impugned order dated 21.10.2017 is set aside. Respondent school is directed to re-instate the Appellant within four weeks of passing of this order. Appellant will be entitled for all the consequential benefits and full wages from the date of this order onwards.

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19. 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 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 R1 School is directed to decide the representation given by the Appellant within 4 weeks of receiving the same by a speaking order and to communicate the order alongwith the copy of the same to the Appellant. Order accordingly. File be consigned to record room.

Sd/-

(V K MAHESHWARI) 5/2/19
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL

PLACE: DELHI
DATED: 05.02.2019

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