BEFORE SHRI DILBAG SINGH PUNIA, PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL
LUCKNOW ROAD, TIMAR PUR, DELHI-110054

Appeal NO.35/2019

IN THE MATTER OF:

Vandana Yadav
W/o Sh.Devender Singh Yadav
R/o 47, Siddharth Apartment,
near Richmond School,
Paschim Vihar, New Delhi-110087
Mob. No. 9312316177 **...Appellant**
Through: Sh. Anuj Aggarwal, Advocate

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 **...Respondents**
Through: Mr. Mukesh Kumar, Advocate

THE SEAL OF THE DELHI SCHOOL TRIBUNAL

Certified to be True Copy
Delhi School Tribunal
Delhi

JUDGEMENT

The appellant Ms. Vandana Yadav has filed the present appeal against order bearing number. MCPS/5659/26/19 dated 12.10.2019 (Annexure A-1), issued by the Manager, Modern Child Public School (R1), vide which she was terminated from the service. Main contents of appeal are that appellant was appointed as an Assistant Teacher on a salary of Rs. 9,075/- in grade pay of Rs. 4500-7000 vide appointment letter dated 03.07.2007 (Page 28- Annexure P3). That she had unblemished and uninterrupted service record of 12 years. That since she was given annual increment, earned leave etc., albeit not strictly, as per Section 10 of Delhi School Education Act, 1973 (in short, DSEA) w.c.f.

3/2/2024

03.07.2010. That she was a deemed confirmed employee as per Rule 105 of Delhi School Education Rules, 1973 (in short, DSER). That her termination on the ground of unsatisfactory performance is illegal.

2. It is asserted further that appellant, sent a legal notice via email dated 19.10.2019 through her counsel but no revert back from the respondent school has been received till date.

3. In the grounds, assertions made in the main body of appeal have been reiterated. It is asserted that impugned order is illegal, unjustified, arbitrary, discriminatory, punitive, perverse, unreasonable, unconstitutional and violative of Articles 14, 16, 21 & 311 of the Constitution of India, That the same is also violative of the principles of natural justice and provisions of the DSEA and DSER (DSEA&R, in short).

4. It is asserted that respondent school (R1) is a private unaided recognized school and no prior approval was taken from the Director of Education, before dispensing with the services of the appellant in terms of Section 8 (2) of the DSEA. That order of termination passed without prior approval is bad in law.

5. It is further asserted that the termination order was not issued by competent authority and that the manager of the respondent school (R1) was incompetent to terminate the services of the appellant. That in terms of the DSER, it is only the Disciplinary Authority which is competent to terminate the services of an employee of a recognized private school.

6. It is further averred that the termination of services of the appellant was in violation of Rule 118, of the Delhi School Education Rules, 1973. That no Disciplinary Authority was ever constituted prior to the termination of service of the appellant. It is alternatively contended that in case any disciplinary authority was constituted then constitution of the said authority was in violation of the provisions contained in rule 118 of DSER. That termination of service of the appellant was in complete violation of Rule 120 & 123 of DSER as well.

3/12/2021

7. It is further submitted that appellant has not committed any misconduct whatsoever. That no inquiry whatsoever has been conducted by the respondent school (R1) regarding misconduct, if any, of the appellant. That no opportunity to present her case has been given to the appellant.

8. It is further asserted that appellant is unemployed since the date of her illegal termination from her service and, despite her best efforts, has not been able to procure any employment whatsoever. That she is entitled to the relief of reinstatement in service with full back wages and continuity of service.

9. It is contended that services of the appellant remained unblemished and meritorious for 11 years during which she was not served any memos calling for any explanation, whatsoever. That however, thereafter, the appellant has been served with repeated memos by the respondent No.1 school. That all the allegations contained in the said memos are concocted and frivolous. That the appellant has duly replied to all the memos and thereafter neither any show cause notice nor any charge sheet was served upon the appellant which implies that the replies submitted by the appellant were found acceptable as otherwise revert back must have been there.

10. It is further submitted that appellant has been victimized on account of demanding her salary in terms of Section 10 of the DSEA, 1973. That the appellant made several verbal representations to the respondent school (R1), in this regard which has led to issuance of memos.

11. It is further stated that appellant has been harassed on several occasions by the respondent school (R1). That the respondent school (R1) increased the working hours of the appellant from time to time and that too without any payment of overtime as provided in DSER. That she was directed by the respondentschool (R1) to submit the reply within 24 hours of the issuance of the memos. That she was not even allowed to sit on the chair while dictating the notes in the classes or while indulging in other non-teaching work/activity and to ensure this, the management even

removed the chairs. That the appellant had to take all eight periods while standing almost daily putting her under extreme physical duress. That the appellant has been harassed and pressure tactics have been adopted by the respondent No.1 school with the objective of pressurizing her to tender resignation. That the objective of the aforesaid victimization and harassment has been to avoid the liability of payment of due salary in terms of Section 10 of the DSER.

12. It is asserted that impugned order is punitive in nature resulting in mental harassment, demoralization and humiliation. That she has not been issued any experience certificate/relieving letter in the absence of which it is almost impossible for her to procure any employment, especially in view of her age i.e. 48 years. That the impugned order practically has ruined her career.

13. A request for setting aside the impugned order dated 12.10.2019 (Annexure A-1) has been made. Request of reinstatement with full back wages and imposition of costs has also been made.

14. **In the reply to 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, 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 1978 SC 344 and also for the reason that appellant has not been dismissed, removed or reduced in rank by way of penalty. Non specifically admitted facts of the appeal have been denied.

15. It is averred that the appeal is hit by the law of estoppel, as once the appellant accepted the terms and conditions given in the offer of appointment, which she has, she is bound by the same. That she (appellant) has not come to the Tribunal with clean hands and has suppressed many relevant facts and therefore also, is not entitled for any relief as prayed in the appeal.

16. In para-wise reply of the appeal the assertions of the appellant have been controverted and that of preliminary objections have

been reiterated. It is contended that during the entire service, performance of the appellant was unsatisfactory.

17. It is asserted that appellant did not have unblemished and uninterrupted record of service to her credit, and during entire service her performance has been unsatisfactory. That appellant herself has annexed number of memos and advisories although not all, which speak about her unsatisfactory performance that a large number of memos and advisories were issued to the appellant for improvement of her performance but of no avail. That management had allowed her to continue in service with the hope that she will improve her performance. That since, appellant failed to improve her performance, the school is justified in its action to terminate her service as per terms and conditions of her appointment. It is reiterated that services of appellant have been dispensed with in accordance with the service contract i.e.as per terms and conditions of her appointment letter, which were duly accepted by her without any objection at the time of appointment.

18. It is stated that neither the appellant was a permanent employee nor was she confirmed at any point of time by the management. Stipulation no. 5 of the terms and conditions of the appointment has been relied which reads 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."

19. It is averred further that there is no concept of deemed confirmation and confirmation is always by passing of appropriate orders by the competent authority. That if the parties of this case will not be made to be bound by these terms and conditions, then there will be no use of offer of appointment and conditions stated there in. That in para 1 of the appointment letter, it has been provided as under:

"During or at the expiry of the said period of probation or the extended period of probation, the managing committee shall have the right to terminate your service without any notice or without assigning any reason. You (wrongly typed as The) will continue to be on the probation till your services are confirmed in writing by the managing committee."

20. It is reiterated that service of the appellant was not confirmed by the managing committee at any time, as her services were not satisfactory during her entire service. It is repeated that management had allowed the appellant to continue in service with the hope that she will improve her performance.

21. It is further submitted that although the appellant was given or might have been given increment, leave as per her entitlement as stated in appointment letter, but mere grant of some excess leave by mistake subject to verification of the record, does not mean that appellant became confirmed or permanent employee. That appointment was only on the basis of terms and conditions stated in appointment letter. That termination order has been passed as per the term and conditions of the appointment letter, by the competent authority.

22. It is contended that no legal notice was received by the management as stated in the appeal. That there is no illegality in the impugned order and same has been passed in the interest of the school children, as per the terms and conditions of the appointment letter.

23. It is further averred that appellant has not challenged the terms and conditions of the appointment letter during entire service period and therefore, now she cannot rely on any other grounds except the term and conditions of the appointment letters. That she was appointed like a contract employee with certain terms and conditions and therefore, she is governed by those conditions, for which there is no need to take any approval.

24. It is asserted that the decision to terminate the services of the appellant has been taken by the Managing Committee and the Manager has only passed the impugned termination order on behalf of Managing Committee. That otherwise also, it is totally wrong to say that the Manager is not competent to pass the impugned order. That impugned order has been passed in non-violation of rule 118 and has been passed.But in fact the same has been passed as per the terms and

3/2/2021

conditions of offer of appointment. It is submitted that the disciplinary authority has been mentioned in the rules.

25. It is stated that paras F and H are contradictory to each other, as in para F of the appeal, the appellant has stated that she has not committed any misconduct whereas in para H she has stated that no enquiry has been conducted.That all the facts stated in ground I to K are without any basis and have been asserted only to gain sympathy and there is no legal force in the same and the same are totally false and fabricated.

26. In the rejoinder w.r.t. reply of respondent school, those assertions have been controverted which are not in consonance with the assertions of the appeal and 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. in WP No. 4164 of 2002 ;170 (2010) DLT 505 has been placed. The Principle Vs. Presiding Officer' has been distinguished on the ground that the school in the 'presiding officer' was unrecognized, teacher was short of required qualifications and he 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 11 years.

27. It is asserted that terms and conditions of appointment are contrary to DSER and not valid. 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 decided on 10.08.2020. That plea of estoppel is not applicable.

28. In para-wise reply Shashi Gaur Vs. NCT of Delhi & Ors., (2001) 10 SCC 445 and Leela Sharma Vs. Govt. of NCT of Delhi & Ors. in WP No. 4164 of 2002: 170 (2010) DLT 505 have been relied and it is stated that this Tribunal has the powers to adjudicate the issue. That DSER are statutory rules and any contract or terms of appointment, which are contradictory of the aforesaid rules, shall be illegal and unenforceable in law. It is submitted that the doctrine of estoppel is not applicable as appellant has not misrepresented or violated any terms and conditions.

31/2/2024

29. It is asserted that the reason for issuance of memos after 11 years of service was not the unsatisfactory performance of the appellant but it was the change in approach of the new school management after demise of the founder Manager of the school. That the new management deliberately attempted to tarnish the image of most of the old teachers of the school by issuing 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 they wanted to save on salary expenses by appointing teachers on less wages and on contract basis in preference to those appointed as per govt. pay scales. That the memos annexed in the Appeal along with replies can be perused to infer the concocted and biased nature of allegations as well as the fact that the management was ultimately convinced with the replies made which were categorical, to the point and made with conviction. That coercive attitude of the management had forced many teachers to resign on the terms of the school just to get an experience certificate to keep their hope of finding another job alive which gets bleak if the teacher is terminated. However the appellant didn't budge to pressure tactics and that is why she has been terminated

30. It is submitted that admittedly the services of the appellant have been terminated on account of the purported unauthorized absence from services. It is submitted that unauthorized absence is misconduct for which, as per the DSER, the respondent No.1 was bound to conduct an inquiry. That admittedly no inquiry whatsoever has been conducted in the present case and, therefore, the termination of services of the appellant was illegal and unjustified.

31. It is statedthat presuming for the sake of argument the appellant was on probation at the time of termination of service then also in terms of the law declared by the Hon'ble Supreme Court in State Bank of India and Ors. Vs. Palak Modi and Ors. MANU/SC/1058/2012 and Amar Kumar vs. State of Bihar and Ors. MANU/SC/1152/2013, the respondent school (R1) was bound to conduct an inquiry. That in case of stigmatic termination of services, inquiry is required to be conducted even in case of a probationary employee. With respect to unauthorized absence, it is stated that rule 123 (a)(vii) of the DSER deals with absence without leave in the Code of Conduct of Teachers. That para 5 of the terms of the

Appointment letter is violative of the rule 123(a) (viii) of DSER as it fails to acknowledge exception. That provision of rule 123(a) (viii) of the Delhi School Education Rules, 1973 read as under:

"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 fact, the necessary sanction for the leave".

32. It is asserted that stipulations of appointment letter are violative of Rule 111 of the DSER also which provides for grant of leaves as admissible to employees of a corresponding status in government schools. That none of her submissions vis extant legal provisions should be construed as admission to the effect that absence of appellant was without any permission or sanction of leave or it was just a casual leave. With regard to memo concerning absence issued to the appellant, it has been submitted as follows:

"I had applied for leave for two days i.e. 09th and 10th October 2019 almost 20 days in advance on 18th or 19th September2019. The reason for the leave application was to go for a family excursion. I attended the school till 7th Oct. 2019 and neither any clarification regarding my leave application was sought nor any denial of the same was communicated to me. Accordingly treating it as deemed sanction, I proceeded on leave on the date mentioned in the application".

33. It is submitted that the application for leave was neither sanctioned nor rejected in spite of numerous verbal enquiries requests for the same. That a family excursion for which many arrangements are already in place cannot be cancelled because of deliberate delay tactics by the school with ulterior motives.

34. It is stated that there is no practice of giving any acknowledgment of receipt of any document, be it a reply to a memo, joining report after leave or an application for leave. That employees are asked to give a receipt for the memos issued but contrarily are never given a receipt of the reply submitted by the emplyoee(s) which are usually sought within 24 hours. That therefore, employees have to resort to email the reply(s) just to support their contention. That school's inbox of emails and diary register can be checked to verify the same. That respondent

school does not give any acknowledgement for any receipt of any document and denies the emails sent. That their dispatch register will contain dispatch number of communication like memos but the receipt register does not contain the required details.

35. It is further stated that terms of appointment are grave enough for the Directorate of Education to take cognizance of the schools failure to work as provided under conditions of Recognition in Rule 50 (vi) of the DSER which mandates that, the Managing Committee should observe the provisions of DSEA&R and the same is one of the conditions for grant of recognition. That rule 56 provides for suspension or withdrawal of the recognition if a school ceases to fulfill any requirement of DSEA and DSER.

36. It is averred that para 3 of the terms and conditions of the Appointment letter clearly states that during ad-hoc/probation period the appellant was entitled for only eight casual leaves a year and no other leaves. That the facts that all the teachers were granted H.R.A. increment and earned leaves after expiry of their probation period without formal communication are sufficient to construe deemed confirmation.

37. It is reiterated that the legal notice was sent on school's email address and as usual the school has deliberately denied its receipt.

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

31/12/2021

as mutually agreed upon in the appointment letter. That appeal is hit by principle of estoppel. 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:*
>
> *(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.*

THE SEAL OF THE DELHI SCHOOL TRIBUNAL

Certified to be True Copy

Delhi School Tribunal
Delhi

3/2/2021

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 not doing so is that no permission was required. Pleadings of ground C in the grounds of the appeal are as follows:-

"C. Because the respondent no.1 school is private unaided recognised 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 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:

C: "Para No. C of the appeal is wrong as stated and hence same is 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 by those conditions, for which there is no need to take any approval."

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

45. The grounds taken in the reply of 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 C, are not tenable, Raj Kumar Vs. DOE has to apply and hold the field. There are umpteen number of cases now to

30/12/2021

support this conclusion, some of which are being discussed, in which Raj Kumar Vs. DOE has been discussed at length.

46. Impugned order is a termination order 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 Id#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 of Red Roses Public School 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 and the observations are as follows:

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

Certified to be True Copy
Delhi School Tribunal
Delhi

3/2/2021

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 this 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 the 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 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."

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:

"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 (Mangal Sen Jain) 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 Sec.2 (h) of DSEA stand replicated 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 has held that very nature of The employment of employees of a school has undergone a change and 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. Vs. Richa Arora and Ors. W.P. (C) 10886/2018 decided on 10.10.2018 has been referred. Para 12 and 13 of Laxman Public School Society Vs. Richa Arora case were also referred which I deem it 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

3/2/2021

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 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, 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"

31/12/2021

60. No doubt the observations regarding deemed confirmation after 3 years of satisfactory service on probation are of the period when Hamdard 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 another vs J.A.J. Vasu Sena and another Manu/SC/1139 ; 262 (2019) DLT 535 has overruled the concept of deemed confirmation, I have no hitch to observe that except '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 Vidyalaya Vs. 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, the only exception will be where the employee of his/her own violation gives up the job, section 8(2) will not apply. Therefore I have no hitch to observe that every employee is entitled to statutory protection of Section 8(2) and rule 105.

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

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 dismissed 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, 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:

Certified to be True Copy

Delhi School Tribunal
Delhi

3/2/2021

"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 before the Hon'ble Supreme Court 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 including the judgement 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

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 schools 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".*

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 has held that provisions of DSEA&R apply to all schools of Delhi. In para 18, T.M.A Pai Foundation Vs state of Karnataka AIR 2003 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 questions posed 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*

30/12/2021

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 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 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 :-

31/12/2021

"(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 with 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.

(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 school.

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. 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 unrecognised.

89. In this case, 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:-

31/2/2021

"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 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".

91. 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.

92. 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".

93. 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 followed, while interpreting the provisions of pro poor socio-beneficial legislations including DSE&R. Therefore, the plea of 'exclusion' of the jurisdiction of the tribunal has to be tested on the 'inclusion' principle instead of exclusion principle 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. Therefore 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 this Tribunal on the touchstone of reasonableness.

94. In 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.

95. Similarly I hold that jurisdiction of DST cannot be permitted to be excluded on the plea of 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 to exclusion of jurisdiction instead of inclusion. Coming to the disposal of factual pleadings.

96. 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,

Mrs.vandana yadav,

Ref. No. 1143A/25/07

Sub: Terms and Conditions of appointment

Dear Sir/Madam,

With reference to your application dated 27.06.2007 and subsequent interview/test held on 23.06.2007 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. 9075/- in the grade of Rs. 4500-125-7000 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 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

THE SEAL OF THE DELHI SCHOOL TRIBUNAL

Certified to be True Copy

Delhi School Tribunal
Delhi

7/2/2024

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. to22 .....

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/-

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 27.06.2007 at 7 AM as per aforesaid terms and conditions.

Sd/-
3/2/2021

THE SEAL OF DELHI SCHOOL TRIBUNAL

Certified to be True Copy

Delhi School Tribunal
Delhi

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

97. Termination/Impugned order No. MCPS/5659/26/19 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/5659/26/19 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. Vandana yadav, A.T, temporary teacher due to unsatisfactory performance with immediate effect"

Dr. Vivek Yadav

Manager.

98. Perusal of 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 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 18 of this judgement are relevant and be read as part of this para.

"11 . The question which thus arises for adjudication is that if, the Managing Committee includes all the persons who are to constitute the

31/12/2021

Disciplinary Authority/Committee, whether it can be said that the Managing Committee is also the Disciplinary Authority/Committee.

12. Rule 59(1)(a & b) is as under:

59. Scheme of management of recognised schools-

(1) The scheme of management in relation to a recognised school shall provide that:

(a) the Managing Committee of a recognised aided school shall consist of not more than fifteen members; and the Managing Committee of a recognised unaided school shall consist of not more than twenty one members;

(b) subject to the total number of members specified in Clause (a) every Managing Committee shall include the following, namely:

(i) the head of the school;

(ii) one parent, who is a member of the Parent-Teachers' Association of the school, constituted in accordance with such instructions as may be issued by the Administrator, and is elected by that Association;

(iii) two teachers of that school, to be elected by the teachers of that school from amongst themselves;

(iv) two other persons (of whom one shall be woman), who are, or have been, teachers of any other school or of any college, to be nominated by the Advisory Board;

(v) two members, to be nominated by the Director, of whom one shall be an educationist and the other an officer of the Directorate of Education, Delhi, not below the rank of the Principal of a Higher Secondary School;

(vi) the remaining members to be nominated or elected, as the case may be, in accordance with the rules and regulations of the society or trust by which the school is run.

13. I also find that Section 2(k) of the Act defines the "Head of School" as the principal academic officer of the School and Section 2(m) defines the "Manager" as the person entrusted under the scheme of management of School made under Section 5, with the management of the affairs of the School. "Managing Committee" is defined in Section 2(n) as the body of individuals entrusted with the management of the School. Section 4 makes the existence of a duly approved scheme of management as required by Section 5 a precondition for grant of recognition to the School. Section 5 requires the Managing Committee of the School to (act 27) in accordance with the Rules and with the previous approval of the appropriate authority, make a scheme of management for the School.

THE SEAL OF THE DELHI SCHOOL TRIBUNAL

Certified to be True Copy

Delhi School Tribunal
Delhi

31/2/2021

14. Rule 59(2) while prescribing as to for what all the scheme of management to be prepared shall provide for, in Clause (e) requires the scheme of management to provide for the "duties, powers and responsibilities of the Managing Committee, which shall include control over appointments, disciplinary action and control on staff". Chapter XV of the Rules deals with "other duties and responsibilities of Managers and Managing Committees of Schools" but is not found to be relevant for the present purposes.

15 . The Respondent School has not placed before this Court its scheme of management. Thus it cannot be said as to what the same provides qua "disciplinary action and control on staff". I have wondered whether, since disciplinary action and control on staff is to be within the scheme of management of the School to be prepared by the Managing Committee, it can be said that as long as the constituents of the Disciplinary Committee as per Rule 118 are also constituents of the Managing Committee, it can be said that the Disciplinary Committee is the same as the Managing Committee. Moreover, under Rule 98 the Appointing Authority of every employee of a School is the Managing Committee and the general view appears to be that the power to appoint comprehends the power to remove.

16. I am of the opinion that the Managing Committee cannot be held to be the Disciplinary Authority/Committee for the following reasons:

(i) had the intent been to constitute the Managing Committee as the Disciplinary Authority/Committee also, there was no need in Rule 118 to prescribe the constitution of the Disciplinary Authority/Committee and it would have been sufficient to merely provide that the Managing Committee of the School shall also be the Disciplinary Authority/Committee;

(ii) while under Rule 59(1)(b)(v), of the two members of the Managing Committee to be nominated by the DOE, one is required to be an educationist and the other an officer of the DOE, Delhi, under Rule 118(iii) the member of the Disciplinary Authority/Committee is required to be either a nominee of the DOE in the case of an aided School or a nominee of the "appropriate authority" in the case of unaided School. "Appropriate Authority" is defined in Section 2(e) of the Act as, in the case of a School recognized by the Delhi Administration, as the Respondent School is, the Administrator or any other officer authorized by him in this behalf. Moreover, there is no qualification for such nominee, either of the DOE or of the

Appropriate Authority as is in the case of the nominees of the DOE in the Managing Committee;

(iii) in some of the other cases coming before this Court, it has been seen that the DOE has been appointing nominee in the Disciplinary Authority/Committee expressly and did not take a stand that the nominee appointed to the Managing Committee would also be a nominee for the Disciplinary Authority/Committee;

(iv) though vide Rule 59(2)(e) the scheme of management is to also provide for the disciplinary action and control on staff but in view of the specific Rule 118 dealing with the Disciplinary Authority/Committee and further in view of Section 5 supra requiring the scheme of management to be in accordance with the Rules, the scheme of management qua disciplinary action and control on staff cannot be contrary to Rule 118.

(v) Managing Committee under Rule 59 is a much bigger Body than a Disciplinary Authority/Committee under Rule 118. To hold the two to be the same would tantamount to vesting the powers of the Disciplinary Authority/Committee also in persons other than those provided under Rule 118; Rule 118 does not permit presence in the Disciplinary Authority/Committee of persons other than those mentioned therein.

(vi) In the face of the Rules which are statutory in character expressly providing separately for Managing Committee and the Disciplinary Authority/Committee and further in face of Rule 120(1)(d) expressly empowering the Disciplinary Authority/Committee constituted under Rule 118 to also impose major penalty, it has to be necessarily held that the Rules have taken away the power under the general law of the Managing Committee as the Appointing Authority to take disciplinary action for and to impose a major penalty on the employee of the School. Thus, it follows that notwithstanding the presence of a nominee of the DOE in the Managing Committee of the School and notwithstanding the Administrator, Delhi even if has delegated powers as an appropriate authority to the DOE, the Managing Committee cannot be treated as the Disciplinary Authority/Committee.

17 . I find that the Division Bench of this Court in P.K. Bansal v. UOI MANU/DE/0424/1988 : 37 (1989) DLT 37 also held that the Managing Committee has no power to review the decisions of the Disciplinary Authority/Committee constituted under Rule 118. I may however mention that the subsequent Division Bench of this Court in Kathuria Public School v. Director of Education MANU/DE/0945/2005 : 123 (2005) DLT 89 without noticing the earlier Division Bench, in para 39 generally observed that the ultimate power

vests in the Managing Committee and the constitution of the Disciplinary Authority/Committee does not in any manner take away the powers of the Managing Committee to take necessary action in matters of discipline relating to teachers and employees. With due respect to the Division Bench, I am humbly of the opinion that it is not so reflected in the Rules. Moreover, the said observation came to be made in the context of the delay by the DOE in nominating the members to the Disciplinary Authority/Committee and for which a time period of two weeks was laid down by the Division Bench. The Supreme Court in Steel Authority of India v. Presiding Officer Labour Court MANU/SC/0315/1980 : (1980) 3 SCC 734 held that where under the Service Rules the Personnel Manager was the Disciplinary Authority, the Resolution of the Board of Directors of the Company and the orders of the Managing Director of the Company delegating the powers for disciplinary action to another officer would be of no avail. Thus, the observations aforesaid of the Division Bench in Kathuria Public School (supra) of the ultimate power vesting in the Managing Committee is contrary to what has been held by the Apex Court.

18. Once it is held that the Disciplinary Authority/Committee under Rule 118 is distinct from the Managing Committee, the action if any taken by the Managing Committee would not be in accordance with law and of no avail.

99. So the termination order is hit by this basic defect and submission of the appellant in this regard carry weight and are allowed.

100. There is a force in the submissions of the appellant to the effect that she was harassed and was 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 coming memo(s)

101. Memo dated 14.05.2018 bearing No. MCPS/4481/86/2018 was issued for individual pointing out of a student of XI-C standard instead of making the student aware indirectly regarding not visiting of classes during lunch break. This memo was replied on 16.05.2018 wherein plea of reservation of rights was taken. It was submitted that issuing of such memos was defamatory and should not have been resorted to. Appellant

has identified the student who is habitual of visiting other classes during lunch break. It has been submitted that in view of co-educational nature of the school this type of conduct was not called for as it shall be having obvious and serious implications and for this reason particular student was questioned. It is stated that student was not pointed out individually despite the fact that student was defying code of conduct repeatedly. That student concerned was a stubborn one, who has no regard and respect for teachers. It was further replied that appellant has nothing personal against this particular student and pointing out had become necessary requirement since the student was continuously disregarding orders of teachers. That questioning of this student at fault should have been taken in right perspective instead of blaming the appellant. That student at should have been taken to task in view of his undesired activities and issue of appellant being a individual pointer should not have been raised at all.

102. Memo dated 1.09.2018 bearing no. MCPS/4650/94/18 was issued regarding non-checking of notebooks properly amount to serious neglect. This memo was replied on 04.09.2018. It has been submitted that no specific omission has been pointed out. That in view of large volume of work and corresponding time, some instance of non-pointing of errors in students notebook might have taken place, which is natural. That appellant has put best of her efforts and acted sincerely. She has stated that such instance should have been brought to her notice directly and unambiguously. A request for issuance of operational guidelines was made concerning each aspect of duties expected from teachers. A request has been also made that SOP should be capable of practical implementation

103. Another memo dated 4.09.2018 bearing No. MCPS/4659/94/18 was issued in which issue of improper checking of copies of students in violation of rule-123 of DSER,1973 was raised. In this charge of being unpunctual was also inferred. This memo was replied to on 5.09.2018. In reply submissions regarding non marking of notebook were explained. The cause has been attributed to modus oprendi of some of students of non submission of home work copy, in order to escape assessment. That had it been brought to her notice such student would have been taken to task as is so being done by her. That she has been working in school from last 12 years and has never been reprimanded. That a single instance can fall

in ambit of rule-123 of DSER,1973 which requires sustained neglect in correcting home work and class work. It has been submitted that specific irregularity may be brought to her notice, so that proper action can be taken including corrective measures.

104. Another memo dated 5.11.2018 bearing No. MCPS/4726/101/18 was issued regarding her absence on an activity day. This was replied on 5.11.2018 wherein it was stated that she had to be on leave due to marriage of her niece. That she had applied for earned leave for 5 days, from 1st of Nov. to 5th of Nov, 2018. That application was made 10 days in advance. That reason regarding non sanctioning of earned leave was not communicated to her till date 31.10.2018. That when she had met Dr. Sudesh Yadav prior to procceding on leave and Ms. Krishma who handles administration had conveyed a message for reduction of period of leave on 27.11.2018. That 28th being Sunday she had tried to meet Mr. Vivek Yadav but she was told to meet next day. That she had tried to meet on 30th and 31st of October also but on account of non avjalibility of Mr. Vivek Yadav she could not meet him and therefore had to proceed on leave. That she had reduced her leave period from 5 days to 3 days even at cost of ceremonies of marriage of her niece.

105. Another memo dated 8.04.2019 bearing No. MCPS/4867/1/19 was issued regarding non taking of steps to prevent students from late coming despite the order dated 4.4.2019. This was considered to be carelessness and negligence on the part of appellant. This memo was replied on 8.04.2019 where in it was stated that no particular strategy was prescribed w.r.t. order dated 4.4.2019. It has been submitted that once a student is allowed to come inside the school's main gate after designated time, only a little, a teacher can do like award of symbolic punishment of making the student to stand up-in the class or any monetary fine. It was asserted that there was no carelessness or negligence. That she will be obeying with respect whatever direction shall be issued by management in this regard.

106. There is an explanation having been called on page 30 regarding nomination of appellant for school trip. Appellant had replied that in spite of her willingness she will not be able to conduct school trip due to medical issues. That she travels by train and has been advised to avoid long by trip

by road. Another submission was that she needs to be around her daughter who was going with her examinations till 3.06.2019.

107. Another memo dated 20.7.2019 bearing No. MCPS/4989/12/19 was issued regarding sitting of appellant on one room and gossiping despite order passed and singed by her. This was replied on 21.07.2019, thatbappellant had gone to Ms. Sarika Dabas to discuss about teachers diary and further course of action regarding teaching as she and Ms. Sarika Dabas are parallel teachers. Another reason given was discussion concerning faulty results of PT-1 of 6th to 10th classes due to wrong application of formula in excel sheet as given by examination head. That contemplation for rectification was made and examination head was in this regard. That this can be verified from CCTV footage.

108. Another memo dated 24.07.2019 bearing No. MCPD/5001/13/19 was issued in which reply to memo dated 21.07.2019 stands to be wrong. In reply of this previous reply has been reiterated. Another memo dated 29.07.2019 bearing No. MCPS/5007/14/19 was issued regarding sitting in staff room and gossiping. In reply dated 29.07.2019 it has been stated that she has reached school at 7:12 am and entered staff room at 7:17 am and after collecting relevant stuff she was in classroom at 7:22 am. She had arrived much before entry of students in classroom and this can be verified from the CCTV footage

109. Another memo dated 10.10.2019 bearing NO. MCPS/5648/25/19 was issued regarding absence from duty without getting leave sanctioned. In reply dated 11.10.2019 it was stated that she had applied for leave for 2 days that is from 9 to 10 October,2019 on 18th or 19th September 2019 , that is almost 20 days in advance. Reason to go on leave is family excursion. She had attended school on 7th October 2019 and no clarification about leave was sought and no denial was given.

110. A conjoint perusal of memos and replies shows that memo(s) were issued for the sake of issuing and were issued only from 2018 onwards when the appellant had requested for compliance of section 10 of DSEA. Balance of convenience hangs heavily in favour of the appellant when tested on the touchstone of preponderance of probabilities.

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

112. 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 memo(s).

113. Main cause for termination alleged is non-obtainment of leave in advance w.r.t. family excursion. A perusal of the application for leave as well as the pleadings go to show that submissions of the appellant are fully tenable and the school should not have taken such a harsh step for the same. Application dated 18th or 19th September, 2019 (as mentioned in appellant's reply to memo dated 10.10.2019) mentions that appellant had earlier discussed the issue with the respondent and intimation about her leave for 2 days that is 9th and 10th October, 2019 was earlier submitted to respondent, to which no clarification about leave was sought and no denial was given by respondent.

114. 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 111 and Rule 123 (a) (vii) deal with absence without leave in the code of conduct of teachers. Rule 111 and 123 (a) (vii) read 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."

Rule 123 (a) (vii):

"(a) No teacher shall:—

(vii) remain absent from the school without leave or without the previous permission of the head of the school:

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."

115. A bare perusal of the statutory provisions coupled with replies leads to an irresistible presumption that the same instead of supporting case of respondent supports the case appellant.

116. I have no hesitation to observe that appellant had duly informed the school authorities about her leave for family excursion 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 12 years at the time when she got operated for cataract. Firstly the school should have admitted about obtainment of 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 particularly when the leave was for a very short period. 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 made 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.

117. 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.

118. 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 10/11 years, will be committing misconducts of the nature which are the subject matters of appeal. 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.

119. 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.

120. 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 11 years makes the appeal allowable and I have no hesitation, therefore in allowing the appeal on factual matrix also.

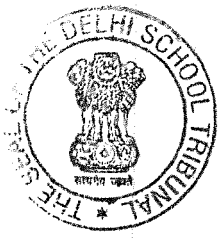
121. In view of reasons given herein before impugned order dated 12/10/2019 is set aside. Respondent school (R1) is directed to reinstate the appellant within a period of 4 weeks Appellant will be entitled for all consequential benefits. She will be entitled for full wages from date of order onwards.

122. With respect of back wages, in view of rule 121 of DSER the appellant is advised to move an exhaustive representation before respondent school (R1) within a period of 4 weeks from the date of this order as to how and in what manner she is entitled to complete wages.

3/12/2021

The Respondents school is directed to dispose off the representation of 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.

(DILBAG SINGH PUNIA)
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL



Certified to be True Copy

Delhi School Tribunal
Delhi