

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

Appeal No.62 of 2018

Date of Institution:02.11.2018

Date of order: 12.10.2021

In the matter of :

Mrs. Satinder Tandon,
W/o Sh. Pawan Tandon,
R/o BD-54, Janak Puri, DDA Flats,
New Delhi-110058
(Through: Mr. Anuj Aggarwal, Advocate) ... Appellant

VERSUS

1. **Presidium School,**
Through Its Managing Committee
PS-2, C-3 Block,
Ashok Vihar Phase-II,
Delhi-110052

(Through: Mr. P. S. Singhal, Advocate)

2. **Presidium School Palam Vihar,**
Through its Head of School/Manager,
B&C Block, Krishna Chowk,
Near Spanish Court, Pocket-C,
Palam Vihar, Haryana-122017

(Through: Sh. Suman Malhotra, Advocate)

3. **Director of Education,**
Office of Directorate of Education,
Old Secretariat Building,
Civil Lines, Delhi-110054

... Respondents

JUDGEMENT

Appellant has challenged termination orders bearing No. PRF/AV/2018-10/AUG-1 dated 03.08.2018 vide which her services were terminated. Facts in brief, as per contents of appeal and relevant for disposal are as follows.

Mrs Satinder Tandon V/s. Presidium School & Ors, Appeal No. 62/2018

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2. Appellant was appointed vide letter bearing no. P/06/T/323 dated 1st April 2006 as Primary Teacher in Presidium School, PS-2, C-3, Block, Ashok Vihar Phase-2, Delhi-52 (Ashok Vihar School, in short) which is a private unaided recognized school governed by the Delhi School Education Act 1973, and Rules framed thereunder (DSEAR, in short).
3. It is stated that appellant was confirmed as primary teacher w.e.f. 01.04.2008 vide letter dated 08.07.2014. That vide e mail dated 17.02.2017, sent by Ms. Renu Kapoor Head/Human Resources(HR), it was informed that the school management has promoted the appellant as Academic Head at Presidium School, Palam Vihar (Palam Vihar School, in short) w.e.f. 20.02.2017.
4. It is stated that Palam Vihar school, is an unaided, unrecognized private school. That despite promotion as Academic Head of Palam Vihar school appellant continued on the rolls of Presidium School, Ashok Vihar till her illegal termination dated 03.08.2018. That appellant had started working at Palam Vihar School w.e.f. 20.02.2017 as Academic Head and her record has been unblemished and uninterrupted.
5. It is stated that appellant on 09.02.2018 applied for sick leave as she was mentally shocked and traumatized getting to know that instead of she being appointed, Ms. Shelly Banga had been appointed as Branch Head of Palam Vihar school. That she proceeded on sick leave w.e.f. 09.02.2018 after informing about her leave and medical condition via message on the whatsapp group, which was created for the school employees including CEO, HR(Head) etc.

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Delhi School Tribunal
Ghazi



- 6 It is stated that appellant remained on medical leave from 09.02.2018 to 15.02.2018. That out of the aforesaid 7 days, 3 were school holidays on account of 10.02.2018 being 2nd Saturday, 11.02.2018 being Sunday and 14.02.2018 being Mahashivratri. That on 16.02.2018 appellant reported for duty but she was not allowed to perform her duties.
- 7 It is stated that Ms. Harpreet Kaur and Gurpreet Kaur were already working as Academic Head in Palam Vihar school in 2018. That because of promotion of Ms. Shelly Banga aspect of classes which were to be monitored/headed by appellant became unclear/uncertain. That Palam Vihar school was running classes up to 7th standard and with promotion of Shelly Banga, the school was now having 03 Academic Heads and one Branch Head.
8. It is submitted that due to uncertainty of the classes which were to be monitored/headed by appellant, appellant via email dated 16.02.2018 requested Ms. Sudha Gupta, CEO of Palam Vihar school to clarify the work which was to be handled by her. That this email dated 16.02.2018 has not been responded till date.
- 9 It is stated that on 20.02.2018 on instructions of Mr. Paras Gupta, Coordinator, appellant met him in his office and in the meeting, she (appellant) was told to wait till further instructions from HR about her position. That when no written instruction was received, a reminder vide email dated 23.02.2018 was sent but of no avail. That thereafter another email was sent on 09.03.2018 which also met the same fate of no revert back. That appellant was telephonically called to have a meeting with Mr. Paras Gupta on 13.03.2018 but no result came out in this meeting dated 13.02.2018 and status quo prevailed.

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10. It is stated that on 24.07.2018 another message was received from head HR Ms. Renu Kapoor and appellant on 26.03.2018 met her (Ms Renu Kapoor) at Punjabi Bagh. That she was directed by Mrs Renu Kapoor orally to join the Ashok Vihar School as TGT Social Science. That vide email dated 29.03.2018 appellant informed Palam Vihar school about the outcome of her meeting with Ms. Renu Kapoor. That vide email dated 11.04.2018 appellant informed Palam Vihar school that she would be joining Ashok Vihar school from 12.04.2018 (wrongly typed as 11.04.2018 in the email).
11. It is stated that when she visited Ashok Vihar school on 12.04.2018, she was not allowed to join the duty and was insulted by making her to sit in the waiting area for 6 hours. That vide email dated 12.04.2018 she brought the aforesaid facts to the notice of management of Ashok Vihar school. That no reply has been received till date of the same. That appellant has not been permitted to perform her duties by both the schools.
12. It is stated that appellant received letter dated 03.08.2018 bearing No. PRF/AV/2018-19 AV AUG-1 on 08.08.2018 stating therein that the services of the appellant stand terminated with immediate effect.
13. In the grounds of appeal it has been averred that impugned order bearing no. PRF/AV/2018-19 AV AUG-1 dated 03.08.2018 is illegal, unjustified arbitrary, discriminatory, punitive unreasonable, unconstitutional and violative of article 14,16,21 and 311 of the Constitution. It is stated that no misconduct has been committed and services of appellant have ended without any inquiry/show cause notice/charge sheet. That termination of service is in complete violation of the principles of natural justice and respondent has indulged in unfair practices.

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Delhi School Tribunal

Mrs Satinder Talwar, Principal, Ashok Vihar School & Ors. Appeal No. 62/2018



14. It is stated that Rule 118 to 123 of DSER have been flouted, no disciplinary authority has been constituted as per the mandate of Rule 118, no inquiry as per DSEAR has been conducted; no prior approval under Section 8(2) has been taken and termination is void-ab-initio. Reliance on Rajkumar V/s Director Education (2016) 6 SCC 541 has been placed.
15. It is stated that appellant is completely unemployed since the date of her termination and has not been paid due salary despite being an employee of Ashok Vihar School.
16. **Ashok Vihar school, R1 in reply to appeal** has controverted the submissions of the appellant and in its preliminary objections, it has been averred that twisted and concocted facts have been presented.
17. It is stated that 'Presidium' is a brand name with several schools running under it some of which are recognized and some are unrecognized. That all the schools are being run as separate entities e.g. trusts, societies and individuals etc and they have no legal connection inter se. That Ashok Vihar school has no connection whatsoever with Palam Vihar school. That Ashok Vihar school is being run by 'Jindal Charitable Society' and therefore there was no question of appellant having been transferred to any other Presidium school. That DSEAR does not permit transfer of teachers from one school to another and therefore story of transfer is false.
18. It is admitted that appellant was working with Ashok Vihar school since 2006 and therefore Management of Ashok Vihar school went out of its way to help the appellant, of which, she is now taking undue advantage.

19. It is submitted that performance of appellant was found unsatisfactory and she was also suffering from some personal problem. That in December 2016 she (appellant) was hinted that she should look for another job. That she approached Ashok Vihar school with a request that the owner of Presidium i.e. Mrs. Sudha Gupta was known to her and was inclined to help her, that Ms. Gupta has offered her to absorb her temporarily in one of her unrecognized schools; give her time as well as necessary training so that she can improve her performance and she also represented that she would be absorbed in the new school at a senior designation as the same was an unrecognized school.

20. It is stated that Mrs. Sudha Gupta as well as appellant suggested to the management of Ashok Vihar school that instead of making appellant resign from services of Ashok Vihar school or terminating her services, Ashok Vihar school should show the same as transfer of the appellant from Ashok Vihar school to Palam Vihar school. That appellant begged before the Ashok Vihar school that considering her personal problem and also the fact that she has rendered over 10 years in service, Ashok Vihar school could do at least that much and oblige her.

21. It is claimed that Ashok Vihar school went out of its way and agreed to the request and reflected the same as transfer. That as per the arrangement salary of appellant continued to be disbursed from Ashok Vihar school.

22. It is further submitted that it is not in the knowledge of the Ashok Vihar school as to what transpired with the appellant in the Palam Vihar school. That as per the knowledge of the Ashok Vihar school, there was no improvement in the performance of appellant and because of the same appellant was asked to discontinue in the new school and when her efforts to persuade the management of Palm Vihar School failed, she approached Ashok Vihar school and demanded that she be allowed

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Mrs. Satinder Tandon Vs. Presidium School & Ors. Appeal No. 62/2018



to join. That Ashok Vihar School was not too keen on the same and offered her that she may resign honorably to which she refused. That she (appellant) even refused to join back as a primary teacher and demanded that she be absorbed as Academic Head and in such circumstances, she remained on unauthorized leave. That since the demand of the appellant was patently untenable, Ashok Vihar school after waiting for a sufficiently long time had no option but to terminate her services on account of her unauthorized absence.

23. In parawise reply on merits submissions hereinabove have been reiterated. It is reiterated that Ashok Vihar school has nothing to do with Palam Vihar school and claimed that Ashok Vihar school has been more than generous and helpful by agreeing to the arrangement proposed. That appellant instead of being grateful, is levelling false allegations and has refused to join back as primary teacher and is demanding that she would join only as an 'Academic Head'.

24. It is submitted that impugned order may be irregular and can be cured, if so directed by this Tribunal, as has been held by the High Court and Apex Court in a catena of cases. That appellant had poor performance, is of an adamant attitude despite being on a senior position and she herself is responsible for her situation. That she failed to report for duty and remained on unauthorized leave. That she is not entitled to salary for the said period. That she has also failed to come forward even for full and final settlement.

25. Palam Vihar School, R2 in its WS/reply to appeal has denied the relationship of employer and employee between R2 and appellant and has also challenged the jurisdiction of this Tribunal on the ground that school being in Haryana, DST has no jurisdiction.

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Delhi

Mrs Satinder Tandan V/s. Presidium School & Ors, Appeal No. 62/2018



26. It is stated that Ashok Vihar school has also admitted that services of appellant were dispensed with by them and therefore, there is no real dispute between the answering respondent, appellant having chosen to rejoin her services with Ashok Vihar school. That after choosing to join Ashok Vihar School she became employee of the Ashok Vihar school and respondent has been arrayed in the array of respondents out of ill will.
27. In reply to para 3, it is submitted that appellant was deputed with Palam Vihar school for a short while as an Academic Head to stabilize the establishment; to meet the needs of a newly established school and to solve teething problems with the help of her experience. That for the aforesaid reasons only she was never brought on the rolls of Palam Vihar school and continued to be on the rolls of Ashok Vihar school.
28. In reply to para no 5, it has been claimed that answering respondent is not a participant to any message groups upon which appellant allegedly left the message applying for the leave. That there was no reason with the appellant to assume that she was entitled to be promoted to the post of Branch Head of Palam Vihar School. More so, she was never brought on the rolls of the answering respondent. That appellant was a stop gap arrangement till regular appointment and she wrongly raised the claim for being appointed as Branch Head. That Palam Vihar School did not accede to her request as it had already appointed Branch Head (Ms. Shelly Banga).
29. It is admitted that on 07.02.2018 Mrs. Shelli Banga was promoted as Branch Head of Palam Vihar school and there were two Academic Heads working with them i.e. Mrs. Harpreet Kaur and Mrs. Gurpreet Kaur. Receipt of email is denied and averred that question of no response does not arise. That email dated 17.02.2018 clearly reveals that it has not been addressed to Palam Vihar school. That contents of emails are contrary to her assertions of para 6 of appeal.

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School Tribunal

Mrs Satinder Lamba V/s. Palam Vihar School & Ors, Appeal No. 62/2018



30. It is stated that perusal of email dated 17.02.2018 goes to show that appellant was asked to go on a break and she has been questioning the same whereas, there is no such contention in the corresponding para of the appeal. That it is the case of the appellant that she had gone on leave on the cause of sickness. That in the email appellant is directly questioning the management's decision to promote Ms. Shelli Banga because she had been conceiving that she would be promoted as Branch Head. That she has taken the acts of promotion of Ms. Shelli Banga as demotion.

31. It is stated that when appellant refused to work as an Academic Head under Ms. Shelly Banga, she was asked to report back and join the duties with Ashok Vihar School. That question of reply to email dated 23.2.2018 does not arise as it was not received. As per para 10, Palam Vihar School was aware that appellant was directed to join the duties with respondent no.2, although the capacity in which she was to join was not known. It is stated that appellant's expression that she is traumatised and is in depressed state of mind clearly shows that appellant was trying to create disputes, which never existed.

32. It is stated that contents of e mail dated 29.3.2018, ^{show} the expression of agony of appellant towards management's decision asking her to join with Ashok Vihar school has created.

33. **Respondent No.3 DOE in its WS/reply** of both the schools through Ms Richa Kalra, Dy. Director, Zone-XI, Distt NW(B) has submitted that respondent no.1 is a private recognized unaided school and liable to follow DSEAR and respondent no.2 does not fall within the jurisdiction of DOE. It is affirmed in para no.3 of the reply that respondent No.1 has not sought prior approval from DOE.

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34 **Appellant in her rejoinder to the reply of Ashok Vihar School** of her appeal has controverted those assertions of reply which are not in consonance with the assertions of appeal and has reiterated the assertions of appeal. She has submitted that appellant was made to work in Palam Vihar school and Ashok Vihar school has deliberately concealed this fact. That appellant was promoted as Academic Head vide order No. 38/2016-17 dated 14.2.2017, which was effective from 20.2.2017 which is evident from her email dated 15.4.2018. That appellant was forced to resign from Ashok Vihar school. That she was ready to join Ashok Vihar school even as a PRT but she has not been allowed to resume duty by both the schools. That 'last come first go rule' has not been applied.

35. **In the rejoinder concerning reply of appeal of Palam Vihar School**, assertions of Palam Vihar which are in contrast of assertions of appeal have been controverted and contents of appeal have been reiterated.

36. Some documents having relevance for determination are detailed as under :-

Ref No Pre/AV/2018-19/Aug

Dated 03rd Aug., 2018


Order

Whereas it has been reported to the undersigned that you have allegedly been absent from duty and conduct not conducive to the maintenance of discipline in the school and interests of your students, it has been reported that :

- (a) You are on the rolls of Presidium Ashok Vihar since 1.4.2006.
- (b) On 14.2.2017 you were asked to take over as Academic Head in Presidium Palam Vihar vide order No. 38/2016-17/14.2.2017
- (c) You joined duties in Presidium Palam Vihar w e f 20.2.2017
- (d) It has now been reported from Presidium Palam Vihar that view of your poor performance in your new assignment you were asked by the school authorities in Feb.,2018 to report back to Presidium Ashok Vihar
- (e) While your orders to report to Presidium Palam Vihar were issued by Head HR, no orders to revert back to Presidium Ashok Vihar were issued by Head HR
- (f) Without awaiting formal orders from head HR you moved from Presidium Palam Vihar on verbal directions but did not report back to Presidium Ashok Vihar and have been absent from duty ever since

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Delhi School Tribunal
Delhi


Mrs Satinder Tandon V/s. Presidium School & Ors. Appeal No. 62/2018



Therefore now It stands established that :

- (a) Your absence from duty has been wilful and deliberate and that your dereliction of duty is inconsistent with the continuation of your of employment.
- (b) Your wilful and deliberate absence has affected the interest of students which is inconsistent with the continuation of your employment.

Now, therefore, it stands established that your actions constitute serious misconduct inconsistent with the continuation of your employment. Therefore, your services are no longer required by the school and the same stand terminated with immediate effect

You will be paid accrued entitlements and outstanding remuneration up to and including the date of this order.

Sd/-
(Puja Gakhar)/Manager

37. Appointment letter is at page 24 of paper book bearing No. P/06/T/323 dated 1.4.2006. As per this letter appellant was appointed as PRT on a probation of 2 years which was liable to be extended for another year. The relevant clause(s) 2,3,4 of the appointment letter are as under :-

Appointment letter

xxx xxx xxx

xxx

- (ii) Initially you will be on probation for a period of two years from the date of joining. The said period of probation is further liable to be extended for one year. Solely at the discretion of the managing Committee. During of at the expiry of said period of probation or the extended period of probation, The Managing Committee shall have the right to terminate your services without any notice or without assigning any reason. You will continue on probation till your services are confirmed in writing by managing Committee.
- (iii) After confirmation, your service shall be liable to be terminated on three month's notice or salary in lieu therefore except on disciplinary ground in which case no such notice or payment in lieu thereof shall be necessary.
- (iv) Even after confirmation, if you are found absent from duty for ten days without obtaining prior permission in writing of the Managing Committee/Principal or if you proceed on leave without obtaining prior permission or overstay the sanctioned leave for ten days without first getting it sanctioned then your service shall be liable to be terminated after initiating proper disciplinary proceedings.

39. xxx xxxx xxxx

Yours faithfully

Sd/-

Principal/Manager/Secy

38. Letter of confirmation dated 8.7.2014, reads as under :-

To

Ms Satinder Tandon

Sub: Letter of Confirmation

With reference to your letter of appointment dated 1.4.2006, we have the pleasure to inform you that your employment is confirmed as PRT w.e.f. 1.4.2008 in the pay band of Rs.9300-34800 , grade pay Rs.4200, plus usual allowances as payable time to time. From the Mrs Satinder Tandon V/s. Presidium School & Ors, Appeal No. 62/2018

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date, the norms regarding notice of termination as set out in paragraph 3 and 4 of the letter of Appointment will apply.

Yours faithfully,

(G.S. Matharoo)/CEO

39. A medical certificate dated 12.2.2018, at page 41 of paper book reads as under:-

Dr. S.K. Tanoja, MBBS, DTCD,
Clinic 12/15, Choli Subzi Mandi
Janakpuri, New Delhi-58 Dated 12.2.2018

After careful examination of the case, I hereby certify that Smt. Satinder Tandon w/o Pawan Tandon whose signature is given above is/was suffering from Hypertension c Depression Bodyache and I consider that a period of absence from duty of 7 days w.e.f. 9.2.2018 to 15.2.2018 is absolute necessary for treatment, restoration of his/her health

Sd/-
Dr. S.K. Tanoja
Regd No. 17030, DMC 14251

40. At page 42 of the paper book, is the e- mail dated 16.2.2018 addressed to Ms Sudha Gupta, Ms. Aparna Gupta, Mr. Paras Gupta, Mr. Matharoo and copy to Ms Amita Bhatia ,reads as under :-

"Respected Sir/Maam,

This is to bring to your kind attention that on Friday, 8th Feb, 2018, I was called by our Zonal head to her office and she shared with me that Mr Paras Gupta Sir wants "me to go on a break".

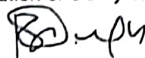
Needless to say, this was very shocking news for me. I was so disturbed and traumatised by these words that ever since I have been on a sick leave, and I have been paying visits to my doctor.

I need clarity on the following points:

- 1) Firstly, for what reason I am being asked to take a break?
- 2) What is the duration of this break?
- 3) Is this going to be a paid break or an unpaid break?

I was in for another surprise when I called HR Head to get some clarity as the same day office order had declared the post of school head for Ms. Shelly Banga, Palam Vihar. HR Head's reply was "no change" for me. My surprise was based on the fact that on two different occasions, once in June and then in November, Chairperson Maam enquired from the zonal head as to why was there a delay in announcing my title as "School Head" for Palam Vihar branch (in my presence) and this process should be taken up on priority ASAP. For the same, Chairperson Maam advised me to talk to Paras Sir. I tried calling Paras Sir for an appointment to discuss the same, but without success. I totally respect the decision taken by my seniors to announce Ms Shelly Banga as School Head for Palam Vihar. What I have again not been given clarity on is that Palam has two academic heads already. One takes care of classes nursery to 3 and other is responsible for classes 4 to 7, which classes are left for me to handle, if I too am an Academic Head?

I have served relentlessly for the last 14 years, never demanding anything in return. As and evidence to prove my point please read- according to the office order passed for me on 14.2.2017 last year I was promoted to Palam Vihar Presidium as an Academic Head, whereas in reality I was expected to shoulder the responsibility of running the branch as school head, without any remuneration or declaration or clarity of my role.



Mrs Satinder Tandon V/s. Presidium School & Ors, Appeal No. 62/2018

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I would also like to clear here, that I had no experience of running a school as a Head . yet I would not like to miss any chance of taking pride and sharing that I ran the school with full commitment, diligence and sincerity and making it a profitable branch in its first year itself. A few other important points that I would like to share, from my side would be- the success of the Christmas Carnival at Palam, successful handling of all parents concerns inspite of I- Cards not being delivered almost to beginning to Feb., 2018, my timely coordination with all respected seniors for smooth functioning of the branch, taking care of both administration and academic, heading a team of 40 odd members and many more.

But for all my good endeavour, what I have received is demotion and not promotion

Seeking an unbiased democratic support.

Regards/

Satinder Tandon

41. E mail dated 14.2.2017, page 43-44 of paper book is an office order bearing No.38/2016-17 dated 14.2.2017, which reads as under:-

OFFICE ORDER

That Management is pleased to promote Ms. Satinder Tandon (Discipline incharge, Presidium Ashok Vihar) as Academic Head at Presidium Palam Vihar with effect from 20.2.2017

This issued with the approval of CEO Sir.

Renu Kapoor.

Head H R

42. E Mail dated 23.2.2018 at page 45 of paper book, addressed to Ms. Renu Kapoor, reads as under:-

As you are aware that I was on applied sick leave dated 9th, 12th, 13th and 15th Feb due to extreme mental trauma and related conditions. When my condition was a bit stable, I had written a mail on Friday 16th of Feb., 2018 seeking clarity about my unclear role/position.

Post that I was asked by Paras Sir's coordinator Ms. Sumedha to come and meet Paras Sir on Tuesday, 20th of February. In the meeting I was asked to wait till further instructions from HR for future clarity on my role/position in the organisation.

This is a gentle reminder, if you could please provide me clarity on the same.

Satinder Tandon

43. Email dated 09.3.2018 (page 46 of paper book addressed to Mr. Manoj Bhatia reads as under :-

I am yet to receive any further clarity on my role. Awaiting the same

Satinder Tandon

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Delhi School Tribunal

(Signature)



44. Email dated 29.3.2018(page 47 of paper book), addressed to Mr. Matharoo, Ms. Sudha Gupta, copy to Mr. Paras Gupta reads as under:-

"This is to bring to your kind attention that since February 9th I have been sitting at home due to extreme mental trauma and depression. This is due to the official message passed on to me through the zonal head, Mrs Amita Bhatia that Paras Gupta Sir wants to go on a break till further instructions. Though under trauma, yet I have been in communication with Paras Sir, directly, seeking clarity on my role in school.

After almost a month and half on 24th March, 2018, I received a message from HR Head Mrs Renu Kapoor to telephonically call her on Monday, 26th March to discuss my further placing. On calling her on 26th I was told by her that I can join TGT, Social Science in Ashok Vihar, if I wish.

Needless to say this is demotion for me, I am very much traumatised and in depressed state of mind looking the progress of the decisions being taken for me.

In true earnest, I request you all to look into this matter and help me out.

Satinder Tandon"

45. Email dated 11.04.2018 at page 48 of paper book addressed to Mr Paras Gupta, Ms Sudha Gupta, Mr. Matharoo, CEO reads as under :-

"This is to bring to your kind attention that as per the last discussion with HR Head dated 29.3.2018, I was told that still I am on payroll of Ashok Vihar Presidium, I wish to inform that I will joint the office at Ashok Vihar Presidium from tomorrow 11.4.2018, till my further role and position is made clear to me. I am open to any further discussion

Kindly share who I need to report to ?.

I am extremely traumatised as continuously for past two months, I am facing harassment from various sources.

Satinder Tandon"

46. Email dated 12.4.2018 (page 49 of paper book) addressed to Mr. Matharoo and Ms. Sudha Gupta, reads as under:-

"Respected Sir/Maam,

You had mailed yesterday that I will be joining Ashok Vihar from today 12.4.2018 Thursday.

Unfortunately no one in Ashok Vihar, was informed about my joining. I reported at 7.55 a.m. in the morning and left at 1.45 p.m.

It was traumatising and insulting to be made to sit at the reception for nearly 6 hours with no one coordinating for me or with me . Finally I left after informing both the VP academics and operations. I asked both before leaving if there is any instruction for me and VP operations said she tried calling HR in morning but HR Head did not take her call , thereafter she did not..

I am utterly stressed and shocked with the behaviour and response meted out to me today after 15 years of service. I have been writing so many mails for my role in the organisation Is it asking too much?

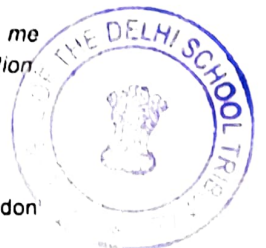
Regards,



Mrs Satinder Tandon V/s. Presidium School & Ors, Appeal No. 62/2018

Satinder Tandon"

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47. Email dated 14.5.2018, page 50 of paper book, addressed Ms Renu Kapoor alongwith copy to Mr. Matharoo reads as under :-

"Dear Ms Renu Kapoor,

During our last discussion on 24.4.2018 you said that you were not able to provide me with a suitable position and advised me to move on.

During the same discussion, I request you to provide me with details of my final settlement so that I may decide to part ways. I am still waiting for the same.

During your telephone call on 8th May, you advised me to give you a figure of my final settlement, I request you to do the calculations of the same, as you have all the records available since you are hearing HR Department.

Regards

Satinder Tandon"

48. That email dated 18.06.2018, page 52 of paper book addressed to Ms Renu Kapoor, alongwith copy to Sh. Matharoo, reads as under :-

"Respected Sir,

As you know I have been asked by the organisation to sit at home since Feb and further a suitable job benefitting my existing profile could not be provided. It was suggested by HR head, Presidium that I should move on in life. That I would like to look at my full and final settlement before I could take a decision.

It hurts to see complete unprofessional illogical delay by the concerned people towards solving my problem. My anguish here is due to the fact that I am jobless since Feb, I have lost my livelihood and over and above the organisation has illegally made me sit at home.

I was further shocked to see the rough estimate of my full and final, which include a term "notice period salary". Please note NO ONE has given me any notice.

I, therefore, request an immediate solution to my current situation.

Regards,

Satinder Tandon"

49. That email dated 29.8.2018, page 53 of paper book addressed to Mr Matharoo, Ms Sudha Gupta, Mr Paras Gupta, Ms Puja Gakhar, reads as under :-

"Respected Seniors

I, Satinder Tandon, deny each word written in the termination letter sent to me on the 9th August, 2018 by the school authorities, bearing Ms Puja Gakhars signatures.

I tried contacting the authorities. Needless to say there was 'No response'.

Regards,

Satinder Tandon"

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Delhi School Tribunal

Satinder Tandon



49. Arguments were heard at the bar. Sh. Anuj Aggarwal, Advocate for appellant, Sh. P.S Singhal, Advocate for Ashok Vihar School, R1, Suman Malhotra, Advocate for Palam Vihar School, R2 and Sh. Dhiraj Madan for respondent no.3 (DOE) have argued in consonance with their respective pleadings.

50. Sh. Anuj Aggarwal has argued that R1 and R2 have colluded and have taken false pleas in order to deprive the appellant from her legal and vested rights. That management of both the schools is one and the same and in the pleadings false pleas have been taken. That plea of abandonment is clearly negated from the correspondence of the appellant with the respondent. Sh. Anuj Aggarwal has placed his reliance on Rajkumar V/s Director of Education & others 2016 (6) SCC 541; Managing Committee of Daisy Dails Senior Secondary School and another V/s Rajender Singh Malik & others. MANU/DE/0819/2011 decided on 10/03/2011 vide W.P (C) 7267 of 2000; New Delhi Municipal Council V/s Budhram bearing W.P(C) No. 11594/2004 decided on 14/12/2009; G.T Lad and others V/s Chemical and Fibers of India Limited MANU/SC/0264/1978 decided on 6/12/1978 vide civil appeal no. 1188 of 1976; Krushna Kant B. Parmar V/s Union of India and another MANU/SC/0118/2012 decided on 15/02/2012 vide civil appeal no. 2106 of 2012 arising out of SLP(C) no. 15381 of 2006 and Gauri Shanker Vishvakarma V/s Eagle Spring Industry Private Limited & others MANU/MH/0338/1987 decided on 3/9/1987.

51. Sh. P.S Singhal on the other hand has argued that the transfer of appellant to Palam Vihar School at the maximum can be said to be an irregularity as also so pleaded in the reply of the appeal. He has submitted that there was no need of seeking approval under section 8 as appellant is guilty of abandonment and is, therefore, not entitled to any relief. That provisions of section 8(2) and rule 120 are not available to the appellant in view of abandonment of services by the appellant.

52. Counsel for DOE on the other hand has argued that in the absence of approval under section 8(2) from DOE, plea of the respondent school are not tenable. He has placed his reliance on the email at page 50



of the paper book and has submitted that this email shows that appellant has abandoned the services and therefore, adverse inference be drawn against her.

53. I have carefully perused the records of the case and considered the submissions. Appellant is a confirmed employee as per admitted case of the parties. This I am saying for the reason that in para 1 and 2 of the appeal at page 7 appellant has submitted that she was appointed on 1/4/2004 vide appointment letter E/06/T/323 and was confirmed vide letter dated 8/7/2014 w.e.f 1/4/2008. Respondent no. 1 (Ashok Vihar school) in corresponding para no. 1 and 2 has pleaded that para no. 1 and 2 of the appeal are matter of record which means that Ashok Vihar school, admitted employer of appellant admits that appellant is a confirmed employee. In view of this admitted fact, section 8(2) and rule 120 of DSEAR get attracted which admittedly have not been complied with by the school. R2 in its reply has impliedly negated the stand of Ashok Vihar School that appellant was not a good employee as it is categorical stand of respondent no.2 that appellant has always been an employee of Ashok Vihar School and she was brought to Palm Vihar School for establishing the Palam Vihar, it being new. In para 3 of reply to brief facts it is stated as under by Palam Vihar School:

"It is submitted that the Appellant was only deputed with the answering Respondent for a short while as an academic head to stabilize the establishment of the answering Respondent i.e. to meet the needs of teething problems as being experienced and with the establishment of the school. It is submitted that for the said reasons alone she was never brought on the roles of answering Respondent and continued to be on the roles of Respondent no. 1."

54. The above version is repeated in para 5 at page 69 wherein it is stated that services of the appellant were utilized by Palam Vihar School to meet the teething troubles of establishing a new school which Palam Vihar School was.

S. J. 4

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Delhi School Tribunal
Delhi

Mrs Satinder Tandon V/s. Presidium School & Ors, Appeal No. 62/2018



55. Plea of respondent no. 1 regarding it having shown mercy on the appellant vide para 2 C to J are not true as R2 has controverted the same as evidenced from the aforgoing particularly extracted portion.

56. Ashok Vihar School has admitted at Page 80 to 82, that the act of Ashok Vihar School can be said to be an irregular act at the maximum.

57. Assertions at page 80 that appellant refused even to join back as a primary teacher are not born out from the records of the case as respondent school has not placed on record any letter vide which appellant was asked to join as a primary teacher. It is the specific case of the appellant in the rejoinder that at one point of time, she was even ready to join even as PRT despite the fact that it would have been a demotion for her from 'Branch Head'. In para 11 appellant has categorically stated as under:-

"it is wrong and therefore, denied that the appellant refused to join back as a teacher and demanded that she would join only as an academic head. It is submitted that appellant was always ready and willing to work as a primary teacher in the respondent no. 1 school."

58. The aforesaid submissions categorically negate the plea of Mr. P.S Singhal as well as school. I may point out that even I had asked Mr. P.S Singhal as to why the appellant be not reinstated now but this offer was not acceptable to the respondent school as so stated by Mr P S Singhal on instructions.

59. I am not in agreement with the arguments advanced by Mr. P.S Singhal as these arguments are in teeth with the provisions of DSEAR. His argument that section 8 is not applicable in the facts and circumstances of the case on account of abandonment of services by the appellant is not tenable as respondent Ashok Vihar School has miserably failed to prove its submission in this regard. It is no more res-integra that onus to prove the plea of abandonment is on the respondent school. In the present case, Ashok Vihar School has miserably failed and the emails sent by the appellant to the respondent are categorical proof which completely



negative the plea of abandonment. Email dated 17/02 which was sent to Ms. Sudha Gupta, Mr. Matharoo, Ms. Aparna Gupta, Mr. Paras Gupta, Ms. Amita Bhatia and Ms. Renu Kapoor goes to show that there was no abandonment on the part of the appellant. Zonal Head, Ms. Renu Kapoor had conveyed the desire of Mr. Paras Gupta that appellant should 'go on a break'. This email completely goes against the plea put forth by the respondent school. Appellant had demanded clarity as to why she was being asked to take a break; what was the duration of break and will it be a paid or unpaid one. In this mail appellant had raised her grievance that despite having been assured by the chairperson Ms. Sudha Gupta of Presidium Brand, she was not being promoted. She has also raised her grievance that instead of she being promoted one, Ms. Shelly Banga was promoted as school head. She has stated in the last 3 paras of this mail as under:-

"I have served relentlessly and selflessly for the last 14 years, never demanding anything in return. As an evidence to prove my point please read. According to office order passed for me on 14th Feb 2017, last year, I was promoted to Palam Vihar Presidium as and Academic Head whereas in reality I was expected to shoulder the responsibility of running the branch as school head without any remuneration or declaration or clarity of my role.

I would also like to clear here, that I had no experience of running a school as a head, yet I would not like to miss any chance of taking pride and sharing that I ran the school with full commitment, diligence and sincerity and making it a profitable branch in its first year itself. A few other important points that I would like to share, from my side would be the success of the Christmas Carnival at Palam successful handling of all parent concerns "in spite of I-Card's not being delivered almost to beginning of February 2018 my timely coordination with all "respected seniors" for a smooth functioning of the branch taking care of both administration and academics, heading a team of forty odd members and many more.

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Delhi School Tribunal
DELHI

Mrs Satinder Tandon V/s. Presidium School & Ors, Appeal No. 62/2018



But for all my good endeavour, what I have received is demotion and not promotion.

Seeking an unbiased democratic support!"

60. Appellant has proved that she was promoted through office order bearing no. 38/2016-17 dated 14/02/2017 letter having been issued by none else but Ms. Renu Kapoor, head-human resource 11/77 West Punjabi Bagh. This office order proves the interconnection between both the schools and goes against the pleas of R1 and R2 in their reply to the appeal that they are not interconnected.

61. Email dated 23/02/2018 is another email which negatives the plea of the abandonment. On the one hand school was asking the appellant to appear and meet Mr. Paras Gupta, Ms. Renu Kapoor etc. and on other hand in reply of appeal it has taken plea of abandonment. E-mail dated 09/03/2018 is another mail which again negatives the plea of abandonment of respondent school as vide this email appellant had submitted that she was waiting for the clarity.

62. Email dated 29/03/2018 is another piece of evidence which falsifies the plea of abandonment. In this email Ms. Satinder Tandon (appellant) has written that she had received a message from Ms. Renu Kapoor (she is the official of respondent school who had issued the office order and as per appellant is Zonal Head). In this mail it stands mentioned that appellant was free to join as TGT social science in Ashok Vihar School.

63. In this email appellant expressed her dis-satisfaction as according to her and rightly so she was being asked to join as TGT social science whereas she stood promoted as Branch Head vide officer order mentioned earlier.

64. In e-mail dated 25/08/2018 appellant had mentioned that HR head had told during discussion that she was still on the payroll of Ashok Vihar Presidium as is also the admitted position in the reply of the appeal by both the schools on 25/08/2018. An e-mail was sent in which it stands mentioned that appellant had gone to join Ashok Vihar School on 12/04/2018 but she was not permitted to join despite her stay at the school

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Delhi School Tribunal

Satinder
Mrs Satinder Tandon V/s. Presidium School & Ors, Appeal No. 62/2018



from 7:55 AM till 1:45 PM. She has mentioned that she had tried to contact all concerned authorities of both the schools, but of no avail.

65. From the email sent on 14/05/2018 it is clearly inferable that it was advised by the management of the Presidium that Presidium will not be in a position to provide a suitable position. It also stands mentioned that appellant had sought as to what were the terms of settlement for her. It also stands mentioned that from 24/04/2018 onwards till 14/05/2018 nothing had moved concerning providing of details of final settlement.

66. Appellant wrote another mail on 16/05/2018 to Mr. Matharoo with copies to others seeking an appointment which she was not given. From the email dated 25/08/2018 it is clearly inferable that appellant was asked by the management to sit at home since February and it had failed to provide a suitable position befitting profile of the appellant. This mail mentions about the offer of settlement which according to the appellant was not acceptable to her. She has expressed her anguish in the following lines

"I was further shocked to see the rough estimate of my full and final, which included a term 'notice period salary'. Please note no one has given me any notice".

In this mail also appellant sought a solution to her the then situation. Then came the termination order and its reply has been given by the appellant vide her mail dated 24/10/2018 as under:-

"I, Satinder Tandon, deny each word written in the termination letter sent to me on the 9th of August 2018, by the school authorities, bearing Ms. Puja Gakhars signatures.

I tried contacting the authorities. Needless to say there was "No response"

I reserve my right to initiate appropriate legal proceedings against the harassment caused to me at my workplace."

67. The aforesaid discussion of the emails leaves no manner of doubt that there is no abandonment by the appellant and the arguments of Mr. P.S Singhal in this regard are not at all tenable. In the replies to the appeal

the sending of the emails has not been denied and thus e mails are deemed admitted. Appellant in her list of dates and events has categorically stated that her emails dated 16/02/2018 and 23/02/2018 were not responded to. Respondent school has not come forward as to what were the terms of amicable settlement. Respondent school has also not come forward with the plea that emails of the appellant were reverted back. In these circumstances I have no hitch to reject the arguments of Mr. P.S Singhal.

68. Once the plea of abandonment goes, then as a natural corollary the prior approval of director was required to be obtained which admittedly has not been obtained. Therefore, in view of the categorical mandates of Rajkumar V/s Directorate of Education & Ors bearing Civil appeal No. 1020/2011 decided on 13.04.2016 , Shashi Gaur V/s Government of NCT & ors reported in (2001) 10SCC 455, Laxman Public School Society and Ors. V/s Richa Arora and Ors. W.P (C) 10886/2018 decided on 10.10.2018, Meena Oberoi V/s Cambridge Foundation School MANU/DE/4149/2019 : 265 (2019)DLT 401, Reshamwati V/s Management Committee and Others W.P (C) 11565/15 decided on 1/7/19, Red Roses Public School V/s Reshmawati and Ors bearing LPA No. 516/2019 decided on 15.10.2019, Dr. Ram Pal Singh Mission law finder document ID#863089, Surrender Rana V/s DAV appeal 37/1997 decided by DST on 15/01/2002, judgment of Ld. Single judge concerning appeal No. 37/97 of Hon'ble Mr. Justice S. Ravinder Bhatt (as his lordship then was, now a Supreme Court Judge) dated 08/02/2006 vide W.P(C) 1249/2002, Double Bench Judgment dated 30/11/2006 in LPA no. 492/2006 concerning W.P.(C)1249/2002 and judgment of Hon'ble Apex Court concerning LPA No. 492/2006 in civil appeal no. 2719/2007 decided on 03/02/2011, it alone and alone has to be held that appellant could not have been disengaged from the service.

69. Assertions of respondent school in the reply of appeal vis-a-vis appellant has twisted and concocted facts Palam Vihar and Ashook Vihar School not being inter connected. Ashok Vihar school having obliged the appellant, performance of appellant not being satisfactory at Palam Vihar

Mrs Satinder Tandon V/s. Preldium School & Ors, Appeal No. 62/2018



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Delhi School Tribunal
Delhi

School, appellant having been kept at the rolls of Ashok Vihar School on the request of Sudha Gupta and appellant etc. are not tenable in view of the foregoing. The phrase "Pot calling the kettle black" aptly applied concerning the version of Ashok Vihar School and arguments of Sh P S. Singhal predicated on the same. I do not have the slightest hesitation to reject the arguments and version of Ashok Vihar school.

69. In view of the afore-going discussion appeal has to be allowed and I order accordingly.

70. Request for imposition of heavy costs was made by Mr. Anuj Aggarwal in this case on account of the fact that appellant has suffered unnecessarily at the hands of the management of the Presidium School. Reliance has been placed on the judgement of my Ld. predecessor in Sunita Sahi V/s Sachdeva Public School & others, decided on 08/03/2018 in appeal no. 19/2017. Keeping in view the facts and the circumstances of the case, I deem it expedient to allow the plea of the appellant and impose costs of Rs.25,000/- out of which Rs. 15,000/- shall go to the appellant and Rs.10,000/- shall go to Delhi High Court Legal Services Committee.

71. In view of reasons given herein before, impugned order dated 08.08.2018 is set aside. Respondent No. 1 is directed to reinstate the appellant within a period of 04 weeks. Appellant will be entitled to all consequential benefits. She will be entitled to full wages from date of order onwards.

72. With respect to back wages, in view of Rule 121 of DSEA&R 1973, the appellant is directed to submit an exhaustive representation before the respondent school within a period of 4 weeks from today as to how and in what manner he is entitled to complete wages. The Respondent school is directed to decide the representation to be given by the appellant within 4

weeks of receiving of the same by a speaking order and to communicate the order alongwith the copy of the same to the appellatant. Ordered accordingly. File be consigned to record room.

Dilbag
(DILBAG SINGH PUNIA)
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL

Dated: 12/10/2021

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