* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 18th August, 2023**

\+ W.P.(C) 3362/2019 and CM APPL. No. 15437/2019 ,44624/2021 44089/2022

DAV PUBLIC SCHOOL AND ANR. ..... Petitioners

Through: Ms.Nikita Anand, Advocate

versus

KOMAL PANWAR ..... Respondent

Through: Mr.Anuj Aggarwal, Advocate for R-1
Mr.Gaurav Dhingra, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

> *"a) Issue a writ of certiorari or any other writ or order or direction under Article 226 and 227 of the Constitution of India in setting aside the impugned order dated 28.02.2019 passed by the Ld. Delhi School Tribunal in Appeal No. 43/2018; and*
> *b) Pass any such order or further orders that this Hon'ble Court may deem just and fair in the facts of the case, in the interest of justice."*

2. The respondent No. 1 (hereinafter "respondent teacher") is a

teacher by profession and has been working as a Primary Physical Education Teacher [hereinafter "PRT (PET)"] with the petitioner No. 1 (hereinafter "petitioner school") since 2014.

3. The present petition has been filed by the petitioner school challenging the legality and validity of the impugned order dated 28th February 2019, in Appeal bearing No. 43/2018, passed by the learned Delhi School Tribunal (hereinafter "learned Tribunal"), directing the petitioner school to reinstate the respondent teacher.

4. Learned counsel appearing on behalf of the petitioner school submitted that the respondent teacher was employed with the petitioner school on a contractual basis since 1st July 2014, and thereafter, reappointed on contractual basis on 15th July 2016, after conducting a fresh interview process on 11th July 2016. The said reappointment was concluded by the efflux of time in May 2018.

5. It is submitted that the respondent teacher had filed an appeal against her alleged illegal termination before the learned Tribunal. The respondent teacher in her appeal admitted that she was contractually appointed from 1st July 2014, till May 2016, with no subsequent guarantee of employment. Similarly, after the fresh interview conducted on 11th July 2016, a memorandum dated 15th July 2016, was issued to the respondent teacher recording that the services of the respondent teacher can be terminated without notice by the petitioner school.

6. It is further submitted that a meeting was conducted between the petitioner school and the respondent teacher on 9th August 2018, subsequent to which, the petitioner school offered the respondent teacher an appointment to the post of PRT (PET), which she declined. Further,

the respondent teacher failed to report to work on 10th August 2018. Thereafter, the petitioner school inquired the respondent teacher regarding her willingness to join her duties, instead, she served the petitioner school with a legal notice on 16th July 2018, accusing the petitioner school of illegally terminating her services.

7. It is submitted that the learned Tribunal failed to take into consideration Rule 105 (3) of the Delhi School Education Rules, 1973 (hereinafter "DSEAR"), wherein, an employee who has been appointed to fill a temporary vacancy for a limited period cannot after expiry of the said period, automatically acquire the status of a permanent employee.

8. It is further submitted that according to the judgement of a Coordinate Bench of this Court in ***Mrs. Aradhana Goel v. Balwantray Mehta Vidya Bhawan & Anr.*, W.P(C) No. 8165/2007**, it is a settled law that the employer is the concerned authority for judging the suitability of the services of a probationer and this Court cannot substitute its decision for that of the employer for any reason and if the probationer is found to be unsuitable for the service, such services of the probationer can be terminated in accordance with the appointment letter.

9. It is submitted that the petitioner school has paid Rs. 1,45,313/- to the respondent teacher as maternity benefits w.e.f. 1st December 2017, to 29th May 2018, and no further benefits are due to the respondent teacher.

10. In view of the foregoing submissions, it is submitted that the impugned order dated 28th February 2019, passed by the learned Tribunal in Appeal bearing No. 43/2018, is against the settled principles of law and therefore, is liable to be set aside.

11. *Per Contra*, the learned counsel appearing on behalf of the

respondent teacher vehemently opposed the instant writ petition and denied the averments made by the petitioner.

12. It is submitted that the respondent teacher was appointed on probation basis on 1st July 2014, and her services were confirmed by the petitioner school on 11th July 2016. On 2nd July 2018, *vide* an oral order, the services of the respondent teacher were terminated illegally by the petitioner school.

13. It is further submitted that the same is in violation of Section 8 of the Delhi School Education Act, 1973 (hereinafter "DSE") and Rule 118, 120 & 123 of the DSEAR. Furthermore, no prior approval for termination was taken by the petitioner school from the South Delhi Municipal Corporation (hereinafter "SDMC").

14. It is submitted that the present writ is liable to be dismissed since the petitioner school is guilty of misleading this Court by averring wrong facts, thereby, concealing that the respondent teacher was a confirmed employee.

15. It is further submitted that as per the judgment of ***Municipal Corporation of Delhi vs. Asha Ram and Anr.*** **2005 (80) DRJ 750**, there is no perversity in the impugned order passed by the learned Tribunal which may call for the interference of this Court under the present writ petition.

16. It is submitted that as per the report received from the SDMC through an application filed under the Right to Information Act, 2005, it is evident that the respondent teacher was a confirmed PRT (PET).

17. It is submitted that in gross violation of the provisions of DSEAR, the respondent teacher by way of refusal of duty, was illegally terminated

on 2nd July 2018, *vide* an oral order of the petitioner school.

18. Hence, in view of the foregoing submissions, the respondent teacher seeks that the instant petition being devoid of any merits is liable to be dismissed with costs.

19. Heard the learned counsel for the parties and perused the records including the pleadings and the judicial precedents cited.

20. Before delving upon the relevant issues arising in this petition, it is necessary to set out the relevant facts here.

21. The petitioner school submitted that from 2014 to 2016, the respondent teacher was employed on a contractual basis with no subsequent guarantee of further employment and by efflux of time her employment was concluded in May 2018. On the other hand, the respondent teacher submitted that the petitioner school appointed the respondent teacher on probation basis on 1st July 2014, and thereafter, confirmed her services on 11th July 2016. It has been alleged that the respondent teacher was terminated illegally on 2nd July 2018, and aggrieved by the same, the respondent teacher filed an appeal before the learned Tribunal. The learned Tribunal *vide* the impugned order dated 28th February 2019, allowed the appeal and directed the petitioner school to reinstate the respondent teacher. Hence, the petitioner being aggrieved by the said order has approached this Court challenging the impugned order. The relevant portion of the impugned order is reproduced below:

> "*8. Certainly the appellants were confirmed employees of the respondent school. Accordingly to the appellants, they were terminated vide oral order dated 02.07.2018. However, according to respondent school, appellants had stopped coming to the school. In any case, in view of law laid down*

by the Hon'ble Supreme Court in Shashi Gaur Vs. NCT of Delhi (2001) 10 SCC 445, the case of appellant falls in the category of "otherwise termination". It is well settled legal proposition that no confirmed employee can be terminated without following the provisions of Rule 118 & 120 of DSEAR, 1973. It is apparent in this case the appellants were terminated without following the provisions of Rule 118 & 120 of DSEAR, therefore, their alleged oral termination order dated 02.07.2018 is illegal and arbitrary, hence the same is set aside. Even otherwise, respondent No.1 and 2 vide letter dated 14.08.2018 admitted that both the appellants were confirmed employees. In these circumstances, R-1 & R-2 are directed to reinstate the appellants within a period of four weeks from today. Appellants will be entitled for full wages from the date of this order onwards along with all the consequential benefits.

9. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules,1973, the appellant is directed to make exhaustive representation to the R-1 & R-2 within a period of 4 weeks from the date of this order, as to how and in what manner the appellant will be entitled to complete wages. The respondent No.1 & 2 are directed to decide the representation given by the appellant within 4 weeks of receiving the same by a speaking order and to communicate the order along with the copy of the same to the appellant. Order accordingly."

22. The petitioner school is managed by the petitioner No. 2 management and is recognized under the DSEAR, thereby, governed by the respondent Directorate. No doubt, that the petitioner School is an unaided private school, however, it is well within the bounds of the DSEAR, and is therefore, legally obliged to implement the orders or directions given by the Government of Delhi. Rule 118 of the DSEAR, provides that every recognized private school whether aided or unaided,

is required to constitute a disciplinary committee. The said Rule is reproduced hereunder:

> "***118. Disciplinary authorities in respect of employees-*** *The disciplinary committee in respect of every recognized private school, whether aided or not, shall consist of-*
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> *(i) the chairman of the managing committee of the school;*
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> *(ii) the manager of the school*
>
> *(iii) the nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;*
>
> *(iv) the head of the school, except where the disciplinary proceedings is against him and where the disciplinary proceeding is against the Head of school, the Head of any other school, nominated by the Director;*
>
> *(v) a teacher who is a member of the managing committee of the school; nominated by the Chairman of such managing committee.*"

23. The language of the above said provision clearly lays down that a private school, whether aided or unaided is required to formulate a disciplinary committee. The said provision is also supplemented by the Rule 120 of the DSEAR, which mandates that a major penalty cannot be imposed upon an employee by the school prior to an inquiry conducted by the disciplinary committee in a manner specified under the said Rule. The aforementioned Rule is reproduced hereunder:

> **"*120. Procedure for imposing major penalty-*** *(1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below: -*
>
> *(a)the disciplinary committee authority shall frame definite charges on the basis of the allegation on which*

the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defence and also to state whether he desires to be heard in person;

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

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

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

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

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

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

(iv) after considering the representation made

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

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

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

24. The learned Tribunal observed in its impugned order that the respondent No.1 & 2 (before the learned Tribunal) i.e., the petitioner school and the Management specifically admitted in their counter affidavit in the Appeal bearing no. 43/2018, that the appellant i.e., the respondent teacher herein, was confirmed as a permanent employee to the post of PRT (PET) w.e.f. 9th August 2015.

25. Accordingly, the learned Tribunal placed reliance on the judgment of the Hon'ble Supreme Court in ***Shashi Gaur vs. NCT of Delhi*, (2001) 10 SCC 445** and decided that the termination of the respondent teacher falls within the category of '*otherwise termination*' and the same is in complete contravention to the provisions of Rule 118 and 120 of the DSEAR.

26. In the case of ***Shashi Gaur (Supra)***, the Hon'ble Court therein, categorically held that under Section 8 (3) of the DSE, termination can be challenged in an appeal except in cases where the service comes to an end by an efflux of time. In other words, the statute provides for remedy of an appeal to the teachers who are taken out of the service on the whims of the Management of the Institution and Government. Relevant paragraph of the aforementioned judgement is reproduced herein-

> "*5. Mr. Das, the learned senior Counsel appearing for the appellant, contends that Section 8(3) provides for an appeal against an order of dismissal, removal or reduction in rank and not against any order of termination as is apparent from the provisions contained in Sub-section (2) of Section 8, which provides for obtaining prior approval of the Director before dismissal, removal or reduction in rank or otherwise terminating the services of an employee of a recognised private school. The very fact of absence of the expression "otherwise termination" available in Subsection (2) from the provisions of Sub-section (3) clearly demonstrates that against an order of termination which does not come within the expression "dismissal, removal or reduction in rank", the Legislature has not provided for an appeal to the Tribunal constituted under Section 11 of the Act.*"

27. Furthermore, the Hon'ble Supreme Court in ***Raj Kumar vs. Director of Education and Others,* (2016) 6 SCC 541**, has held that the termination of an employee, will be bad in law if it is obtained without prior approval of the Director of Education. Section 8 (2) of DSE, is a procedural safeguard enacted by the legislature with a clear intent to provide security of tenure to employees and to regulate the terms and conditions of their employment. It further ensures that an employee is not terminated in an arbitrary or unreasonable manner without the approval of

the Director, even by a private school. The relevant paragraphs of the aforementioned judgement are reiterated herein:

> "*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 favour 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 recognised private school.*
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> *x x x*
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> *48. At this stage, it would also be useful to refer to the Statement of Objects and Reasons of the DSE Act, 1973. It reads as under:*
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> > *"In recent years the unsatisfactory working and management of privately managed educational institutions in the Union Territory of Delhi has been subjected to a good deal of adverse criticism. In the absence of any legal power, it has not been possible for the Government to improve their working. An urgent need is, therefore, felt for taking effective legislative measures providing for better organisation and development of educational institutions in the Union Territory of Delhi, for ensuring security of service of teachers, regulating the terms and conditions of their employment. ... The Bill seeks to achieve these objectives."*
> >
> > *A perusal of the Statement of Objects and Reasons of the DSE Act would clearly show that the intent of the legislature while enacting the same was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment.*
>
> *49. In Principal v. Presiding Officer [Principal v. Presiding Officer, (1978) 1 SCC 498 : 1978 SCC (L&S) 70] , a Division Bench of this Court held as under : (SCC p. 503, para 7)*

> *"7. Sub-section (2) of Section 8 of the Act ordains that subject to any rule that may be made in this behalf, no employee of a recognised 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 of Education. From this, it clearly follows that the prior approval of the Director of Education is required only if the service of an employee of a recognised private school is to be terminated."*

28. In the instant case, this Court has taken into consideration the facts and documents placed on record and observes that the service of respondent teacher is clearly recorded as that of a permanent employee by the petitioner school. Furthermore, the observation laid down by the learned Tribunal are also been considered, wherein, the learned Tribunal placed reliance on the counter affidavit of the petitioner school in the Appeal bearing no. 43/2018, which stated that the petitioner school accepted the respondent teacher as a permanent employee. Thus, proving that the respondent teacher was terminated in contravention of the provisions of Rule 118 and 120 of the DSEAR. Therefore, this Court is of the view that the respondent teacher was a permanent employee of the petitioner School.

29. Now, delving into a peculiar question raised in this petition, in regard to the entitlement of back wages. This Court is of the view that based on the observations mentioned herein above, the respondent teacher is entitled to back wages as directed *vide* the impugned order dated 28th February 2019, passed by the learned Tribunal. The Hon'ble Supreme Court in the judgment of ***Sunil Sikri vs Guru Harkrishan Public School***

***& Anr.*, 2022 SCC OnLine SC 926**, held that when an appeal to the Delhi School Tribunal is filed under Section 11 of the DSE, and the employee is reinstated, then the provision is not merely an enabling one since it confers upon the Managing Committee of the school, a power that becomes a duty to consider and any other view would put the employee at the mercy of the employer, which is not the intent of the DSE.

30. Therefore, in light of the observations made by this Court in the foregoing paragraphs, it is held that the respondent teacher is entitled to reinstatement as held by the learned Tribunal. This Court finds no infirmity in the impugned order passed by the learned Tribunal and hence, upholds the impugned order 28th February 2019, passed by the learned Tribunal in Appeal bearing No. 43/2018.

31. In view of the above discussion of facts and law, this Court discerns no material in the propositions put-forth by the petitioner school and thereby, the instant writ petition is dismissed.

32. Accordingly, pending applications, if any, also stand dismissed.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 18, 2023
SV/RYP

Click here to check corrigendum, if any