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

Appeal No.31 of 2019

Date of Institution: 01.10.2019
Date of Disposal :18.05.2022

IN THE MATTER OF:

Ms. Akansha Singh
D/o Sh. Charanjit Singh
R/o 15/3, 2nd Floor,
East Patel Nagar, New Delhi-110008

(Through: Mr. Anuj Agarwal, Advocate)

...Appellant

Versus

1. **Modern School**
Through its Managing Committee Poorvi Marg, Vasant Vihar
New Delhi-110057

(Through: Mr. Kamal Mehta, Advocate)

2. **Directorate of Education**
Director of Education, Govt. of NCT of Delhi
Old Secretariat Building, Civil Lines, Delhi-110054

(Through: Mr. Mukesh Kumar, Advocate)

...Respondents

JUDGEMENT

Vide this appeal appellant has challenged her termination orders dated 16.12.2018. Brief facts as per factual matrix of the case are that respondent no.1/ Modern School (hereinafter referred to as "School') is an unaided, recognized and private school. That appellant was appointed as a Primary Teacher, on purely temporary/ad-hoc/ contract basis for the period 01.07.2013 till 30.04.2014, on a consolidated salary @Rs. 25,000/- p.m. That she was re-engaged/re-appointed vide appointment letter dated 30.6.2014 and thereafter from time to time without any gap. That she has remained in service w.e.f. 01.07.2013 till her illegal termination on 16.12.2018 .That her last salary drawn was Rs. 37,000/-p.m. That she had an unblemished and uninterrupted record to her credit till termination of her

services and is deemed confirmed employee as per rule 105 and law settled by the High Court of Delhi in Hamdard Public School, Sonia Mehta etc.

2. It is stated that from 15.11.2018 to 15.12.2018, appellant had proceeded on maternity leave but school has not paid any maternity benefits till date, as per the Maternity Benefits Act, 1961. That instead when appellant reported to the school after maternity leave, her services were terminated verbally and no written order was given.

3. It is stated that after 16.12.2018 appellant made numerous representations via e mail and post to school directly / through teacher's representatives and to the Directorate of Education, but no reply has been received so far. That on 6.9.2019, appellant served a legal notice for seeking reinstatement which was duly received but with no revert back. That non-renewal of contract of service/refusal of duty amounts to termination of service of a deemed confirmed/ permanent/regular employee. That parity of pay u/s 10 of Delhi School Education Act, 1973 and Rules framed thereunder (DSEAR, in short) was also claimed in her representations.

4. **In the grounds of appeal**, it is claimed that termination is illegal, unjustified, arbitrary, discriminatory, punitive, perverse, unreasonable, unconstitutional, violative of Articles 14, 16, 21 and 311 of the Constitution of India and violative of principles of natural justice under DSEAR.

5. It is asserted that no prior approval was sought from Director of Education before dispensing with the services of the appellant in terms of Section 8(2) of DSEAR.

6. It is further asserted that neither any show cause notice was given nor any domestic inquiry was conducted. That no opportunity of hearing was given, which is violative of Rule 120 and 123 of DSEAR. That no Disciplinary Authority was constituted as per rule 118 of DSEAR constitution of which is a must before termination of an employee.

7. It is further asserted that main reason for termination was to victimize appellant for taking maternity leave for which she had claimed maternity benefits which were denied illegally. Section 12 of the Maternity Benefit Act, 1961, has been relied to assert that no termination can take place

during maternity leave of an employee. Section 12 of Maternity Act is reproduced below:-

> *"12. Dismissal during absence or pregnancy. –*
>
> *(1) Where a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.*
>
> *(2) (a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge of dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity benefit or medical bonus: Provided that where the dismissal is for any prescribed gross misconduct the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.*
>
> *(b) Any woman deprived of maternity benefit or medical bonus or both may, within sixty days from the date on which the order of such deprivation is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefits or medical bonus or both, shall be final.*
>
> *(c) Nothing contained in this sub-section shall affect the provisions contained in subsection (1)".*

8. It is submitted further that termination of appellant was in violation of the principle of 'last come first go'. That several of her juniors stand retained in service. That Ms. Aditi Suri who was junior to her was given appointment in the meeting of the Managing Committee dated 18.08.2018. That fresh hands were engaged for doing the same job/duties, as were being performed by her.

9. It is averred that appellant had sought experience certificate for the period of service rendered, but the same was not provided.

10. It is asserted that appellant is completely unemployed since the date of her illegal termination and despite her best efforts has not been able to procure any job. It is requested that she be reinstated in service with full back wages and continuity of service.

11. In the reply to appeal, respondent school has asserted that appeal is liable to be dismissed as services of the appellant were contractual in nature and had come to an end by efflux of time as per appointment letter dated 03.07.2017. That no demand for regularization either existed or was made by the appellant at any point of time and could have ever been granted. That having accepted and acted on the terms of appointment without any demurer or protest, appellant is not entitled to claim herself to be in services upon expiry of contractual term. That this

fact is evident from the mail dated 27.03.2018 wherein she wanted re-appointment after motherhood which she was expecting in July' 2018. That said mail was sent in acknowledgement of the fact that contractual tenure of appellant was coming to an end on 02nd June 2018. That, however, on the request of appellant she was allowed to work for 07 days in July 2018 i.e. till 13.07.2018.

12. It is asserted that appellant **was never granted or sanctioned any leave for maternity.** That after contractual determination of her services, she got her dues settled, and received the same alongwith experience certificate in full and final settlement for which she had applied. That she had received on 09.08.2018 her experience certificate and dues. That, therefore, she is not entitled to seek reinstatement of services. That appeal is barred under the principles of admission, acquiescence, waiver, estoppel and on account of full and final settlement. That she has suppressed these facts from this Tribunal. Copy of experience certificate has been annexed as Annexure-I.

13. It is further asserted that there is no automatic / deemed confirmation under DSEAR, after a lapse of 2 years and reliance on various judgments is of no help. That Rule 105 and appointment letter stipulate a condition precedent to the confirmation of service and there is no deemed confirmation of service merely because the contractual arrangement was continued beyond the stipulated period. That it is only upon issuance of an order of confirmation that a probationer is granted substantive appointment in that post. That satisfaction of the appointing authority is a condition precedent to the issuance of an order of confirmation even as per rule 105 of DSEAR.

14. It is also submitted further that appeal is liable to be dismissed being highly belated. That appellant herself has admitted about her contractual tenure which had come to an end on 02.06.2018, and thereafter appellant had merely worked for a few days in July. That vide communication dated 13.07.2018 she admitted having worked with school till July 2018 for which she had sought experience certificate. That a challenge to contractual determination ought to have been made either from 2nd June' 2018 or from 15th July 2018, even as per the best case of the appellant. Assertions about

delay are not being adverted to for the reason that condonation of delay application has been admitted and delay stands condoned.

15. It is asserted that appeal is gross abuse /misuse of the process of law and is merely a chance litigation full of malicious and afterthought concoction/fabrication of fact. That appellant has concealed the fact regarding contractual employment and acquiring of experience certificate. That she had never asked for maternity benefits prior to filing of the present appeal.

16. It is repeated that appellant was appointed on contractual basis from time to time and lastly on 03.07.2017 which came to an end by efflux of time as is evident from e-mail dated 27.03.2018 wherein she wanted re-appointment after delivery which was expected in July'2018.

17. It is asserted that appellant was sent an acknowledgement of the fact that contractual tenure of the appellant was coming to end and she required further appointment. That tenure of appellant ended on 2nd June'2018, but on her request she was allowed to work furthermore for 07 days until 13th July'2018. That she was never sanctioned/granted any leave for maternity. That she had not sought any in view of the fact that her contractual term had come to an end.

18. It is further submitted that appellant had negotiated her professional charges @ Rs.37,000/- p.m. for the last tenure which duly stand paid. That she did not have uninterrupted record of service to her credit till 16.12.2018. That she has concealed fact of issuance of experience certificate until July'2018. That she herself admitted about determination of her services in July'2018, **Annexure R2** is relied which reads as under:-

Date:-13.08.2018

To,
The Principal
Modern School
Vasant Vihar
New Delhi-57

Respect Ma'am

This has reference to my Experience Certificate that I Akansha Singh had worked continuously from July 2013- July 2018 on Ad-hoc/contractual basis. It may be added that I worked as a PRT at MSVV on regular basis/continuously.

I request you to kindly make changes as per my documents attached with this application.

Thanking you,
Yours sincerely
Akansha Singh

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19. **DOE in its reply dated 19.11.2020 has asserted** that school in an unaided, private, non minority school, recognized by DOE; bound by the provisions of DSEAR; and appellant was in continuous employment w.e.f. 1.7.2013 to 16.12.2018. It is asserted that during 15.7.2018 to 15.12.2018 appellant was on maternity leave and school is bound to comply with the provisions of maternity benefits act and in failure thereof liable for punishment under section 21 of this Act.

20. It is asserted that respondent school has violated section 8(2) of DSEAR and mandate of Rajkumar Vs. DOE.

21. **Appellant in rejoinder filed on 14.12.2020**, has asserted that school has wrongly said that she had obtained an experience certificate dated 9.8.2018 in full and final settlement. She has asserted that aforesaid experience certificate was factually wrong for the reason that she has been shown as contractual employee whereas in fact she was working on regular basis. It is claimed that respondent school in order to mislead this Tribunal has tempered with experience certificate by changing its date.

22. **Mangal Sain Jain vs. Principal, Balwantray Mehta Vidya Bhavan** bearing WPC No. 3415/2012 decided on 10.08.2020. **Sonia Mehta vs. Dayanand Model School & Ors.,** bearing WP(C) No.3061/2011 have been relied to assert that she is a confirmed employee & entitled to parity under section 10 of DSEA&R.

23. Arguments were heard at the bar, Counsel Mr. Anuj Aggarwal for appellant, Counsel Sh. Kamal Mehta for respondent and Counsel Sh. Mukesh Kumar for DOE, have been heard at length. They have argued in consonance with their respective pleadings. Main arguments have remained centred on section 8(2) of DSEAR, 1973.

24. **I have carefully perused the records of the case and considered the submissions.** The issue to be decided is as to what is the consequence of non-seeking of approval as per section 8(2) and proviso of rule 105(1). Section 2(h), 8(2), 8(3) of DSEA and rule 105 of DSER are relevant for deciding the issue and are being reproduced:-

> *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:

(Provided further that no termination from service of an employee on probation shall be made by a school, except with the previous approval of the Director.)

(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.

25. In **Laxman Public School Society (Regd.) and Ors. V/s Ms. Richa Arora and Anr.** bearing W.P(C) 10,886/2018 decided on 10/10/2018 Richa Arora was appellant before Delhi School Tribunal (DST) Ms. Richa Arora was appointed on probation period of one year which was further liable to be extended in terms of appointment letter dated 22/05/2015. Ms. Richa Arora was terminated within first year of service vide letter dated 13/05/2016. Only one ground, out of many other grounds otherwise taken, in appeal No. 46/2016 decided on 18/05/2018 by my Ld. Predecessor Sh. V.K Maheshwari, was pressed, i.e. termination order dated 13/05/2016 was illegal as approval from DOE was not taken which was mandatory. Per contra stand of the school was that appellant was appointed as computer teacher on probation for one year and was intimated vide letter dated 22/05/2015 wherein the term & conditions of her appointment as TGT (Computer) were detailed which were as per DSEAR. That the said letter was duly received by the appellant and a copy of the said letter with her declaration of acceptance of terms & conditions mentioned in the letter duly signed by Ms. Richa Arora was returned to the school on 01.06.2015. Further stand of the school was that appellant was neither a diligent worker

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nor a proficient teacher. That she did not have good control over the class. That in review of her work time and again the aforementioned deficiencies were revealed. That she has been in the habit of physical reprimanding of the students and despite having been given ample opportunities, she did not improve.

26. Appellant relied on **Raj Kumar V/s Directorate of Education & Ors.** bearing Civil appeal No. 1020/2011 decided by Hon'ble Apex Court on 13/04/2016, reported in AIR 2016 SC 1855: (2016) 6 SCC 541. Proviso of 105 had been relied heavily which reads as under:-

> *"Provided further that no termination from the 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".*

27. Appeal was allowed by Sh. V.K. Maheshwari and school went in appeal by way of W.P. (C) 10886/18. Appeal of school was dismissed on 10/10/2018 by Hon'ble Mr.Justice C. Hari Shankar in his scholarly judgement.

28. Perusal of 'Laxman judgement' reveals that in Para 7, Hon'ble High Court has relied upon Section 8(2) and rule 105 in the light of Raj Kumar V/s DOE. Para 9 to 15 onwards are relevant and are being reproduced for the sake of convenience and ready reference.

> *9. "The petitioner has challenged the aforementioned order, dated 18th May, 2018 of the learned Tribunal principally on the ground that Raj Kumar (supra) dealt with the case of a regular employee, whereas the respondent was still on probation on the date when her services were terminated. The contention of the petitioner is, therefore, that the rigour of Section 8(2) of the Delhi School Education Act, 1973 and Rule 105 of the Delhi School Education Rules, 1973, would not apply when services of a probationer were terminated during the period of probation.*
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> *10. It is not possible to accept such a contention.*
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> *11. The following passage, from the judgment of the Supreme Court in Raj Kumar (supra), merits reproduction, in this regard: "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."*
>
> *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. JamunaKurup, (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."

14. Clearly, therefore, the mandate of Section 8(2) of the Delhi School Education Act, 1973 and Rule 105 of the Delhi School Education Rules, 1973, especially the second proviso thereto, would apply, with equal force, to employees on probation, as it applies to other employees.

15. Resultantly, no exception can be found with the impugned order passed by the learned Tribunal."

29. Para 13, of law finder having document ID # 143275 which is para 14 of (2008) 11 SCC 10, is reproduced in full.

"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'. The respondents who were appointed on contract basis initially for a period of six months, extended thereafter from time to time for further period of six months each, were therefore, employees of MCD, and consequently, entitled to the benefit of age relaxation. If the intention of MCD and UPSC was to extend the age relaxation only to permanent employees, the advertisement would have stated that age relaxation only to be extended only to permanent or regular employees of MCD or that the age relaxation would be extended to employees of MCD other than contract or temporary employees. The fact that the term 'employees of MCD' is no way restricted, makes it clear that the intention was to include all employees including contractual employees. Therefore, we find no reason to interfere with the judgment of the High Court extending the benefit of age relaxation."

30. **Meena Oberoi V/s Cambridge Foundation** W.P.(C) No. 1363/2013 decided on 5/12/2019 again by Hon'ble Mr. Justice C. Hari Shankar reported in MANU/DE/4149/2019:265 (2019) DLT 401 is also of relevance. Meena Oberoi, petitioner was appointed as an office assistant on 4/07/1991 and she was confirmed in 1993 on this post. On 21/07/2009 she was terminated on the ground that her services were no more required by the school. Fourthly of Para 6 (of Meena reported in MANU) has been dealt with, in Para 27 onwards. Para 27 to 51 of Meena Oberoi reported in MANU are relevant and be read as part of this Para and same are not

being reproduced for the sake of brevity. The sum and substance of these Paras is as under.

31. In Para 27 it has been detailed that fourthly is predicated on section 8(2) of DSEAR. In Para 28 it is mentioned that services of the petitioner could not have been disengaged by the school without prior approval of DOE. Para 29 is substance of Section 8(2) of DSEAR. Para 30 discusses about "dismissal, removal, reduction in rank" and "nor shall his service be otherwise terminated". It has been held that the above words 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. It has been further held that legislative intent to cover all forms of disengagement of services of employees is manifest by the cautionary use of the words 'otherwise', in the expression 'nor shall his service be otherwise terminated'. Para 30 to 36 being apposite to explain this, are being reproduced.

> *"30. The expressions "dismissed", "removed", "reduced in rank" and "otherwise... terminated" are comprehensive and all-encompassing in nature and embrace, within themselves, every possible contingency, by which the services of an employee of the school are disengaged. The intention, of the legislature, to cover all forms of disengagement of employees, is manifest by the cautionary use of the word "otherwise", in the expression 'nor shall his service be otherwise terminated'.*
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> *31. The wide amplitude of the expression "otherwise" has been noticed, by the Supreme Court, in several decisions.*
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> *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:*
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> *"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."*
>
> *The Supreme Court held that the expression "or otherwise" related to other members of the corps other than the staff of any university or school, including a student, who was a member of the corps. Similarly, in Lila Vati Bai v. State of Bombay AIR 1957 SC 521, it was held that the legislature when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses. Other decisions, of the Supreme Court, which notice the overarching scope of the expression "or otherwise" are Nirma Industries Ltd v. Director General of Investigation and Registration (1997) 5 SCC 279, Sunil Fulchand Shah v. U.O.I. (2000) 3 SCC 409 and Tea Auction Ltd. v. Grace Hill Tea Industry 2006 (12) SCC 104.*

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

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

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

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

32. In Para 37 to Para 51, scope of Section 8(2) has been explained and it has been held after adverting to Kathuria Public School MANU/DE/0804/2004:(2005) 123 DLT89, **T.M.A. Pai Foundation V/s State of Karnataka** MANU/SC/0905/2002:(2002) 8 SCC 481, **Prabhudayal Public School V/s Prahalad** MANU/DE/2934/2008, **Prabhudayal Public School V/s Anirudh Singh** MANU/DE/7068/2011, **Katra Education Society V/s State of UP** MANU/SC/0041/1966:AIR 1966 SC 1307, **Principal V/s Presiding Officer** MANU/SC/0046/978 and **Raj Kumar V/s DOE** AIR 2016 SC 1855:2016 (6) SCC 541, that law with respect to Section 8(2) and 8(3) is settled like still water and obtainment of prior approval of Director Education is mandatory before disengagement of the services of any employee of any School.

33. In **Mangal Sain Jain V/s Principal, Balwant Rai Mehta Vidya Bhawan and others** reported in law finder's document #1740651, judgement of Meena Oberoi W.P.(C) No. 3415 of 2012 decided on 10.08.2020was relied by Hon'ble Ms. Justice Jyoti Singh . Hon'ble Ms. Justice Jyoti Singh has explained the concept further. It was observed that prior approval has to be obtained irrespective of nature of employment i.e temporary, permanent, contractual, probationary, ad hoc etc. Head note reads as under:-

Termination- Without prior approval of Director- Discharge of services of petitioner, violative of Rule and Order or Discharge set aside-Petitioner director to be reinstated in service with 50% Back Wages.

Delhi School Education Act (18 of 1973), S.8, S.2(h)-Delhi School Education Rules (1973), R.118, R.120, R.105- Discharge from service - Validity - Charges of misconduct against Petitioner / Accounts Clerk - Petitioner was an 'employee' under Rule 105(1) and thus acquired status of a confirmed employee and his appointment being statutory in character, provisions of Rules 118 and 120 of Rules and S.8(2) of Act would hold the field - However, there was non-compliance of mandatory provisions of said Rules as there was no Disciplinary Committee and charge sheet was not framed as per law - Impugned order of discharge passed without prior approval of Director of Education and being in violation of mandate u/s.8(2) of Act, is bad in law and therefore, set aside - In view of petitioner having attained age of superannuation, relief of notional reinstatement granted with 50% back wages from date of discharge and also retiral benefit with interest.

34. In Para 5 of this judgement 3 issues were framed which are 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?

35. The operative portion of this judgement starts from Para 12 onwards. In Para 13, it has been mandated 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 the probation on account of unsatisfactory work and conduct. It is observed that the words used in rules are 'every employee' and word 'employee' has been defined in Section 2(h) and means a teacher and includes every other employee working in a recognized school.

36. In Para 14, it has been observed that Hon'ble Supreme Court in **Management Committee of Montfort School V/s Vijay Kumar** (2005) 7 SCC 472 has held that nature of employment of employees of a school is statutory and not contractual. Perusal of the provisions of DSEAR reveals that there is no provision which permits contractual employment in private schools. That despite there being provision of contractual employment in minority schools, Hon'ble Supreme Court has held that nature of employment of employees of minority schools is statutory. It has been observed as under:-

"Therefore, if the minority schools can have contractual employment and yet their employees have to be treated as statutory employees, then as a fortiori Non-Minority school's, 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 DSEA&R would apply and services can be terminated only after complying with the said provisions".

37. In Para 15, Laxman Public School Society (Regd.) and others V/s Richa Arora and others was referred. Para 12 and 14 of 'Laxman' were reproduced which I have already reproduced.

38. In Para 18, **Union Public Service Commission V/s Dr. JamunaKurup** 2008(11) SCC 10 has been referred and it has been held that word 'employee" would include both permanent or temporary, regular or short term, contractual or ad hoc, in absence of in any restrictive definitions. Para 19 being the fulcrum about definition of 'employee' is apposite and reads as under:-

"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 by plethora of judgments, as the appointment is a statutory appointment, it ipso facto entitles the employee to all protections and procedural safeguards envisaged in DSEA and R by the Legislature."

39. In view of the foregoing discussion, I have no hitch to observe that every 'employee' is entitled to statutory protection of Section 8(2) and every initial appointment has to be on probation except short term employments under rule 105(3).

40. In Para 20 to 22 facts of the case were discussed. Para 22 is relevant, albeit analogically from the angle of rule 118 and 120 & reads asunder:-

22. Petitioner has in Grounds (a), (d) and (f) of the present writ petition specifically averred that the Charge sheet was not issued by the Disciplinary Committee as none was ever constituted by the Managing Committee and the Charge sheet as well as the Discharge order was signed only by the Manager and the Principal in their individual capacities. There is no denial to the specific averments of the Petitioner in reply or the written submissions filed by the School and even during the course of arguments, apart from simply stating that principles of natural justice were complied with, nothing has been said to support that the Disciplinary Committee was ever constituted. No record was produced to contradict the plea of the Petitioner in this regard. In its absence, an inference will have to be raised in favor of the Petitioner

that there was no Disciplinary Committee and hence the Charge sheet was not framed as per law. Charge sheet placed on record bears only the signatures of the Principal and the Manager and since nothing is forthcoming to indicate that the action was by or pursuant to a decision of the Disciplinary Committee, the inevitable conclusion is that there was non-compliance of the mandatory provisions of Rules 118 and 120 of DSEA&R. In the absence of there being a Disciplinary Committee, even the Penalty order is without jurisdiction and liable to be set aside.

41. Para 23 to 28 of this judgment are also significant and I deem it expedient to reproduce the same although at the cost of lengthening of the judgement.

"23. Law is now as settled as still water that if the disciplinary proceedings are not initiated or conducted as per procedural safeguards formulated under the statutory provisions, being Rules 118 and 120 of DSEA&R, against an employee of the School, the proceedings shall vitiate. The consequential penalty order would then be rendered illegal. This has been so held in Dr. Swami Ram Pal (supra) and there have been repeated affirmations as in the case of Hindon Public School (supra) as well as Rukmani Devi (supra), to refer a few, wherein the penalty orders have been set aside on account of non-compliance of Rule 120 of DSEA&R.

24. The next issue urged herein, with respect to Section 8(2) of the DSEA&R, in my view, does not pose any challenge and requires no exposition or a comprehensive analysis, being well settled. Provisions of Section 8(2) of DSEA&R clearly provide that no employee of a RecognizedPrivate School shall be dismissed, removed or reduced in rank nor shall his services be otherwise terminated except with the prior approval of the Director. Section 8(2) of DSEA&R is extracted herein under:

"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."

25. Supreme Court in Raj Kumar (supra), has clearly held that Section 8(2) of DSEA&R is one of the precautionary safeguards which needs to be followed to ensure that employees of Educational Institutions do not suffer unfair treatment at the hands of the Management. Supreme Court in the case before it declared the Termination order to be bad in law on the ground that the Management Committee had not obtained prior approval, from the Director of Education as required under Section 8(2) of the DSEA&R, before passing order.

26. The judgment in Raj Kumar (supra) is particularly significant in the present case as one of the objections taken in the Counter Affidavit of Respondent No.3 is that Petitioner was employed with the Primary School, which was unaided and hence provisions of Section 8(2) were inapplicable. Supreme Court has, ruling on this aspect, erased the distinction between unaided and aided Educational Institutions, in so far as applicability of Section 8(2) of DSEA&R is concerned. Elucidating the Section and the intent of the Legislature in enacting it, Court observed that the Division Bench of this Court had erred in striking down Section 8(2) in Kathuria Public School vs. Director of Education, 2005 SCC Online Del 426 and held that while the functioning of both aided and unaided Educational Institutions must be free from unnecessary Government interference, the same however, needs to be reconciled with the conditions of employment of the employees of these Institutions and provision of adequate precautions to safeguard their interests such as Section 8(2) of DSEAR would help in preventing unfair treatment by the Management. Division Bench while striking down Section 8(2) in Kathuria Public School (supra) has not correctly applied the law laid down in Katra Education Society vs. State of U.P. AIR 1966 SC 1307, wherein the Constitution Bench of the Supreme Court with reference to a provision similar to Section 8(2) of the DSEA&R, held that regulation of service conditions of employees of private recognized schools is required to be

controlled by Educational Authorities and the State Legislature is empowered to Legislate such a provision in DSEA&R. Relevant paras of the Judgement are as under;-

"50. The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC Online Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] by placing reliance on the decision of this Court in T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1 : AIR 2003 SC 355] , as the subject- matter in controversy therein was not the security of tenure of the employees of a school, rather, the question was the right of educational institutions to function unfettered. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.

51. The Division Bench of the Delhi High Court, while striking down Section 8(2) of the DSE Act in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC Online Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] has not correctly applied the law laid down in Katra Education Society [Katra Education Society v. State of U.P., AIR 1966 SC 1307], wherein a Constitution Bench of this Court, with reference to provision similar to Section 8(2) of the DSE Act and keeping in view the object of regulation of an aided or unaided recognized school, has held that the regulation of the service conditions of the employees of private recognized schools is required to be controlled by educational authorities and the State Legislature is empowered to legislate such provision in the DSE Act. The Division Bench wrongly relied upon that part of the judgment in Katra Education Society [Katra Education Society v. State of U.P., AIR 1966 SC 1307] which dealt with Article 14 of the Constitution and aided and unaided educational institutions, which had no bearing on the fact situation therein. Further, the reliance placed upon the decision of this Court in Frank Anthony Public School Employees' Assn. v. Union of India [Frank Anthony Public School Employees' Assn. v. Union of India, (1986) 4 SCC 707 : (1987) 2 ATC 35 : AIR 1987 SC 311] is also misplaced as the institution under consideration in that case was a religious minority institution.

52. The reliance placed by the learned counsel appearing on behalf of the respondents on T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1 : AIR 2003 SC 355] is also misplaced as the same has no bearing on the facts of the instant case, for the reasons discussed supra. The reliance placed upon the decision of the Delhi High Court in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC Online Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] is also misplaced as the same has been passed without appreciating the true purport of the Constitution Bench decision in Katra Education Society [Katra Education Society v. State of U.P., AIR 1966 SC 1307] . Therefore, the decision in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC Online Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] , striking down Section 8(2) of the DSE Act, is bad in law.
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55. The respondent Managing Committee in the instant case did not obtain prior approval of the order of termination passed against the appellant from the Director of Education, Govt. of NCT of Delhi as required under Section 8(2) of the DSE Act. The order of termination passed against the appellant is thus, bad in law."

27. The law laid down by the Supreme Court in Raj Kumar (supra) has been followed thereafter in several judgments, but to avoid prolixity I am referring to only few. In School Management of Ring Midways (supra) Court held as follows:-

"2. A reading of the impugned order of the Delhi School Tribunal shows as under:-

(v) Admittedly the respondent no. 1 was a confirmed teacher and she was removed from services without following the due procedure provided in Rule 120 of the Delhi School Education Rules, 1973 of setting up of a disciplinary authority, enquiry report being submitted after allowing both the parties to lead evidence, a disciplinary authority validly constituted which has accepted the report of the enquiry officer against the respondent no. 1 / teacher, and whereby the respondent no. 1/teacher has been held/accepted to be illegally appointed and hence she has to be removed. Therefore, there is admitted violation of the provisions of the Delhi School Education Rules which require that a confirmed employee can only be removed from services after following the due process of law and by conducting of an enquiry as per the Delhi School Education Act and Rules.

(vi) No prior permission of the Director of Education was taken as required by Section 8(2) of the Delhi School Education Act, and which prior permission has been held to be mandatory by the Supreme Court in its recent judgment in the case of Raj Kumar Vs. Director of Education and Others, (2016)6 SCC 541 : AIR 2016 SC 1855 Civil Appeal No. 1020/2011 decided on 13.4.2016; and as so observed by the Delhi School Tribunal in para 24 of its judgment. Therefore, without actual permission having been taken or being actually available, the act of the petitioner/school in removing the respondent no. 1 from services is violative of Section 8(2) of the Delhi School Education Act read with ratio of the judgment of the Supreme Court in Raj Kumar's case (supra).

3. All the aforesaid aspects arise from the record and could not be effectively disputed or challenged by the petitioner/school in this Court and thus once the respondent no. 1 was a confirmed employee and whose services have not been terminated after following the due process of enquiry as required under Rules 118 and 120 of the Delhi School Education Rules and also that admittedly no disciplinary authority was constituted and which took decision to remove the respondent no. 1, and which aspects have to be taken with the fact that no permission was obtained by the Director of Education for removal of the respondent no. 1, clearly, hence there is no illegality found in the impugned judgment of the Delhi School Tribunal allowing the appeal of the respondent no. 1 and reinstating the respondent no. 1 in the services of the petitioner/school."

28. In a similar vein, a Coordinate Bench of this Court in a recent judgement in Meena Oberoi (supra) has quashed an order of termination of an employee, appointed as Office Assistant in a Private Recognized School, on the ground that there was no prior approval of the Director of Education, before passing the order of termination. Applicability of the provision to an unaided school has been emphasized based on the enunciation of law on this aspect by the Apex Court in Raj Kumar (supra).

42. Hon'ble Supreme Court has followed **Raj Kumar v/s DOE in Marwari Bal Vidyalaya** Law in Finder Document ID #1389235 Civil Appeal No. 9166 of 2013. D/d. 14.2.2019 relevant portion of head note is as under:-

A. Delhi School Education Act, 1973, Section 8(2)- Writ Petition against Private Unaided School- Maintainability- Intent of legislature while enacting Delhi School Education Act, 1973 was to provide security of tenure of employment- employees of school and to regulate terms and conditions of their employment-while functioning

of both aided and unaided educational institutions must be free from unnecessary Governmental interference, same needs to reconciled with conditions of employment of employees of these institutions and provision of adequate precautions to safeguard their interests- Section 8(2) of Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at hands of management- Therefore, writ petition maintainable.

43. In **Reshmawati V/s the Management Committee & others**, Law Finder document id #1527102, this view has been reiterated after following Rajkumar. Head note reads as under:

Delhi School Education Act, 1973, Section 8(2)- Constitution of India, 1950 Article 226 Dismissal from service- Petitioner's case is that she has been dismissed illegally and malafidely because of biasness on account of filing of civil suit against the respondent school- Petitioner was appointed as sweeper vide appointment letter date 01.07.1989 but she had worked as Aaya during the whole service period- It is not in dispute that after appointment of the petitioner in 1989, till 2012, there was no complaint against petitioner and admittedly, no action ever taken by respondent-school – Petitioner and other Class IV employees filed civil suit for payment of necessary benefits as per 6th Pay Commission report and the same was settled in settlement dated 05.06.2012 and 24.09.2012 were issued by the respondent school – All allegations are made against the petitioner only after the suit was decreed in favor of the class IV employees including the petitioner – Respondent school made such allegations and were determined to remove the petitioner from service – Charges are not so serious- Disciplinary authority could have given other punishment lesser than removal from service- The 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 – The punishment order mentioned above is set aside for violation of the procedures and rules of the Act- Petitioner removed from services in the year 2013- Direction to reinstate petitioner in service with 50% back wages from the date of dismissal- Petition allowed.

44. This view has been upheld by the division bench in **Red Roses Public School V/s Reshmawati and others** bearing LPA No. 516/2019 decided on 15.10.2019 although indirectly. The reason to say so is that in Para 21 it has been held as follows:

21. So far as the aspect of non-compliance of Section 8(2) of the Delhi Education Act is concerned, it is clear that the decision in Kathuria Public School (supra) rendered by a Division Bench of this Court was holding sway right from the year 2005 till 2016, when the said decision was upset by the Supreme Court in Raj Kumar (supra). The appellant, therefore, could not be faulted for non-compliance of the said provision. Pertinently, even the Director of Education took the stand before the Appellant Tribunal that there was no necessity of obtaining of prior approval of the Director under Section 8(2) in the light of the decision of this Court in Kathuria Public School (supra).

45. So, Rajkumar could have been of help to Ms. Reshmawati had her date of termination been after 13.4.2016 on which date this judgment was announced. Orders of termination in this case are dated 16.12.2018.

46. In **Dr. Swami Rampal Singh Missions School V/s Harvinderpal Singh Bindra and another** reported in law finder document ID# 863089 is

another mandate of Delhi High Court in this regard, head note of which is as under:-

> *"Constitution of India, 1950 Articles 226/227 – Delhi School Education Act and Rules, 1973 – Termination of services of School Teacher – Termination- In the present case, Delhi School Tribunal notes that respondent no.1's probation period was extended beyond the initial period of the one year – Also that there is no letter on record that petitioner/school observing that the services of respondent no.1 as a probationary employee were unsatisfactory, and therefore, the services were terminated – No approval has been obtained by petitioner/school for termination of services of respondent no.1 – For this additional reason also the impugned letter dated 24.2.2001 is liable to be set aside- Writ petition dismissed."*

47. The **Management of Rukmani Devi Jaipuria school V/s DOE** reported in Law Finder document id #1046214 is another mandate in the same regard relevant portion of head note of which is to the effect that even the infliction of penalty requires prior approval of Director. This judgment therefore applies by analogy. Another judgment which applies by way of analogy is a 3 Judge Bench Judgment of Honb'le Supreme Court in **Modern School V/s Union of India** reported in Law Finder doc id# 71989. In this judgment power of Director Education to regulate fee structure & income and expenditure under section 17(3), 18(4) & (5) and 24(3) coupled with rule 172, 175 , 176 & 177 has been upheld post TMA Pai by holding that autonomy does not mean absolute autonomy. Clause 7 of the order passed by the director on 15.12.1999 under section 24(3) of the DSEAR was held as not being contrary to rule 177.

48. **Surender Rana V/s DAV school** and others Appeal No. 37/1997 decided by DST on 15/01/2002 is also a mandate which has remained almost unnoticed earlier. Para 5 and 6 of the judgment delivered by Sh. Dinesh Dayal, the then Principal Secretary Law, Delhi, read as under:

> *"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 initial 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 or 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/-"*

49. A bare glance on above extracted inverted portion reveals that prior approval has to be obtained in case of a probationary employee. Appellant Surender Rana was a probationary employee in this case at the time of his termination as he was appointed on 1.8.96 and was terminated on 30.6.97, as stands evidenced by the facts narrated by Sh. Dinesh Dayal, the then Ld. District & Session Judge cum Principal Secretary Law & Justice Govt. of India NCT of Delhi.

50. Judgment passed by Sh. Dinesh Dayal dated 15/01/2002 was challenged in W.P.(C) No. 1249/2002 by the employee of school which was disposed on 8.2.2006 by Hon'ble Mr. Justice S. Ravinder Bhatt, the then Ld. Single Judge (now, a Judge of Hon'ble Supreme Court). HMJ 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.*

51. This judgment of Ld. Single Judge was challenged before Double Bench by the school in LPA No. 492/2006. L.P.A was dismissed on 30.11.2006 and it was observed as follows:

> *"11. We are in entire agreement with the observation 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 Constitutional 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".*

52. Decision of LPA was challenged in Civil Appeal No. 2719/2007 decided on 3.2.2011. This appeal was also dismissed. It was held by Hon'ble Apex Court as follows:

> *"2. Rule 105 of the Delhi School Educational 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."*

53. A review petition was also filed in Surender Rana's matter by his school before the Apex Court and the Supreme Court of India dismissed

the abovesaid review petition (C) No. 1567/2011(in civil Appeal No. 2719/2011) on 20.7.2011.

54. Hereinbefore mentioned and discussed judgments including that of Surender Rana make it abundantly clear that every employee whether ad-hoc/temporary, contractual, probationary or confirmed is entitled to the protection of section 8(2) of DSEA. Only exceptions are the appointments made under rule 105(3) w.r.t private unaided schools i.e. stop gap arrangements. Minority schools are another exception. I have perused the appointment letters issued to the appellant. I have no hitch to observe that appointment letters cannot be said to have been issued under rule 105(1). Terminology of contractual/ ad-hoc appointment has been used by the school to play with the security of tenure of the appellant which cannot be permitted. List of judgments can be multiplied. The multiplication is being avoided and I deem it expedient to pause here and conclude that prior approval was/is must and Appeal has to be allowed on this single count itself.

55. It is admitted case of the school at internal page 5 and running page 64 of the paper book that no prior approval was obtained. In view of the above, there is no hitch to observe that action of the school of termination of the appellant is contrary to the provisions of DSEAR and mandates of the Hon'ble Delhi High Court and Hon'ble Apex Court. Therefore, the order passed by the school of refusal of duty cannot be sustained and is hereby set aside.

56. Arguments of Ld. Counsel for respondent school Sh. Kamal Mehta, are not tenable in view of the foregoing discussion. Reliance on Durgabai **Deshmukh Memorial Senior Secondary School & Ors. Vs. J.A.J Vasu Sena & Ors.** reported in MANU/SC/1139/2019, is of no help as this case instead of helping the respondent school, helps the appellant. Para 43 to 45 are relevant in this regard and are being reproduced:-

"43. In the present case, the first Respondent served as a probationer for nearly five years. Rule 105(1) permits the appointing authority to extend the period of probation ***with the prior permission of the Director.*** *The proviso stipulates that* ***noprior approval of the Director is required*** *for the extension of the probationary period by the appointing authority of a* ***minority institution.*** *The amending history of the provision shows that prior to the amendment in 1990, no prior approval of the Director was required. By virtue of the Amending Rules 1990 the prior approval of the Director was made mandatory, save and except for extensions in the case of*

minority institutions, for the grant of any extension in the probationary period. The absolute discretion vested with the appointing authority of an institution was made subject of the prior approval of the Director.

44. The power vested in the Director serves as a check on the absolute discretion of the appointing authority to extend the probationary period. The power vested in the Director, however, to approve a request of the appointing authority is not unbridled. Rule 105(1) stipulates that the services of a probationer may be terminated without notice during the period of probation where the services of the probationer are not "in the opinion of the appointing authority, satisfactory". Rule 105(2) stipulates that an order of confirmation may be issued if, in the opinion of the appointing authority, the performance of the probationer is satisfactory. The discretion of the Director be exercised objectively on the basis of the material produced by the appointing authority bearing on the performance of a probationer.

45. The prior approval *of the Director, save and except for minority institutions, is mandatory and must be complied with as a condition precedent for the valid exercise of the power to extend the period of probation. The Director is required to assess the determination of the appointment authority and based on that assessment, to decide whether to approve an extension of the probationary period. The provision which mandates that the prior approval of the Director shall be sought before extending the period of probation ensures that the appointing authority may not extend the probationary period without legitimate reason. The extension of the probationary period by the appointing authority, save and except for minority institutions, without the prior approval of the Director is impermissible in law."*

57. I am not in consonance with the submissions of Sh. Kamal Mehta as the same are hit by the provision of DSEA&R. Stand of the school that services of the appellant were contractual in nature and had come to an end by efflux of time as per appointment letter dated 03.07.2017 cannot be accepted in view of the afore-going discussion and position of law as categorically exposited by the Hon'ble High Court of Delhi and Hon'ble Apex Court.

58. Moreover school cannot be permitted to make delusive appointments. Perusal of the records of the case goes to show that first letter of appointment was issued to the appellant on 10.07.2013, bearing reference no. MSVV/Ms. Akansha Singh (Pers.)/2013-14. The same was accepted. Duration of this letter was from 01.07.2013 to 30.04.2014. Similarly, letter dated 30.06.2014, bearing no. MSVV/Ms. Akansha Singh(Pers.)/2014-15, was issued for the period of 01.07.2014 to 30.06.2014. Another letter dated 30.06.2015, was issued for the period of 11 months. Another letter dated 30.06.2016 was issued for the period of 01.07.2016, for a period of 11 months. Last letter is dated 03.07.2017 which again for a period of 11 months w.e.f. 03.07.2017, onwards.

59. A bare perusal of the aforementioned orders reveals that school indulged in issuing delusive appointment letters which is not permissible in

view of the aforegoing discussion as well as in view of the latest mandates of the Hon'ble High Court of Delhi in W.P.(C) No. 10398 and 10400 decided on 17.01.2017 titled as Shiv Sharma Vs. Govt. of NCT of Delhi & Anr. and Mukesh Sharma Vs. Govt. of NCT of Delhi and Anr. The relevant portion of para 4 to para 8 is as under:-

> *4. The repeated appointments and terminations, have persuaded me to hold that the petitioner's-school's actions are a fraud upon the requirement to normally not to appoint an employee on contract basis. Accordingly, in a case where on account of genuine exigencies a contractual appointment is required (like when a regular employee suddenly leaves etc.) then such employment will be treated as adhoc/temporary/contractual and not a statutory one having protection of the Act & Rules. With this preface let us reproduce para 10 of* ***Montfort Senior Secondary School's case (supra)*** *and which reads as under:-*
>
> > *"10. In St. Xaviers' case (supra) the following observation was made, which was noted in Frank Anthony's case (supra):*
> >
> > *"A regulation which is designed to prevent mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30 is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajbjai Sabhai (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test _ the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it."*
> >
> > *The effect of the decision in Frank Anthony's case (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore,* ***the contractual rights have to be judged in the background of statutory rights.*** *In view of what has been stated in Frank Anthony's case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V are no longer contractual in nature* ***but they are statutory.*** *The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV. The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights....."*
>
> *5. A reference to aforesaid para shows that the Supreme Court in* ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** *(supra) has laid down the ratio that the very nature of employment of the employees of a school are that they are no longer contractual in nature but statutory. This observation was made by the Supreme Court in spite of the fact that the minority schools had entitlement under the provisions of Section 15 and Rule 130 of the Delhi School Education Act and Rules, 1973 to have a contract of services for its employees. It be noted that so far as the non-minority schools are concerned there is no provision in the Delhi School Education Act and Rules, 1973 to have a contractual appointment. Therefore, once if minority schools' employees cannot have contractual employment and they have to be treated as statutory employees, then*

*fortiorily non-minority schools whose employees cannot be engaged in employment on contractual basis, such employees in non-minority school would surely have statutory protection of their services. In **Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.** (supra) the Hon'ble Supreme Court has made it clear in the aforesaid paragraph 10 that the qualifications, leaves, salaries, age of retirement etc, removal and other conditions of services are to be governed "**exclusively**" under the statutory regime provided under the Delhi School Education Act and Rules, 1973. Once that is so, then, as per Rules 118 to 120 of the Delhi School Education Rules, 1973 the services of an employee can only be terminated on account of misconduct and that too after following the requirement of holding of a detailed enquiry and passing of the order by the Disciplinary Authority. Therefore, in view of the categorical ratio of the judgment of the Supreme Court in the case of **Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.** (supra) and in view of the facts of this case the respondent No. 1's services from the inception cannot be taken as only contractual in nature and would be statutory in nature. Once the services are statutory in nature, and admittedly the respondent No. 1 has not been removed by following the provisions of conducting an enquiry and passing of an order by the Disciplinary Authority as required under the Rules 118 to 120 of the Delhi School Education Rules, 1973, the respondent No. 1's services cannot be said to have been legally terminated. Respondent No. 1, therefore, continues to be in services.*

*6. To distinguish the applicability of the Supreme Court in the case of **Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.** (supra), learned counsel for the petitioner has urged the following two arguments:*

*(i) Respondent No.1 is estopped from questioning his first appointment as contractual, thereafter appointment on probation and his termination during the probation period and thereafter again a fresh contractual appointment and finally his termination as per the last contract dated 8.4.2010. It is argued that respondent No.1 having acted upon the aforesaid sequence of events comprised in different appointments cannot now contend that the ratio of the judgment in **Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)** should come to his aid.*

*(ii) It is argued that the judgment in **Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)** was intended only to apply to minority schools and ratio of the said judgment cannot be read to apply to non-minority schools.*

*7. So far as the second arguments urged on behalf of the petitioner-school to distinguish the applicability of the ratio in the case of **Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)**, I have already dealt with this aspect above by holding, and the same is reiterated herein, that, if for minority schools, there cannot be contractual appointments, and which in fact was so envisaged under the relevant provisions of the Delhi School Education Act and Rules, 1973, then, surely and indubitably, so far as non-minority schools are concerned, and who do not have provisions even in terms of Delhi School Education Act and Rules, 1973 for making contractual appointments, the ratio of **Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)** would squarely apply and the employees of the non-minority schools will be treated not as contractual employees of the schools but statutory employees having statutory protection in terms of the relevant provisions of the Delhi School Education Act and Rules, 1973.*

8. So far as the first argument of estoppel is concerned, that argument is attractive only at the first blush, however, this argument overlooks the elementary principle that there is no estoppel against law. Of course, there may be estoppel against law where the provisions of law are only for private individual interest and not meant to be in public interest, however, considering that statutory protection is given to the employees of a school and which results in stability to the education system, the same therefore cannot be held to be as not in public interest, more so after amending of the Constitution by introduction of Article 21A by which right to education has been

made as a fundamental right for children from the ages of 6 to 14 years. Also one cannot ignore the fact that right to education otherwise also is an important part of Directive Principles of State Policy vide Article 41 and Article 45 of the Constitution, and thus subject of education itself has been treated by the Supreme Court as a public function and consequently, writ petitions lie against even private educational institutions. Reference need in this regard be only made to the Constitution Bench judgment of the Supreme Court in the case of ***Unni Krishnan J.P. & Ors. etc. etc. Vs. State of A.P. & Ors. etc. etc. 1993(1) SCC 645*** *and which clearly holds that the subject of education is a public function, and hence writ petitions are maintainable*

60. Observations of para 14 and 16 of LPA No. 223/2015 titled as **Army Welfare Education Society & Anr. Vs. Manju Nautiyal & Anr.** decided on 29.10.2015, being affirmative of the observations of Ld. Single Judge, are relevant and are reproduced as under:-

"14. The argument of the appellants can only be accepted to the extent that they have a right to prescribe the mode and manner of selection of their employees and to constitute Selection Committees, but the Managing Committee would be obliged to follow the Delhi School Education Rules, 1973. Sub-Rule 6 of Rule 96 of the Delhi School Education Rules, 1973 protects the independence of the private schools by prescribing that the Selection Committees shall regulate their own procedures while effecting selections. But that does not mean that the Managing Committee of the two schools established by the first appellant can violate such Rules which are intended to enhance the quality of education in schools. The Delhi School Education Act, 1973 protects not only the tenure of appointment by making it co-terminus with the attainment of the age of superannuation of employees of recognized private schools with reference to the post held by them and equivalence being with employees of government schools. The Act and the Rules recognize the right of the private schools to select suitable candidates, but confer rights upon the candidates : if probation is successfully cleared, to be made permanent. The security of tenure of employees in schools serves the purpose of enhancing the quality of education because the permanent employee has to achieve benchmarks to earn further promotion. It also acts as a bulwark against harassment of the employee at the hands of the Managing Committees of schools. Rule 105 of the Delhi School Education Rules, 1973 clearly envisages regular appointments, albeit on a probation for an initial period to be resorted to and as per sub-Rule 3 temporary or short term vacancies can be filled up, but limited to the duration of the limited period by resorting to tenure appointments. The exception to the Rule i.e. of a tenure appointment is clearly linked to the vacancy being for a short term and cannot be used as a tool of oppression. Regretfully we note that large number of cases are being filed in this Court where teachers are being exploited. In spite of vacant posts being available contract appointment is being resorted to and this results in deterioration in the quality of education being imparted in Delhi.

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16. To put the law in its correct perspective we hold that recognized private schools in Delhi cannot resort to temporary, tenure or contractual appointments save and except where a vacancy is available for a limited duration. To give some examples. A teacher has proceeded on child care leave for a period of one year. The lien being retained to the post, a short term vacancy for one year ensues and can be filled up for said period. A teacher, on being unwell, applies for and is sanctioned medical leave for three months. The lien being retained to the post, a short term vacancy for three months ensues and can be filled up for said period. A teacher may suddenly resign. The process to fill up the vacancy is likely to consume say 6 months. Teaching would suffer if no teacher is available immediately. It would be a situation of a short term vacancy pending regular selection and it would be permissible to recruit a teacher without following the process of selection and limiting the tenure till when a

regular teacher is appointed. But where a vacancy exists it would be a fraud on the statute to resort to short term tenure appointment and that too endlessly."

61. The action of the school of issuing delusive appointment letters is therefore held as illegal and appellant shall be deemed continuing on probation by way of a legal fiction. Had the judgement of the Durgabai Deshmukh not come, then the appellant would have become a deemed confirmed employee.

62. Assertion that appellant had accepted the contractual/ad-hoc appointment when any demurrer or protest is of no help as there can be no estoppel against the statute.

63. Assertion that mail dated 27.03.2018, shows that appellant was aware that her tenure was coming to an end on 02.06.2018 but on her request she was allowed to work for 7 days is again of no help as the school was required to obtain prior approval of the Director Education for extension of probation which it has not been doing since beginning.

64. Argument that appointment was never granted or sanctioned any leave for maternity is of no help as refusal to grant leave for maternity is a violation of statute which the school cannot be permitted to do.

65. Assertion that appellant had received her experience certificate and principle of admission, acquiescence, waiver and estoppel will apply is of no help as there can be no estoppel against the statute.

66. Argument that appeal is abuse/misuse of process of law and is merely a chance litigation full of malicious and afterthought concoction/fabrication is noted to be rejected as appellant has exercised her valid legal right.

67. Argument that appellant concealed the fact regarding contractual appointment and fact regarding acquiring of experience certificate is of no help in view of the afore-going discussion.

68. Argument that appellant had negotiated her professional charges at the rate of 37000/- per month which duly stand paid, is also another argument which is being noted for rejecting as school cannot be permitted to violate Section 10 of DSEA&R.

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69. **Reply of DOE is important in this case** wherein it is asserted that school is bound to comply with the provision of DSEA&R being an unaided private non-minority school having been recognized by DOE. It is the stand of the DOE that appellant was in continuous appointment w.e.f. 01.07.2013 to 16.12.2018. It is also the stand of the DOE that school was bound to comply with the provision of Maternity Benefits Act and has become liable for punishment under section 21 of the Maternity Benefits Act. It is also the stand of the DOE that school has violated section 8(2) of DSEA&R and mandate of Rajkumar Vs. DOE.

70. Reliance of Ld. Counsel Sh. Kamal Mehta on **Delhi Public School and Ors. Vs. Ketki Aggarwal and Ors.** bearing CWP No. 5151/1999, decided on 12.05.2000, is of no help as much water has flown after 12.05.2000. Pursuant to the mandate of **Rajkumar Vs. DOE** (2016) 6 SCC 541 decided on 13.04.2016 and detailed discussion in this regard has already been made.

71. Similarly reliance on **Satya Prakash Vermani Vs. Govt. of NCT of Delhi and Ors.** bearing W.P.(C) No. 1921/1996, decided on 14.05.1996 is of no help for the same reasons which have been given w.r.t. Delhi Public School & Ors. Vs. Kaitki Aggarwal & Ors. Similar, is the situation w.r.t. **Lovely Jyoti Vs. Mount Carmel School and Ors.** bearing W.P.(C) No. 7701/2009, decided on 23.03.2009.

72. Reliance on **Prabha Chawla and Ors. Vs. Air Force Bal Niketan (Aided) School and Ors.** bearing LPA No. 179/2018, decided on 09.08.2019, is of no help as the school in that case was a Government aided school for which different yardsticks apply.

73. In view of the afore-going discussion, arguments of the Counsel Sh. Kamal Mehta for the respondent school are disallowed and appeal is required to be allowed.

74. In view of the reasons given hereinabove, the termination of appellant w.e.f. 16.12.2018 is quashed and set aside. Respondent No.1 is directed to re-instate the appellant within a period of 04, weeks, Appellant will be entitled to all the consequential benefits. Consequential benefits will mean that appellant shall be considered to be on continued probation w.e.f her first appointment till disengagement of her services 16.12.2018. Yearly

increments shall be given by school as undoubtedly appellant cannot be held to be a confirmed employee in view of the mandate of **Durgabai Deshmukh Memorial Senior Secondary School & Ors. Vs. J.A.J Vasu Sena & Ors.** reported in MANU/SC/1139/2019 but there is no bar to direct the school to consider the appellant on probation with regular yearly increments. She will be entitled to full wages from date of order onwards.

75. With respect to back wages, in view of mandate of Rule 121 of DSEA&R 1973, read with **Guru Harkishan Public School through its Managing Committee V/s. DOE,** 2015, Lab I.C 4410 of Delhi High Court Full Bench, appellant is directed to submit an exhaustive representation before the management of respondent school within a period of 4 weeks from today as to how and in what manner, appellant is entitled to full back wages. 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 along with a copy of the same to the appellant. Ordered accordingly. File be consigned to record room.

(Dilbag Singh Punia)
Presiding Officer
Delhi School Tribunal

Dated:18.05.2022

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THE SEAL OF THE DELHI SCHOOL TRIBUNAL