

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

Appeal No. 07 of 2020

Date of Institution: 19.11.2020

Date of Disposal: 24.05.2022

IN THE MATTER OF:

Mr. Ratan Kumar
S/o Late Sh. Sarwan Kumar
R/o 9/15, G. F. Prem Krishi Farm,
School Marg East, Babarpur,
Shahdara, Delhi-110032

(Through: Mr. Anuj Aggarwal, Advocate)

...Appellant

Versus

1. **Siddharth International Public School,**
Through its Manager/Managing Committee
Main Wazirabad Road,
Delhi-110093

(Through: Mr. R M Sinha, Advocate)

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

(Through: Mr. Satender Kumar, Advocate)

...Respondents

JUDGEMENT

Appellant has challenged his termination order bearing No. 185/SIPS/WR/2019 dated 30.12.2019 having been issued by Siddharth International Public School (school, in short). Termination order has been annexed as Annexure A-1, which reads as under:-

Siddharth International Public School

Ref No. 185/SIPS/WR/2019

Dated: 30.12.2019

To
Mr. Ratan Kumar

Subject: Termination of Services



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It has been noticed that you have not been performing your duties with a professional attitude and on medical grounds, you had been refusing work assigned by (should read 'to') you by the Head of School, School In-charge and Administrative Officer on account of your ill health. You were also notified to produce a Medical certificate justifying your inability to work in the school. Your matter had been escalated to the Disciplinary Committee.

As per rule no. VI b of the Appointment Letter and Terms and Conditions, an employee's services can be discontinued on his non performance due to being medically unfit. After examining your detailed medical reports, show cause notices issued to you, the Disciplinary Committee has found you to be medically unfit and unprofessional and has decided to discontinue your services.

Your services are hereby terminated with immediate effect that is from 30.12.2019. You are to collect your three month's advance salary with cheque no: 162797 from the Accounts Department after filling the No Dues form.

Sd/-
Manager

Sd/-
Head of School

2. Factual matrix is that appellant was initially appointed on the post of 'Peon' in 1989 and on 01.12.1990, he was given an appointment letter wherein it was mentioned that his appointment was on permanent basis. That in February 1992, he was promoted as "Daftery" and he has been working continuously/ uninterruptedly with the school since then. That as such he is a confirmed employee of the school.

3. It is stated that despite his repeated requests, appellant was not being paid in parity with Govt. school employees as envisaged under section 10 of Delhi School Education Act & Rules, 1973 (DSEA&R, in short). That finally, appellant along with other staff of school filed a writ petition in the Hon'ble Delhi High Court bearing W.P. (C) No. 11519 of 2019 demanding parity of pay u/s 10 of DSEAR.

4. It is stated that appellant was threatened to withdraw his name from the aforesaid writ petition and when he refused to do so, school started issuing show cause notices repeatedly on concocted/false grounds. That prior to the filing of the writ petition; appellant **was never issued any show cause notice/memo/chargesheet by school in his entire tenure of almost 29 years.** But after filing of this writ petition, within a short span of 3 months, appellant was issued several show cause notices based on concocted/false grounds.

5. It is stated that vide notice bearing No. 178/WR/2019 dated 23.12.2019, appellant was directed to submit his reply w.r.t. the allegations about refusing of doing of task having being assigned by HOS/School In-

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Ratan

charge/ School Administrative Officer, within a period of 24 hours .That vide his letter dated 23.12.2019, he replied the same on 24.12.2019, thereby categorically denying all the allegations. Notice dated 23.12.2019 and reply dated 24.12.2019, read as under:-

Siddharth International Public School
MAIN WAZIRABAD ROAD, DELHI-110093

Ref. No. 178/WR/2019

date: 23.12.2019

NOTICE

Mr. Ratan Kumar

It has been noticed that as an employee of the school, you have been refusing the tasks assigned to you by the Head of School/School In-charge/ School Administrative Officer. You are also not found seated on your assigned seat. You are to submit all your medical reports in the school office. Also, you need to submit a medical certificate issued by a certified medical practitioner stating your medical status. You are to submit all the documents within 24 hours of receiving the letter.

Head of School

*** *** *** *** *** ***

REPLY

To,
The Vice Principal
Siddharth International Public School
Loni Road,
Delhi-110093

Subject: Regarding the information letter no. 178/WR/2019, dated 23.12.2019

Sir/Madam

With reference of above subject, I am enclosing/attaching my medical certificate with this letter and the photocopies of the concerned documents have already been submitted by me.

Sir/Madam, I am feeling by various notice processes that I have demanded in relation of my amended/revised pay grade/salary and since such time, the administration of school is being inappropriately being mentally harassed and tortured me, which is not favourable for my health. Therefore, if it is possible, kindly consider this issue.

Enclosure: Original Medical Certificate

Yours faithfully

Ratan Kumar



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6. It is asserted further that on 28.12.2019, appellant was called by HOS of school in her room where three other persons were already present i.e. Ms. Charu Srivastav, HOS, Mr. Nitin Aggarwal, Chairman, and Mr. Vinit Aggarwal, Manager. That the aforesaid three persons forced the appellant to sign on a blank paper. That appellant under duress signed on that blank sheet of paper.

7. It is stated that appellant lodged a complaint regarding the aforesaid act by these persons to the SHO, P.S. Jyoti Nagar, Delhi-93 vide letter dated 28.12.2019, to DDE, Zone-VI, NE, Dilshad Garden, Delhi-95 vide letter dated 30.12.2019 and to Director (Edn.), GNCTD vide letter dated 31.12.2019 .

8. It is asserted that just 2 days of police complaint, vide impugned order No. 185/SIPS/WR/2019 dated 30.12.2019, the services of the appellant were illegally terminated.

9. It is stated that appellant sent a legal notice via mail dated 15.01.2020 to the respondent school, but no response has been received so far.

10. **In the grounds of appeal**, it is stated that termination order is illegal, unjustified, arbitrary, discriminatory, punitive, perverse, unreasonable, unconstitutional, violative of Articles 14, 16, 21 & 311 of the Constitution of India.

11. It is stated that appellant has not committed any misconduct and no inquiry whatsoever was conducted by the school as well as no charge sheet was issued to the appellant. That no disciplinary authority was ever constituted.

12. It is claimed that aforesaid termination order is in violation of Rule 118, 120 and 123 of the DSEA&R as no personal hearing was given and order is in violation of Section 8 (2) of DSEAR as no prior approval was taken from DOE.



13. It is asserted that although appellant was a deemed confirmed employee, but even in case of probationer, respondent school was required to take prior approval from DOE before terminating the services of the appellant under Rule 105 of DSEAR.

14. It is stated that the manager of the school was not competent to terminate the service of the appellant and it was only the disciplinary authority/managing committee which was competent to issue termination order.

15. It is stated that no appointment letter was issued to the appellant. That appellant was deemed confirmed employee after working for 3 years with the school. Reliance has been placed on **Hamdard Public School Vs. Directorate of Education and Anr.** [202 (2013) DLT 111] & **Sonia Mehta Vs. Dayanand Model School and Ors** in W.P. (C) No. 3061/2011 decided on 06.09.2013 wherein it stands held that an employee of a school is deemed to be confirmed in service after a period of three years of service. That no appointment letter was issued to appellant by school.

16. It is asserted that respondent school is a private recognized unaided school and thus bound by the provisions of DSEA&R. **Raj Kumar vs. Director of Education [(2016) 6 SCC 541]**, has been relied.

17. It is asserted that appellant had demanded record of his leaves account on several occasions but despite his repeated requests, the same has not been provided to him. Copy of Letter and reminder regarding leave have been annexed at page no. 28 and 30 of paper book respectively which read as under:-

Date: 15.05.2019

*To,
The Vice Principal/Manger
Sidharth International Public School Loni Road
Delhi-110093*

Subject: Regarding to Sanction/ Allow all leaves till date from 01.12.1990.

Sir,

It is submitted that in accordance of record maintained in the School, I have to be retired on 31.12.2020 and I shall be in need of periodical leaves for the treatment of my ailments.

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Ratn

Therefore, you are requested that with reference of above subject kindly allow me all kinds of leaves (CL, HPL, ML, EL).

Thanking you,

Yours faithfully
Sd/- (illegible)
(Ratan Kumar)
Mobile- 9278473769
9/15, Govt. School Marg
Eastern Babupur
Shahdara, Delhi-110032
*** **

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REMINDER

To,
The Manager/HOS
Siddhartha International Sr. Sec. Public School
Wazirabad Road, Delhi-93

Sub: Requirement of Bal. Leave record From 01.12.1990

Respected Sir/Madam,


This is to bring your kind notice that I joined my duty on Dt. 01.12.1990 for the Post of Daftari as permanent Staff, till now I have not taken any long leave in this regard I have given one application on Dt. 15.05.2019 to Principal/Manager of SIP School Loni road, but no response from your side.

Further I humble request you to kindly issue me a Leave (Medical, Casual, Earned Leave) certificate upto Sept. 2019.

With regards,

Yours faithfully
Sd/-
24/09/2019
(Ratan Kumar)
WR 068
9/15, GF School Marg, East Babar Pur, Shahdra Delhi-32
Mob: 9278473769

18. It is stated that Provident Fund of the appellant also is being deducted regularly by the respondent school from the salary of the appellant, but the same is not deposited by the respondent school in the PF account of the appellant. It is submitted that the said action on the part of the school is illegal as well and amounts to a criminal offence under the provisions of Indian Penal Code, 1860 as well as the Employees' Provident Funds Scheme 1952 (EPF) Act.



19. It is stated that appellant has been harassed and victimized on account of he being a 'SC employee'. That HOS namely Mrs. Charu Srivastav, has made several 'casteist' remarks against him. That the said action on the part of the Mrs. Charu Srivastav, HOS amounts to punishable criminal offence under provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

20. It is reiterated that appellant has already rendered more than 29 years of service with the respondent school management and as such he was a deemed confirmed employee in terms of rule 105 of DSEAR.

21. **Respondent school in reply to the appeal** has asserted that school is a private unaided recognized senior secondary school situated at main Wazirabad Road, Delhi and is being run by Ravi Bharti Shiksha Samiti (Regd.)

22. **In preliminary objections**, it is asserted that this Tribunal does not have the jurisdiction to adjudicate the present appeal. The appellant being a Peon is a 'workman' i.e. non teaching staff under the definition of section 2(j) of Industrial Dispute Act and respondent school is an industry under section 2(j) of Industrial Dispute Act. Reliance on Miss Sundarrambal Vs. Govt of Goa, Daman and Diu & Ors. , H.R. Adyathaya vs. Sandoz(India) Ltd.(constitution Bench) , Bangalore Water Supply Vs. Rajappa and Raj Kumar Vs. DOE has been placed.

23. In brief facts of the case, it is admitted that appellant was working in the school as a peon since 01.12.1990, and nature of the job of appellant was only manual/unskilled. Certificate dated 29.11.1991, has been annexed at page no. 132 of the paper book which reads as under:-

Siddharth International Public School

RefNo. ****


Dated: 29.11.1991

It is to certify that Ratan Kumar S/o Sh. Sarman Kumar R/o 1882, Janta Flats Nand Nagri Delhi-93 has been working here as Peon since 01.12.1990 in the Pay scale of Rs 750-950/-.

I wish him success in life.

Sd/
Principal

S. International Public School
Pocket-B, East of Loni Road, Delhi-93.



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24. It is stated that services of the appellant as a peon in the school were confirmed w.e.f. 01.12.1992, vide letter dated 13.01.2019 (should read 13.01.1993), the same has been annexed at page no. 133 of the paper book which reads as under:-

Siddharth International Public School

Ref No. _____

Dated: 13.01.1993

Mr. Ratan Kumar

Peon

Dear Sir,

I am glad to inform you that the management of the school has confirmed you as Peon w.e.f 01.12.1992

You are required to put in hard labour and sincerity in your work. Please note.

Yours faithfully

Suman

25. It is submitted that school had promoted the appellant from the post of peon to Daftri on 01.02.1994. That a show cause notice dated 19.1.2019 issued to appellant shows that he was deployed on duty of school transport system. That Adhir Kumar Sharma parent of Sameer wrote a complaint letter dated 19.11.2019, to the Principal of the school regarding the transportation issues. That several show cause notices were issued to appellant i.e. on 19.11.2019, 20.11.2019, 21.11.2019, 25.11.2019, 27.11.2019, 02.12.2019 and 06.12.2019 which read as under:-

Siddharth International Public School

Ref No.....

Dated 19.11.2019

Show Cause Notice

Mr Ratan Kumar

It has brought to our notice that you have not been performing your duties towards school transport system diligently.

On November 18, 2019, due to your Ignorance a student of class 7 missed his bus. On demanding explanation by the School Administrative Officer, you refused to take any responsibility of the incident and it was the class teacher who informed the parent.

May we reminding you that the students are our first priority in school and your negligence could harm the safety and security of the students.



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You are liable to reply to the show cause notice for your act of negligence within 24 hours of receiving the letter, else the school authorities shall take necessary action.

Head of School

*** **

Siddharth International Public School

Ref No.....

Dated...21.11.2019

Show Cause Notice-II

Mr Ratan

This is with reference to the reply dated 20.11.2019 towards the Show Cause Notice issued to you on 19.11.2019. The school authorities have found your reply vague and incomprehensible and therefore you are to provide a reply to the below mentioned points.

1. With reference to Points 1&2, what was your action toward the child's absence from the school bus in the morning? Your reply indicates that you knew that the student was dropped by the parent and still you did not check on the absence of the student in the afternoon.
2. With reference to point no-3, please clarify on how did you get to know that the child was asked to stay back in the computer lab? Was the transport In-charge that is you or the class teacher or the parent informed about the same? If not, why?
3. With reference to point no. 4, it is very clear from your statement as you have admitted that you did not try to look for the mentioned student. This is indicative your casual attitude and acute negligence.

The School authorities require you to provide a detailed explanation and clarify the matter within 24 hours of the receipt of this letter.

Head of School

*** **

Siddharth International Public School

Ref No.....

Dated...27.11.2019

Show Cause Notice-III

Mr Ratan

This is with reference to the reply submitted by you against the Show Cause notice issued towards your negligence towards in the transport department. The reply is accompanied with a letter written by the parent of class VII whose bus was missed on 26.11.2019. Without the permission or discussion with Head of School, you approached the parent and also convinced him to write a letter in your favour. This scheme of actions reflects that you do not abide by the school rules or decorum. It is an act of callousness on your part. The reply to the first letter submitted by you clearly stated that you did not take any responsibility of the child. State your reasons on why should the school authorities not take an action against you in this regard?

Head of School

*** **



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Siddharth International Public School

Ref No.....

Dated: 02.12.2019

Show Cause Notice-IV

Mr Ratan

Your reply to the show cause notice issued on 27Nov,2019 is still pending. Please let us no why an appropriate action must not be taken against you.

Head of School

*** **

Siddharth International Public School

Ref No.....

Dated...02.12.2019

Show Cause Notice-V

Mr Ratan

It has come to our notice that you are not found seated on your assigned seat. Please reply with reason within 24hours of receiving this notice.

Head of School

*** **

Siddharth International Public School

Ref No.....

Dated: 06.12.2019

Show Cause Notice-VI

Mr Ratan

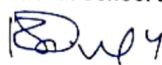
Despite several reminders, you have been found sitting in the Medical room. We need to remind you that your duty is to assist Mr. Yogesh K Gupta-School In-Charge and Mr. S. K Dahiya-Executive Director. You must be seated outside their office so that they can ask for you whenever required. You must produce a valid reason within 24hours towards your denial to sit at your official seat.

Head of School

26. It is stated that appellant on 06.12.2019 filed a reply to show cause notice-VI and showed his medical inability to perform the assigned job and attached medical prescriptions of various hospitals and reports were revealed that appellant was suffering from Cervical Spondylitis and Lumbar Spondylitis.

27. It is stated that Dr. Yogesh Gupta, School incharge wrote a letter to the Principal of the school complaining the careless attitude of the appellant regarding the work assigned which has been annexed at page no. 144 of the paper book. That Smt. Anita Verma, teacher of the school wrote a

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complaint to the principal of the school against the rowdy behaviour of the appellant with her in the class room. This letter has been annexed at page no. 145 of the paper book.

28. It is stated that on 23.12.2019, school has issued a notice against the appellant to direct the appellant to submit the latest medical certificate stating his medical fitness. Letter dated 23.12.2019, has been annexed at page no. 146 of the paper book. That on 24.12.2019, appellant submitted his reply to the letter dated 23.12.2019 wherein appellant has submitted a medical certificate dated 23.12.2019. Medical certificate dated 23.12.2019, has been annexed at page no. 40-41 of the paper book.

29. It is stated that on 26.12.2019, HOS wrote a letter dated 26.12.2019 to the Chairman of school recommending that the services of appellant should be discontinued because appellant is medically unfit to do the job, is careless, unprofessional and has rowdy behavior. Letter dated 26.12.2019 reads as under:-

Siddharth International Public School

Ref. No. ____

Dated: 26.12.2019

To
The Chairman
School Managing Committee
Siddharth International Public School
Main Wazirabad Road
Delhi-93

Subject: Regarding the case of Mr. Ratan Kumar

Dear Sir

This is to bring to your notice that Mr. Ratan holds the position of Daftari in school. He also manages the School Transport. He has not been performing his duties with commitment. He refuses work assigned to him by the Head of School or School In-Charge or the school Administrative Office on account of his health.

He also does not inform the class teachers and Head of School in case a student misses his/her bus and refuses to take responsibility of the same.

He has also broken the protocol of taking a due permission from the Head of School to speak to a parent with whom the former has no contact or relationship. In the process of being compassionate towards him on account of his health, he was asked to report to the school In-Charge and be seated outside his office. Apparently, he has refused to that as well.

The Kindergarten teacher, Ms. Anita Verma has also reported that Mr. Ratan Kumar visits her classroom very often during the school hours. His grandson studies in her class and he pressurizes her to give special attention to the child.



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On demanding explanation, his temper shoots up and he defends himself in a very loud voice. In short, all efforts made while speaking to him, advising him, and seeking justification have failed and Mr. Ratan has not been able to perform any duty with the required professional attitude.

Six Show Cause Notices have been issued to him till date the replies to which have not been found satisfactory.

His case was presented to the School Managing Committee on 16.12.2019 and I was directed to either notify Mr. Ratan to produce a Medical Certificate to certify his ill health due to which he refuses work assigned to him or appoint a Medical Practitioner who could examine Mr. Ratan and certify if he was medically fit to work or not. In order to be unbiased, Mr. Ratan was notified to produce a Medical Certificate duly attested by a registered medical practitioner to justify his ill health.

The Certificate produced by Mr. Ratan Kumar clearly states that he is suffering from acute cervical spondylitis and that he must avoid work from time to time and he must avoid extreme hot and cold weather.

It is humbly submitted that after analyzing the medical reports, professional behaviour and replies to the Show Cause Notices issues, I would recommend that Mr. Ratan Kumar's Services should be discontinued. His medical ailments and unprofessional attitude will only make the school work decadent.

For your kind perusal and approval

Yours Truly

*Sd/-
Charu Srivastava
(Head of School)*

30. It is stated that a meeting of Disciplinary Committee of school was held on 28.12.2019 in which appellant was also present. That during the meeting, the disciplinary committee, directed the Manager and HOS to relieve the applicant from the job. That thereafter HOS and Manager of school have terminated the services of appellant on medical ground and on the ground of unprofessional conduct and rowdy behavior, vide termination order dated 30.12.2019. That appellant was directed to collect 03 months advance salary from the accounts department. Minutes of meeting dated 28.12.2019 of Disciplinary Committee reads as under:-

Ref. No.

Date:.....

Minutes of the meeting of the Disciplinary Committee held in Siddharth International Public School, Main Wazirabad Road, Delhi-93 on 28.12.2019 at 3:00 PM in the school office.

Agenda:

To discuss the reason for non performance on medical grounds of Mrs. Ratan Kumar holding the position of Daftari at Siddharth International Public School.

Members of the Disciplinary Committee:

<i>Name</i>	<i>Signature</i>
<i>Chairman of the school managing</i>	

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Ratan

committee	
Manager of the school managing committee	
Head of school	
Nominee of the Director	
Teacher representative	

Mrs. Ratan Kumar.....

1. The Chairman informed all the members that the Vice Principal had presented the case of Mr. Ratan Kumar in the School Managing Committee meeting held at 16.12.2019 and it was unanimously decided to escalate the matter to the Disciplinary Committee. The Chairman had directed the Vice Principal to either appoint a Medical Officer to get Mr. Ratan Kumar diagnosed and issue a report stating if Mr. Ratan was medically fit to work in school or not or notify Mr. Ratan to procure a Medical Certificate to justify if he is medically fit to work in the school. In order to be unbiased, the Vice Principal sent a Notice to Mr. Ratan Kumar notifying him to produce a Medical Certificate to prove if he was medically fit or not.

2. The Vice Principal submitted a detailed report to the Chairman on 26.12.2019 on Mr. Ratan Kumar according to which, Mr. Ratan Kumar was issued a notice to submit his medical reports. As per the Medical Practitioner's report, he was found medically unfit to work in the school.

3. All the reports submitted by Mr. Ratan Kumar along with the Vice Principal's letter to the Chairman and the Show Cause Notices issued to Mr. Ratan Kumar were placed in front of the Committee for all the members to examine.

4. On examining the medical reports and Medical Certificate submitted by Mr. Ratan Kumar and Show Cause Notices issued to him by the Head of School, it was concluded that Mr. Ratan Kumar is medically unfit to continue his duties in school.

5. Mr. Ratan Kumar was present to defend the accusations placed against him but his answers were found to be dissatisfactory by the members of the Disciplinary Committee.

6. As per Point VI of the Service Rules, an employer may terminate the services of the employee by giving three calendar month's notice or by paying three month's salary in advance if the employee is found medically unfit. Since, Mr. Ratan Kumar is suffering from acute spondylitis and neuro ailments, it is not appropriate to let him continue his services any further. The Disciplinary Committee directed the Manager and the Head of School to relieve him with an advance three month's salary.

Sd/-
Nitin Aggrwal
Chairman

Sd/-
Vineet Aggarwal
Manager

Sd/-
Charu Srivastava
Vice Principal

31. In para wise reply of the appeal, submissions of the reply hereinabove have been reiterated and assertions of the appeal have been controverted.



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32. It is submitted that section 8(2) of DSEAR has not been violated in this case as appellant himself has admitted that he was medically unfit to perform his duties efficiently.

33. It is asserted that PF is not only being deducted from the salary of appellant but has also been deposited in the PF account of appellant by the respondent school till December, 2019. It is denied that appellant had sought details about his record of leave, which were due to him and claimed that appellant is trying to demean the name of respondent school by making such false allegations.

34. **In the rejoinder filed by appellant**, it is stated that appellant has been terminated at the age of 59 years and the appellant has a right to continue in service upto 60 years. The appellant shall attain his age of 60 years on 15.12.2020 but due to his illegal termination neither gratuity nor leave encashment have been paid to appellant by respondent school.

35. It is reiterated that the services of appellant have in fact been terminated on account of filing a WP(C) No.1292 of 2020 titled as **Chandra Rani Vs. Managing Committee (through its chairman), Sardar Patel Public Sr. Sec. School & Ors** before the Hon'ble Delhi High Court seeking salary as per 7th CPC.

36. It is stated that termination of appellant was also illegal inasmuch as no medical examination was ever conducted by a competent medical practitioner on the direction of respondent school and the respondent school was not competent to return a finding of medical fitness/unfitness of the appellant.

37. With regard to applicability of Industrial Disputes Act instead of DSEAR, it is stated that appellant has a choice either to approach the Industrial Tribunal or Delhi School Tribunal and he has rightly exercised his option by preferring the above captioned appeal before this Tribunal under DSEAR.

38. **DOE in its reply dated 23.10.2020**, has asserted that as per rule 120(2), no order with regard to imposition of a major penalty can be passed by disciplinary authority except after the receipt of the approval of the Director. That no Disciplinary Committee was constituted as per rule 118 in

this case and no prior approval of Director has been obtained by the school before imposing the major penalty of termination of service of appellant. That there is violation of rule 8(2), 118 and 120(2) of DSEA&R, by the school. That order of termination of appellant is not legal.

39. Arguments of Sh. Anuj Aggarwal, Counsel for the appellant, Sh. R.M. Sinha & P.M Sinha, Counsel for respondent school and Sh. Satender, Counsel for DOE, have been heard at length. They have argued in consonance with their respective pleadings.

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

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

8 (2) subject to any rule that may be made in this behalf, no employee of a recognized private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

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

Rule 105. Probation:

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

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

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

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

41. Although school has taken the stand that appellant was not a confirmed employee at some places but I have no hesitation to observe that this stand is incorrect. The reason to say so is that it stands admitted in the pleadings that appellant was a confirmed employee. At page no. 8 of

the paper book in para 2 it was specifically mentioned that on 01.12.1990 appellant was issued appointment letter by the school wherein it was declared that the appellant was being appointed on the post of peon on permanent basis.

42. In para 3 of appeal it stands submitted that in February 1992, appellant was promoted to the post of Daftery and he is working continuously and uninterruptedly since then. In the last line it has been pleaded that he was confirmed/ permanent employee of the school.

43. Respondent school in its reply/objections at page no. 122 of the paper book has submitted that contents of para 2 and 3 are a matter of record. Non denial by the respondent school precludes it from raising the issue of appellant not being a confirmed employee. Therefore, arguments to the contrary of Sh. R. M. Sinha and Sh. P.M Sinha are disallowed.

44. Another reason to hold against the school is that school cannot be permitted to keep an employee on probation @ infinity which is being sought to be done in the present case by taking the plea that appellant was not confirmed on the post of Daftery and he was only confirmed on the post of peon. School had issued appointment letter on 01.12.1990 to the appellant for the post of peon and had promoted the appellant on the post of Daftery in 1992. Termination order has been issued on 30.12.2019 i.e. after a period of more than 26 years. It is beyond comprehension that an employee shall be kept on probation for a period of 26 years. So, I have no hitch to conclude that appellant was a confirmed employee.

45. Arguments and assertions of Sh. R.M. Sinha and Sh. Prateek Mohan and the school to the contrary are disallowed as being untenable in view of the afore-going discussion.

46. I am not in consonance with Mr. R.M. Sinha that no approval of DOE was required in this case. It has emerged over the record categorically that no prior approval under section 8(2) was taken by the respondent school in this case.

47. In ground F at page no. 13 of the paper book this ground was specifically taken to the following effect:-



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"Because the termination of service of the appellant is in violation of Section 8(2) of the Delhi School Education Act, 1973. It is submitted that no prior approval was taken from the Director of Education, Govt. of NCT of Delhi, by the respondent No.1 school before terminating the service of the appellant."

48. Respondent school in its reply to the ground F at page no. 124 has not submitted that approval of DOE was taken. On the other hand it has been asserted that appellant was not a deemed confirmed employee, rule 105 does not apply to him as appellant has admitted that he is medically unfit; this Tribunal has no jurisdiction and DSEA&R is not applicable.

49. One and only one conclusion is deducible from a conjoint reading of ground F at page 13 and reply at page 124-125 that prior approval of Director Education as per section 8(2) was not taken.

50. I am not adverting to the contents of Ground M wherein also the same issue was raised by the appellant and was answered by the respondent school in the similar manner.

51. It is no more res integra that as per section 8(2) prior approval of DOE is mandatory. **Raj Kumar Vs. DOE** (2016) 6SCC 541: (2016) 2SCC (L&S) 111: 2016 SCC OnLine SC 317, is a categorical mandate in this regard. Therefore, on this short ground appeal is required to be allowed and is being allowed. For further substantiation, reliance is placed on **Marwari Balika Vidyalaya Vs. Asha Srivastava and Ors.** MANU/SC/0365/2019 bearing Civil Appeal No(s).9166/2013 decided on 14/02/2019, **Mangal Sain Jain Vs. Principal, Balvantray Mehta Vidya Bhawan & Ors** reported in 2020 (3) LLN 407: Law finder document ID #1740651, **Meena Oberoi Vs. Cambridge Foundation School & others** reported in (2019) 265 DLT 401, **Laxman Public School Society (Regd.) and Ors. v. Richa Arora and Ors.** W.P. (C) 10886/2018 decided on 10.10.2018, **Reshmawati Vs. The Managing Committee and Others** bearing WP(C) 11565/ 15 decided on 1/7/19, **Rukamni Devi Jaipuria public school Vs. DOE**, Law finder DOC ID #1046214 and **Shashi Gaur Vs. NCT of Delhi & Ors.** reported in (2001)10 SCC 445.

52. Argument that this Tribunal has no jurisdiction is not tenable as this issue stands settled by Hon'ble Supreme Court in **Management Committee of Mont Fort school Vs. Vijay Kumar** (2005) 7 SCC 472, wherein it has been held that "employee" of the school is dominus litis,

Appellant has approached this Tribunal being an employee as per section 2(h) and I don't have the slightest hesitation to reject the arguments of Sh. R.M. Sinha to the contrary. Para no. 14 of Vijay Kumar (*supra*) is reproduced as under:-

14. According to learned counsel for the appellant though there may be two remedies available to the dismissed employee, that is, one the appeal and the other before the arbitrator, his stand was that when one of the parties i.e. the employer wants a particular forum for adjudication there cannot be a compulsion for him to go before the forum chosen by the other party. This argument in our view is clearly without substance. Even if there are plural or multiple remedies available, the principle of dominus litis has clear application. In Dhannalal v. Kalawathi Bai, (2002(6) SCC 16) this Court relying on Ganga Bai v. Vijay Kumar, (1974(2) SCC 393) held as under:

"There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit."

In Dhannalal's case (supra) it was further held as under:

"The plaintiff is dominus litis, that is, master of, or having dominion over, the case. He is the person who has carriage and control of an action. In case of conflict of jurisdiction the choice ought to lie with the plaintiff to choose the forum best suited to him unless there be a rule of law excluding access to a forum of the plaintiff's choice or permitting recourse to a forum will be opposed to public policy or will be an abuse of the process of law."

53. Another reason to quash the termination order is that order of termination dated 30.12.2019 at page 23 of the paper book, has been passed by the Manager and HOS of the school whereas it should have been passed by the Disciplinary Authority and that too after conduct of an inquiry as per rule 120 of DSEA&R, which it is evident from the records of the case that it has not been done.

54. A bare perusal of rule 120 goes to show that no order imposing on an employee any major penalty shall be made except after conduct of an inquiry. As per rule 118 read with rule 120(a), Disciplinary Authority is required to be formed by the managing committee of the school comprising of Chairman of Managing Committee, Manager of the school, a nominee of the appropriate authority, head of school and a teacher's representative who is the member of managing committee. Appropriate authority as per 2(l) (ii) & (iv) is DOE's nominee. Disciplinary Authority is mandated to frame definite charges on the basis of the allegation on which the charges are

based. A copy of charge sheet alongwith statement of allegations on which they are based has to be furnished to the employee. Employee is to be given time to file the reply to the charge sheet and an option has to be given to employee of being heard in person.

55. As per rule 120(1)(b) Disciplinary Authority on receipt of written statement of defence is authorised to conduct the inquiry either itself or has the liberty of appointing an inquiry officer for this purpose. A report is required to be prepared by the inquiry officer as per rule 120(1)(c) and he has to give findings on each of the charges alongwith the reasons.

56. Under 120(1)(d), Disciplinary Authority is duty bound to consider the record of the inquiry and has to record its findings on each charge. In case DAC decides to impose major penalty then, employee has to be supplied with a copy of report of the inquiry officer coupled with the view of the DAC to impose major penalty. Written notice is required to call upon the C.O to make any representation against the proposed action.

57. Disciplinary Authority has to record its findings as to the penalty which it proposes to impose on the employee and has to send its findings and decision to the Director for his approval along with transmission of all relevant records of the inquiry.

58. Rule 120(2) mandates that no order with regard to imposition of the major penalty shall be made by the Disciplinary Authority except after the receipt of approval of the Director.

59. Records of the case categorically show that provisions of rule 120 have been given a complete go-bye by the school and therefore, the termination order cannot be permitted to stand. Show cause notices dated 19.11.2019, 21.11.2019, 27.11.2019, 02.12.2019, 06.12.2019 and 23.12.2019 are of no help to the school as an inquiry was required to be conducted in the manner described above which admittedly has not been done.

60. Similarly the minutes of meeting of Disciplinary Committee dated 28.12.2019, in which appellant has been shown as present, are of no help



to the school as a bare perusal of the minutes of meeting goes to show that provision of rule 120 have been given a complete go-bye.

61. Arguments of Sh. R.M. Sinha & Sh. P.M Sinha regarding appellant having become unfit for the job due to his admitted medical condition are also of no help as school was required to get the appellant medically examined from a medical board regarding he being completely unfit to perform any job and thereafter, was required to conduct an inquiry as per rule 120 which admittedly has not been done.

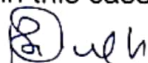
62. The respondent school cannot be permitted to be so cruel to an employee with service tenure of more than 26 years in rejecting the request of the appellant to provide him suitable work.

63. Assertions about appellant being overage are not tenable as termination order nowhere mentions that appellant was overaged and for this reason he was being shunted out. Service tenure of the appellant of such a long period precludes the respondent school to raise such arguments at such belated stage. As per letter dated 13.01.1993, appellant was confirmed as a peon from 1999 till 31.12.1999 school failed to pass an order of confirmation. I have no hitch to conclude that school has scant regard of provisions of DSEA&R.

64. Appointment letter in which the so called terms and conditions of appointment have been given in rule 6(b), has not been produced. An adverse inference has to be drawn against the school that it was unfavourable letter.

65. Another ground was the unprofessionalness. With respect to unprofessionalness of the appellant I have no hesitation to observe that appellant was a confirmed employee and an inquiry was required to be conducted because unprofessionalness undoubtedly is a misconduct and in case of misconduct an inquiry is required to be conducted.

66. Reliance of Sh. R.M. Sinha on **Secretary, State of Karnataka and Ors. V/s Uma Devi and Ors.**, (2006) 4 SCC 1 is of no help as appellant was a confirmed employee in this case.

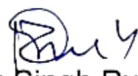


67. Reliance of Sh. R.M. Sinha on **Durgabai Deshmukh Memorial Senior Secondary & Others V/s J.A.J Vasu Sena & Others** reported in MANU/SC/1139/2019 is of no help as I have already held that appellant was a confirmed employee in this case. No other arguments were advanced.

68. I have no hesitation to observe that action of the school is actuated by malafides in this case. The reason to say so is that pursuant to filing of Writ Petition regarding payment of salary, school has issued various memos continuously. Appellant was forced to sign on blank papers and had to lodge a complaint to Police Station. The acts of the school incline me to hold that action of the school of termination of the appellant is actuated by malafides. Remaining assertions and arguments are not tenable in view of the afore-detailed reasons.

69. In view of the afore-going discussion appeal is allowed with all the consequential reliefs including back wages except the relief of reinstatement for the reason that appellant has attained the age of superannuation on 31.12.2020.

70. 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. The Respondent school is directed to decide the representation to be given by the appellant within 4 weeks of receiving of the same by a speaking order and to communicate the order alongwith a copy of the same to the appellant. Ordered accordingly. File be consigned to record room.


(Dilbag Singh Punia)
Presiding Officer
Delhi School Tribunal

Dated: 24.05.2022