DELHI SCHOOL TRIBUNAL PATRACHAR VIDYALAYACOMPLEX
LUCKNOW ROAD, TIMAR PUR, DELHI-110054

Appeal No.38 of 2019

IN THE MATTER OF:

Sarika Dabas
W/o Sh. Raminder Singh
R/o 130, Sansad Vihar, West Enclave,
Pitam Pura, Delhi-110034
Through: Mr. Anuj Agarwal, Advocate

...Appellant

Versus

1. **Modern Child Public School**
Through its Principal/Manager
Punjabi Basti, Nangloi,
Delhi-1100341
Through: Ms. Sonika Gill, Advocate

2. **Directorate of Education**
Director of Education, Govt. of NCT of Delhi
Old Secretariat Building, Civil Lines,
Delhi-110054
Through: Mr. Mukesh Kumar, Advocate

...Respondents

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

JUDGEMENT

The appellant Ms. Sarika Dabas has filed the present appeal against order bearing No. MCPS/5660/26/19 dated 12.10.2019 (Annexure A-1), issued by the Manager, Modern Child Public School, vide which she was terminated.

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2. It is stated that appellant was appointed as an Assistant Teacher on a salary of Rs. 9,818/- in grade pay of Rs. 4500-8000 besides usual allowances vide appointment letter dated 01.07.2008 (Page 24 - Annexure 24B). She had unblemished and uninterrupted record of service of 11years. Respondent certified vide Certificate/ Letter No. Ref. No. 4365/65/2017 dated 22.05.2017 that appellant is a permanent teacher since 01.07.2008 in scale of Rs. 9300-34800. That even in the absence of letter dated 22.05.2017, she was deemed confirmed employee.

3. It is asserted further that appellant had to be on leave w.e.f. 07.10.2019 for undergoing surgery of her right eye. She had duly informed/requested respondent No.1 school about the surgery orally in September end and then through an email dated 7.10.2019 for grant of leave from 07.10.2019 to 12.10.2019 when she got confirmation from the surgeon. That no reply to the said e-mail was received. That, thereafter, appellant sent a request for extension of her medical leave as advised by the surgeon via e-mail dated 13.10.2019. That a hard copy of the same was also sent to respondent No.1 school on 14.10.2019 (13th being a Sunday) but no reply to the said letter was received. That she had to remain on leave from 07.10.2019 to 20.10.2019 (14 days) due to the cataract surgery.

4. It is stated that appellant on 21.10.2019, duly submitted a leave application cum joining report along with medical certificates and resumed her duty. She was allowed to join her duties, duly signed the attendance register and took classes for 7 periods out of 8 periods assigned. That around 2.45 PM, she was served with impugned Order which is illegal, unjustified and suffers from malice.

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5. It is reiterated that appellant had worked for morethan11 years prior to her illegal termination and even in absence of Ref No- 4365/65/2017 dated 22/5/17 she was a deemed confirmed employee in terms of Rule 105 of the Delhi School Education Rules, 1973 (DSER, *in short*). She was given annual increments and earned leave, although not in accordance with Section 10 of the Delhi School Education Act, 1973 (DSEA, *in short*). That this also proves that she was admittedly being treated as a confirmed/permanent employee by the respondent No.1 school.

6. It is asserted further that appellant, being aggrieved of impugned order, sent a legal notice via email dated 31.10.2019 through her counsel but no revert back from the respondent School has been received till date.

7. In the grounds, the assertions made herein before have been reiterated. That the termination of service of the appellant by the respondents, is illegal, unjustified, arbitrary, discriminatory, punitive, perverse, unreasonable, unconstitutional, violative of Articles 14, 16, 21 & 311 of the Constitution of India, violative of the principles of natural justice and also violative of the provisions of DSEA and DSER (DSEA&R, in short).

8. It is averred that respondent school is a private unaided recognized school and is bound by the provisions of the DSEA. That no prior approval was taken from the Director of Education, before dispensing with the services of the appellant as required under Section 8 (2) of DSEA. Reliance on Raj Kumar vs. Director of Education [(2016) 6 SCC 541], has been placed.

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9. It is stated that termination order was not issued by competent authority and manager of the respondent school was not competent to terminate the services of appellant. That it is only the Disciplinary Authority, under rule 118 of DSER, which is competent to terminate the services of an employee of a Private School. That no Disciplinary Authority was ever constituted prior to termination of service of the appellant.

10. It is asserted that appellant is completely unemployed and, despite her best efforts, has not been able to procure any employment whatsoever.

11. It is asserted further that appellant remained unblemished and meritorious for 10 years and during this period she was not served any memos calling for any explanation whatsoever. That after completionof10 years of service, she was served with repeated memos containing frivolous and concocted allegations. That appellant duly replied to all the memos addressing each allegation with conviction and thereafter neither any show cause notice nor any charge sheet was served upon the appellant. Which implies that replies were satisfactory as otherwise show cause notice/ charge sheet would have been issued or revert backs to the replies of the appellant would have been there.

12. It is stated further that appellant has been victimized on account of demanding of salary in terms of Section 10 of the DSEA in conformity with the recommendation of Central Pay Commission.

13. It is further stated that appellant has been harassed on several occasions by the respondent school. Working hours of the appellant have been increased from time to time and that too without any payment of overtime as. She was directed to submit the replies within 24 hours of the

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issuance of the memo(s) and no receipts of the reply(s) were ever given to her. She was not even allowed to sit on the chair while teaching or doing non-teaching work/activity. That the conduct of the respondent school in this regard was callous and insensitive to the extent that, the management had ordered peons to fetch the chairs being used by elderly or those teachers returning from sick leave. That due to this act of removing chairs, she had to take all eight periods almost daily while standing putting her under extreme physical duress.

14. It is stated that respondent school applied pressure tactics with the objective of pressurizing the appellant to tender resignation in order to avoid the liability of payment of due salary in terms of Section 10 of DSEA.

15. It is stated that the termination of services of the appellant was punitive in nature resulting in mental harassment, demoralization and humiliation. That she has been removed from service in an unceremonious and stigmatic manner by the respondent school and because of this perceived blemish, it is almost impossible for the appellant to procure any employment, especially in view of her age i.e. 45 years. That termination order has ruined her career.

16. A request for setting aside the impugned order dated 12.10.2019 (Annexure A-1) has been made along with request of reinstatement with full back wages, consequential benefits and imposition of costs.

17. In the written statement/reply of appeal respondent school, R1 has taken the preliminary objections viz. directions of the respondent being as per the terms and conditions mentioned/given in offer of appointment of appellant, this Tribunal having no jurisdiction to adjudicate the appeal as per mandate of Hon'ble Supreme court in the case of Principal and others Vs Presiding Officer, AIR

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1978 SC 344 and also for the reason that appellant has not been dismissed, removed or reduced in rank by way of penalty.

18. It is averred that the appeal is hit by the principle of law of estoppel, as once the appellant accepted the terms and conditions given in the offer of appointment, she is bound by the same. It is asserted that the appellant has not come to this Tribunal with cleans hands and has suppressed many relevant facts and, therefore, is not entitled for any relief.

19. It is stated that the appellant has incorrectly used the documents i.e. No Objection Certificate dt.22.5.2017 issued by the Principal, Ms. Sudha Datta, who was not competent to issue any NOC to the teachers. That Certificate dated 22.05.2017 was issued without taking any permission from the Manager or management of the school. That the same was issued by Ms. S.Datta in her individual capacity and certification in the certificate 'appellant has been serving as a permanent teacher' is totally wrong and contrary to records.

20. In Parawise reply of the appeal, the assertions of the appellant have been controverted. It is asserted that during the entire service, performance of the appellant was unsatisfactory. That she herself has annexed number of memos and advisory letters to that effect. That these memos had made no impact on the appellant and the management of respondent school had allowed appellant to continue in service with the hope that she will improve her performance. That several warnings were issued to her but she failed to discharge her duties to the satisfaction of the management. It is repeated that the school is justified in its action to terminate her services as per terms and conditions of her appointment, which were duly accepted by her without any objection at the time of

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appointment. That she is neither a permanent employee nor was she confirmed at any time by the management.

21. It is submitted that no prior leave was applied or taken by the appellant. That once it is admitted by her that surgery, if any, was a planned one, then in such a situation, leave should have been applied and got sanctioned. That neither any leave was applied nor was any information given. That she was absenting herself from service unauthorizedly on the cost of the study of the students. That no medical documents were submitted in support of surgery. That since the appellant had neither applied for any leave nor any leave was sanctioned and therefore, there was no question of extension of leave and she was continuously absent from school without any intimation or sanctioned leave.

22. It is reiterated that the service of the appellant has been terminated as per the terms and conditions stated in her appointment letter. That in para 5 of the terms and conditions of the appointment it is clearly stated as under:

> *"Even after confirmation, if you are found absent from duty for 2 days without obtaining prior permission in writing of the Managing Committee/Principal or if you proceed on leave without obtaining prior permission or over stay the sanctioned leave for 2 days without getting it pre-sanctioned, your service shall be liable to be terminated without any further reference/notice to you."*

23. It is stated that even if appellant was a confirmed employee but since she had accepted the above extracted condition, hence there is no illegality in the order of termination.

24. It is stated that plea of deemed confirmation is not tenable as orders regarding confirmation have not been passed. That appointment and confirmation are subject to the

terms and conditions of appointment letter and both sides are bound by the same as otherwise there will be no use of issuing appointment letters and conditions stated therein. Stipulation no. 1 of the appointment letter has been relied.

25. It is stated that the services of the appellant were not confirmed by the managing committee at any time as her services were not satisfactory. That she was allowed to continue in service with the hope that she will improve. That although the appellant was given increment/leave as per appointment letter but mere grant of increments, excess leave, may be, by mistake, does not mean that she was a confirmed/permanent employee.

26. It is reiterated that appellant has not challenged the terms and conditions of appointment letter, during her entire tenure and now she is estopped from wriggling out of the same. That she was a contractual employee and therefore there was no need of taking approval from Director Education, while terminating her. That decision to terminate the services of the appellant has been taken by the Managing Committee and the Manager has only passed the impugned order on behalf of the managing committee and he is competent to pass the order. That principles of natural justice have not been violated.

27. It is averred that submissions of the appellant in Para f and h of grounds are self contradictory as she has pleaded in Para h that she has not committed any misconduct whereas in Para (f), she has pleaded that no inquiry has been conducted. That there is no concept of verbal application in service jurisprudence and the fact remains that no application was moved. That order of termination is not punitive.

28. The Directorate of Education in its reply to the appeal has

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submitted that Respondent No. 1 is a private, unaided recognized school. That functioning of the school is not interfered with by DOE and final decisions are taken independently by the school.

29. In para 7, it is stated that Respondent school has failed to comply with the Rules of DSER as no approval has been granted by the DOE with respect to impugned orders dated 12.10.2019. Reliance on Section 8(2), Raj Kumar Vs. DOE (Civil Appeal No. 1020/2011 decided on 13.04.2016): MANU/SC/0407/2016: AIR 2016 SC 1855 and circular dated 20.5.2016 (Annexure R2/A) has been placed.

30. In the rejoinder w.r.t. W.S/Reply of respondent school, those assertions of respondent school have been controverted which are not in consonance with the assertions of the appeal. Assertions of the appeal have been reiterated. Reliance on Shashi Gaur Vs. NCT of Delhi &Ors., (2001) 10 SCC 445 and Leela Sharma Vs. Govt. of NCT of Delhi &Ors. (WP No. 4164 of 2002); 170 (2010) DLT 505 has been placed. 'Presiding Officer' has been distinguished as the school in the 'presiding officer' was unrecognized and the teacher was short of required qualifications and had worked only for three years whereas in this case the respondent school is recognized, appellant has required qualifications and has a service tenure of 11years.

31. It is asserted that terms and conditions are contrary to DSER and not tenable. That appellant is a deemed confirmed employee as per the mandate of the Mangal Sain Jain Vs. B.R. Mehta Vidya Bhwan and others W.P.(C) no- 3415/12. That plea of estoppel is not applicable.

32. In Parawise reply, it is pleaded that there was no reason for issuance of memos after 10 years of service. That the

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same does not lead to the conclusion that performance of the appellant was unsatisfactory. That things changed after the new management took over. That pursuant of the sad demise of the founder manager of the school, new management deliberately attempted to tarnish the image of most of the old teachers of the school by issuance of memos on frivolous grounds to harass them and force them to leave the school so that new teachers can be appointed on fixed salary basis. That new management wanted to save on salary expenses by appointing teachers on less wages and on contract basis instead of making appointments as per govt. pay scales. That school records are the proof in substantiation of these assertions. That perusal of the memos shows that the same are concocted and biased. That many old teachers have resigned due to the bad behavior of the new management. That many others followed suit for getting experience certificate. That when the appellant didn't budge to the pressure tactics, the respondent school took the action in retaliation. Reliance on Sonia Mehta Vs. Dayanand Model School and Ors in W.P. (C) No. 3061/2011 decided on 06.09.2013 has been placed regarding the concept of deemed confirmation. That action has been taken without any conduct of inquiry. Reliance on State Bank of India and Ors. Vs. PalakModi and Ors. MANU/SC/1058/2012 and Amar Kumar vs. State of Bihar and Ors. MANU/SC/1152/2013, has been placed. That in stigmatic termination an inquiry is required to be conducted even if the employee is on probation.

33. It is stated that rule 123(9) (vii) of DSEAR deals with absence without leaves. That para no-5 of the appointment letter is violative of rule 123(a) (viii) as this rule provides for leave which are beyond the control of the employee and in case of an application with proof having been moved, leave has to be sanctioned ex-post facto. That stipulation no5 of the appointment letter is also

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violative of Rule 111 of DSER, 1973 which provides for availability of leaves as admissible to employees of a corresponding status in Govt. Schools.

34. It is stated that submissions here in above stated are without prejudice to the fact situation of the case of the appellant. That she had informed the HOS (Head of School) well in advance and HOS had given a nod to go ahead with the surgery. That it was just due to non-finalization of the date of surgery that the leave was not applied in writing. That as a standard practice in the school, a message was conveyed through colleagues pursuant to already communicated reasons to the HOS followed by an email on the day of surgery. That stipulations of the appointment letter are grave enough for taking note of, by the DOE to take action as Rule 50 (vi) enjoins a duty on the managing committee to follow DSER. That DOE should take action under Rule 56. That school was not giving confirmation letters and most of the employees including the appellant were deemed confirmed.

35. It is stated that leave application of the appellant was neither sanctioned nor rejected in spite of numerous verbal enquiries. That appellant had informed the respondent school well in advance about the contemplated surgery and the same could not have been cancelled because of deliberate delay tactics adopted by the school with ulterior motives. That the dates were not finalized due to clearance of insurance and other formalities, and, therefore oral information was given. That she took leave for the pre-surgery tests on4/10/2019.

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36. It is stated that, there is no practice of giving any acknowledgment of receipt of any document by the school whereas teachers are asked to give a receipt w.r.t. the memos, replies of which are invariably sought within 24

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hours. That even w.r.t. show cause notices issued, respondent school never gave receipt of the replies submitted. That due to the nature of the respondent school, the teachers had to resort to email. That school's inbox of emails and diary register can be checked to verify the same. That even receipts of emails sent are denied. That dispatch register will contain dispatch numbers of communication w.r.t. memos but no mention would be found there about the same in the receipt register/dispatch register.

37. It is asserted that no meeting of the managing committee ever took place and constitution of the managing committee was illegal and unjustified. That respondent school has not placed on record the minutes of the meetings of the managing committee which proves that no meeting the managing committee ever took place.

38. Arguments were heard at the bar. Ld. Advocates Mr. Anuj Aggarwal for the appellant, Ms. Sonika Gill for respondent school and Mr. Mukesh Kumar for DOE have been heard at length. They have argued in consonance of their respective pleadings Mr. Anuj Aggarwal has heavily relied on the latest interpretation of Section 8(2) by Hon'ble Supreme Court in Raj Kumar Vs. DOE and circular of DOE dated 20.05.2016 bearingno.DE/ 15(1540/Act1/SLP 1020/2011/2016/8878-8885).

39. Ms. Sonika Gill has argued that impugned order is not a 'dismissal, removal or reduction in rank' by way of penalty and hence as per the mandate of the 'The Principal Vs. Presiding Officer', this tribunal has no jurisdiction. That appellant has been terminated as per contractual terms as mutually agreed upon in the appointment letter. That appeal is hit by principle of estoppel. That alleged certificate dated 22.05.2017 is invalid, appellant is not a confirmed employee, unauthorized absence goes against

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her and her services have been legally terminated. That appellant is a temporary employee and her services have been rightly discontinued on account of her misconducts.

40. Counsel for DOE Mr. Mukesh Kumar has likewise Mr. Anuj Aggarwal relied on Section 8(2) read with Raj Kumar Vs. DOE and Circular.

41. I have perused the records of the case and considered the submissions. Section 2(h), 8(2), 8(3) of DSEA and Rule 105 of DSER are relevant for deciding the issue involved and are being reproduced at the outset.

2(h) "employee" means a teacher and includes every other employee working in a recognized school;

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.

8(3) Any employee of a recognized private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.

Rule 105. Probation

(1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority by another year [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:

[Provided that the provisions of this Sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year shall not apply in the case of an employee of a minority school:

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(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation as the case may be, confirmed with effect from the date of expiry of the said period.

(3) Nothing in this Rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.

42. It is admitted case of the respondent school that no approval has been taken from the DOE as required under section 8(2) in this case, although the stand taken for doing so is that no permission was required. Pleadings of ground B in the grounds of this appeal are as follow:-

"B. Because the respondent no.1 school is private unaided unrecognised school and is bound by the provision of Delhi school education act, 1973. It is submitted that no prior approval was taken from the Director of Education, Govt of NCT of Delhi, before dispensing with the services of the appellant in term of section 8(2) of Delhi School Education Act, 1973. As per the law laid down by the Hon'ble Supreme Court of India in Rajkumar V/s Director of Education(2016) 6 SCC 541, prior approval had to be obtained from the Director Education as required as under section 8(2) of Delhi School Education Act 1973. The order of termination passed without prior approval would be thus, bad in law"

43. Reply of the respondent in this regard is as follows:

A-B: "Para No. A and B of the appeal are wrong as stated and hence same are denied. In reply it is submitted that neither the appellant was a permanent employee nor she was confirmed employee. It is submitted that she was appointed with certain terms and conditions stated in the appointment letter and she was appointed only after acceptance of terms and conditions of the appointment letter and now her service has been terminated only as per those term and conditions. It is submitted that she has not challenged the terms and conditions of the appointment letter during entire service period and therefore, now she cannot get other grounds beyond the terms and conditions of the appointment letters. It is submitted that she was appointed like a contract employee with certain terms and conditions and therefore she is governed

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by those conditions, for which there is no need to take any approval."

44. A juxtaposed reading of herein before discussed pleadings of appellant and respondent makes it abundantly clear that no approval of DOE was taken.

45. The grounds taken in the appeal are not tenable as requirement of approval under section 8(2) does not envisage any other challenge vis concerning terms and conditions of appointment letter, post being contractual/temporary/non-regular etc. Even otherwise the grounds taken in reply to the ground B, are not tenable, Raj Kumar Vs. DOE has to apply and hold the field. There are umpteen number of cases now to support this conclusion, some of which are being discussed, in which Raj Kumar Vs. DOE has been discussed at length.

46. Impugned order mentions about termination which as per Section 117(iii) & (iv) is a major penalty. Para 16 of management of Rukamni Devi Jaipuria public school Vs. DOE: Lawfinder doc 9D#1046214 is one which substantiates the above conclusion and is reproduced:

"16.Not only this, as per sub section (2) of section 8 of the Delhi School Education Act, 1973, any major penalty has to be inflicted with the prior approval of the Director of Education. Supreme Court in Raj Kumar v. Director of Education (2016) 6 SCC 541 has reiterated that as per Section 8 (2) of Delhi School Education Act, 1973, prior approval of Director of Education is mandatory for awarding major penalty".

47. Reliance is also placed on Reshmawati Vs. The Managing Committee and Others WP(C) 11565/ 15 decided on 1/7/19. In para 28 and 29 , it has been observed that prior approval of DOE is a must:

"28.Be that as it may, the admitted fact is that

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approval of the termination has not been taken from the Directorate of Education as is mandatory under section 8(2) of Delhi School Education Act, 1973. Thus the punishment order mentioned above is set aside for violation of the procedures and rules of the Act.

29. In Raj Kumar vs. Director of Education: (2016) 6 SCC 541, wherein it is held that the approval under section 8(2) of the Delhi School Education Act is mandatory but has not been taken in the present case."

48. In para 27 onwards of Meena Oberoi Vs. Cambridge Foundation School & others (2019) 265 DLT 401, 4th and 5th issues vis-à-vis "Impugned decision was issued in violation of sec. 8(2) of DSEA, which require prior approval of DOE to be obtained by school before terminating services of any employee and violation of Sec. 2(oo) read with Sec 25 of Industrial Disputes Act were discussed (five issues were specified in para 6 and the above mentioned two issues were 4th and 5th issues)." The relevant paras of Raj Kumar Vs. DOE were discussed at length in this case including the reasons regarding overruling of Kathuria Public School's Judgement.

49. In para 29 , Sec 8(2) was discussed which ordains that no employee of recognized private school shall be dismissed, removed or reduced in rank nor his services shall be otherwise terminated except with prior approval of DOE. A bare reading of their judgement goes to show that prior approval has to be obtained irrespective of nature of major penalty. 'Termination otherwise' was explained further including "Or Otherwise terminated', 'Removal', 'Termination', 'Dismissal' were also discussed in light of Supreme Court judgments.

50. Para 30 to 37 are important and are reproduced :

"30. The expressions "dismissed", "removed", "reduced in rank" and "otherwise... terminated" are comprehensive and all-encompassing in nature and embrace, within themselves, every possible

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contingency, by which the services of an employee of the school are disengaged. The intention, of the legislature, to cover all forms of disengagement of employees, is manifest by the cautionary use of the word "otherwise", in the expression "nor shall his service be otherwise terminated".

31. The wide amplitude of the expression "otherwise" has been noticed, by the Supreme Court, in several decisions.

32. While examining the expression "or otherwise", as contained in Article 356(1) of the Constitution of India - which empowers the President of India to proclaim a state of emergency "on receipt of a report from the Governor of a State or "otherwise", the Supreme Court held, in S.R. Bommai v. U.O.I (1994) 3 SCC 1, the expression "otherwise" meant "in a different way" and (was) of a very wide import and (could not) be restricted to material capable of being tested on principles relevant to admissibility of evidence in Court of Law." In U.O.I. v. Brahma Dutt Tripathi (2006) 6 SCC 220, the Supreme Court was concerned with the expression "or otherwise" as it occurred in Section 9 of the National Cadet Corps Act 1948, which reads thus:

"7. The Central Government may provide for the appointment of officers in or for any unit of the Corps either from amongst members of the staff of any university or school or otherwise and may prescribe the duties, powers and functions of such officers."

(Emphasis supplied)

The Supreme Court held that the expression "or otherwise" related to other members of the corps other than the staff of any university or school, including a student, who was a member of the corps. Similarly, in Lila Vati Bai v. State of Bombay AIR 1957 SC 521, it was held that the legislature when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses. Other decisions, of the Supreme Court, which notice the overarching scope of the expression "or otherwise" are Nirma Industries Ltd v. Director General of Investigation and Registration (1997) 5 SCC 279, Sunil Fulchand Shah v. U.O.I. (2000) 3 SCC 409 and Tea Auction Ltd. v. Grace Hill Tea Industry 2006 (12) SCC 104.

33. It is also important to note, in this context, that

the expression used in Section 8(2), is not merely, "or otherwise", but is "or otherwise terminated". The expression "termination" etymologically, refers to the determination of the relationship, between the employer and the employee. Cases which result in the determination of the said relationship would, therefore, amount to "termination" and, in my view, the expression "or otherwise terminated" is expressive of the legislative intent to include all such cases within the provisions.

34. Equally, the expression "remove" has, simply but felicitously, been explained, by the High Court of Mysore in State of Mysore v. B. Chikkavenkatappa 1964 SCC OnLine Kar 141, as meaning "to take off or away from the place occupied". Every case in which an employee is taken off, or taken away, from the place occupied by him in the establishment would, therefore, amount, etymologically, to "removal from service". For this reason, the expression "removed from service" has been held, by the Supreme Court, to be synonymous with termination of service R.P. Kapur v. S. Pratap Singh Kairon, AIR 1964 SC 295.

35. Clearly, therefore, every type of disengagement, from service, would be covered by the expressions "dismissed", "removed", or "otherwise... terminated", as employed in Section 8(2) of the DSE Act. Cases of cessation of the employer-employee link at the instance of employee, such as cases of abandonment of service would not, therefore, attract the provision. Where, however, by an act of the employer, the employee is removed from the employer's services, the applicability 8(2) of the DSE Act cannot be gainsaid.

36. A case of disengagement from service, on the ground that the post or the employee had become surplus, would, consequently, also be covered thereby.

37. On the issue of whether Section 8(2) of the DSE Act applies to orders of dismissal, removal, reduction in rank, or termination, of employees, by private unaided schools, however, the law has, over the period of time, been in a state of flux, though the waters appear, now, to be stilled."

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51. In para 38, Kathuria Public school and in para 39 to 43, Prabhu Dayal Vs. Praladh Singh and Pabhu Dayal Vs. Anirudh Singh were discussed vis-à-vis Kathuria Public School.

52. In para 44, reversal of Kathuria Public school was discussed and by referring to the observation of Hon'ble supreme court in Raj Kumar's case in para 46 Hon'ble Mr. Justice C.Harishankar concluded as follows:

> *"There can be no mistaking the tone and tenor of the afore-extracted passages, from the decision in Raj Kumar. The Supreme Court has, in no uncertain terms, held that Kathuria Public School was wrongly decided. Equally, the Supreme Court has emphasised the need and necessity of ensuring that, even in the case of private unaided schools, prior approval of the DOE is obtained, before taking any of the actions contemplated by Section 8(2) of the DSE Act. Inasmuch as prior approval of the DOE had not been obtained before terminating Raj Kumar from service, the Supreme Court held that, even on that score, the termination of Raj Kumar was unsustainable in law."*

Therefore it was the mandatory statutory duty of Respondent school to have obtained the prior approval of DOE, which has not been taken.

53. In Mangal Sain Jain Vs. Principal, Balvantray Mehta Vidya Bhawan & Ors 2020 (3) LLN 407,Lawfinder document #1740651 judgement of Meena Oberoi was discussed; Section 2(h) and rule 105 were elaborated further. It was observed that prior approval has to be obtained irrespective of nature of emplyoment vis- Temporary, Permanent, Contractual, Probationary, Ad-hoc etc. Head-note is reproduced:

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"Delhi School Education Act And Rules, 1973, Rules 2(h) and 105 - Ad hoc Employee - Rule 105 pertaining to Probation refers to every Employee and term 'Employee' defined in Rule 2(h) includes within its scope Teacher and every other Employee working in School - Petitioner working as Accounts Clerk in R1-School - Order of Termination issued against Petitioner in 2008 - Stand of Petitioner that Manager and Principal not competent to issue Charge-sheet as they were not Disciplinary Committee - Thus, as definition of Employee is very wide, it also includes within its ambit an Ad-hoc Employee - A Probationer, thus, entitled to protection of Rule 105 and his services cannot be terminated without prior approval of Director of Education - Charge-sheet bearing signatures of Principal and Manager not in consonance with mandates of Rules 118 and 120 - Proceedings so initiated, held, vitiated."

54. In para 5, three issues were framed as under :

(a) *Whether the Petitioner is a probationer/confirmed employee and entitled to protection of procedural safeguards of the provisions of DSEA&R?*

(b) *If the provisions of DSEA&R are applicable, whether the Chargesheet was issued by the Disciplinary Committee, as per the mandate of Rules 118 and 120 of DSEA&R and if not, the effect thereof ?*

(c) *Whether the Discharge order passed without prior approval of the Director of Education, as required under Section 8(2) of DSEA&R, is liable to be quashed?"*

55. The operative portion of this judgement starts from para 12 onwards. In para 13, it has been mentioned that rule 105 (1) provides that every employee on initial appointment will be on probation for a period of one year extendable by another year by the appointing authority and subject to termination without notice during probation on account of unsatisfactory work and conduct. It is further held that the word used in rule are " every employee" and word "employee " has been defined in Sec.2(h) and means a teacher and includes every other employee working in a recognised school . Rule 105 of DSER and

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sec.2 (h) of DSEA stands extracted in this para, which I have already reproduced at the outset

56. In para 14, it has been observed that Hon'ble Supreme Court in Management Committee of Mont Fort school Vs. Vijay Kumar (2005) 7 SCC 472 held that very nature of The employment of employees of a school is that it is not contractual but statutory. It has been observed that :

> *"Therefore, if the Minorities Schools? can have contractual employment and yet their employees have to be treated as statutory employees, then as a fortiori Non-Minority Schools? employees also have statutory protection of their services. The Court held that once the nature of employment of every employee is statutory in nature, the provisions of Rules 118 and 120 of the DSEA&R would apply and services can be terminated only after complying with the said provisions"*

57. In para15, Laxman Public School Society (Regd.) and Ors. v. RichaArora and Ors. W.P. (C) 10886/2018 decided on 10.10.2018 was referred para 12 and 13 ofLaxman Public School Society vs Richa Arora case were referred which I also deem expedient to reproduce:

> *"12. There is nothing, in the judgment of the Supreme Court in Raj Kumar (supra), which limits its applicability to the case of a regular employee, and does not extend the scope thereof to the termination of a probationer. Rather, Rule 105 of the Delhi School Education Rules, itself states that, "every employee shall, on initial appointment, be on probation for a period of one year ..... ". This itself indicates that, even during the period of probation, the employee continues to remain an employee. The second proviso to Rule 105 mandates that, except in the case of a minority school, no termination from service, of an employee on probation, shall be made by school, except with the previous approval of the Director of Education. There is no dispute about the fact that, prior to terminating the services of the petitioner, no approval of the Director of Education was taken.*
>
> *13. One may also refer to the definition of "employee", as set out by the Supreme Court in the*

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judgment Union Public Service Commission v. Dr. Jamuna Kurup, (2008) 11 SCC 10, of which para 14 is reproduced as under:

"14. The term "employee" is not defined in the Delhi Municipal Corporation Act, 1957, nor is it defined in the advertisement of UPSC. The ordinary meaning of "employee" is any person employed on salary or wage by an employer. When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word "employee" would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD, whether permanent or contractual will be "employees of MCD."

58. In para 18 and 19, Union Public Service Commission v. Dr. Jamuna Kurup (2008) 11 SCC 10 was referred and it has been held that word "employee" would include both permanent o temporary,regular or short term,contractual or ad hoc in absence of any restrictive definitions.

59. Para 19, is as follows:

"19.What emerges by a combined reading of the judgements collated above juxtaposed with Section 2(h) and Rule 105 of DSEA&R is that the word "employee" has been given a wide meaning and is not restricted to "regular" employee for the applicability of the provisions therein. This interpretation is strengthened by the use of word "every" as a prefix to the word "employee" in Section 2(h). Thus even an ad-hoc employee is covered under the definition of "employee". In case he is a probationer he is entitled to protection and his services cannot be terminated without prior approval of the Director of Education under Rule 105. If he has worked for at least 3 years, he acquires status of confirmed employee as held in several judgements and all procedural safeguards will have to be complied with under the DSEA&R, before imposing a penalty contemplated under Section 8(2). Going a step forward, as elucidated by plethora of judgements, as the appointment is a statutory appointment, it ipso facto entitles the employee to all protections and procedural safeguards envisaged in DSEA&R by the Legislature"

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60. No doubt the observations regarding deemed confirmation after 3 years of satisfactory service on probation are of the period whenHamdard Public School vs Directorate Of Education & Another, Law Finder DOCID #489610; 2013 (202) DLT 111 ; W.P. (C) 8652/11 D.O.D 25/07/2013 , Army Public School & Anr. vs Narendra Singh Nain And Anr. W.P. (C) 1439/2013 D.O.D 30/08/2013 ; Army Public School And Anothers vs Ayodhya Prasad Sunwal And Anothers W,P. (c) No. 2176/2013 D.O.D 30/08/2013 ; Army Public School vs Anusuya Prasad And Another etc. were holding the field and were upheld in LPA No. 86/2018 decided on 07/05/2012 by distinguishing Deputy Director of Education vs Veena Sharma Manu/DE/1944/2010 : (2010) 175 DLT 311 (DB) and thereafter Durgabai Deshmukh Memorial And Anothers vs J.A.J. Vasu Sena And Anothers Manu/SC/1139 ; 262 (2019) DLT 535 has overruled the concept of deemed confirmation. I have no hitch to observe that except the deemed confirmation aspect, rest of observations particularly regarding DOE's approval are not only applicable but the applicability of same stands reiterated by another Bench of Hon'ble Apex Court i.e Marwari Balika VidyalayaVs. Asha Srivastava and Ors. MANU/SC/0365/2019 Civil Appeal No(s).9166/2013 D.O.D 14/02/2019.

61. Cursory glance of para 19 reveals that even an ad-hoc 'employee' is covered under the definition of 'employee' and is entitled to benefit of sec 8(2) as well as rule 105. Similarly a probationer is entitled to protection of Section. 8(2) and rule 105. Therefore I have no hitch to observe that every employee is entitled to statutory protection of Section 8(2) and rule 105.

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62. In para 24 to 26 discussion about Raj Kumar's case has been made and it was concluded thereafter that Mangal Sain was entitled to relief of reinstatement.

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63. Surender Rana Vs. DAV school and others Appeal No. 37/1997 decided by DST on 15/1/2002 is also an addition which has remained almost unnoticed earlier. Para 5 and 6 are reproduced:

> "*5. There is no dispute about the fact that the Appellant was working in the Respondent school as store keeper. The appointment letter filed by Appellant shows that he was appointed on 1.8.96 and was put on probation for an intial period of one year. This being the situation, services of Appellant could have been terminated only in accordance with the provisions of rule 105 of Delhi school education rules, 1973.*
>
> *6. Rule 105 of Delhi school education rules, 1973, requires that before the termination of an employee, prior approval of director of education has to be obtained. Admittedly, no such approval was obtained by the respondents before terminating the services of appellant. The order of termination of his services is, therefore, liable to be set aside. The appeal is accordingly accepted. The order of termination dated 30.6.97 is accordingly set aside. It is, therefore, ordered that the appellant be reinstated to his original position. The appellant shall also be entitled to the costs of this appeal, which is assessed as Rs 2,000/-"*

64. A bare glance on above extracted inverted portion reveals that prior approval has to be obtained in case of a probationary employee. Appellant Surender Rana was a probationary employee in this case at the time of his termination as he was appointed on 1.8.96 and was terminated on 30.6.97.

65. Order of DST dated 15/01/2002 was challenged in W.P. (C) No.1249/2002 which was disposed on 8.2.2006 by Hon'ble Mr. Justice S. Ravinder Bhatt (now, a Judge of Hon'ble Supreme Court). It was observed as under:

> "*There is no dispute about the fact that the Appellant was working in the Respondent School as Store Keeper. The appointment letter filed by the Appellant shows that he was appointed on 1.8.96 and was put on probation for an initial period of one year. This being the situation,*

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services of the Appellant could have been terminated only in accordance with the provisions of Rule 105 of the Delhi School Education Rules, 1973.

66. This judgement was challenged before Double Bench in LPA No. 492/2006 which was also dismissed on 30.11.2006 and it was observed as follows:

> *"11. We are in entire agreement with the observations made by the Learned Single Judge in affirming the order of the Tribunal. We also feel that the Tribunal could not have decided in the favor of the Appellant since the appellant failed to provide any documentary proof to substantiate their claims that they are a minority institution and could thus invoke the right guaranteed under Article 29(2) of the Constitution since they are a religious minority under Article 30(1)."*
>
> *"13.The records of this case reveal that the Respondent No. 1 was a victim of bureaucratic delay and complete apathy of the Appellant. We are satisfied thus that there is no reason whatsoever for us to interfere with impugned judgment of the Learned Single Judge".*

67. Decision of LPA was challenged in Civil Appeal No. 2719/2007 decided on 3.2.2011 and in para 2 it was held as follows:

> *"2. Rule 105 of the Delhi School Education Rules, 1973 deals with probation and prescribes the period of probation. The second proviso to sub-Rule (1) of Rule 105 clearly provides that no termination from service, of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director."*

68. Hereinbefore mentioned and discussed judgments of Surender Rana make it abundantly clear that even a probationer is entitled to the protection of section 8(2) of DSEA. The list of judgments can be multiplied. The multiplication is being avoided and I deem it expedient to pause here and conclude that prior approval was must and Appeal must be allowed on this single issue itself.

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69. Although appeal stands disposed of on this technical ground, still in view of fact that this Tribunal is last Court of facts, it is deemed expedient to discuss the case of parties on factual aspects also. It will be better although not necessary, strictly, if other issues arising out of pleadings are discussed. One such issue is that of 'jurisdiction' which is being discussed hereinafter.

70. The jurisdiction issue I am discussing at length, the reason being that issue of jurisdiction on the basis of " The Principal and Presiding Officer" (1978) 1 SCC 498, has been raised.

71. Section 8(2), 8(3) came up for interpretation before the Hon'ble Supreme Court, most probably for the first time in *"The Principal and others Vs Presiding Officer"* and it prescribed two conditions with respect to availability of jurisdiction of this Tribunal vis-à-vis (i) that the employee should be an employee of a recognized private school and (ii) he/she must be visited with anyone of the three major penalties i.e. dismissal, removal or reduction in rank.

72. This interpretation was widened by Hon'ble Supreme Court in Shashi Gaur Vs. NCT of Delhi &Ors reported in (2001)10 SCC 445 wherein in Para 7 and 8, it was observed as follows:-

> *"7. This judgment and the interpretation put to the provisions of Sub-sections (2) and (3) of Section 8, undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Government authorities, having been given certain control over the action of such private*

management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, 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 proceeding, but also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court in not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that availability of an alternative remedy ousts the jurisdiction of the Court under Article 226 of the Constitution."

73. 'Termination otherwise' was thus interpreted, the interpretation of which was not necessitated in the Principal Vs. Presiding Officer. To save the employees of private school from the caprices and whims of the management of private institutions, narrow construction was avoided to sub section (3) of section 8 of DSEA, to provide ,more efficacious remedy of a civil appellate court, which has all powers of an appellate court, as provided under section 11(6) which provides as follows:-

11(6) *"Tribunal shall for the purpose of disposal of an appeal preferred under this act have the same power as are vested in a court of appeal by the code of civil procedure, 1908 (5 of 1908) and shall also have the powers to stay the operation of the order appealed against on such terms as it may think fit".*

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74. Difference between appellate remedy before DST and writ remedy was spelt out and it was held that DST's jurisdiction was wide for the school employees as compared to writ jurisdiction of high court under article 226. View taken by the High Court that remedy before DST was the only remedy for dismissed / removed /reduced in the rank employees and not the High Court under Article 226, was reversed. Remedy under Article 226 was held to be concurrent although less wide and less efficacious.

75. In social jurist, a civil rights group Vs GNCT and others (Delhi) W.P. (C) 43/2006 decided on 08.02.2008, reported in Law Finder DOCID# 178740: 2008(147) DLT 729: 2008(101) DRJ 484: 2008 (4) AD (Delhi):2008(8) SCT 118, a Division Bench of Delhi High Court in its 'PIL' jurisdiction held that provisions of DSEA and DSER apply to all schools of Delhi. In para 18, T.M.A Pai Foundation Vs state of Karnataka AIR2003 SC 355 was relied and it was held that no doubt the right to establish an educational institution is a fundamental right guaranteed under clause (6) of article 19 of the constitution, but the same is subject to reasonable restrictions. It is deemed expedient to reproduce Para 19 and 20 which answered the following questions;

> *(i) Is there a fundamental right to set up educational institutions and if so, under which provision.*
>
> *(ii) In case of private institutions, can there be Govt. regulations and if so to what extent "*

76. *Answering the first question extracted above, in the affirmative, the Court held:*

> *19. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would*

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be an activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in Sodan Singh's case correctly interpret the expression "occupation" in Article 19(1)(g). 26. The right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognized head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Articles 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. This would allow members belonging to any religious denomination, including the majority religious community, to set up an educational institution. Given this, the phrase "private educational institution" as used in this judgment would include not only those educational institutions set up by the secular persons or bodies, but also educational institutions set up by religious denominations; the word "private" is used in contradistinction to Government institutions"

"20. Insofar as the second question is concerned, the Court held that the right to establish an educational institution could be regulated but such regulation was limited to only certain aspects and did not extend to fixing a rigid fee structure or dictating the formation and composition of the governing body or compulsory nomination of teachers and staff, etc. The Court observed: The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a Government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restriction"

77. In para 21, it was held that provisions of DSEA are meant to better organize and develop school education in Delhi and matters connected there with or incidental thereto. Chapter II was referred concerning establishment, recognition, management of schools. Section 3 was considered to be very

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important as it empowers the Administrator to regulate education in all schools of Delhi as per DSEA and DSER. Section 3(2) of DSEA empowers the administrator to establish and maintain any school, or to permit any person or local authority to do so subject to compliance of provisions of DSEA and DSER. Clause 3 of section 3 empowers the administrator as follows :-

> "(3) On and from the commencement of this Act and subject to the provisions of clause (1) of article 30 of the Constitution, the establishment of a new school or the opening of a higher class or the closing down of an existing class in any existing school in Delhi shall be subject to the provisions of this Act and the rules made there under and any school or higher class established or opened otherwise than in accordance with the provisions of this Act shall not be recognized by the appropriate authority".

78. In para 22 and 23 sections 4(1) and 4(6) were referred which concern recognition of schools and powers of 'appropriate authority' to recognize any private school on an application made to it in the prescribed form. It was observed that the provisions forbid recognition of school unless the conditions stipulated there under are satisfied.

79. In para 24 it was held that the administrator has the power to regulate education in all schools of Delhi. That the expression 'all schools' in Delhi is significant and leaves no manner of doubt that the act is not limited in its application only to the recognized schools. Section 2(i) and 2(v) were referred and in Para 25 it was held that the power of administrator to regulate extends not only to recognize but to all schools whether the same are recognized or not recognized.

80. In para 29, it was concluded as follows:-

> *The following aspects therefore emerge from the above discussion:*
>
> *(i) The power of the administrator to regulate school education extends to all the schools in Delhi whether the same are recognized or unrecognized.*

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(ii) A school can be established only with the permission of the administrator granted in terms of Section 3(2) of the Act and any school established contrary to the said provisions shall not be recognized by the appropriate authority.

(iii) Recognition of the schools shall be granted only if the school satisfies the norms stipulated in Section 4(1) of the Act read with Rules 50 and 51 of the Rules framed under the Act.

(iv) The appropriate authority competent to grant recognition may, in its discretion and for good and sufficient reasons, exempt provisionally any private school seeking recognition from one or more of the provisions of Rule 50 or 51 or both for such period as it may consider necessary.

(iii) If a school ceases to fulfill any requirement of the Act or any of the conditions specified in the Rules or fails to provide any facility specified in Rule 51, the appropriate authority may after giving the school a reasonable opportunity of showing cause against the proposed action withdraw recognition in terms of Rule 56 which shall not be restored under Rule 57 unless the authority is satisfied that the reasons which led to the withdrawal have been removed and that in all other respects, the school complies with the provision of the Act.

81. The afore-going discussion concerning 'Social Jurist' clearly shows that all schools of Delhi are amenable to the provisions of DSEA and DSER Sections 2(t) and 2(u) DSEA show that 2(t) talks about a recognized school which means a school recognized by appropriate authority whereas definition of word 'school' is inclusive. School includes a pre primary, primary, middle and higher secondary school. The definition goes further to include any other institution which imparts education or training below the degree level. Only exception are the institutions which impart technical education.

82. Therefore, I have no hesitation to observe at this, juncture itself that every employee working in a 'school' as defined under 2(u) of DSEA can approach DST in case of the relationship of 'employer' and 'employee' having come to an end including employees of unrecognized schools who are also included in the same.

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83. 'Social Jurist' was relied by Hon'ble Delhi High Court in Saheed Udham Singh Shiksha Samiti and Ors. Vs. Suman Lata Manu/DE/3237/2013; W.P(C) 3723/12 decided on 09.09.2013 in appellate writ jurisdiction w.r.t. DST and held that employees of 'unrecognized' schools were also under the umbrella of DST.

84. In the head note of Manu, a question was posed as to:-

> "Whether or not provisions or Rules should or should not apply to unrecognized schools?"

85. This question was answered as under in the head note:-

> *"Provision of Rules would apply to unaided, private and unrecognized schools also and therefore, it could not be held that since petitioner no.3 school was unrecognized school, it would not be governed by provision of sec 8 (3) of the Act.".*

86. Ratio decidendi has been given at the bottom of the head note as follows:-

> *"It shall be an incongruity in terms to hold that merely on ground of recognition of school or non-recognition of school thereof, different remedies lie for challenging orders of termination passed by schools with respect to termination of services of its employees/ teachers"*

87. In para 8 it was observed that :-

"Much water has flown under the bridge since the Supreme Court delivered the judgment in the year 1978 in the case of The Presiding Officer (supra). The observations which were made by the Supreme Court in the case of The Presiding Officer (supra) were in the plain language of the Delhi School Education Act, 1973, and which plain language as per its literal interpretation only provided for appeals to be filed by the employees/teachers of recognized schools, and which was because it was thought that DSEA&R do not apply at all to unrecognized schools.

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Surely, the provision of Section 8(3) is not an independent statute in itself and the said provision is very much a part and parcel of the DSEA&R, and therefore if the Act. as a whole applies to unrecognized schools and so held by the Division Bench of this Court in the case of Social Jurist (supra), I cannot agree to the argument urged on behalf of the petitioners that the ratio of the judgment of the Supreme Court in the present case should be interpreted to hold that whereas teachers/employees of recognized schools can file appeals before the DST under Section 8(3), however teachers/employees of unrecognized schools cannot file appeals before the DST against the orders of the schools terminating their services".

88. I may observe that the Supreme Court in the case of The Presiding Officer (supra) was not concerned with the situation at all that the provisions of DSEAR apply to unrecognized schools and if they do, yet, Section 8(3) will not apply to a school merely on the ground that school is not recognized.

89. In this case (W.P © 3723), school was being run by Saheed Udham Singh Smarak Shiksha Samiti, which had claimed its primary wing school to be an unrecognized one and had terminated the services of Smt. Suman Lata and three others. These three teachers had approached the Tribunal. DST vide its order dated 17.05.2012 had held the termination as illegal on the ground that provisions of rule 120 of DSEA mandate holding of an inquiry before terminating the services, which was not done.

90. In para 18, the Tribunal held as follows:-

"Admittedly the respondent school did not conduct any departmental inquiry against any of the appellant herein. Appellants were not granted any opportunity to defend their cases. No Inquiry officer was appointed. No disciplinary committee was constituted. It is not the case of respondent school that the disciplinary authority itself made an inquiry

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into the alleged charges against the Appellants. The disciplinary Authority also did not hold any inquiry proceedings. No witness was examined to depose in support of the prosecution. The disciplinary authority did not issue any notice to any of the appellants suggesting the action proposed to be taken. No representation against any tentative punishment was invited. There has, therefore, been flagrant violation of the law laying down the procedure for imposing the penalty of dismissal from the service. The impugned orders in the aforesaid three appeals are, therefore, illegal and unsustainable in the eyes of law. The same are set aside. Appeals are accordingly allowed.

Question of school being unrecognized and therefore provisions of DSEA and DSER not being applicable was raised and reliance on ***Principal Vs Presiding Officer*** *was placed, Para 4,5 and 6 of the "Principal Vs Presiding Officer " supra were relied.*

91. As per para 3 of Manu/DE/3237/2013 the Hon'ble High Court of Delhi framed the issues as follows:-

> *(i) Whether the provisions of section 8(3) of DSEA, entitle an employee of an unrecognized school to maintain an appeal before Delhi School Tribunal.*

92. In Para 4, **Social Jurist, a civil rights group society Vs. N.C.T. and Ors.** Manu/DE/ 0203/2008; 147(2008) DLT 729 was referred and Para 12 to 15, 17 to 25, 29 were reproduced. Thus, I have no hesitation to hold that jurisprudential policy of conferring the jurisdiction instead of taking it away has to be applied, while interpreting the provisions of pro poor socio-beneficial legislations including DSEA and DSER. Therefore, the plea of exclusion of the jurisdiction of the tribunal has to be tested on the inclusion of the jurisdiction instead of exclusion of the jurisdiction as otherwise the schools will be in a position to draft the terms which are more favourable to them and security of teachers/ employees will be at peril. So terms of appointment letter shall have to be tested on the jurisprudential policy of inclusion, so that terms and conditions of appointment can be tested by Tribunal on the touchstone of reasonableness.

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93. In the view of aforegoing discussion. I hereby hold that respondent school cannot be permitted to exclude the jurisdiction of this tribunal on the plea of mandate of the Presiding Officer Vs. The Principal And Another.

94. Similarly I hold that jurisdiction of DST cannot be permitted to be excluded on the plea estoppel on the basis of acceptance of terms and conditions of the appointment. A harmoniously balanced view between two idiomatic situations "Ignorance of law is no excuse" and "Necessity knows no law" has to be drawn and therefore issue of estoppel cannot be permitted to come into the way of this Tribunal as otherwise it would amount exclusion of jurisdiction instead of inclusion. Coming to the disposal of factual pleadings.

95. Terms and conditions of appointment letter and other documents of the parties and otherwise deemed relevant are being reproduced as under :

Modern Child Public School, Nangloi, Delhi-41

Appointment letter for PGT/TGT/A.T.

To,

Ms. SarikaDabas,

Ref. No. .....

Sub: Terms and Conditions of appointment

Dear Sir/Madam,

With reference to your application dated 09.05.2008 and subsequent interview/test held on 22.05.2008 in connection with your appointment as a Teacher in this school, we have the pleasure to offer you the post of a teacher on a salary of Rs. 9818/- in the grade of Rs. 4500-8000 besides usual allowances as applicable to other teachers employed in this school on the following terms:

1. Initially you will be on probation for a period of two years from the date of joining. The said period of probation is further liable to be extended for one year solely at the discretion of the Managing Committee. During or at the expiry of the said period of probation or the extended period of probation, the managing committee shall have

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the right to terminate your services without any notice or without assigning any reason. You will be on the probation till your services are confirmed in writing by the managing committee.

2. After confirmation, your services shall be liable to be terminated on one month's notice or salary in lieu thereof except on disciplinary grounds in which case no such notice or payment in lieu thereof shall be necessary.

3. During the Adhoc/probation period you are entitled only for eight casual leaves a year. No other leaves will be sanctioned.

4. .....

5. Even after confirmation, if you are found absent from duty for 2 days without obtaining prior permission in writing of the Managing Committee/Principal or if you proceed on leave without obtaining prior permission or over stay the sanctioned leave for 2 days without first getting it pre-sanctioned, your services shall be liable to be terminated without any further reference/notice to you.

6. The annual increment as shown in the pay scale shall not be claimed by you as a matter of right but will depend upon the maintenance of high standard of discipline, good work, result, efficiency, integrity, punctuality, regularity and result.

7. 7. to 22 .....

23. In case any act or omission constituting misconduct alleged against you, you shall be placed under suspension pending enquiry, and will not be entitled to any salary/suspension allowance during the period of such suspension (State if the rules provide for payment of subsistence allowance).

24-25.....

26. You will be retired on ___ the age of 58 years though the managing committee may grant extension of one or two years on ad-hoc basis or even retire you earlier in case you fail to perform your duties efficiently.

In case the above terms and conditions are acceptable to you, please sign and return carbon copy in token of the acceptance of the above terms and conditions

Sd/-

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DECLARATION BY THE EMPLOYEE

I accept the offer and the terms and conditions mentioned in the aforesaid letter. I have understood the same in the language known to me.

Sd/-
Signature of the Employee

APPOINTMENT

You are hereby appointed on the post of AT on 01.07.2008 at 7 AM as per aforesaid terms and conditions.

Sd/-

Signature of the employee
with complete postal address
& Ph. No.

96. Termination/Impugned order No. MCPS/5660/26/ 19 dated 12.10.2019 issued by school Manager is also reproduced herein below :

Modern Child Public School

Punjabi Basti, Nangaloi,

Delhi-110041, Ph.2547303

Email:modernchildpublicschool@gmail.com

MCPS/5660/26/19 Dated: 12.10.2019

ORDER

"As per the terms and condition stated in the appointment letter dated 01.07.2008, the managing committee of the school decided to terminate the service of Smt. Sarika dabas, A.T, temporary teacher due to unsatisfactory performance with immediate effect"

Dr. Vivek Yadav
Manager.

97. Perusal of the termination order reveals that it is the managing committee which has decided to terminate the service due to unsatisfactory performance. Rule 118 of DSER provides about the constitution of the committee. Rule 120 of DSER provides procedure for imposing major penalty. No minutes of meeting of managing committee have been placed on record

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for which an adverse inference has to be drawn. Hon'ble Mr. Justice R.S Endlaw in Mamta vs. School Management of Jindal Public School and Ors. W.P. (C) No. 8721/2010 Decided On:01.06.2011 and reported in MANU/DE/2424/2011 has held that Disciplinary Authority and Managing Committee under DSEA&R are two different entities having different duties and the general law under article 311 of the Constitution of India vis-à-vis Appointing Authority being the Disciplinary Authority is not applicable in case of the employees coming within the definition of Section 2(h) of DSEA. Para 11 to 19 of this judgement are relevant and be read as part of this para which are not being reproduced for the sake of brevity. So the termination order is hit by this defect as well and submission of the appellant in this regard carries weight and is allowed.

98. Plea regarding non giving of appropriate time for replying the memo(s) is also tenable. I have no hesitation to observe that school authorities were not giving proper time to file reply to the memo(s) as period of 24 hours cannot be considered a sufficient period at all and this amounts to violation of principles of natural justice.

99. There is a force in the submissions of the appellant to the effect that she was harassed in the shape of not being permitted to sit on chair and the teachers had to work under extreme physical duress. This fact is evident from conjoint perusal of the memo(s) read with their replies. A discussion about memo is being made hereinafter.

100. In this case memo dated 26.09.2018 was issued with the mention that appellant had not attended the arrangement period. This memo was replied to on the same date (26.09.2018) and appellant gave the explanation that she was given arrangement of period no. 4 & 5 on 25.09.2018. She has further submitted that she was also given bundle of examination copies (English 47 copies) pertaining to Mrs. Sapra for checking despite the fact that Mrs. Sapra was very

much attending the school. She further submitted that she approached Mrs. Shalini and politely requested her to reconsider the arrangements but when Mrs. Shalini bluntly refused to oblige, she (appellant) had to contact Mrs. Sudesh Madam who cancelled her 5th period. She has further mentioned that she duly attended the 4th period arrangement in 4th B for Mrs. Sapna Dogra which can be verified from the arrangement register. She also denied the charge of being rude and having misbehaved. Her reply was that she had asked for the details of the person with whom she had misbehaved and on what account? No rejoinder to this answer was given by the school management.

101. Another memo was issued on 18.02.2019 to be replied in 24 hours. It was regarding map books being incomplete. A bare perusal of the reply of the same date i.e. 18.02.2019 reveals that answer given was completely tenable and therefore Dr. Vivek Yadav could not dare to answer this. Another memo was issued on 19.02.2019 regarding map books being incomplete. In the reply dated 19.02.2019 it was revealed that mistake was on the part of the school management and not on the part of the school teachers. Thereafter, another memo dated 08.04.2019 was issued in which late coming of the students was asked to be explained after passing of order dated 04.04.2019 This memo was also replied on the same date and the appellant replied that she was on leave on that day and she was not aware about the circular. She explained her helplessness in the matter and rightly answered as she only could have reprimanded the late comers with warnings/fines/punishment in case of repeat offenders which she was already doing She submitted that any other method suggested by the higher authorities would also be implemented by her. She could not have done more than that.

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102. Another memo dated 18.04.2019 was issued in which allegation of using of mobile phone was leveled on the pretext of circular of DOE. The same was also answered on 18.04.2019 itself. Appellant stated that she had used the mobile phone to know the well being of her daughter as she was not keeping well and had used the mobile phone in the 2nd recess in the staff room and this was a single instance only. The explanation given by the appellant will appeal even to a lay man and she cannot be considered to be at fault. This rather shows the whimsical and fanciful attitude of the school.

103. Another memo dated 20.07.2019 was issued wherein it was imputed that appellant was sitting in one room and gossiping. This memo was also replied on the same day and name of the person with whom the appellant was allegedly gossiping was requested to be disclosed which has not been done by the respondent school till date. Her explanation that she was sitting in Class 7th A and there was only one instance of Mrs. Vandana coming to her class to discuss about the teachers diary and future course of action required regarding teaching in the current session for the reason that they were parallel teachers. Thereafter, she has answered that another topic of discussion was about faulty result in PT-I from 6th to 10th Classes due to wrong application of formula in excel sheet having been given by the examination head. Appellant has challenged that her explanation is verifiable from CCTV footage. Another memo dated 24.07.2019 was issued related to non satisfactory reply by the respondent to the memo dated 20.07.2019 and inefficiency in her work which was replied to on the same date. The plea of parallel teacher was taken as well.

104. The memos read with the replies show that memo(s) were issued for the sake of issuing and were issued only from 2017 onwards when the appellant had raised the question of following of section 10 of DSEA by school. Balance of

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convenience hangs heavily in favour of the appellant when tested on the touchstone of preponderance of probabilities.

105. The non-response by the school, makes me to observe that answers were proper and i.e., why school could not dare to revert back.

106. Submissions of the appellant that she had asked for pay parity as per Section 10 of Delhi School Education Act, and the same had actuated the respondent school to issue memo(s) also carries weight when read in the light of replies of the appellants to the memo(s).

107. Main cause for termination is non-obtainment of leave in advance w.r.t. cataract surgery. A perusal of the email as well as the pleadings, goes to show that submissions of the appellant are fully tenable and the school should not have taken such a harsh step for the same. Email dated 07.10.2019 mentions that appellant had earlier discussed the issue with the respondent and intimation about her reporting for surgery on 07.10.2019 was given.

108. Stand of respondent regarding termination of services of appellant on the basis of unauthorized absence is not tenable as condition no. 5 of the appointment letter is not a reasonable condition, Rule 123 (a) (VII) deals with absence without leave in the code of conduct of teachers. Rule 123 (a) (VII) is reproduced as:-

> *"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".*

Rule 111 provides as under.

> ***Rule 111*** *"Every employee of a recognized private school, whether aided or not, shall be entitled to such leave as are admissible to employees of a corresponding status in Government school."*

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109. I have no hesitation to observe that appellant had duly informed the school authorities about her cataract operation and school could not have made this a basis for termination of the appellant particularly in view of the fact that she was working in the school for a period of more than 11 years at the time when she got operated for cataract. Firstly the school should have admitted about obtainment of medical leave by the appellant in advance. Secondly it should have accorded ex-post-facto sanction of the leaves. At the worst, it could have deducted the salary for a period for which appellant was on leave and nothing more than that. It could not have been made the basis of termination. Respondent school has not produced the leave record of the appellant and has given a go bye to Rule 111. An adverse inference has to be drawn from the same. If the schools are permitted to behave like this, then security of the tenure of the teachers will be at great risk which is not the object and aim of DSEA&R.

110. At the cost of some repetition it is observed that plea of the respondent school regarding estoppel is also not tenable as there can be no estoppel particularly regarding acceptance of terms and conditions of appointment by a poor employee vis-a-vis a mighty school.. Moreover, on the pretext of admission of the terms & conditions of the appointment letter, respondent school cannot be permitted to impose conditions which are not reasonable. A teacher who has to serve under the high handedness of such a management which places its reliance on unreasonable conditions will affect the education of the school children which is a fundamental right now. School management cannot be permitted to function at its whims & fancies and terms & conditions of appointment have to stand true on the touchstone of reasonability. So submissions of preliminary objections no.2 are not tenable.

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111. Preliminary objection no.4 is also not tenable as it has not been explained as to why Ms. Sudha Dutta was not competent to issue the 'No Objection Certificate' (NOC) dt. 22.05.2017. No scheme of management has been shown/placed on record of this Tribunal by virtue of which, it can be said as to upon whom the duty to issue experience certificate was imposed. In the absence of the same, the bald self serving assertion cannot be permitted to come in the way of issuance of NOC by the principal, who is normally the issuing authority in case of such certificates.

112. Submissions to the effect that performance of the appellant was not satisfactory is also not tenable as the memos were issued only after the appellant had raised the issue of salary payments as per section 10 of the DSEA. It is not appealable to reason that a teacher who was not issued memos for continuous period of 10 years, will be issued memos of the nature which have been issued to the appellant. The arguments/submissions of the appellant in this regard are more believable as compared to the self serving assertions of the respondent. A conjoint perusal of the memos and the replies goes to show that memos were issued only for the sake of issuing. Had there been force in the stand taken in the memos then school must have issued rejoinders to the replies which it did not dare.

113. Perusal of emails dt. 07.10.2019, 13.10.2019 & application dt. 21.10.2019, medical records attached with leave application dt. 21.10.2019, go to show the bonafides of appellant.

114. The impugned order which has been issued by the manager, Dr. Vivek Yadav does not stand on the scrutiny of provisions of DSEA & DSER. Dr. Vivek Yadav has not mentioned in the termination order that this order was issued on the instructions of the disciplinary authority and No minutes of managing committee have been placed on record. No

constitution of Disciplinary Authority is there on the records produced by the respondent school, these aspects have to go in the favour of allowing of the appeal.

115. Above all, non-seeking of permission of the DOE U/s 8 (2), non-reverting to the Rule 118 by the management, issuance of termination order by an unauthorized person i.e. the manager without any minutes of meeting, non-following of procedure under Rule 120 of conducting of an inquiry, particularly w.r.t an employee who has served the school for more than a period of 10 yrs etc. makes the appeal allowable and I have no hesitation, therefore in allowing the appeal on factual matrix also.

116. In view of reasons given herein before, impugned order dated 12/10/2019 is set aside. Respondent No. 1 is directed to reinstate the appellant within a period of 4 weeks, Appellant will be entitled to all consequential benefits. She will be entitled to full wages from date of order onwards.

117. With respect of back wages, in view of Rule 121 of DSEA&R 1973, the appellant is directed to submit an exhaustive representation before to respondent school within a period of 4 weeks from today as to how and in what manner she is entitled to complete wages. The Respondent school is directed to decide the representation to be given by the appellant within 4 weeks of receiving of the same by a speaking order and to communicate the order alongwith the copy of the same to the appellant. Ordered accordingly. File be consigned to record room.

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(DILBAG SINGH PUNIA) 3/2/2021
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL

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