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

Appeal No.19 of 2019

Date of Institution 11.07.2019
Date of decision 26.03.2021

IN THE MATTER OF

Mrs. Umesh Gauba
W/o Mr. Prem Gauba,
R/o C-178, NDMC Society,
H-Block, Vikaspuri,
Delhi - 110018, **...Appellant**
Through: Mr. Anuj Aggarwal,Advocate

Versus

1. **Modern Child Public Sr. Sec. School (Recognized),**
Through its Manager,
Punjabi Basti, Nangloi,
Delhi-110041
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: Ms. Lalita Gupta, Advocate

THE SEAL OF THE DELHI SCHOOL TRIBUNAL

JUDGEMENT

Appellant in this appeal has challenged the legality of order bearing no. MCPS/4933/7/19 dated 27.05.2019 (Annexure A-1) vide which she was discharged from service w.e.f. 31.05.2019. Case set up by the appellant is that she was appointed as an Assistant Teacher in respondent school (R1) on 01.09.1993 which is a private recognized unaided school. That she was duly qualified and was confirmed vide letter dated 01.07.1996. That her service record for more than 24 years had been unblemished and uninterrupted.

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2. It is stated that appellant on 14.03.2018, had to be got admitted in the hospital for Coronary Angiography followed by Coronary Angioplasty about which school was duly informed via e-mail dated 14.03.2018. She on 18.03.2018 was discharged from the hospital with the advice of taking bed rest for two weeks. She was further called for check up on 03.04.2018 and was advised rest for two more weeks. That on 19.03.2018 she sent a leave application along with medical reports. She joined duty on 27.04.2018 and submitted her medical and fitness certificate.

3. It is further stated that on 18.05.2018, mother of appellant expired and she had to take further leave w.e.f 18.05.2018 to 28.05.2018 for a period of 11 days and had informed the school telephonically on 18.05.2018. That she joined her duties on 29.05.2018 and submitted a leave application.

4. It is stated further that on 04.06.2018, appellant received a notice through Courier dated 30.05.2018 bearing No. MCPS/4493/87/2018 seeking explanation about unsanctioned leaves within a period of 24 hours. That she also received a termination letter dated 01.06.2018 bearing number MCPS/4495/88/2018 as per which her services were terminated w.e.f 01.06.2018.

5. It is stated further that appellant sent request letters dated 18.06.2018 and 24.06.2018 requesting therein for reinstatement. That letters dated 18.06.2018 and 24.06.2018 despite having been duly received were not responded. That she repeatedly visited the school for redressal but of no avail. That salary for the month of May'2018 has not been paid till date.

6. It is further stated that appellant served a legal notice dated 03.07.2018 which was not replied to despite having been duly received.

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7. It is stated that appellant had preferred an appeal bearing number 27/2018 before Ld. Predecessor of this Tribunal. During the pendency of appeal respondent school withdrew the order of termination dated 01.06.2018 as evidenced by para 4 to 6 of the orders dated 20.2.2019 of my Ld. Predecessor which read as under:-

> *"4. Arguments heard and the matter was fixed for order. In this case, the termination order of the Appellant withdrew by the Managing Committee of R-1 as per letter dated 05.02.2019. In view of fact that the termination order does not exist. Appellant has been reinstated in service.*
>
> *5. Other prayer of the Appellant is that she will be entitled for continuity of service along with all consequential benefits (monetary as well as non-monetary) w.e.f. 01.06.2017 till date of joining of service. As the termination order has been withdrawn by the R-1 itself thus it become void-ab-initio therefore she will deemed to be in service for the same period and will entitled for all the consequential benefits (monetary as well as non-monetary)*
>
> *6.In the light of aforesaid discussion, keeping in view of the long ordeal and hardship suffered by the Appellant for no fault of her and in the peculiar of facts and circumstances of the present case, R-1 is directed to pay a cost of Rs. 33,000/- to Appellant within four weeks from passing of this order."*

8. It is stated that vide letter dated 05.03.2019 appellant made a representation to respondent school to comply with orders dated 20.02.2019 but of no avail. That a reminder dated 18.03.2019 was also sent but of no avail.

9. It is stated, that on 05.02.2019 itself, in the evening around 05.00 PM, the appellant received another order from respondent school whereby the appellant was put under suspension with immediate effect illegally without approval of Director as envisaged under section 8(4) of DSEA and without payment of suspension allowance. That she made a

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representation dated 05.03.2019 to the Director against her illegal suspension.

10. It is asserted that suspension order is illegal, unjustified and violative of the provisions of Delhi School Education Act, 1973 (DSEA, in short) and Delhi School Education Rules 1973 (DSER, in short). That order dated 20.02.2019 has yet not been complied with.

11. It is stated that the appellant filed a writ petition bearing no. W.P.(C). No. 4637/2019 which was allowed vide orders dated 06.05.2019. the order read as under:

> *"Vide the present petition, the petitioner seeks a direction thereby setting aside the impugned office order dated 05.02.2019, whereby the petitioner was placed under suspension with respondent no.1 School. He further seeks a direction thereby declaring the suspension order illegal as well as unjustified. The petitioner further seeks a direction that petitioner is entitled to all consequential benefits including reinstatement in service, full salary with effect from 05.02.2019.It is not in dispute that the petitioner was put under suspension on 05.02.2019 and thereafter the respondent No.1 School sent the case of the petitioner for approval to the Directorate of Education, NCT of Delhi. However, till date, the Directorate of Education has not granted any approval to the suspension of petitioner. Thus, the suspension has lapsed in terms of Section 8 (4) and Rule 115 of Delhi School Education Act and Rules, 1973.Accordingly, the order dated 05.02.2019 is hereby set aside. Consequently, respondents are directed to pay full salary with consequential benefits to the petitioner w.e.f.05.02.2019. Accordingly, the petition is disposed of. Pending application also stands disposed of."*

12. It is stated that the respondent school was served a copy of afore reproduced order dated 06.05.2019 vide letter dated 22.05.2019 which was duly received by respondent school (R1)

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13. It is stated that as per rule 110(2) of DSER an employee of a private school is entitled to continue in service up to the age of 60 years.

14. In the grounds, previous assertions of the appeal have been reiterated and averred that impugned order is in complete violation of Rule 110 and 118 of DSER. That no Disciplinary Authority was constituted, as per Rule 118 and no prior approval was taken from the Director of Education as per Section 8 (2) of the DSEA. That the termination order was not issued by a Competent Authority as the Vice Principal is not a competent authority to issue the termination order. That no domestic inquiry was conducted. That the appellant has not committed any misconduct and no inquiry for misconduct, if any was conducted which is violative of the provisions DSEA & Rule 120 and Rule 123 of DSER

15. It is stated that the termination letter is just a pretence to avoid the payment of retiral dues and other benefits of appellant. A request for setting aside orders bearing no. MCPS/4933/7/2019 dated 27.05.2019 and awarding of consequential benefits has been made including the benefit of reinstatement. Costs have also been requested to be paid.

16. In the counter affidavit/ reply respondent School, in preliminary objections has asserted that appellant has not been dismissed/removed or reduced in rank by way of penalty and has been retired normally on completion of age of retirement as per the terms and conditions given in her appointment letter and therefore this Tribunal has no jurisdiction to adjudicate on the same. AIR 1978 SC 343 titled as Principal and Ors. Vs Presiding Officer has been relied Appeal no. 18 of 1986 decided on 08.08.1990 titled as Ram Dhan Jain Vs. Managing Committee Hira Lal Jain Sr. Sec. School & Another has also been relied.

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17. It is submitted that the appeal is hit by the principle of law of estoppel, as appellant after accepting the offer of appointment is estopped from filing the present appeal. The appellant has not come with clean hands and suppressed many relevant facts and on this account also is not entitled to any relief.

18. In parawise reply, assertions of the appeal have been controverted and that of preliminary objections reiterated. It is stated that appellant has given a wrong statement about her termination whereas fact of the matter is that she has been retired on attainment of age of retirement.

19. It is sated that record of appellant is not unblemished and uninterrupted as at the time of retirement, one charge sheet concerning misconduct was pending. That the same has been pending at the time of filing of the present appeal as well. That services of the appellant were unsatisfactory and she committed misconducts many times.

20. It is stated that no information was given to the school by the appellant and no leave was applied by her. That, therefore, no question of sanction of the same arises and the appellant cannot be permitted to remain absent at the cost of the study of the children. That appellant was rightly terminated from her service.

21. W.r.t. appeal no. 27/2018 it is stated that the appellant was rightly terminated from her service and her termination order was withdrawn on account of procedural lacuna and without prejudice to take disciplinary action against her. That she was placed under suspension forthwith and was paid subsistence allowance as per rules. That she is governed by the Code of Conduct. That Judgment of this Tribunal has been fully implemented albeit subject to outcome of writ petition and compliance report has already been filed.

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22. It is stated that Judgment of this Tribunal has been challenged before Hon'ble Delhi High Court in W.P.(C) No.11750/2019 and is pending adjudication after issuance of notice to the respondents.

23. It is stated further that the appellant has concealed the material facts. That the judgment dated 22.5.2019 passed by the Single Bench of Hon'ble Delhi High in WP (C) No. 4637 of 2019 has already been set-aside by the Division Bench in LPA No 510/2019 and that W.P.(C) No.4637 of 2019 is still pending and, therefore, there is no question of implementation of that judgment.

24. Stipulation no. 26 of the appointment letter has been relied and stated that appellant has been retired as per condition no. 26 of appointment letter:

> *"You will be retired on attaining the age of 58 years though the Managing Committee may grant extension of one or two years on adhoc basis or even retire you earlier in case you fail to perform your duties efficiently."*

25. It is stated that terms and conditions stated in the appointment letter were accepted by the appellant without any objections and after retirement she indirectly wants to challenge the conditions of appointment which is not permissible as per law. Earlier pleas have been reiterated in reply to the grounds of appeal.

26. In its affidavit, Directorate of Education through Smt. Alka Sehrawat, DDE zone 17 has asserted that respondent school is a private, unaided recognized school and functioning of such schools are not interfered by the DOE and final decisions are taken freely by such like schools.

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27. In para 4, it is stated that the appellant was appointed as Assistant Teacher on 01.09.1993 and her services were confirmed with effect from 01.07.1996 vide confirmation letter dated 01.07.1996. That the respondent school has violated Sec 8(4) and rule 115&116 of DSEAR. Para 6 mentions about taking of leave by appellant from 14.03.2018 to 26.04.2018 and 18.05.2018 to 28.05.2018 and joining of duty on 29.05.2018.

28. In para 7 it is stated that on 04.06.2018 appellant received a notice dated 30.05.2018 giving her an opportunity to explain unsanctioned leave. That respondent school issued a termination letter in name of appellant without taking approval from the DOE whereas appellant failed to reply to notice dated 30.05.2018.

29. It is stated in para 8 that on 05.02.2019 after reviewing the termination order dated 01.06.2018 respondent school withdrew the termination order and appellant was reinstated. That in evening of 05.02.2019 suspension letter was issued for initiating disciplinary proceedings. That on 12.02.2019 DOE received a letter from respondent school seeking approval of suspension of Ms. Umesh Gauba (Annexure -2), That no approval was given by DOE

30. In para 9 it is mentioned about the order of DST dated 20.02.2019. That a representation has been made by the appellant on 19.03.2019 for declaring the suspension order as illegal. That DOE sent letters dated 1.12.2018, 11.12.2018, 17.12.2018 and 23.01.2019 to respondent school demanding an explanation regarding seeking of prior approval before issuance of suspension order.

31. In para 10 it is stated that on 25.04.2019 DOE vide letter no. Z/17/2018/1986 replied to appellant vides Annex A-4. That on 27.02.2019 and 27.04.2019 letters were issued informing the school management to follow letter no

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F.DE/15/(1304)/Act/2010/3283 of DOE for appointment of nominee of DOE for Disciplinary Committee (Annexure A-5(colly)).

32. It is further submitted that on 06.05.2019 in W.P. (C). 4637/2019 Hon'ble High Court of Delhi set aside suspension order dated 05.02.2019 coupled with directions for payment of salary and consequential benefits. That appellant was reinstated. That respondent school filed LPA 510/2019 which was disposed of on 06.05.2019 and Double Bench has set aside order dated 06.05.2019 passed by Ld. Single judge (Annexure -6). That DOE replied to respondent school's letter dated 20.5.2019 regarding Disciplinary Action Committee meeting against the appellant. Copy of letter dated 27.05.2019 along with minutes of meeting on 28.05.2019 have been Annexed as A-6

33. It is stated in para 12 that respondent school issued a fresh suspension notice whereby appellant was suspended with effect from 27.05.2019. That a letter was sent for approval to DOE by school. That on 02.08.2019 DOE replied vide letter No. Z/17/2009/2625 regarding illegal and unjustified suspension of appellant vide annexure A-7. That order dated 27.05.2019 is against the provisions of DSEA.

34. Appellant in the rejoinder of reply of School has controverted those assertions of the respondent which are in dissonance of the contents of the appeal. It is submitted that judgments relied upon by the respondent are not applicable. That on the other hand Shashi Gaur Vs. NCT of Delhi & Ors., MANU/SC/2349/2000 and Leela Sharma Vs. GNCT of Delhi & Ors. in WP No. 4164 of 2002, 170 (2010) DLT 505 hold the field and that this Tribunal has got the jurisdiction.

35. It is stated that law of estoppel is not applicable to the facts of the present case. That Rule 110 clearly provides that age of

superannuation of school employees is 60 years whereas in present case services of the appellant were terminated at the age of 58 years. That there can be no estoppel against the law, That condition contained in the appointment letter concerning age of retirement being 58 yeas is in violation of rule 110 & 118 of DSEAR. That the same is also hit by Section 23 of the Indian Contract Act, the condition being against public policy.

36. It is stated that respondent school is guilty of taking contrary stands. That on the one hand respondent no. 1 has stated that appellant has retired from service of respondent no. 1 school and on the other hand, it has taken a stand that one charge sheet in respect of misconduct is still pending against the appellant. It is repeated that appellant has not committed any misconduct whatsoever. That there is no provision in DSEA&R which empowers the respondent school to conduct a departmental inquiry against a retired employee.

Arguments were heard at length at the bar. Sh. Anuj Aggarwal for the appellant has argued at length in consonance of the pleadings of Appeal and Rejoinder. He has relied upon ***Manohar Lal Vs. Govt. of NCT of Delhi 219(2015)/DLT-140, Leela Sharma Vs. Govt. of NCT of Delhi 2012 (128) DRJ 132 (DB) L.P.A. 883/2010, Raj Kumar Vs. Director of Education Civil Appeal no. 1020 of 2011 decided on 13.04.2016. Shobha Ram Laturi AIR 2015 SC, and Veena Aneja Vs. Lt. Governor & Ors. W.P.(C) 3165/08, 25.04.2008***. He has also agrued that in L.P.A Division Bench has set aside the orders of Ld. Single Judge only on the ground of opportunity of hearing having not been given to the respondent school. That as far as question of lapse of suspension order is concerning, the same has already become final.

37. Ms. Sonika Gill for the respondent school has submitted that W.P.(C) 4637/2019 is still pending. That one charge sheet is also pending against the appellant. She has argued in

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consonance with the contents of the reply to the appeal. It has been contended that charge sheet was given. To a specific query about further steps pursuant to charge sheet having been taken, Ms. Sonika Gill has not been in a position to tell anything. She has relied on ***Principal Vs Presiding Officer*** **1978 AIR 344 decided on 9.1.1978**

38. Counsel for DOE has argued in consonance with contents of its reply of appeal. She has relied on ***Raj Kumar vs. Director of Education CIVIL APPEAL NO. 1020 OF 2011 decided on 13.4.2016.*** Reliance on circular dated 20.05.2016 has also been placed in which all the private schools of Delhi were directed to comply with mandate of Raj Kumar Vs DOE.

39. I have perused the records of the case and considered the submissions. The first issue to be decided is that of jurisdiction. Which 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, as well as on the basis of terms and conditions of appointment letter has been raised.

40. Section 8(2) and 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 extent 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.

41. 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,*

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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."

42. 'Termination otherwise' was thus interpreted, the interpretation of which was not necessitated in the Principal Vs. Presiding Officer. Ratio decidendi of the Principal Vs. Presiding Officer case was based on the question of recognition or non-recognition. Termination of the teacher in this case related to Nov 1975 on the basis of he not possessing a training degree or a recognized diploma or three years experience of teaching intermediate or high classes or a recognized training certificate. During those old days, commercialization of education had not set in. Moreover DSEA& DSER were in inception stage.

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Process of recognition as per provisions pf section 3 and 4 of DSEA was going on. It is common knowledge that things had changed in 2010 when Hon'ble Apex Court decided Sashi Gaur (supra). Mushrooming of unrecognized schools and commercialization of education had become an order of the day. So the Hon'ble Supreme Court interpreted the 'Termination Otherwise'. Aspect of the teacher being unqualified must also have been in sub consciousness of their lordships. To save the employees of private school from the caprices and whims of the management of private institutions, narrow interpretation was avoided to sub section (3) of section 8 of DSEA, to provide ,more efficacious and more wide 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".*

43. 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 remedy.

44. 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

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Delhi High Court in its 'PIL' jurisdiction held that provisions of DSEA and DSER apply to all schools of Delhi. In para 18, T.M.A Pai Foundation Vs state of Karnataka AIR2003 SC 355 was referred 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 "*

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

> *25. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would 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,*

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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 restrictions"

46. 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 :-

"(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".

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

48. 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 recognized but to all schools whether the same are recognized or not recognized.

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

(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.

50. 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 is the institutions which impart technical education.

51. Therefore, I have no hesitation to conclude 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 been brought to an end including employees of unrecognized schools who are also included in the same.

52. '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.

53. In the head note of Manu, of Saheed Udham Singh Shiksha

Samiti (supra) a question was posed as to:-

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

54. 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.".*

55. 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"*

56. In para 8, 5th line onwards it was observed as under :-

> *"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*

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schools cannot file appeals before the DST against the orders of the schools terminating their services".

57. In this case, of Saheed Udham Singh 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 two others. The school was also running a govt. aided school in the same precincts in violation of order dated 23.03.1999 of DOE. 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.

58. In para 18, Delhi School Tribunal which held as follows was extracted in para 1 of Saheed Udham Singh Smarak Shiksha Samiti case :-

"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".

59. In para 9 , it was concluded after referring Sashi Gaur as follows:

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"At this stage, it will be relevant to mention that the Supreme Court in the judgment in the case of Shashi Gaur Vs. NCT of Delhi and Ors MANU/SC/2349/2000 :(2001) 10 SCC 445 has held that appeal against every type of termination of services of a teacher/employee of a school has necessarily to be filed before the DST. The ratio in the case of Shashi Gaur (supra) when read with the ratio of the Division Bench in the case of Social Jurist (supra) persuades me to hold that appeals filed even by employees of unrecognized schools will be maintainable before the DST under Section 8(3) of the Delhi School Education Act, 1973. It would be an incongruity in terms to hold that merely on the ground of recognition of school or non-recognition thereof, different remedies lie for challenging orders of termination passed by schools with respect to termination of services of its employees/teachers. Once the Act applies, surely, all the provisions thereof including Section 8(3) apply to unrecognized schools and the observations of the Supreme Court which were made in the year 1978 in the case of The Presiding Officer (supra) were as per the plain language of the provision of Section 8(3), however, a Division Bench of this Court subsequently in the case of Social Jurist (supra) has explained the scope of applicability of the Act to even unrecognized schools which are functioning in Delhi. I may state that the Supreme Court in the case of The Presiding Officer (supra) was not concerned with the situation if all the provisions of DSEAR apply to unrecognized schools and if they do, yet, Section 8(3) will not apply to a school merely on the ground that school is not recognized."

60. Thus, I have no hesitation to hold that jurisprudential policy of conferring the jurisdiction instead of taking it away has to be applied, while interpreting the provisions of DSEA and DSER which have been enacted to provide better education as well as to ensure security of tenure. Therefore, the plea of exclusion of the jurisdiction of the tribunal has to be tested on the inclusion of the jurisdiction instead of exclusion of the jurisdiction as otherwise the schools will be in a position to mould the terms of service which are more favorable to them and security of teachers/ employees will be at peril. I stand fortified in my view by the statement of objects and reasons of DSE Act,1973 which

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read as under:

> *"In recent years the unsatisfactory working and management of privately managed educational institutions in the Union territory of Delhi has been subjected to a good deal of adverse criticism. In the absence of any legal power, it has not been possible for the Government to improve their working. An urgent need is, therefore, felt for taking effective legislative measures providing for better organization and development of educational institutions in the Union territory of Delhi, for ensuring security of service of teachers, regulating the terms and conditions of their employment.....The Bill seeks to achieve these objectives."*

61. DSEA and DSER are regulatory measures to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. So terms of the appointment letter shall have to stand true on the touchstone of DSEA and DSER wherever the DSEA and DSER are silent then on similar probable regulatory measures

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

63. Another issue which is equally important is about obtainment of prior approval from DOE. Whether the act of the respondent school on section 2(h), 8(2) & 8(3) of DSEA and rule 105 of DSER are relevant for deciding the issue involved threadbare 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.

64. It is admitted case of the respondent school that no approval has been taken from the DOE as required under section 8(2) & 8(4) in this case, although the stand taken for doing so is that no permission was required. Pleadings of ground D in the grounds of this appeal are as follows :-

"D. Because no prior approval was taken from the Director of Education, Govt of NCT of Delhi, before dispensing with the services of the appellant in term of section 8(2) of Delhi School Education Act, 1973. As per the law laid down by the Hon'ble Supreme Court of India in Rajkumar V/s Director of Education(2016) 6 SCC 541, prior approval had to be obtained from the Director Education as required as under section 8(2) of

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Delhi School Education Act 1973. The order of termination passed without prior approval would be thus, bad in law"

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

"A-L : Para No. A to L of the appeal are wrong as stated and hence same are denied. In reply it is submitted that the appellant has been retired on completion of age of retirement and has not been terminated from her service. It is submitted that the appellant given such wrong statement to make jurisdiction of this Hon'ble Tribunal, otherwise , she is well aware that she has been retired on completion of age of retirement as per the terms and conditions given in her appointment order. In reply it is submitted that rule 110 was incorporated vide notification date 29.1.1980 and the appellant was appointed after this notification on 01.07.1996 and in the appointment letter of the appellant it is clearly stated as under:

26. You will be retired on attaining 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.

It is submitted that all terms and conditions stated in the appointment order were accepted by the appellant without any objections and now after her retirement indirectly she wants to challenge the conditions of appointment order, which is not permissible in the eyes of law and therefore, the appeal filed by the appellant is liable to be dismissed on the sole ground. It is submitted either she could not accepted the appointment on the terms and conditions stated in the appointment order, or she could challenged the conditions of appointment order immediately. It is submitted that detailed reply has been in the facts of the case and same may be reiterated here again."

66. A juxtaposed reading of herein before reproduced pleadings of appellant and respondent school, goes to show that no specific denial is there about non obtainment of prior approval of DOE as envisaged under 8(2) of DSEA which amounts to admission. Thus it is abundantly clear that no approval of DOE was taken, which was mandatory. Section 8(2) does not envisage any other challenge including stipulations and term No. 26 of

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appointment letter. Therefore Raj Kumar Vs. DOE has to apply and hold the field. Head note of Raj Kumar is as under:

> *"Sections 2(h), 8(2), 10 -- Employee -- Recognized private school -- Dismissal -- Prior approval -- Necessity of -- Managing Committee, before terminating the services of the appellant did not comply with the mandatory provision of Section 8(2) of the DSE Act -- Managing Committee did not obtain prior approval of the order of termination passed against the appellant from the Director of Education, Govt. of NCT of Delhi Held, order of termination is bad in law."*

67. The following passage from judgement of supreme court in Raj Kumar (supra) is apposite which read as under:-

> *"45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent-School. Section 8(2) of the DSE Act is a procedural safeguard in favor of an employee to ensure that an order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognized private school."*
>
> *(Emphasis Supplied)*

67A There are umpteen number of cases now to support this conclusion, some of which are to be discussed, in which Raj Kumar Vs. DOE has been discussed at length.

68. Para 16 of management of Rukamni Devi Jaipuria public school Vs. DOE: Lawfinder doc 9D#1046214 is one which substantiates the above conclusion and is reproduced:

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

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

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

70. Meena Oberoi is another one in this list. 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 Judgment.

71. In para 29 of Meena Oberoi , Sec 8(2) was discussed which ordains that no employee of recognized private school shall be dismissed, removed or reduced in rank nor his/ her services shall be otherwise terminated except with prior approval of DOE. A bare reading of this judgment goes to show that prior approval has to be obtained irrespective **of nature of major penalty as provided under rule 117 of DSEA**. 'Termination otherwise' was explained further including "Or Otherwise terminated', 'Removal', 'Termination', 'Dismissal' were also discussed in light of Supreme Court judgments.

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72. 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 not 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.*

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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.

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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."

73. 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.

74. 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, before retiring the appellant pre maturely on the ground of stipulation no. 26 of appointment letter which at the bare minimum can be said to be an act of disengagement of service or in comparatively more simpler words as a end of relationship of employee and employer

75. 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**

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emplyoment e.g 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."*

76. 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 Charge sheet 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?"*

77. The operative portion of this judgment 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 stands extracted in this para, which I have already reproduced

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

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

79. In para15, Laxman Public School Society (Regd.) and Ors. v. Richa Arora and Ors. W.P. (C) 10886/2018 decided on 10.10.2018 was referred, Para 12 and 13 of Laxman Public School Society vs Richa Arora case were referred which I deem apposite to reproduce:

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

petitioner, no approval of the Director of Education was taken.

13. One may also refer to the definition of "employee", as set out by the Supreme Court in the 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."

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

81. Para 19, is as follows:

"19.What emerges by a combined reading of the judgments 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 judgments 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

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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"

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 ; Delhi Public School and Ors Vs Shalu Mahendroo in LPA No. 737/2012 Decided On: 09.11.2012 etc. were holding the field and were upheld in LPA No. 17/2018 decided on 07/05/2018 by distinguishing Deputy Director of Education Vs Veena Sharma Manu/DE/1944/2010 : (2010) 175 DLT 311 (DB) and thereafter Durgabai Deshmukh Memorial And Anothers Vs J.A.J. Vasu Sena And Anothers Manu/SC/1139 ; 262 (2019) DLT 535 has overruled the concept of deemed confirmation, I have no hitch to observe that except the deemed confirmation aspect, rest of the observations 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 pursuant to Raj Kumar case (Supra). It is also clear that every employee, irrespective of the category / type of employment is entitled to approach the Tribunal in the eventuality of relationship of employer and employee having been brought to an end by the employer.

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

83. 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/-"

84. A bare glance on above extracted inverted portion reveals that prior approval has to be obtained even 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.

85. 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.*

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

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

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

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

88. Hereinbefore mentioned and discussed judgments including Surender Rana make it abundantly clear that all types of employees including a probationer are 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 of DOE w.r.t discharge or so called retirement was must and Appeal must be allowed on this count as well.

89. Although appeal stands allowed of on the technical grounds, still in view of fact that this Tribunal is last Court of facts, it is

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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 and for this very reason issues ofterms and conditions of appointment 'Estoppel', 'concealments of facts' etc are discussed hereinafter.

90. One such issue is 'Estoppel' due to alleged acceptance of terms and conditions of the appointment letter which were drafted by the school. Law of interpretation requires that such appointment letters are required to be read keeping in view the relative position of parties which are a poor employee and a mighty employer. A harmonious view between two idiomatic situations "Ignorance of law is no excuse" and "Necessity knows no law" has to be taken 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. Moreover there can be no estoppel against statute.

91. Terms and conditions of appointment letter and documents deemed relevant are being reproduced as under :

Modern Child Public School, Nangloi, Delhi-41

Appointment letter for PGT/TGT/A.T.

To,

Ms. Umesh Gauba

Ref. No. MCPS/PF/2004

Sub: Terms and Conditions of appointment

Dear Sir/Madam,

With reference to your application dated 01.09.1993 on the post of A.T. you are hereby issued the latest terms and conditions regarding appointment amended in the DSERA,1973.

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1 to 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 to 25.....

26. You will be retired on attaining 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

92. Termination order dated 27.05.2019 under condition No.26 of appointment letter.

Modern Child Public School

Punjabi Basti, Nangaloi,Delhi-110041,Ph.2547303

Email:modernchildpublicschool@gmail.com

MCPS/4933/7/19 Dated:27.05.2019

ORDER

"As per the terms and condition stated in the appointment letter of Mrs. Umesh Gauba. On completion of age of 58 years, the managing committee of school hereby discharge her from services on 31.05.2019"

26/3/2021

Mrs. Ila Yadav

Vice principal

93. A bare Perusal of rule 110(2) of DSER 1973, reveals that the retirement age of an employee is 60 years as is evident from a bare reading of rule 110 (2) which read as under:

> *"110. Retirement age*
> *(1) Except where an existing employee is entitled to have a higher age of retirement, every employee of a recognised private school, whether aided or not, shall hold office until he attains the age of 58 years.*
>
> *Provided that the managing committee may grant extension to a teacher for a period not exceeding two years in the aggregate, if in the opinion of the managing committee such teacher is fit for such extension and has no mortal or physical incapacity which would disentitle him to get such extension :*
>
> *Provided further that no such extension shall be granted in the case of a teacher of an aided school except with the previous approval of the Director*
>
> *(2) Notwithstanding anything contained in sub-rule (1), every teacher, laboratory assistant, librarian. Principal or Vice-Principal employed in such school shall continue to hold office until he attains the age of 60 years: Provided that where a teacher. Principal or Vice Principal attains the age of superannuation on or after the 1st day of November of any year, such teacher, Principal or Vice Principal shall be re-employed upto the 30th day of April of the year immediately following.*
>
> *(3) Notwithstanding anything contained in sub-rule (1) and sub-rule (2) where a teacher, Principal or Vice Principal has obtained National or State Award for rendering meritorious service as a teacher. Principal or Vice Principal or where he has received both the National and Slate Awards as aforesaid, the period of service of such teacher. Principal or Vice Principal may be extended by such period as the Administrator may, by general or special order, specify in this behalf."*

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Even a layman after a bare reading of rule 110(2) will conclude that under DSER an employee i.e. teacher , lab assistant, librarian, principal or vice- principal shall hold office until attainment of 60 years of age. One will also conclude that this age can exceed upto 30th day of April in case of a teacher, principal or vice-principal when superannuation has to take place on or after the first date of November.

Rule 110(3) provides for further extension of age w.r.t teachers who are national or state awardees. Since rule 110(2) starts with a non- obstante clause, the same has a mandatory character. Thus appellant could not have been retired at the age of 58 years.

94. Para 13 of Manohar lal Vs GNCT of Delhi in LPA No. 874 of 2013 D.O.D 13.03.2015, MANU/DE/0685/2015 is the precedent which supports the above detailed interpretation of rule 110 of DSER

> *"13. Rule 110(1) provides for the age of superannuation of all employees of a recognized private school, whether they be employed on administrative or on teaching duties, of 58 years. However, the proviso thereto enables the Managing Committee of the school to grant 'extension' to a teacher for a further period of two years i.e. till the age of 60 years. However Rule 110(2) and which is "notwithstanding anything contained in Rule 110(1) ", makes the age of superannuation of certain employees of the school viz. Teacher, Laboratory Assistant, Librarian, Principal or Vice Principal of 60 years and the proviso thereto further provides that in the case of Teacher, Principal or Vice Principal, if the age of superannuation of 60 years is reached on or before the first day of November of any year, then such Teacher, Principal or Vice Principal shall be 're-employed' upto the 30th day of April of the year immediately following. Though there may appear to be inconsistency between Rule 110(1) and 110(2) inasmuch as Rule 110(1) specifies the age of superannuation of 58 years and permits 'extension' of two years to the employees engaged in teaching, Rule 110(2) specifies the age of superannuation of those employed as Teacher, Laboratory Assistant, Librarian, Principal or Vice Principal as of 60 years, with the Teachers,*

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Principal or Vice Principal having the added right of 're-employment', if attaining the age of superannuation after 1st November, till 30th April of the following year. However applying the principle of harmonious construction, it has but to be held that employees performing the function of Teaching, Laboratory Assistant, Librarian, Principal or Vice Principal have a right to hold office until the age of 60 years."

95. So it can be said without any hitch age of retirement cannot take place below 60 years except compulsory retirement which is punitive. Rule 117 prescribes penalties and relevant parts reads as under :-

"117. The following penalties may, for good and sufficient reasons, including the breach of one or more of the provisions of the Code of conduct, be imposed upon an employee of a recognised private school, whether aided or not, namely:—
(a)Minor penalties,:—.....
(b) Major penalties,:-
(i) reduction in rank;
(ii) compulsory retirement;
(iii) removal from service, which shall not be a disqualification for future employment in any other recognised private school;
(iv) dismissal from service, which shall ordinarily be a disqualification for future employment in any aided school.
Explanation.- The following shall not amount to a penalty within the meaning of this rule, namely:-
(a) stoppage at the efficiency bar on the ground of unfitness to cross the bar;
(b) retirement of the employee in accordance with the provisions relating to superannuation or retirement;
(c) replacement of a teacher, who was not qualified at the date of his appointment, by a qualified one;
(d) discharge of an employee appointed on a short-term officiating vacancy caused by the grant of leave, suspension or the like."

Rule 117 requires that penalty whether it is minor or major can be imposed if there are good and sufficient reasons. No reasons have been given by the school except stipulation no. 26 which is untenable stipulation being hit by the mandate of rule 110(2).

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96. Impugned order mentions about discharge from services on 31.05.2019. The same means pre mature retirement as otherwise as per mandate of rule 110(2) she would have retired on 31.05.2021. In order to retire the appellant pre maturely, it was incumbent upon the respondent school to conduct an inquiry as per rule 118 and 120 of DSER.

97. A bare perusal reveals that compulsory retirement or premature retirement w.r.t appellant under DSEA is a major penalty and schools can not resort to it without following the procedure under DSER i.e. constitution of a Disciplinary Committee as prescribed under rule 118 and following of procedure as mandated under rule 120. Rule 118 and 120 are as under:

> *"118. The disciplinary committee in respect of every recognised private school, whether aided or not, shall consist of:-*
> *(i) the chairman of the managing committee of the school;*
> *(ii) the manager of the school;*
> *(iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;*
> *(iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Mead of the school, the Head of any other school, nominated by the Director;*
> *(v) a teacher who is a member of the managing committee of the school; nominated by the Chairman of such managing committee*
>
> *120. Procedure for imposing major penalty*
> *(1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below:—*
> *(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defence*

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and also to state whether he desires to be heard in person; (b) on receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if considers it necessary so to do, appoint an inquiry officer for the purpose;

(c) at the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry regarding his findings on each of the charges together with the reasons therefore;

(d) the disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall:—

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;

(ii) give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action;

(iii) on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the Director for his prior approval;

(iv) after considering the representation made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty which it proposes to impose on the employee and send its findings, and decision to the Director for his approval and while sending the case to the Director, the disciplinary authority shall furnish to him all relevant records of the case including the statement of allegations charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made, and the proceedings of the disciplinary authority.

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

(3) Any employee of a recognised private school who is aggrieved by any order imposing on him the penalty of compulsory retirement or any minor penalty may prefer an appeal to the Tribunal."

98. Perusal of the termination order or discharge order whichever it

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may be called reveals that it is the managing committee which has allegedly discharged the appellant from service due to attainment of 58 years of age which will fall under "termination otherwise" condition of section 8 of DSEA. 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 that impugned order was not passed by the managing committee as put forth. Vice principal Ila Yadav could not have pre maturely retired the appellant. Managing committee is also not statutorily entitled to prematurely retire an employee. Only a Disciplinary Committee as per rule 118 of DSER is entitled to prematurely retire an employee for misconduct as per the procedure prescribed under rule 120 which admittedly has not been the case of the respondent school.

99. 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; MANU/DE/2424/2011 has held that Disciplinary Authority and Managing Committee under DSEA&R are two different entities having different duties and the general law under article 311 of the Constitution of India vis-à-vis Appointing Authority being the Disciplinary Authority is not applicable in case of the employees coming within the definition of Section 2(h) of DSEA. Para 11 to 19 of this judgment are relevant and be read as part of this para which are not being reproduced for the sake of brevity. So the termination order is hit by this defect as well and submissions of Mr. Anuj Aggarwal in this regard carry weight and are allowed.

100. The impugned order which has been issued by the vice principal, Mrs. Ila Yadav does not stand on the scrutiny of provisions of DSEA & DSER. Mrs. Ila Yadav has not mentioned in the termination order that this order was issued on the instructions of the Disciplinary Authority. 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. All these defects in the version of respondent are inclining me to return a finding in favor of appellant.

101. Another cause for discharge is non-obtainment of leave in advance w.r.t coronary Angiography and leave due to demise of her mother. I don't have the slightest hesitation that action of respondent school is completely unwarranted. A bare perusal of the pleadings, goes to show that submissions of the appellant are fully tenable and the school should not have taken such a harsh step for the same. Email dated 14.03.2018 mentions that appellant had earlier discussed the issue with the respondent and leave application was sent on 19.03.2018 along with the medical reports informing the school about her health conditions and further appellant sent another leave application dated 09.04.2018 to school authorities

102. Stand of respondent regarding discharge 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 and is hit by the mandate of Rule 123 of DSER. Rule 123 (a) (VII) deals with absence without leave in the code of conduct of teachers. Rule 123 (a) (VII) is reproduced 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 facto, the necessary sanction for the leave".*
>
> Rule 111 provides as under.
>
> ***Rule 111*** *"Every employee of a recognized private school, whether aided or not, shall be entitled to such leave as are admissible to employees of a corresponding status in Government school."*

103. Perusal of medical records dated 03.04.2018 with leave

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application dated. 09.04.2018 and fitness certificate dated 26.04.2018 go to show the bonafides of appellant.

104. I have no hesitation to observe that appellant had duly informed the school authorities about her coronary Angiography and demise of her mother and school could not have and cannot make this a basis for discharge of the appellant particularly in view of the fact that she was working in the school for a period of more than 25 years at the time when she got operated. Firstly the school should have admitted about obtainment of medical leave by the appellant in advance. Secondly it should have accorded ex-post-facto sanction of the leaves. At the worst, it could have deducted the salary for a period for which appellant was on leave and nothing more than that. It could not have been made the basis of discharge. Respondent school has not produced the leave record of the appellant and has given a go bye to Rule 111. An adverse inference has to be drawn for 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.

105. At the cost of some repetition it is observed that plea of the respondent school regarding 'Estoppel' is not tenable as there can be no estoppel against law/statute 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 respondent school concerning estoppel are not tenable

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106. Submissions to the effect that appellant had suppressed many relevant facts while approaching this Tribunal are devoid of merits. I have perused the records particularly reply to the appeal, No facts has been concealed by the appellant. Duty to disclose the concealed facts, if any was on the respondent school, in which it has failed miserably. So I have no hitch to reject the submissions in this regard.

107. Therefore in view of, non-seeking of permission of the DOE U/s 8 (2), non-reverting to rule 118 by the management, issuance of discharge order by an unauthorized person i.e. vice principal, Non production of minutes of meeting of managing committee, 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 25 yrs etc. makes the appeal allowable and I have no hesitation, therefore in allowing the appeal on factual matrix also.

108. In view of reasons given herein before impugned order dated 27.05.2019 is set aside. Respondent No. 1 is directed to reinstate the appellant within a period of 4 weeks. Appellant will be entitled to all consequential benefits. She will be entitled to full wages from date of order onwards.

109. Mr. Anuj Aggarwal has requested for imposition of costs on the respondent school on the ground that school is flouting the provisions of DSEA&R time and again. He has drawn attention of this Tribunal towards the other two cases of the respondent school in which the appeals of the appellants have been allowed and orders of reinstatement have been passed. He has argued that acts of the respondent school are directed towards tiring the appellants so that they come to their knees and accede to the unreasonable terms and conditions of the management. He has also submitted that change of management has led to innumerable difficulties to the staff as new management is acting at its whims and fancies. My

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attention has been drawn to some orders of my Ld. Predecessor and my orders in the case of Rajesh Maheswari dated 13.10.2020 in review application No. 67A/2018 filed in appeal No.79/2017 and a request for imposition of very very heavy costs has been made. Ms. Sonika Gill on other hand refuted the submissions of Mr Anuj Aggarwal and submitted that no case of imposition of cost is made out.

110. I have considered the respective submissions and I am in the consonance with the submissions of Mr.Anuj Aggarwal that respondent school requires to be burdened with costs as it is flouting provisions of DSEA and DSER. I deem it expedient to place on record that imposition of costs of Rs. 33000/- in the previous case inter se by my Ld. Predecessor earlier has not made any impact on the school. Without dilating much on the aspect I am imposing costs of Rs 35000/- on the respondent school.

111. With respect to back wages, in view of Rule 121 of DSEA&R 1973, the appellant is directed to move an exhaustive representation before R-1 within a period of 4 weeks from the date of this order as to how and in what manner she is entitled to complete back wages. The Respondent school is directed to decide the representation to be given by the appellant, within 4 weeks of receiving of the same, by a speaking order and to communicate the order alongwith a copy of the same to the appellant. Ordered accordingly.

112. Application u/s 11 (6) is disposed of as being non maintainable on merits, having become infructuous and not pressed for. File be consigned to record room.

THE SEAL OF THE DELHI SCHOOL TRIBUNAL

(DILBAG SINGH PUNIA) 26/3/2021
Presiding Officer
Delhi School Tribunal

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