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

Appeal No: 30 of 2020

Date of Institution:02.11.2020
Date of Disposal:02.06.2022

IN THE MATTER OF:

Mr. Arjun Singh
S/o Late Sh. Bhola Singh,
R/o C-23,LIG DDA Flat,
East of Loni Road, Delhi-110093,

(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 and P.M. Sinha, Advocates)

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

(Through: Mr. Dhiraj Madan, Advocate)

...Respondent(s)

JUDGEMENT

Appellant has challenged his termination order issued via email dated 03.07.2020 and letter dated 01.09.2020 issued by Siddharth International Public School, Main Wazirabad Road (School, in short). Email dated 03.07.2020 and letter dated 01.09.2020 read as under:-

ANNEXURE A-1 (Colly)

SIDDHARTH INTERNATIONAL PUBLIC SCHOOL
MAIN WAZIRABAD ROAD, DELHI-110093

Info sipswr infowr@siddharthschools.edu.in

To: Arjun Singh@siddharthschools.edu.in *Fri, Jul 3, 2020 at 9:57 AM*

Mr. Arjun Singh

Reference is made to your appointment which is on probation basis. Numerous deficiencies have been found in your work at school. You were also asked to appear in front of the Inquiry Officer to get a fair chance of defence but you failed to appear for the same.

Keeping the above in mind, the school authorities have decided to discontinue your services with immediate effect. As the school no longer requires your service, you are visit the school for the official handover all the school property and documents and collect your full and final salary on filling the no dues from

Charu Srivastava

Head of School

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Ref No. SIPSWR/2020-21/369 *Dated: 01.09.2020*

Mr. Arjun Singh

The School Managing Committee has directed me to inform you that your salary for the month of March 2020 has been disbursed in April, 2020.

Also due to numerous deficiencies found in your work and conduct it has been decided that your probation period shall not be extended because the School Managing Committee is not satisfied with your work and conduct. The same has been communicated to you verbally as well in the month of March, 2020. An e-mail to your official school ID was also sent regarding the same. Due to COVID-19, letter was not issued keeping in mind the safety measures. The same is now intimated to you in writing.

Head of School

2. Brief facts as per contents of the appeal are that, appellant was appointed as Lab. Attendant on 01.08.1996 and had become a permanent/confirmed employee.

3. It is asserted that on 12.09.2011, due to coercion and undue influence, appellant had to resign; he was again appointed on 01.10.2011 as a Lab. Assistant and worked with the school continuously till 31.03.2017. That again on 31.03.2017, due to coercion and undue influence, appellant had to resign and was again appointed on 01.07.2017 on the post of Head

Clerk. That vide letter dated 25.05.2019, services of appellant were confirmed. Letter dated 25.05.2019 reads as under:-

Siddharth International Public School
POCKET-B, EAST OF LONI ROAD, DELHI110093

Ref. No. SIPS/CC/05/19 *Dated: 25.05.2019*

Mr. Arjun Singh

Head Clerk

The School Management is pleased to inform you that your services as Head Clerk stands confirmed w.e.f. from 01.07.2019 in the Pay Scale of Rs. 9300-34800, after completing the Probation Period of two years from 01.07.2017 to 30.06.2019. Kindly put yourself in hard work for the betterment of the School.

I wish you all the success in life.

Pushpa
Manager

4. It is stated that in October, 2019, appellant alongwith other employees filed a writ petition bearing W.P.(C) no. 11519/2019 for seeking salary as per 7th CPC read with section 10 of DSEA&R is pending adjudication. That filing of writ petition enraged the management.

5. It is stated that on 23.03.2020 lockdown was imposed which was relaxed in May, 2020; appellant was directed by the management to resume duty w.e.f. 16.05.2020 and from 16.05.2020 to 26.06.2020, appellant continuously worked with school management.

6. It is stated that on 02.06.2020 appellant received a whatsapp call from Head of School and was directed to withdraw the W.P. (C) 11519/2019. That on 15.06.2020, appellant received a phone call from P.A of the HOS to attend a meeting on 16.06.2020 with the Chairman, Manager and the HOS of school. That in the meeting, appellant was forced to withdraw the writ petition to which he refused and the same resulted in termination.

7. It is stated that appellant informed DOE on 22.06.2020 via email/post/ by hand about undue harassment on the part of the school authorities. That on 26.06.2020, appellant was again called for a meeting and was asked to withdraw the W.P.(C) 11519/2019 and resign to which he refused.

8. It is stated that on 27.06.2020, appellant was denied entry in the school premises and vide email dated 29.06.2020, appellant was called for an inquiry on purported allegation dated 02.07.2020, which were replied vide reply dated 30.06.2020, by the appellant. That thereafter, the services of the appellant have been terminated vide order dated 03.07.2020. Email dated 29.06.2020, reply dated 30.06.2020 and inquiry report, are as under:-

ARJUN SINGH arjun.singh@siddharthschools.edu.in

Presence required in front of inquiry officer

Info sipswr infowr@siddharthschools.edu.in *Mon, Jun 29, 2020 at 5:18 PM*
To: Arjun. Singh@siddharthschools.edu.in

Mr. Arjun Singh

It is brought to your notice that your employment is on probation basis. The school authorities and the Disciplinary Committee have not found your work and professional behaviour at school conducive to the development and well being of the organisation.

To take the matter further and appropriate action, you are hereby informed to appear before the inquiry officer on July 02, 2020, at 2:00 pm in the school premises.

Charu Srivastava
Head of School

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REPLY

To,
Respected Ms. Charu Srivastava,
Head of the School
Siddharth International Public School
Main Wazirabad, Road, Delhi-110093

Subject: Reply to e-mail dated 29.06.2020, received at 5:19PM regarding the so-called inquiry.

Madam,

With reference to your above said e-mail dated 29.06.2020, the reply is submitted as under:-

1. It is humbly submitted that, the contents of the said e-mail that my employment is on probation are wrong and denied.
It is further submitted that in view of Rule 105 of the DSEAR, 1973, the said probation period is already successfully completed by me. Hence, the contents of your letter are contrary to the facts and rules and hence, again denied.

2. As such so-called inquiry and my presence before the inquiry officer on 02.0.2020 at 2:00PM, it is to submit that in your e-mail, under para (1), it is stated that the school authorities and the disciplinary committee have not found my work and professional behaviour at school conductive to the development and well being of the organisation.
In this regard, it is submitted that the school authorities have already decided the case in the predetermined, as found in the e-mail.

Hence, now so called inquiry has no meaning in the eyes of law and justice but the same is an eye wash and also a kind of further harassment and causing pressure upon me with malafide intention. Thus, having no legal leg to stand the inquiry, I am unable to attend the so-called inquiry as being a pre-planned action of the school and further my harassment.

3. That, it is further submitted that I am agitating for salary and allowances in W.P.(C) No. 11519/2019 as one of the petitioners and hence, time and again, the school management has threatened me to resign from the services or to ready to face dire consequences for which, I have already lodged complaints with the department.

4. That, it is further submitted that my salary for the month of April 2020 to June 2020 has not been released so far and even from 27.06.2020, I am not being allowed to enter in the school without any written order.

It is further submitted that no employee can be denied from his duty without any written orders but in my case, school authorities are repeatedly doing wrong and illegal action just only to hostile me from my legitimate benefits.

Therefore, it is humbly requested:-

(a) That, I may kindly be allowed to join my duty with immediate effect.
(b) That, my salary (whatever was paid) for the month of April, May and June 2020 my kindly be released at the earliest.
(c) That, the so-called inquiry may kindly be closed having no legal leg to stand in the eyes of law and justice.

Yours sincerely
Arjun Singh
Head Clerk
SIPS
Main Wazirabad Road, Delhi-110093

Copy to the DDE (Zone-VI) with request to provide justice.

9. It is stated that vide letter dated 07.07.2020, appellant made a representation to the school management seeking reinstatement but of no avail. That vide letter dated 01.09.2020 received on 05.09.2020, appellant was again informed about his termination by the school.

10. It is stated that appellant made representations/complaint on the Public Grievance Cell of DOE against school but DOE has not taken any action. That a legal notice dated 08.10.2020, was sent by the appellant but with no revert back.

11. It is stated that appellant is completely unemployed since the date of his illegal termination of service w.e.f. 03.07.2020 till date and despite his best efforts, has not been in a position to procure any employment whatsoever.

12. In the grounds of appeal, it is stated that order dated 03.07.2020 is illegal, unjustified, arbitrary, discriminatory, punitive, perverse,

unreasonable, unconstitutional, violative of Articles 14, 16, 21 & 311 of the Constitution of India, violative of principles of natural justice and violative of provisions of DSEAR, 1973.

13. It is asserted that appellant being a confirmed employee could not have been disengaged from the services like this and prior approval as per section 8(2) and as per mandate of **Rajkumar Vs. DOE** (2016) 6 SCC 541 was a must.

14. It is stated that although, the appellant is a permanent employee, still even if it is assumed for the sake of assuming that he is a probationary employee even then the termination order is in violation of rule 105 of DSEAR.

15. It is stated that appellant has not committed any misconduct and assuming for the sake of argument if any misconduct has been committed, then school was bound to conduct an inquiry which has not been conducted and therefore, rule 118, 120, 123 stand violated. That school was required to constitute Disciplinary Authority before termination of services which it has not done. That in case of stigmatic termination of services, an inquiry is required to be conducted.

16. It is asserted that school has violated the provisions of Industrial Dispute Act (I.D Act, in short) and indulged in unfair labour practices. That manager of the school was not competent to terminate the services of the appellant and it is only the Disciplinary Authority which is empowered to take disciplinary action.

17. It is stated that DOE has also failed to take action against the school which has violated Section 10, rule 105, 118, 120 and 123 of DSEA&R and DOE should have de-recognised the school.

18. It is stated that school has violated section 25 of the I.D Act as appellant had worked for more than 240 days in the year preceding the date of his illegal termination and was therefore, entitled to protection of section 25 of I.D Act. That neither any notice nor any notice pay was paid/offered. That no intimation/notice was served upon the appropriate Government informing about termination of service of appellant and section 25F also stands violated.

19. Reliance is placed on **Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana),** 2010(5) SCC 497 to assert that school has violated section 25G of I.D Act as juniors of the appellant have been retained in the service and principle of 'last come first go' has not been followed.

20. It is asserted that section 25H and 25N of I.D. Act have also been violated and school has engaged fresh hands for doing the same job which was being done by the appellant and no permission/approval was taken by the management before termination.

21. It is asserted that termination of appellant is in violation of rule 77, 78 and 79 of I.D (Central) Rules, 1957. That no seniority list was shown/displayed by the management before termination.

22. Respondent school R1, in its reply/objection, to the appeal has taken preliminary objections vis-a-vis appeal is not maintainable; services of appellant have expired by efflux of time; appellant having ceased to be on probation; approval of DOE was not required and services of the appellant were never confirmed.

23. It is submitted that Ms. Pushpa has never been in the managing committee of the school and confirmation letter dated 25.05.2019 issued by Ms. Pushpa is forged and fabricated as on 14.04.2019 newly elected management had taken over the management of the school.

24. It is contended that Ms. Pushpa is required to be summoned to enquire about the truth as to whether she had ever been the manager of the school or she should be asked as to duration of the period when she was the manager of the school.

25. It is submitted that experience certificate dated 01.04.2019, 20.04.2019, 31.05.2019 and salary certificate dated 25.05.2006 are fabricated documents having been issued by old management in collusion with the appellant.

26. It is stated that this Tribunal lacks jurisdiction as appellant is a workman i.e. non teaching staff concerning which the Tribunal does not have the jurisdiction. Reliance on **Miss Sundarrambal Vs. Govt. of Goa, Daman and Diu and Ors., H.R. Adyanthaya Vs. Sandoz (India) Ltd., Bangalore Water Supply Vs. A.Rajappa, Rajkumar Vs. DOE** has been placed, in substantiation.

27. In brief facts of the case, it is asserted that appellant had applied for the post of Asstt. Teacher in the school vide letter dated 25.03.2017. That on 26.03.2017 a service agreement was executed between the appellant and the school wherein appellant was kept on probation for a period of one year.

28. It is submitted that appellant was appointed as head clerk in the school on a probation period of one year w.e.f 01.07.2017 vide appointment letter dated nil. That on 27.06.2018 probation period of appellant was extended for another one year i.e. upto 30.06.2019.

29. It is submitted that account officer of the school made a complaint against the appellant to the HOS regarding his negligent attitude towards the job. That school issued a warning letter dated 17.06.2019 to the appellant (copy of warning letter has not been placed on record by the school).

30. It is asserted that on 17.01.2020 a show cause notice was issued to the appellant for not furnishing the complete set of documents and updated resume to the school as per circulars dated 30.08.2019 and 11.09.2019.

31. It is asserted that on the same date i.e. 17.01.2020 another show cause notice was issued by the HOS to the appellant but appellant refused to accept the same (copy of Show cause notice dated 17.01.2020 has not been placed on record by the school).

32. It is asserted that on 04.02.2020 a show cause notice was issued by the HOS to the appellant containing assertions that complaints had been received from NIOS students that appellant takes money to mark their attendance and to enhance their scores. That appellant refused to accept the said show cause notice. (copy of Show cause notice dated 04.02.2020, has not been placed on record by the school).

33. It is asserted that a complaint dated nil was made to the HOS by Mr. Rajneesh Gupta, Administrative Officer of the school against the unprofessional behaviour of the appellant in the school. That on the basis of said complaint, a show cause notice dated 15.04.2020 was again issued against the appellant but he refused to receive. (copy of Show cause notice has not been placed on record by the school).

34. It is asserted that on 26.06.2020, appellant was asked to appear before school committee but he refused to sign on the attendance sheet on the date of meeting. That in the meeting school committee decided not to extend the probation/confirm the services of the appellant and the same was informed to the appellant vide letter dated 01.09.2020.

35. In parawise reply, assertions of the appeal have been controverted and submissions of the reply of the appeal have been reiterated. It is denied that appellant had ever been employed by the school on or before 26.03.2017 and asserted that appellant for the first time appointed as head clerk on probation for a period of one year w.e.f 01.07.2017.

36. It is denied that the services of the appellant were ever confirmed by the school. The services of appellant expired by not extending of the probation period because the work and conduct was not satisfactory and therefore, no prior approval of DOE is required. That, appellant can not be treated as a regular/confirmed employee.

37. It is submitted that termination letter issued by the school is in accordance with the provisions of DSEA&R and is valid in the eyes of law.

38. In the rejoinder appellant has controverted those assertions of the reply of the appeal which are not in consonance with the contents of the appeal and assertions of the appeal have been reiterated. **Laxman Public School Society & Ors. Vs. Richa Arora & Ors.** decided on 10.10.2018; **Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1, Panipat (Haryana),** 2010 (5) SCC 497; **Rajkumar Vs. DOE** (2016) 6 SCC541 and **Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal and Ors.,** bearing LPA No. 30/2004 decided on 19.01.2006, have

been relied. It is reiterated that appellant was a confirmed/permanent employee.

39. DOE in its reply to the appeal having been filed on 25.02.2021 through Mrs. Meena Kumari, DDE, has asserted that name of the appellant was furnished by the school in the staff statement. That no prior approval from Director Education has been taken and school has violated section 8(2) of DSEA&R.

40. In parawise reply on merits it is stated that in the staff statement date of appointment of the appellant has been shown as 01.07.2017 as a Head Clerk.

41. Arguments were heard at the bar Ld. Counsel Sh. Anuj Aggarwal for the appellant has argued that school is involved in passing of stigmatic orders/issuing of delusive appointment letters and acting malafidely pursuant to demand of parity under section 10. He has argued that numerous memos have been issued after filing of writ petition for parity. It is argued that section 8 (2), rule 105, 120 etc. of DSEA&R; section 25 of Industrial Dispute Act and Rule 77 to 79 of ID (Central Rules 1957) have been violated.

42. Reliance has been placed by Sh. Anuj Aggarwal on **"Laxman Public School Society (Regt.) & Ors. Vs. Richa Arora & Ors.** MANU/DE/3902/2018", **"Raj Kumar vs. Director of Education** [(2016) 6 SCC 541]", "**The Managing Commitee Mount Sr. Mary's School Vs. Nirvikalp Mudgal** bearing WP (C) No. 7375/2012, decided on 03.10.2013, reported in MANU/DE/3509/2013", **"Meena Obreoi Vs. Cambridge Foundation School and Ors.** reported in MANU/DE/4149/2019: 265(2019) DLT 401: WP (C) 1363/2013, decided on 05.12.2019"; **"DAV College Managing Committee Vs. Surender Rana and Anr.,** decided on 03.02.2011, reported in MANU/SC/0472/2011", **"Mangal Sain Jain Vs. Principal, Balvantray Mehta Vidya Bhawan & Ors.** bearing W.P. (C) 3415/2012, decided on 10.08.2020", "**Sunita Sahi Vs. Sachdeva Public School & Ors.,** bearing Appeal No. 90/2017, decided on 08.03.2018", **"Mamta Vs. School Management of Jindal Public School & Ors.** bearing W.P.(C) No. 8721-8723 of 2010: [2011 (124) DRJ 12]: [MANU/DE/2424/2011] decided on 01.06.2011", **"Anoop Sharma Vs.**

Executive Engineer, Public Health Division No. 1, Panipat (Haryana), reported in 2010(5) SCC 497: MANU/SC/0281/2010, 2010(125)FLR629", and "**Shobha Ram Raturi Vs.Haryana Vidyut Prasaran Nigam Limited & Ors.,** decided on 09.12.2015, reported in (2016) 16 SCC 663".

43. Mr. R.M Sinha for respondent school has argued at length in his inimitable style that services of appellant had expired by afflux of time, appellant had ceased to be on probation and services of appellant were never confirmed. He has argued that services of appellant have not been terminated "during probation period" or "on probation period" but because of appellant remaining unsuccessful "during the probation period" or "on probation period". It is contended that appellant has been removed after the expiry of unsuccessful period of probation period of one year and for the reason that school management had not extended the probation period.

44. Mr. Sinha has relied on section 8(2) of DSEA&R to assert that appeal is not maintainable if the probation period has expired and same is neither extended nor the employee is confirmed.

45. It is argued that as per section 8(2), act of dismissal/removal, reduction in rank or termination otherwise, **completes** only when approval by DOE is granted. That only in case of approval having been granted appeal would lie before this Tribunal and not otherwise.

46. It is argued that if no approval is granted, then the employee cannot be said to be dismissed as only an order of Managing Committee remains on record which is alien to section 8 (2) of the Act. It is argued by relying on Shashi Gaur vs. NCT of Delhi reported in (2000) X AD (S.C.) 398 and Principal vs. Presiding Officer reported in AIR 1978 SCC 344 that appeal before this Tribunal will lie only if the termination/removal is concluded and not otherwise.

47. Section 11 (6) has been relied to assert that this Tribunal does not have the powers/jurisdiction to construe the orders of dismissal/removal/ termination passed by Managing Committee howsoever illegal, the orders may be, as a dismissal and to proceed with the appeal against the orders.

48. It has been argued that neither the Tribunal nor the Director has power to direct the school management to extend the probation or to reinstate an employee.

49. It is asserted that management, if aggrieved from accord of prior approval by Director Education can challenge the orders by filing a writ petition.

50. It has been argued that appeal will also not be maintainable before this Tribunal in case approval is applied for and neither refused nor granted. That in such a case, challenge can be laid by the school by filing a writ petition before the High Court.

51. Mr. Sinha has argued that in case of approval having not been applied for appeal will not be maintainable and remedy of the employee will be to approach Civil Court under section 25. That in the alternative, Director Education can also be approached. That in case Director Education refuses to take action or does not take action despite representation of employee within a reasonable time then employee can resort to writ jurisdiction as well.

52. Mr. Sinha has argued under point no. 2 of his written arguments by placing reliance on rule 105 to assert that " during the probation" and on "probation" does not mean and include an employee who has unsuccessfully completed the probation period and the probation period is neither extended nor the services of the employee are confirmed.

53. It has been further argued that afflux of time used in the judgement of Shashi Gaur (supra) does not mean and construe the afflux of time as per sub-clause 3 of 105 of DSEA&R and on the other hand it has nexus with the word "initially appointed".

54. It is averred that sub clause 3 of rule 105 concerns period of ad hoc/temporary meaning thereby that if an employee is appointed for a limited period then the appointment letter shall not include the word "initially appointed".

55. Para 46 of the Durgabai Deshmukh Memorial Senior Secondary School vs. J.A.J Vasu Sena reported in (2020 1 AD (S.C.) 439 has been heavily relied to assert that continuation of the services of a probationer by

appointing authority under rule 105 of DSEA&R beyond maximum permissible period of probation which is two years is a violation of law. It is argued that school cannot be directed to commit violation of law and for this reason appeal is not maintainable.

56. It is reiterated that no prior approval is required from DOE when the service is discontinued and no appeal is maintainable where services of a teacher have come to an end by afflux of time.

57. Under point no. 3, it has been argued that Rajkumar (supra) is not applicable as it does not deal with the issue of services having expired due to afflux of time. It is also argued that Rajkumar case is not a binding precedent in view of T.M. A. Pai foundation vs. State of Karnataka read with Shyam Lal Vs. Smt. Kusum Dhawan AIR 1970 SC 247 and Prem Sehgal vs DOE 1986 RLR 147.

58. It has been argued that any view contrary to his submissions will be illogical because if school does not confirm the service then what will be the fate of services of a teacher? That the teacher cannot be said to be 'on probation' because DOE is not the appointing authority. It has been argued that when the probation period is expired and the same is neither extended nor confirmed and management continues with the services then the same is illegal as theory of automatic confirmation has gone.

59. It has been argued that as per law of precedent as exposited in 1992 Siddharam Satlingappa Mhetre vs. State of Maharashtra decided on 21/12/2010 by Division Bench of Delhi High Court, **Rajkumar vs. DOE** AIR 2016 SC 1855, does not apply.

60. Counsel Sh. Dheeraj Madan for DOE has argued that school has violated rule 8 (2) of DSEA&R and for this sole reason appeal is required to be allowed. He has vehemently controverted the submissions of Sh. R.M Sinha and has argued that arguments of Mr. Sinha are completely contrary to the aims and objects of the Act. He has argued that this Tribunal has all the powers of a civil appellate court as specifically conferred under Section 11(6). He has argued that Director Education being the regulatory authority has all the powers of regulation of school education. He has relied on **Frank Anthony Public School Employees Association vs. Union of India & Ors**. reported in 1986 (4) SCC 707, **Management Committee of**

Mont Fort Vs. Vijay Kumar 2005(3) SCC 472 and has argued that when minority schools despite article 30(1) of the Constitution and section 15 of the Act, have been held amenable to regulatory regime, then how Mr. R.M Sinha can argue that Director Education or this Tribunal do not have not power to intervene and regulate the educational institutions to make the same as effective places of providing of quality education.

61. I have carefully perused the records of the case and considered the submissions. Most important 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) and rule 105 of DSEA&R 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.*
>
> ***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.*

62. First of all I am dealing with the legal position under DSEA&R concerning all type of appointments vis-à-vis contractual/ adhoc/ temporary/probationary/confirmed etc. Extant legal position is that under

DSEA&R, there can be only three types of appointments of employees i.e. confirmed, probationers & stop gap contingent employees under rule 105(3).

63. A bare perusal of rule 105 shows that all appointments at initial stage except stop gap appointments under rule 105(3) have to be on probation. Stop gap arrangement appointments are those, which are made in order to deal with contingent situations like an employee proceeding on long leave, being on medical leave, being on study leave, being abroad, being unauthorisedly absent, etc. However, in such appointments contingency is required to be mentioned in the appointment letter itself to prevent the schools from making delusive appointments. Hon'ble High Court of Delhi in a large number of cases has directed to reinstate employees where delusive appointments have been made by holding that delusive appointment are fraud on the statutory provisions.

64. It is no more res-integra that except cases of abandonment of employment of employee's own volition or statutory operations like superannuation, obtainment of prior approval is a must with the only exception of contingent appointments. Legal position in this regard in the light of precedents is being discussed.

65. 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. 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 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.

66. 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".*

67. Appeal was allowed by Sh. V.K. Maheshwari my Ld. Predecessor and school laid a challenge by way of W.P. (C) 10886/18. Writ petition was dismissed on 10.10.2018 by Hon'ble Mr.Justice C. Hari Shankar in his scholarly judgement.

68. 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.***
>
> ***10. It is not possible to accept such a contention.***
>
> *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."

69. Para 13, of law finder document bearing ID# 143275 which is para 14 of **Union Public Service Commission v. Dr. JamunaKurup,** (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."

70. From the aforegoing categorical exposition of law, 'employee' as defined under 2(h) shall include Regular/Confirmed/ Temporary/Ad-hoc/Contractual etc. it follows without any hitch that every type of employment except the contingent appointments under rule 105(3) are covered by the mandate of section 8(2) and rule 105 &120(2) of DSEA&R.

71. **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 another legal precedent. 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.

72. 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 can be brought to an end. 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, 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'.

31. *The wide amplitude of the expression "otherwise" has been noticed, by the Supreme Court, in several decisions.*

32. *While examining the expression "or otherwise", as contained in Article 356(1) of the Constitution of India - which empowers the President of India to proclaim a state of emergency "on receipt of a report from the Governor of a State or "otherwise", the Supreme Court held, in S.R. Bommai v. U.O.I (1994) 3 SCC 1, the expression "otherwise" meant "in a different way" and (was) of a very wide import and (could not) be restricted to material capable of being tested on principles relevant to admissibility of evidence in Court of Law." In U.O.I. v. Brahma Dutt Tripathi (2006) 6 SCC 220, the Supreme Court was concerned with the expression "or otherwise" as it occurred in Section 9 of the National Cadet Corps Act 1948, which reads thus:*

> *"7. The Central Government may provide for the appointment of officers in or for any unit of the Corps either from amongst members of the staff of any university or school or otherwise and may prescribe the duties, powers and functions of such officers."*

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".

73. 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 an employee of a School.

74. 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 10.08.2020 was relied. 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.

75. 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?

76. 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.** 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.

77. 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 DSEA&R 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".*

78. 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.

79. 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 definition. 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.*** *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&R by the Legislature."***

80. In view of the foregoing discussion, I have no hitch to repeat that every 'employee' whether he is contractual/ Ad-hoc/ Temporary/

Probationary/ confirmed is entitled to statutory protection of Section 8(2), 105(1) and 120. Only exception being the contingent stop gap arrangement employments.

81. In Para 20 to 22 facts of the case were discussed. Para 22 is relevant, from the angle of applicability of rule 118 and 120, duties of Disciplinary authority, consequences of non-controvert, etc & reads as under:-

> ***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.*

82. Para 23 to 28, mandate strict compliance of rule 118, 120 & 8(2), the same being precautionary safeguards to avoid suffering of unfair treatment of the employees at the hands of the management. A detailed discussion about Kathuria having been wrongly decided and reliance in Kathuria on T.M.A. Pai being misplaced has been made. It is also mandated that Katra Education Society Vs State of Uttar Pradesh AIR (1966) SC 1307applies Reliance on Management Committee Montfort School Vs Vijay Kumar, was placed to reassert about necessity of compliance of provisions of DSEA&R. Meena Oberoi was also relied

> *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.*

83. Hon'ble Supreme Court has followed **Raj Kumar v/s DOE in Marwari Bal Vidyalaya** reported in Law Finder Document bearing ID

#1389235 Civil Appeal No. 9166/2013, decided on 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.***

84. Para 28 and 29 of **Reshmawati V/s the Management Committee & others**, reported in Law Finder document bearing id #1527102, read as under:-

> *28. Be that as it may, the admitted fact is that approval of the termination has not been taken from the Directorate of Education as is mandatory under section 8(2) of Delhi School Education Act, 1973. Thus the punishment order mentioned above is set aside for violation of the procedures and rules of the Act.*
>
> *29. In Raj Kumar v. Director of Education: (2016) 6 SCC 541, where it is held that the approval under section 8(2) of the Delhi School Education Act is mandatory but has not been taken in the present case.*

85. 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 albeit 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).*

86. 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. It can be concluded that after 13.04.2016 compliance of 8(2), 105 & 120 is mandatory.

87. In **Dr. Swami Rampal Singh Missions School V/s Harvinderpal Singh Bindra and another** reported in law finder document bearing ID# 863089 is another mandate of Delhi High Court in this regard, para no. 6 and 7 of which are as under:-

> *6. It has been observed in the judgments in the cases of Hamdard Public School (supra) and Army Public School (supra) that the appointment of an employee of a school is statutory appointment with statutory protection in terms of the Delhi School Education Act and Rules, such employment cannot be terminated except by following the due process of rules contained in the Delhi School Education Act and Rules, being Rules 118 and 120 requiring disciplinary proceedings to be initiated for removal of a permanent employee.*
>
> *7. Also, Supreme Court in the case of Raj Kumar v. Directorate of Education and Others (2016) 6 SCC 541 has held that there cannot be termination of an employee of a school without prior approval of the Director of Education under Section 8(2) of the Delhi School Education Act. Admittedly in this case, no approval has been obtained by the petitioner/school for termination of the services of the respondent no.1, and for this additional reason also the impugned letter dated 24.2.2001 is liable to be set aside.*

88. The **Management of Rukmani Devi Jaipuria school V/s DOE** reported in Law Finder document bearing id #1046214 is another mandate in the same regard, which mandates that **every infliction of major penalty requires prior approval of Director.**

89. 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 bearing 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.

90. **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, Govt. of Delhi cum Distt. & Sessions Judge, Delhi, reads 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/-"

91. 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.

92. Judgment passed in appeal no. 37/1997 dated 15/01/2002 was challenged in W.P.(C) No. 1249/2002 by 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, who 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.

93. 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 favour 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".

94. Decision of LPA was challenged in Civil Appeal No. 2719/2007, decided on 03.02.2011. 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."*

95. A review petition was also filed in Surender Rana's matter by the school before the Apex Court and Hon'ble Apex Court dismissed the abovesaid review petition (C) No. 1567/2011(in civil Appeal No. 2719/2011) on 20.7.2011.

96. 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. 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.

97. From the afore-going discussion, it can also be concluded without any hitch that definition of 'employee' is very wide and includes every employee whether confirmed, probationary, contractual, ad-hoc, temporary etc.

98. I had taken the hereinbefore concluded view in **Dharmendra Goyal Vs. Managing Committee, Ahlcon Public School,** bearing appeal no. 17/2019, decided on 15.09.2021 and this view of mine stands upheld by Hon'ble Mr. Justice V. Kameshwar Rao in W.P.(C) No. 13193/2021, decided on 24.11.2021. In L.P.A No. 511/2021, decided on 23.12.2021, school after some argument had to withdraw the L.P.A. filed against dismissal of W.P. (C) no. 13193/2021.

99. In Chairman, **Arya Girls Senior Secondary School Vs Director and Ors.** W.P. (C) 0257/2011 decided on 24.01.2022, by Hon'ble Ms. Justice Jyoti Singh, this very view has been upheld in para no.

27 to para no. 34. Para 27 to 34 are not being reproduced for the sake of brevity. In para no. 26, Appellant was held to be on deemed continued probation, which has been my consistent view as well.

100. My view, in cases wherein schools are not issuing appointment letters for a long time has also been upheld in W.P.(C) No. 7045, 7046 and 7095 of 2022, decided on 06.05.2022. Para 11 and para 14 to 18 may be referred in this regard:-

> *11. The Tribunal has allowed the appeals filed by the respondent/Teachers by referring to various case laws and holding prior approval of DoE under Section 8(2) read with Rule 105, DSEAR was mandatory with respect to employees on probation as the words used in Section 8(2) "Or Otherwise terminated" are very wide. In other words, even a probationer is entitled to protection under Section 8(2) of DSEAR, 1973. The Tribunal also adverted to their termination letters to hold that no show cause notice was given nor any inquiry was conducted. Though the Tribunal has stated with regard to the respondent in W.P.(C) 7045/2022, if any misconduct has been committed, the petitioners are free to take action as the appeal is disposed of on a technical point.*
>
> *xxx xxx xxx xxx xxx xxx*
>
> *14. Though permanent even if the respondent Teachers are to be treated as on probation even then probationers shall be entitled to protection under Rule 105(1), DSEAR, 1973 that is before effecting the termination the approval of the Director of Education has to be taken.*
>
> *15. That apart, it is his submission that a perusal of the termination orders clearly reveals that the termination of the petitioners is because of the representation made by the respondent Teachers to the DoE and various authorities regarding the illegal acts of the petitioners. In other words, the termination order is stigmatic and the principles of natural justice were required to be followed before the petitioners could have taken the extreme action of termination. He seeks the dismissal of the writ petition.*
>
> *16. Having heard the learned counsel for the parties, there is no denial to the fact that the petitioners were appointed as TGT (Physical Education) on October 01, 1999, TGT (Social Science) on April 06, 1998 and PGT (Commerce) on November 02, 2008. The two respondent Teachers who were appointed as TGT were promoted to the post of the PGT, though no promotion orders have been issued. It is true and conceded by Mr. Mittal that the appointment letters were not issued to the respondent Teachers. The very fact that the appointment letters and also promotion orders have not been issued, reflect the violation of the DSEAR, 1973 by the petitioners. The Supreme Court in Management Committee of Montfort Senior Secondary School v. Shri Vijay Kumar, 2005 (7) SCC 482, has held, that the nature of employment of employee in School is not contractual but statutory.*
>
> *17. Surely, the respondent Teachers having worked for so many years, their appointment cannot be treated as contractual that too when two respondent Teachers have been promoted to the higher post of PGT. I am conscious that till such time an order of confirmation is passed, the status remain that of a probationer. In these cases also the Teachers having put in years of service, that too without appointment / promotion orders their appointment shall*

surely have the flavour of probation whose services cannot be terminated without the approval of DoE in view of Rule 105 of the DSEAR, 1973:

Xxx xxx xxx xxx xxx xxx

101. Coming to factual assertions. It is admitted case of the respondent school that no prior approval has been taken from DOE as required under section 8(2) in this case although the stand taken for not doing so is that no permission was required. Relevant extract of pleadings of the appellant, of respondent school and DOE are as under:-

102. Pleadings of appellant with regard to section 8(2), **Ground-'C'** at page 16 of paper book:

> *"Because the Siddharth International Public School is a private recognized school and is bound by the provision 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, before dispensing with the services of the appellant in terms of Section 8(2) of the DSEA&R, 1973"*

103. Corresponding reply of the respondent school with regard to Ground-**'C'** as follows (page 123 of paper book, internal page 9):-

> *"In the case in hand the nature of employment of Appellant is probationary. The services of Appellant/probation ended by the efflux of time. Hence require no prior approval of DOE"*

104. Corresponding reply of the DOE of ground of appeal –**'C'** at page no. 104 of the paper book is as under:-

> *"That in the present case,* ***no prior approval of competent authority/DOE is obtained by the school authority*** *before imposing the major penalty of termination of service of appellant."*

105. A conjoint reading of hereinbefore extracted pleadings of the parties makes it clinchigly clear that no approval of DOE was taken and **the appeal is maintainable on this sole count**.

106. Even otherwise case of Mr. Sinha in arguments is that no approval was required and hence was not taken meaning thereby that no approval was taken. In view of this stand of Mr. Sinha, also provisions of DSEA&R vis-a vis rule 105 & section 8(2) stand attracted.

107. Appeal of appellant is maintainable in both the situations of appellant being a confirmed employee or in the alternative being an employee on

probation or a deemed continued on probation due to non-compliance of statutory provisions by the school.

108. **Coming to the question as to whether appellant is a confirmed or probationary employee?** Case of the appellant is that he was confirmed employee. At page no. 11, in para no. 6 of the appeal, appellant has asserted that his services were confirmed on 25.05.2019 w.e.f. 01.07.2019.

109. In reply to the aforesaid assertions at page no. 121, respondent school has asserted that appellant was not a confirmed employee on the post of Head Clerk w.e.f. 01.07.2019 and appellant was working as a probationer in the school and services of the appellant had ended by efflux of time.

110. Appellant has claimed that he was confirmed vide letter dated 25.05.2019 w.e.f. 01.07.2019 whereas school has taken the stand that she was a probationer. The version of the school in this regard at page no. 123 (internal page no. 9) in ground B, reads as under:-

> *"It is submitted that appellant was working the school as a probationary. Appellant's service was ended by afflux of time."*

111. In the termination letter dated 03.07.2020, letter dated 01.09.2020 bearing reference no. SIPSWR/2020-21/369 and email dated 29.06.2020, **school has admitted that appellant was an employee on probation**.

112. Letter dated 25.05.2019, stand extracted in the beginning of the judgement, and stand of the school w.r.t. this letter in preliminary objections at page 116 of the paper book is that Ms. Pushpa had never been in the managing committee and letter dated 25.05.2019 is forged. That Ms. Pushpa had issued this letter in collusion with appellant as she was not holding any position in the school for the reason that w.e.f. 14.04.2019, newly elected management had taken over.

113. Appellant has also produced experience certificates, appointment letters and salary certificate. A conjoint reading of the same goes to prove that appellant was in service for the periods as so detailed. Experience certificates are reproduced as under:-

Siddharth International Public School

Ref. No. SIPS/LR/APR/19/01 *DATE: 01.04.2019*

EXPERIENCE CERTIFICATE

It is to clarify that Mr. Arjun Singh S/o Sh. Bhola Singh had been worked as Lab Attendent in the above said school from 01.08.1996 to 12.09.2011 in the pay scale of Rs. 5200-20200/-.

I wish him all the best.
V.Principal/Manager

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

Siddharth International Public School

Ref. No. SIPS/LR/APR/19/15 *DATE: 20.04.2019*

EXPERIENCE CERTIFICATE

It is to certify that Mr. Arjun Singh S/o Sh. Bhola Singh had been worked as Lab Asst. in the above said school from 01.10.2011 to 31.03.2017, in the pay scale of Rs. 5200-20200/- (Grade Pay 2800/-).

I wish him all the best.

V.Principal/Manager

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

Siddharth International Public School

Ref. No. SIPS/LR/APR/19/49 *DATE: 31.05.2019*

EXPERIENCE CERTIFICATE

It is to certify that Mr. Arjun Singh S/o Sh. Bhola Singh has been working as Head Clerk in the above said school from 01.07.2017 till now in the pay scale of Rs. 9300-34800/- (Grade Pay 4600/-)

I wish him all the best.

V. Principal/Manager

114. I have no hitch to discard the assertions of the school that confirmation letter issued by Ms. Pushpa, experience certificate issued by Vice Principal/Manager and Salary Slips, are forged. The reason to say so is that no documentary proof in substantiation of the assertions that new management had taken over; Ms. Pushpa was not holding any position in the school, Vice Principal/Manager and Principal were not authorised to issue experience certificates and salary slips were forged etc. has been placed on record. School could have disproved assertions of appellant by placing on record the staff statements under rule 180, appointment letters issued under rule 96, minutes of meeting, individual salary disbursement statements etc. By virtue of mandate of rule 180, Appendix II and circular issued by DOE from time to time school has to maintain such record. At this juncture itself, I deem it expedient to mention that DOE has also failed

to do so as it is the regulatory duty of DOE to keep a record of such like aspect, for ensuring the security of tenure of teachers. For this simple reason of non-substantiation by way of production of best evidence, an adverse inference has to be drawn and is being drawn against the school to the effect that appellant is a confirmed employee. Laxman, Meena Oberoi and Mangal Sain *(supra)* are relied wherein principle of non-revert has been applied for drawing of adverse inference.

115. Even if it is assumed that appellant was on probation on the post of Head Clerk, the fact remains that he having served on the post of Lab Attendant from 1996 to 2011 and on the post of Lab Asst. from 2011-2017, **has to be treated as a confirmed employee at the least on the post of Lab Asst.** as otherwise regulatory provisions shall have no meaning. In a worst case scenario, he could have been reverted to the post of Lab Asst. Instead of doing so school followed another path which has nowhere been prescribed by the legislature.

116. Appointment letter dated nil has been placed on record. Relevant paras of the same reads as under:-

> *To*
> *Mr. Arjun Singh*
> *Lab. Asst.*
>
> **APPOINTMENT LETTER**
>
> *With reference to your application dated 20.09.2011 and subsequent interview/test held on 20.09.2011 in connection with your appointment as a Teacher in this school, we have the pleasure to offer you the post of a teacher on a salary of Rs. 18877 in the grade of Rs. 5200-20200/- besides usual allowances as applicable to other teachers employed in this school.*
>
> *1. Initially, you will be on probation for a period of One Year from the dated of joining. The said period of probation is further liable to be extended for one year solely at the discretion of the Managing Committee. During or at the expiry of the said period of probation or the extended period of probation, the Managing Committee shall have the right to terminate your services without any notice or without assigning any reason. You will continue to be on the probation till your services are confirmed in writing by the Managing Committee.*
>
> *xxx xxx xxx xxx xxx xxx*

117. Relevant para of second appointment letter is as under:-

> *To*
> *Mr. Arjun Singh*
> *H.D.C*
>
> **APPOINTMENT LETTER**
>
> *With reference to your application dated 25.03.2017 and subsequent interview/test held on 26.03.2017 in connection with your appointment as a Teacher in this school, we have the pleasure to offer you the post of a teacher on a salary of Rs. 35481/- in*

the grade of Rs. 9300-34800/- besides usual allowances as applicable to other teachers employed in this school from 01.07.2017.

1. Initially, you will be on probation for a period of One Year from the dated of joining. The said period of probation is further liable to be extended for one year solely at the discretion of the Managing Committee. During or at the expiry of the said period of probation or the extended period of probation, the Managing Committee shall have the right to terminate your services without any notice or without assigning any reason. You will continue to be on the probation till your services are confirmed in writing by the Managing Committee.

Xxx xxx xxx xxx xxx xxx

118. A bare perusal of portions of appointment letters reproduced hereinabove goes to show that school was indulged in issuing of delusive appointment letters. In **Shiv Sharma Vs. Govt. of NCT of Delhi & Anr. and Mukesh Sharma Vs. Govt. of NCT of Delhi and Anr.** in W.P.(C) no. 10398 and 10400, decided on 17.01.2017, DHC has observed as under:-

*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 even against private educational institutions."*

119. I have no hitch to observe that in the absence of prior approval of DOE, every employee whether he/she has been given the nomenclature of contractual, ad-hoc, temporary etc. shall have the protective umbrella under section 8(2) and cases of extension without prior approval or removal without prior approval will amount to be the acts of violation of provisions of DSEA&R and school management shall have to be held liable.

120. I have no hesitation to observe that a probationer will not cease to be on probation and services of an employee will not come to an end on the plea of efflux of time, as argued by Mr. R.M Sinha in the cases where prior approval of DOE has not been obtained. In such cases employee shall be considered as deemed continued on probation with yearly increments. Any contra interpretation will adversely affect the education of school children in the end result as a teacher whose security of tenure is stake will be under great stress and will not be in a position to teach in an optimum way. Giving the interpretation as suggested by R.M Sinha will give unbridled power to school management and employment and teaching will become a business which was never the intention, aim and object of framers of our Constitution.

121. Assertions of Mr. R.M. Sinha that appellant was appointed on probation w.e.f. 01.07.2017 and his services came to an end on 30.06.2018 are not tenable as appellant has been held to be a confirmed employee and in a worst to worst case scenario shall have to be deemed continued on probation in the absence of prior approval of DOE concerning extension

as is the fact situation in this case for the following periods i.e. 01.07.2017 to 30.06.2018; 01.07.2018 to 30.06.2019; 01.07.2019 to 30.06.2020 and 01.07.2020 to 30.06.2021. Appellant shall be entitled to all the consequential benefits as well from the date of termination.

122. The above conclusion is being drawn by me for the reason that school has violated the provisions of section 8(2), rule 105 and 120 of DSEA&R. In **Taylor Vs. Taylor** (1875) LR 1 Ch D 426 and **Nazir Ahmad vs. King Emperor,** 1936 SCC OnLine PC 41: (1935-36) 63 IA 372, followed in **State of UP Vs. Singhara Singh** AIR 1964 SCC 358, it has been held that statutory provisions are required to be acted upon in the manner in which the legislature has provided. In case it is not so done, the person who has not done so has to suffer the adverse consequences. Para 63 of Meena Oberoi, supra is reproduced in substantiation. The same reads as under:-

> *63. There is no compromise on a statutory edict. It stands fossilized, in jurisprudence the world over, from the times of Taylor v. Taylor (1875) LR 1 Ch D 426 and Nazir Ahmad v. King Emperor 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372, both of which have been followed by the Supreme Court in State of U.P. v. Singhara Singh AIR 1964 Supreme Court 358 that, if the law requires an act to be done in a particular manner, that act has to be done in that manner, or not done at all. Expressed otherwise, if the law prescribes a particular manner, in which a particular act is to be done, all other manners of doing that act, thereby, stand proscribed.*

123. Accordingly in view of the mandate of the afore-going judgements, I am concluding that appellant firstly was a confirmed employee or in a worst to worst case scenario was on deemed continued probation by fiction of law for the aforementioned period and appellant will be entitled for regular increments and consequential benefits after alleged date of so called termination.

124. Argument regarding efflux of time having taken away the right of the appellant is not available to the school as a law breaker cannot be given the premium of disobeying of the law.

125. Assertions of R.M Sinha are not tenable as services of the appellant cannot be said to have expired by efflux of time as firstly appellant was confirmed. Secondly, even if the appellant be considered on probation arguendo still the prior approval was required as already discussed in detail.

126. Although in view of aforegoing it is concludable that appellant is confirmed employee, appeal is maintainable even if appellant is considered as an employee on probation in view of latest legal position that there can be no deemed confirmation under DSEA&R after Durgabai Deshmukh, I have no hitch in concluding that appellant is a deemed continued on probation employee and is entitled to yearly increments and other benefits for the reason that school has not complied with rule 105 (1). As per rule 105(1) prior approval is required in the case of extension of probation as well as in case of disengagement of services on the ground of work and conduct of an employee being unsatisfactory.

127. **Another reason independent of afore-detailed** to conclude against the school is that in the termination order issued by Ms. Charu Srivastava, as per provisions of DSEA&R was firstly required to be issued by Disciplinary Authority and secondly the same is stigmatic/punitive and falls within the definition of misconduct as envisaged under rule 123 of DSEA&R. It has been mentioned in the termination order that numerous deficiencies were found in the work of the appellant. This clearly falls under rule 123(1)a(i), 123(1)a(v) of DSEA&R.

128. School has not produced the show cause notices as mentioned in brief facts of the case at page 118-121 of the paper book. Therefore an adverse inference is being drawn against the school that work and conduct of the appellant was upto the mark and disengagement of services on this ground is untenable. Assuming arguendo that show cause notices were issued then the perusal of pleadings of the respondent school at page 118-120 goes to show that show cause notices which are foundation and motive, are stigmatic/punitive coming within the purview of misconduct under rule 123 of DSEA&R for which an inquiry was required to be conducted which admittedly has not been done for the reason that school has not resorted to rule 118 & 120 read with rule 123 of DSEA&R which school was duty bound to do.

129. As per complaint dated 17.06.2009, of Abhishek Gupta allegations of serious mismanagement of funds have been levelled. As per show cause notice dated 17.01.2020, appellant was not keeping his personal file updated and had not deposited his updated resume. As per show cause

notice dated 17.01.2020, Chemistry Lab was found to be unkept and dirty, chemicals were also found unlabelled. Further during the chemistry practical, students were found with the chemicals on account of appellant being busy on phone.

130. In the show cause notice dated nil, allegations of giving all incorrect information of books, giving of false information about books not being available, have been levelled as a result of which parents got frustrated. Further assertions are that appellant was found missing from the book sale counter, mismanaging the funds and was exhibiting irresponsible behaviour.

131. The aforedetailed pleadings categorically lead to the conclusion that the allegations are stigmatic and fall within the definition of the misconduct under rule 123 of DSEA&R. It is no more res-integra that in case of disengagement of services of a probationer as well an inquiry was required to be conducted in cases of misconduct.

132. An inquiry is required to be conducted even by minority schools although the rigour of 8(2), 105 & 120(2) will not apply. The reason to say so is inferable from the mandate of **Managing Committee Mount Sr. Mary's School Vs Nirvikalp Mudgal** bearing W.P.(C) No. 7375/2012, decided on 03.10.2013, reported in MANU/3509/2013. Relevant portion of para no.1, para 2 and para 3 are reproduced:

> *"Before me, the following grounds have been urged by the petitioner for setting aside impugned judgement:*
>
> *(i) The provision of rule 105 which falls in Chapter VIII of the Delhi School Education Rules, 1973, will not apply to the petitioner because petitioner is an unaided minority school.*
>
> *** *** *** *** *** ***
>
> *2. So far as the argument that provision of Rule 105 of Delhi School Education Rules, 1973 does not apply to unaided minority school, this issue is no longer res intergra and has been directly pronounced upon by the Supreme Court in the case of Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors., MANU/SC/0556/2005: (2005) 7 SCC 472 and which holds that employees/teachers even of minority unaided schools will have complete statutory protection and all statutory rights under all the provisions of Delhi School Education Act and Rules, 1973. Para 10 of the judgment in the case of Management Committee of Montfort Senior Secondary School (supra) is relevant and the same 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 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. Sidhajbhai 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 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 Anthon'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...

3. Counsel for the petitioner sought to argue that as per Rule 96, the provisions of Chapter-9 of the Act and the other relevant rules will not apply to the petitioner-school because the petitioner is a minority unaided school. However, I need not at all got into this aspect because in spite of the fact that the statutory provisions which are quoted on behalf of the petitioner before me, the Supreme Court in the case of Management Committee of Montfort Senior Secondary School (supra) has categorically held that the services of teachers in minority unaided schools also are governed by the complete statutory regime proved under the Delhi School Education Act & Rules , 1973. As already stated, the complete scheme which is applicable applies to service conditions, tenure, pay-scales, termination, removal etc. and as so stated in para 10 in Management Committee of Montfort Senior Secondary School (supra) reproduced above. I therefore reject the argument that petitioner-school is not bound by the provision of Rule 105 because the petitioner is a minority unaided school."

133. Rule 120 of DSEA&R uses the words "no order imposing on **an employee** any major penalty shall be made except after an inquiry". Rule 120 (3) uses the word **"any employee"**. A conjoint reading of section 2(h), section 8(2), rule 105, legal precedents and conclusion drawn hereinbefore lead me to conclude without any hitch that if the conduct of any employee falls within the ambit of rule 123, then conduct of inquiry is a must w.r.t.

every employee vis-à-vis probationer, contractual, ad-hoc/ temporary/ permanent. Admittedly it has not been so done.

134. Use of word **"any"** is significant as it is also very wide and all encompassing like "every" or "otherwise" in rule 105, 'any' in section 8(2) with the only exception of the appointments under rule 105(3). Rule 123(1)(a)(i) goes to show that an employee who knowingly or wilfully neglects his duties commits misconduct and therefore, an inquiry is required to be conducted against such misconduct.

135. Rule 123(1)(a)(i), (iv), (v), (vi), (vii), (viii), (xvi), (xvii), 123(1)(c) (i) & (ii) are of wide amplitude and many of them stand attracted in this case if the allegations of school of show cause notices which have not been produced are considered. In the absence of inquiry, any employee whether he is contractual, temporary, ad-hoc, probationary or confirmed, cannot be said to be legally disengaged.

136. In the termination order itself it has been mentioned that numerous deficiencies were found in the work of the appellant. This will come within the definition of 123(1)(a)(i) as a teacher who has abundance of deficiencies in his work can be said to be knowingly or wilfully neglecting his duties. Since an inquiry was required to be conducted as per rule 118 & 120, which has not been conducted, termination order is illegal in law.

137. In view of the afore-going discussion, I have no hesitation to allow the appeal and quash the orders dated 03.07.2020. Arguments of Sh. R.M Sinha & P.M Sinha are not tenable in view of the afore-going discussion **as well as in view of the fact that admitted case of the school is that appellant at the time of termination was on probation. I have no hesitation to observe that arguments of Sh. R.M Sinha are contrary to own case of the school in its termination orders and documents for the reason that as per records of the school, admitted case of the school is that appellant was on probation.** Therefore, I have no hesitation to observe that arguments of Mr. Sinha are not tenable in the light of admitted case of the school as well as otherwise.

138. Questions posed by Mr. R.M Sinha and my answers of the same are as follows:-

Q1. (i) Whether the approval of the Director of Education is required? If the probation period is expired by afflux of time from the date of initial appointment and the period of probation is neither extended nor the services of the employee is confirmed by the management of the school.

***Ans.** Yes. Obtainment of prior approval was/is a must. Even in cases where probation period has expired by efflux of time and probation is neither extended nor the services of an employee are confirmed, prior approval was a sine qua non and in case of its non-obtainment such an employee shall be considered as deemed continued on probation.*

***(ii).** Whether an employee ceases/continues to be an employee of the school whose probation period is expired by afflux of time from the date of initial appointment and the same is neither extended nor the services of the employee is confirmed by the management of the school.*

***Ans.** Continues to be an employee on deemed continued on probation.*

(iii) Whether the appeal is maintainable before this Hon'ble Tribunal under section 8(3) of the act, if the probation period is expired by afflux of time from the date of initial appointment and the same is neither extended nor confirmed by the management of the school.

***Ans.** Yes.*

(iv) Whether the relief of reinstatement as prayed can be granted? if the probation period is expired by afflux of time from the date of initial appointment and the same is neither extended nor confirmed by the management of the school. Since the appointing authority is the school and none else.

***Ans.** Yes.*

Q2. Whether the judgement of Supreme Court of India in Raj Kumar case in given case is applicable as the present dispute does not deal with the point of the services i.e. if the probation period is expired by afflux of time from the date of initial appointment and the same is neither extended nor confirmed by the management of the school.

***Ans.** Yes.*

***Q3.** Without prejudice to issue no. 2; whether Raj Kumar case is binding precedent since it is direct conflict of the T.M.A Foundation judgment?*

Ans. Raj Kumar is binding precedent. It is not at all in conflict with T.M.A Pai.

139. In view of reasons given hereinbefore, termination order dated 03.07.2020, is set aside. Appellant shall be deemed continued on probation upto the date of termination and thereafter, appellant shall be entitled to full back wages and consequential reliefs/benefits. Appellant shall also be entitled to yearly increments as per her tenure of service. Managing Committee of Respondent School is directed to reinstate the appellant

within a period of 4 weeks. Appellant will be entitled to full wages from the date of order onwards.

140. With respect to back wages, in view of Rule 121 of DSEA&R 1973, read in the light of **Guruharkishan Public School, through its managing committee & Directorate of Education** reported in 2015 Lab IC 4410 (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 she is entitled to complete wages. The Respondent school is directed to decide the representation to be given by the appellant within 4 weeks of receiving of the same by a speaking order and to communicate the order alongwith the copy of the same to the appellant. Ordered accordingly. File be consigned to record room.

(Dilbag Singh Punia)
Presiding Officer
Delhi School Tribunal

Date: 02.06.2022