

BEFORE DR. SATINDER KUMAR GAUTAM, PRESIDING OFFICER,
DELHI SCHOOL TRIBUNAL
LUCKNOW ROAD, TIMARPUR, NEW DELHI

Appeal No. 07/2023

Date of Institution 06.04.2023
Date of Disposal 01.07.2024

IN THE MATTER OF:-

Meera Srivastava
W/o Sh. Rajeev Srivastava
R/o B-125, Time Media House,
Sadatpur Colony, Karawal Nagar,
Delhi-110094
(Through: Mr. Anuj Aggarwal, Advocate)Appellant

V/s.

Taksila Public School,
Through Its Principal/Manager,
Jyoti Colony Extension,
Delhi-110094
(Through: Mr. Kanwar S.N., Advocate)Respondent no. 1

Taksila Public School Education Society,
Through its President/Chairman,
C-10/1, Krishna Nagar, Delhi-110051
(Through: Mr. Kanwar S.N., Advocate)Respondent no. 2

Directorate of Education,
Director of Education
Govt. of NCT of Delhi,
Old Secretariat, New Delhi-54
(Through: Ms. Bindiya Savara, Advocate)Respondent no. 3

Ms. Sushma Ahluwalia,
The Chairman,
C/o Taksila Public School,
Jyoti Colony Extension, Delhi-110094
(Through: Mr. Kanwar S.N., Advocate)Respondent no. 4

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JUDGMENT

1. The appellant challenged her terminated letter dated 04.01.2023 issued by the R-1 school which is alleged to be illegal, unjustified, arbitrary, discriminatory, punitive, perverse, unreasonable, unconstitutional, violative of Articles 14, 16, 21 and 311 of the Constitution of India, violative of the principles of natural justice, suffers from malice, violative of the provisions of DSE Act, 1973 as well as Rules.

2. The appellant joined the R-1 school w.e.f. 01.07.2012 on the post of Vice-Principal as a permanent/confirmed Vice-Principle, while she has applied for the post of PGT Biology, receptionist/clerk in the advertisement of R-1 school but the appellant interviewed for appointment on the post of Vice-Principal. The appellant duly fulfils all the requisite qualifications of the post of Vice-Principal as well as PGT Biology in terms of the recruitment rules for the said posts.

3. It is further submitted that the appellant was appointed as Principal by the R-1 school w.e.f. 01.12.2013 on contract basis for a one year. R-1 school informed the Education Officer, Zone-V, Shahdara, Delhi about the appointment of the appellant as the principal on ad-hoc basis for a period of one year w.e.f. 01.12.2013. W.e.f. 25.05.2015 the appellant was confirmed (made permanent) on the post of Principal by R-1 School vide its decision in its SMC meeting held on 24.02.2015 & 03.09.2015.

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4. It is averred by the appellant that she along with other employees of the R-1 school were entitled to receive salary in terms of Section 10 of the Delhi School Education Act, 1973, but said benefits were illegally denied by the R-1 school to them. During the year 2017 DOE' representative inspected the school questioned R-1 regarding extremely low salary to all the employees including appellant. The R-1 school started pressurize the appellant to tender resignation in order to terminate her services. The appellant refused to accede to any of the illegal demands of the R-1. Consequently upon, several memos/show cause notices were issued to the appellant thereby leveling frivolous and factually wrong allegations upon the appellant but appellant duly replied to all the memos/show cause notices.

5. In April 2020 purportedly due to Covid-19 Pandemic Lockdown, the R-1 school reduced the salary of all the employees by 50% including appellant without any prior notice/information to any of the staff. The same had continued during the year 2021 (with 25% salary) and till March, 2022. On repeated representations to DOE by the school employees R-1 started paying the arrears of deduced salary in installments w.e.f. April, 2022.

6. The appellant submitted all her original certificates to the R-1 school regarding her qualifications at the time of appointment, but on 14.01.2019 the Manager of the R-1 directed the appellant to produce all her qualification certificates from 10th to B.Ed. in original as well as photocopies so that the same could be attested. In compliance of order dated 14.01.2019, the appellant again submitted her qualifications

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certificates before the R-1 vide email dated 24.01.2019. The appellant retained her most of the qualification certificates from R-1 till April, 2019.

7. It is also submitted that the appellant complained to the PMO (Prime Minister Office) on 21.12.2020 regarding harassment of the principal regarding salary (Not complied with Govt. Rules; and unlawful deductions and violation of Service Rules). The appellant's nature of appointment was unilaterally and unlawfully changed from regular to ad-hoc by the respondent from year 2020. In this regard, several rounds of enquiries were conducted by the DOE after the order from the PMO in 2021 and 2022, yet there was no visible progress in this regard. Vide order dated 02.01.2023 R-1 school leveled several allegations against the appellant including the allegations of embezzlement of funds, etc. which are extremely serious and factually wrong and frivolous and were leveled with the sole objective to victimize the appellant.

8. The appellant discovered that answer-sheets of the students of Class-12th pertaining to the board practical exams were missing from the R-1 school, the appellant was constrained to dial a 100 number call and informed the police regarding the said incident. One police constable visited the school premises to whom the appellant informed about the aforesaid incidents and about Principal's stamp was also missing from the Principal's office.

9. The services of the appellant were illegally terminated vide impugned order dated 04.01.2023 which appellant received on 06.01.2023 along with a show cause notice dated 02.01.2023 via speed

post on same day. The impugned order of termination is in violation of Section 8 of the DSE Act, 1973. The Impugned termination order is also in violation of Rule 105 of DSER, 1973 It is mandatory for a school to take prior approval from the DOE before terminating a permanent/confirmed employee which is declared by the Hon'ble Supreme Court in ***Raj Kumar Vs. Director of Education &Ors. (2016) 6 SCC 541.***

10. The impugned order dated 04.01.2023 was issued by the Chairperson of the R-1 School who was not a competent authority to pass such order. The competent authority to pass the termination order is a DAC as constituted under Rule 118 of DSER, 1973. No DAC was constituted as required under Rule 118 of the DSER, 1973. It is also submitted that no SMC meeting was conducted before terminating the services of the appellant where the purported decision was taken regarding the termination of service of the appellant. The composition of the said SMC was in violation of Rule 59 of the DSER, 1973.

11. The termination order dated 04.01.2023 is also in complete violation of Rule 120 & 123 of the DSER, 1973. This is also in complete violation of Principle of Natural Justice as no opportunity of being heard was afforded to the appellant before passing the such impugned termination order.

12. The appellant made a written complaint to the DOE against her illegal termination vide dated 12.01.2023. In terms of complaint dated 12.01.2023 the officials of DOE visited the R-1 school

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on 18.01.2023 in the presence of appellant, during the enquiry the appellant's termination order dated 04.01.2023 was revoked by the President/Chairman of TPSES Sh. Amar Singh Kalsi (Who unfortunately died on 05.02.2023) vide letter dated 16.01.2023.

13. The appellant visited the school to rejoin the service in terms of the letter dated 16.01.2023, however, appellant was not allowed to resume duty and was refused duty by R-1 School. Even though, the termination order dated 04.01.2023 was affixed on the outer side of the school on main gate which is defamatory and amount to mental, physical and social harassment of the appellant.

14. The appellant through her counsel served a legal notice dated 28.03.2023 upon the respondents, that was received but no reply to the said legal notice has been received by the appellant till date.

15. The appellant has prayed to set aside the impugned order dated 04.01.2023 and reinstate her on the post of Principal with all the consequential benefits (monetary as well as non-monetary) thereof including continuity of service, full back wages/salary etc.

Reply on behalf of Respondent no. 1, 2 & 4.

16. It is submitted that the present appeal is not maintainable in law for being apparently void ab initio, blatant abuse of process of law and deserves outright dismissal with exemplary costs against the appellant and in favour of the respondent school. The appellant after learning of vacancy of PGT (Biology) in the school, approached it, however failed to do so and sought contractual work deceptively in move

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of her calculated ulterior motives but impressing her bonafide wrongly to win confidence, on filing copy of some bared testimonials of unabated promise & assurance to avail original thereof & prove her proficiency, shortly etc. Despite persisted persuasion by the school for long, it made efforts to assert veracity of the copy of the testimonial submitted by appellant as to afore, addressing the certificate issuing authority, which also proved of no avail. After that, school within rights placed matter before SMC, to which SMC decided to dispense appellant's contractual service with immediate effect without initiating deterrent action against appellant for filing fake eligibility testimonials fraudulently & causing criminal breach of trust.

17. The appellant procured aforesaid contractual work with the school deliberately misplacing copy of certificate of qualification/ experience but withheld originals to sway assertion thereof obviously to belie & allege differently time & again. And on school's persistence to file originals of the alleged testimonials, she again in move to sway the efforts so made, falsely pretended of having submitted the same in the year 2012. The respondent school within its bona fide availed appellant number of opportunities time and again to submit qualification/ experience certificates in original to assert veracity of copy of certificates submitted by her & establish her afore proficiency in teaching the subject matter (PGT Biology) and to establish her eligibility to the post.

18. It is also contended that it was improbable & not feasible to appoint her on any regular post, what to say of her confirmation (made permanent) on the post of Principal w.e.f. 25.05.2015 as alleged.

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However, afore truthful emerged & become known to the DOE nominee during school's periodic inspection as well. .

19. Appellant deliberately not submitted the original testimonials, despite school's availing her number of opportunities for long and despite copy of testimonials so availed were inconsistent & under no stretch of imagination even did confide nor apparently was it feasible that she could have been physically present at two different & distant places at same & one time viz. Undergoing studies at Aryvert college of Education, Adampur Dadri (Bhiwani), Haryana & teaching at Sardar Patel Public Senior Secondary School as PGT (Bio), Karawal Nagar in Delhi. Copy of testimonials submitted by appellant being fake/ made up & warranted requisite action in the matter by SMC, which culminated in dispensing her contractual service.

20. After demise of the Director of the School, vested interests including appellant hijacked administration of the school in March 2022 in absence of the Secretary & Manager of the school.

21. On learning above adverse situation caused by the wrong doers, the respondent had take reins of administration in her hands and addressed letter dated 21.12.2022 to Principal, Aryavart College of Education, Adampur Dadri (Bhiwani) to assert veracity of the certificate dated 30.01.2011 of her being regular student of the college acquiring B.Ed qualification which obviously proved of no avail and in the circumstances, the certificates submitted by appellant did not confide of being genuine and that she could have been ostensibly appointed on

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her being successful to hold the alleged regular post of vice-principal/Principal on being eligibly qualified/ experienced & proving her proficiency in delivery of subject matter. As such in afore scenario, it was next to impossible that she could have been appointed against a regular post of vice principal/ principal as alleged.

22. Respondent school also submitted that appellant was never appointed to any regular post in the school for lacking proficiency in teaching subject matter & failing to submit requisite qualification/ experience of her eligibility for the post, despite availing no. of opportunities while working with the school on contractual terms time to time. The DOE nominees did assert as to aforesaid during periodic school inspections & the school did inform the DOE vide its reply dated 24.05.2014 as also in year 2017/2019.

23. The appellant unable to submit the requisite qualification & experience testimonials and wrongly alleged against the school of non-return of originals & in move to establish her false claim she allegedly sent repeated e-mails seeking return of non-submitted original documents to trivialize the whole matter wrongly. Appellant has hijack school's administration, collection of school fee in case in move to unlawfully siphon & misappropriate the school funds. Appellant did not deposit the amount of EPF contribution. As such appellant held herself guilty for the offence & liable to be prosecuted as per law besides being answerable thereto.

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24. It is pertinent to state that contents of admitted contractual appointment cannot be belied by ancillary communication to 3rd party as made up/ pretended wrongly. Purported confirmation/ permanency did neither exist nor was caused or could have been contemplated in any form or kind much less than as alleged against specific contractual work.

25. It is also pertinent to state that show cause notice was sent on 03.01.2023 by post & alleged order dated 04.01.2023 was served on 04.01.2023 firstly by hand & on her refusal to receive, it was sent by post & whatsapp by the respondent within bonafide. And it is ostensive that the appellant intentionally & deliberately with particular ulterior motives evaded service/ receipt thereof the notice for long despite learning contents thereof and further committed unlawful fabricating documents as also vicious forged documents against the answering respondent in the name of Sh. Amar Singh Kalsi, purporting him President/ Chairman wrongly & even forging his signature despite his being debilitated & bed ridden and which could no way would have been constructed/ contemplated/ issued in any form or kind much less than as alleged etc. Appellant also did not hesitate to influence DOE wrongly as evidence from her unwarranted communication in issue of unauthorized show cause notice dated 25.02.2023 against the school.

26. It is prayed by the respondent school that to dismiss the present appeal with heavy costs against the appellant in favor of the school and grant any other relief in favour of the school & against the appellant as deemed fit & proper.

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Reply of Respondent no. 3/(DOE)

27. It is submitted that Takshila Public School is a private unaided recognized sr. sec school and as per staff statement submitted by school under Rule 180, DSEAR 1973 for the academic session 2012-13 & 2013-14. Mrs. Meera Srivastava/ appellant was designated as Vice Principal appointed on 01.07.2012 with (7500-10000) pay scale. Further as per the staff statement for the academic session 2014-15 Mrs. Meera Srivastava/ Appellant was shown as Principal with total pay Rs. 27000/- only without any scale. In 2018-19 academic session Mrs. Meera Srivastava/ Appellant was shown as Principal, regular with pay band (15600-39100) with grade pay of 7600 then in 2019-20, 2020-21, 2021-22 & 2022-23 appellant shown as Principal.

28. Appellant was terminated from the service vide order dated 04.01.2023 issued by Chariman, Taksila Public School (SMC). Further, no correspondence regarding approval from the Directorate of Education has been received till date from Takshila Public School, which is mandatory under Sub Section (2) of Section 8 of DSEA 1973 before terminating any employee, the Directorate of Education issued an order dated 20.05.2016 wherein all the private recognized unaided school were directed to comply with the provision of Sub Section (2) of Section 8 of Delhi School Education Act 1973 and its connected rule 120 (1) (d)(ii) and (iv) and rule 120(2) of the DSER 1973 with effect from the date of aforesaid judgment of Hon'ble Supreme Court in Civil Appeal no. 1020 of 2011 in the matter of **Raj Kumar Vs. Directorate of Education and ors.**

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29. A show cause notice was issued to the manager/ management committee of Takshila Public School by DDE (NE-II) vide no. F.52(2)/PB/2021/NC-II/551-557 for explanation of the same. The respondent school had replied to the same. However, school was directed vide email dated 25.05.2023 to provide relevant documents in r/o Ms. Meera Srivastava appellant such as appointment letter, salary/ arrear status, etc. Respondent school has submitted reply to the legal notice vide letter no. TPS/2023/0278 dated 06.06.2023. The DDE Zone V District NE-II vide email dated 22.06.2023 directed the Principal/ Manager of the said school to provide additional information in r/o appellant.

30. It is submitted that as per staff statement submitted by Takshila Public School under rule 180, DSEAR 1973 for the Session 2012-13, the qualification of the appellant is M.Sc. B.Ed. The school is bound to comply with the Section 10 of DSEAR 1973 which read as under:-

"10. Salaries of employees- (1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority benefits of the employees of any recognized private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for

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continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.

And also, vide Circular dated 15.10.2008, DoE directed the managements of all the private unaided recognized schools to implement the 6th Pay Commission recommendations- Fixation of pay and payments of arrears in accordance with Circular No. 30- 3(17)/Cood/Cir/2008 dated 22.09.2008. Further, vide order dated 25.08.2017, the DoE has already issued the directions in accordance with sub-section (1) of Section 10 of Delhi School Education Act, 1973, to all the private unaided recognized schools that the benefits of the recommendations of 7th CPC to the employees of Private Unaided Recognized Schools of Delhi have to be extended.

And also, the DoE vide order No. DE.15(318)/PSB/2016/18117 dated 25.08.2017 and order dated 09/10/2019 directed all the private unaided recognized school to implement the recommendation of 7th Central Pay Commission.

31. It is relevant to state that Sub-Section 2 of Section 8 of DSEAR 1973 before terminating any employee provides as under:

“(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 this Director.”

32. It is submitted that the recognized unaided school is bound to follow the DSEAR 1973 and Rule 118:

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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REPLY TO THE GROUNDS

The contents of the preliminary submissions may be read as part and parcel of the reply to the grounds and not repeated herein again for the sake of brevity.

i. the chairman of the managing committee of the school;

ii. the manager of the school;

iii. a 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 proceeding is against him and where the disciplinary proceeding is against the Mead of the 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

In view of the submissions made herein above, it is most respectfully prayed before the Hon'ble Tribunal that, the Hon'ble Tribunal may pass any order or further orders as deemed fit.

Rejoinder on behalf of the appellant to the reply filed by R1, 2 & 4.

33. Paragraph no. 1 to 22 of the reply are denied. It is submitted that vide letter dated 14.01.2019, the Manager of the respondent no. 1/ school directed the appellant to produce all her qualification certificates from 10th to B.Ed in original as well as photocopies so that the same could be attested. It is submitted that even prior to the said letter dated 14.01.2019, the appellant had duly submitted all her qualification certificates to the respondent no. 1/ school. However, in compliance with the Order dated 14.01.2019, vide

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email dated 24.01.2019, the appellant again submitted the qualification certificates before the respondent no. 1/ school. It may be noted the original certificates of the appellant were submitted by the appellant to the respondent no. 1/ school in the year 2012 i.e. at the time of appointment of the appellant. On 27.11.2012 the routine inspection was conducted by DDE. It is, however, submitted that in the year 2019, the appellant made representations to the respondent No.1/school thereby requesting the respondent No.1/school to release the original certificates of the appellant. Most of the qualification certificates of the appellant were retained by the respondent No.1/school till April, 2019. The original documents inter-alia, including experience certificate as received by the appellant from the other schools, prior to joining the respondent No.1/school, in original was retained by the respondent No.1/school from 2012 till 2019. During the said period, the appellant had requested on several occasions to the respondent No.1 & 2 to return the original experience certificate of the appellant. But, however, the request of the appellant was never acceded and it was only in the year 2019 when the appellant was returned her original experience certificates by the respondent No.1/school.

34. Further, the appellant, while working as a Principal of the respondent No.1/school, was harassed by Ms. Sushma Ahluwalia. The appellant on earlier occasions also has raised an objection with respect to hiding of relevant information from the appellant by Ms. Sushma Ahluwalia. On 11.07.2022, the transaction of Rs. 1,92,888/- was made and an email in that record was sent by National Testing Agency (NTA)

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to the respondent No.1/school. The appellant as the 'Principal' of the respondent No.1/school and also the centers suspended for conducting the NEET 2022 examination. In order to create hardship in the smooth functioning the discharge of her duties as a Principal as well as Centers superintendent. The said email dated 11.07.2022 was deliberately hidden under the instruction of Ms. Sushma Ahluwalia. The appellant has also raised an objection with respect to the same on 15.07.2022 via letter addressed to Ms. Sushma Ahluwalia.

35. It is further submitted that the appellant had complained to the PMO (Prime Minister Office) on 21 December, 2020 [Harassment of the Principal regarding salary (not complied with Govt. Rules; and unlawful deductions and violation of Service Rule). The appellant's nature of appointment was unilaterally and unlawfully changed from regular to ad-hoc by the respondent from the year 2020, as evident the staff statement of the year 2020-21 onwards. Several rounds of enquiries were conducted by the DOE after the orders from the PMO in 2021 and 2022, yet there is no visible progress in this regard.

All the parties filed written arguments and address final arguments also, cited law and judgment.

The appellant Counsel Mr. Anuj Aggarwal's arguments/bone of contention are that:-

36. It may be noted that the appellant was appointed on the post of Vice Principal by a duly constituted Selection Committee and in conformity with the provisions of the Delhi School Education Act, 1973

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and the Rules made there-under. Further, the appellant fulfils all the requisite as well as desirable qualifications and conditions for appointment on the post of Vice Principal as provided in the Recruitment Rules notified by the Govt. of NCT of Delhi and as applicable to the employees of the private unaided recognized school in Delhi. It may be noted that the appellant has not committed any misconduct whatsoever. However, in case of any alleged misconduct no inquiry whatsoever has been conducted by the respondent No.1/school. It is submitted that the impugned Order dated 04.01.2023 has been issued in utter disregard to the principles of natural justice. There is no Show Cause Notice, Memo and/or Charge Sheet was issued to the appellant before passing the impugned Order dated 04.01.2023. The appellant is completely unemployed since the date of her illegal termination from service and despite her best efforts has not been able to procure any employment whatsoever. The appellant is, therefore, entitled to reinstatement in service with continuity of service and full back wages/salary.

37. It is also argued that there is no approval was taken from DOE by respondent no. 1 which is violated the Section 8 (2) of DSEAR 1973. As such has been declared by the Hon'ble Supreme Court in **Raj Kumar Vs. Director of Education & ors. (2016) 6 SCC 541**. As the impugned Officer order dated 04.01.2023 has been issued by the Chairperson of the respondent school who is not competent authority to pass the same. Termination of appellant is violation of Rule 105, 118, 120 & 123 of DSER 1973.

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38. It is strongly argued that the composition of the SMC was in violation of Rule 59 of the DSER 1973 and therefore any decision purportedly taken in the said meeting was void-ab-initio and illegal. Ms. Sushma Ahluwalia Chairman of the respondent no. 1 school is herself guilty of conducting several financial misappropriations in the school to which FIR no. 0684 dated 19.11.2022 is registered and selection of Ms. Sushma Ahluwalia is in violation of DSER 1973 and she is incompetent to issue the impugned order dated 04.01.2023.

Respondent no. 2/ Society vide letter dated 16.01.2023 has declare that the termination order dated 04.01.2023 was illegal and in violation of DSEA&R 1973, and society has revoked the termination letter dated 04.01.2023. However, 19.01.2023 when the appellant visited to rejoin/ reinstatement in school as per letter dated 16.01.2023, the respondent no. 1 school has refused the same. Further Respondent no. 1 has pasted the termination order dated 04.01.2023 on main gate of the school to defame and harass the appellant. The impugned order dated 04.01.2023 is illegal, unjustified, arbitrary, violative of Articles 14, 16, 21 and 311 of the Constitution of India and prayed as prayed in appeal.

Bone of contention of DOE/R-3

39. It is argued by Ms. Bindiya Savara Ld. Counsel for R-3 that Takshila Public School/R-1 is a private unaided recognized sr. sec school and as per staff statement submitted by school under Rule 180,

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DSEAR 1973 for the academic session 2012-13 & 2013-14. Mrs. Meera Srivastava appellant was designated as Vice Principal appointed on 01.07.2012 with (7500-10000) pay scale. Further as per the staff statement for the academic session 2014-15 Mrs. Meera Srivastava/ Appellant was shown as Principal with total pay Rs. 27000/- only without any scale. In 2018-19 academic session Mrs. Meera Srivastava/ Appellant was shown as Principal, regular with pay band (15600-39100) with grade pay of 7600 then in 2019-20, 2020-21, 2021-22 & 2022-23 appellant shown as Principal on ad hoc with fixed salary of 41800/-. Appellant was terminated vide order dated 04.01.2023 without approval of termination to which show cause notice dated 25.02.2023 has been issued to the Manager/ Management committee by DDE NE-II for explanation why prior approval of the competent authority is not taken before terminating the appellant.

Moreover the school was directed to provide relevant document in respect of Ms. Meera Srivastava such as appointment letter, salary/ arrear status but the school has submitted reply to the legal notice served by counsel of the appellant vide letter no. TPS/2023/0278 dated 06.06.2023.

However, in response to several e-mails, reminders to provide relevant documents in respect of Ms. Meera Srivastava vide letter dated 08.08.2023 submitted as under;

"It has been advised by our counsel that since the matter is subjudice before Hon'ble DST it would be appropriate that the reply on behalf of the school will be submitted timely in Zonal office in the interest of Justice and

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requested to hold any administrative action till the final verdict of the Hon'ble DST".

40. The main contention of Sh. Kanwar S.N. Ld. Counsel for R-1,2&4 are that the appellant suppressed truthful i.e. on her failure to submit original testimonials of qualification/ teaching experience (2 years for post of PGT/3-5 years for post of Vice-Principal/ 10 years for post of Principal) at the time of interview & submitting a copy of experience certificate from Sardar Patel Public Senior Secondary School, Karawal Nagar, Delhi-110094 with unabated promise to submit originals & other copies of testimonials shortly; She was interviewed for the post of PGT (Biology). Whereas, she failed to prove her proficiency in delivery of the subject 'Biology' to students & was declared unfit for the post of PGT (Biology) by the selection committee.

41. The Appellant on afore failure, in move of her pre calculated ill designs, approached the Director of School pretending of being in dire need of some work & that she will prove her proficiency, as also submit requisite testimonials of being qualified for the post, & face selection committee shortly. And the Director being educationist helpful & humble trusted her afore unabated commitments & promises offered her admin work for a year only against fixed salary obviously, drawn & paid against vacant post of Vice-Principal.

42. While suppressing truthful that she had filed flimsy & forged copy of experience certificate. Whereas, she did not submit original testimonials despite availing opportunities or come true to her

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unabated promises and on persistent persuasion she submitted some original testimonials obviously to gain more time & pretended her bona fide to procure contractual work further. And in further move of her pre-determined ulterior motives vide letter dated 10/04/2019 (on page 41 of the appeal) to controvert afore persisted demand of testimonials by the school, she falsely claimed release of original experience certificate - which she did never submit to it, but falsely pretending of having submitted original in the year 2012. And in said move she sent inordinate/ vague repeated e-mails (on page 43-44 of appeal) to project 'a lie as truth, to absolve herself & trivialize deceitful & deceptive means of procuring contractual work.

43. It is also argued by Sh. Kanwar S.N. Ld. Counsel for R-1,2&4 that afore ill tactics, devised by the Appellant as evident from her own conduct of deceptive suppression of truthful, can no way be upheld nor provisions of appeal U/S 8(3) of the DSEA'73 can be invoked against the school for the simple reason that said provisions otherwise, can be availed in case of dismissal, removal or reduction in rank and no appeal is tenable against an order of cancellation of appointment as to aforesaid, which was void ab initio & procured fraudulently albeit the result may be dismissal.

Hon'ble Supreme Court of India in the case of ***Udyami EvamKhadi Gramodyog Welfare Sanstha v. State of Uttar Pradesh*** 10, reiterated the importance of fairness in an equitable proceeding as under:

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"7. Reliance was placed upon the judgment of the Supreme Court in **R. Vishwanatha Pillai v. State of Kerala and Others, (2004) 2 SCC 105**, for the proposition that where a person procures appointment on the basis of false and forged certificates, the appointment is no appointment in the eyes of law, and in these circumstances, there is no requirement of giving an opportunity of hearing or holding a domestic inquiry. A person whose appointment is based on falsehood and cheating cannot raise a plea of violation of principles of natural justice and invoke the doctrine of audi alteram partem.

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9. Without prejudice to the aforesaid contentions, it was urged that in any case, reinstatement is not an automatic consequence of setting aside the dismissal order and each case turns on its own facts. This principle would apply with a greater vigour, where the appointment itself has been obtained by playing fraud on the Management. In the present case, Respondent No.2 had worked for less than 2 years and at this stage, after passage of over 25 years from the date of dismissal, relief of reinstatement should not be granted to him.

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37. The said principle was reaffirmed and reiterated by the Supreme Court in **Chander Prakash Sahi** (supra supra and and it it was held that termination motivated by an employee's, general unsuitability is valid, however, if there are allegations of serious misconduct then the action to terminate has to be taken as founded on misconduct and treated as punitive.

"30. The issue has earlier engaged the attention of the Supreme Court, as well as of this Court. In **Shashi Gaur v. NCT of Delhi, (2001) 10 SCC 445**, the Supreme Court specifically examined the scope of Section 8(3) of the DSE Act. The services of the petitioner-teacher in that case, were terminated on the ground that he did not possess the requisite qualification to hold the post. The matter was carried, in appeal, to the learned Tribunal and reached, in due course of time, the Supreme Court. It was sought to be contended, by the respondent, before the Supreme Court, therefore, that as - termination, was not one of the exigencies, to which, Section 8(3) of the DSE Act alludes, no appeal against such an order of termination, for want of the requisite qualification to hold the post, could be maintained before the learned Tribunal."

It is therefore, most humbly prayed to kindly dismiss the present appeal with heavy costs against appellant & in favour of the

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school to up keep the sanctity of law. She is not entitled to any relief much less than the relief prayed for, especially when she procured contractual work as to afore dishonestly & fraudulently & failed to assert veracity thereof the experience & B.Ed testimonials of eligibility despite availing repeated opportunities for long.

This Tribunal has **carefully** consider all the arguments raised on behalf of the parties and have also carefully gone through the material on record.

44. It is undisputed fact that the appellant was a confirmed employee and undergone entire selection procedure as per Rule 96 of DSER, 1973, at the post of PGT (Biology), as being qualified and eligible for the appointment of the said post duly applied for the same. Prior to the interview for the appointment of PGT (Biology) the official of the R-1 informed the appellant that she was instead of PGT (Biology) will also face the interview for the post of Vice-Principal. The appellant has no other option and undergone the said interview and w.e.f. 01.07.2012 appellant was appointed as a Vice-Principal with the R-1 as found fulfill all the requisite qualifications for the post of Vice-Principal as well as PGT (Biology) in terms of the Recruitment Rules. On 30.11.2013 the appellant was appointed as a Principal by the R-1 w.e.f. 01.12.2013 on contractual basis for one year vide letter dated 24.05.2014.

45. R-1 informed the Education Officer Zone-V, Shahdara informing about the appointment of the appellant as a Principal on ad

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hoc basis for a period of one year w.e.f. 01.12.2013. On 25.05.2015 the appellant was confirmed as permanent post of 'Principal' by conducting and passed the resolution in meeting held on 24.02.2015 and 03.09.2015 by the SMC vide letter dated 14.01.2019. Manager of the R-1 directed the appellant to produce all her qualification certificates from 10th to B.Ed. in original as well as photocopy. Prior to that said letter, the appellant has duly submitted all her qualification certificates to the R-1, however, in compliance of this order dated 14.01.2019 vide email dated 24.01.2019 appellant again submitted her qualification certificates with the R-1. Though the appellant has already submitted the original in the year 2012 i.e at the time of appointment of the appellant. The appellant made a request in the year of 2019 to release the original certificates, however, most original certificates were retained till April, 2019. Vide order dated 02.01.2023, the R-1 leveled allegations of embezzlement, Show Cause Notice dated 02.01.2023 as well as the order dated 04.01.2023 was received by the appellant whereas the service of the appellant was terminated.

46. The R-3/DOE has undisputed the fact that the R-1 is a private unaided recognized Senior Secondary school under the jurisdiction of Zone-V, Distt. North-East-II, Directorate of Education, Govt. of NCT Delhi and the appellant was designated as Vice-Principal w.e.f. 01.07.2012 with pay scale of 7500-10000. As per the staff statement for the academic session 2018-19 the appellant was shown as regular 'Principal' with pay band 15600-39100 with grade pay of 7600/- and continue being shown as regular 'Principal' for the academic

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session of 2020-21. Later on for the academic session of 2021-22 & 2022-23 the appellant was shown as a 'Principal' on ad hoc basis with fix salary of Rs. 41,800/- and her services was terminated on 04.01.2023 without approval from the Directorate of Education which is violation of the mandatory provision of sub section 2 of Section 8 of DSE Act, 1973. The R-3 has also averted vide order dated 20.05.2016 that all the private recognized unaided schools are directed to comply with provision of sub section 2 of Section 8 of DSE Act, 1973 and its connected Rule 120(i)(d)(ii) & (iv) and Rule 120(ii) of DSE Rules, 1973 w.e.f date of aforesaid judgment of the Hon'ble Supreme Court in **Civil Appeal No. 1020 of 2011 in the matter of Raj Kumar Vs. Directorate of Education & Ors.**

47. The R-3 has also informed that a show cause notice dated 25.02.2023 was issued to the Manager/Management Committee of the respondent school by DDE NE-II vide no. F.52(2)/PB/2021/NE-II/551-557 whereas asking the explanation as under:-

"XXXXX"

Now therefore, the Managing Committee of Taksila Public School, Sch Id : 1105197 is hereby show caused as to why action under Section 24(4) of DSEAR, 1973 for withdrawal of recognition of the school shall not be taken against the school for the above mentioned violations, irregularities and for the non compliance of the relevant provision of DSEA & R, 1973.

The explanation, if any, in this regard must reach this office within 7 days of the receipt of this show cause notice, failing which, it will be presumed that the school has nothing to say in this matter and the action as deem fit will be taken against the school without providing any further opportunity.

This issues with prior approval of Competent Authority.

SD/
[Signature]
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DDE, NE-II"

48. In reply to the show cause notice to the DDE, NE-II It was informed by the Chairman on behalf of the SMC vide reference no. 2579/TPS/83 dated 06.03.2023

49. The Respondent School was also directed vide e-mail dated 25.05.2023 to provide the relevant documents with respect to the appellant such as appointment letter, salary, arrear status etc. in reference of the said e-mail the school has submitted reply to the legal notice served by the Counsel of the appellant vide letter no. TPS/2023/0278 dated 06.06.2023 whereas submitted that:-

"the appellant was repeatedly directed to submit the requisite documents of her being eligible to the post she had opted to take a contractual employment and continue accordingly, wrongly and it was hard time with the school warranting due action in the matter and it being considered did address to the experience certificate, issuing authority to ascertain velocity thereof with specific request to respond on priority. Whereas no response was received obviously for aforesaid submitted as such the matter was placed before the SMC, which did consider the matter and finding categorical inconsistency, to appoint for immediate relieving her from service. And as such no wrong, much less than the alleged wrong was caused. As regard her unlawful law, due action is underway and she will obviously, being bound to answer and compensate the losses show cause will inform accordingly, the school has already informed of the SMC meeting during the your visit itself and nothing is left undone in the matter.

To initiate due action against misappropriation/ pilferage by afore ill doers on taking forcible control hijacking affairs of the school as to afore. Till then, pleaser bear with the school, which obviously, been put at precarious situations as to afore.

SD/-
Chairperson
TPS"

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50. The R-1 is private unaided school recognized by the R-3 hence bound by the provision of Rule 117, 118 and 120 of the Act and cannot be terminated the service of the appellant in violation of the terms and conditions of the appointment letter and DSEA&R 1973. There is no show cause notice, no enquiry, no memorandum of charges, or any kind of complaints whatsoever alleged by the respondent school in their reply has been called for before taking a coercive action against the appellant. It is undisputedly matter of fact that the appellant being served the respondent school since 2012 continuously uninterrupted service without any break and had unblemished service record to her credit. The appellant was confirmed permanent employee as per letter of confirmation dated 25.05.2015. the appellant salary was reduced by the respondent school of 50% due to the Covid-19 pandemic lockdown without any prior notice and during the year of 2021 it was 25% of salary was been drawn by the appellant and the other staff members and the representation to respondent school for requesting to restore the salary and the representation to this effect was also given to the R-3 also. The service of the appellant was converted on ad hoc of its own by respondent school. Though, the employment of the appellant was as per the appointment letter and confirmation letter as a regular one, same was unlawfully and unilaterally changed from regular to ad hoc. Since the appellant contesting his grievances with respect to the salaries as per the rules. Hon'ble Supreme Court in **Managing Committee of Montfort Senior Secondary School Vs. Vijay Kumar & Ors. (2005) 7 SCC 472** has held that the service of the employee of all the schools

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including minority, unaided school are no longer contractual in nature but are statutory and the removal of an employee of all such schools including of a minority, unaided can only be in terms of the statutory regime provided under the DSEAR, 1973.

In this regard Hon'ble Supreme Court in the case of **Managing Committee of Montfort Senior Secondary School** (Supra) has held as under:-

"The Supreme court in its judgment in the case of Montfort (supra) has held that an employee of a school has statutory protection and he can only be removed on application of provisions of the Act and the Rules. Para 10 of the said judgment reads as under:-

"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 mail-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(1) 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. Sidhrajhai Suhhai (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

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has undergone a transformation and services of the employees in minorities unaided 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. In *Premier Automobiles Ltd. V. Kumlekar Shantaram Wadke of Bombay and Ors.* (1976 (1) SCC496), it has been observed that if a statute confers a right and in the same breath provides for a remedy for enforcement of such right, the remedy provided by the statute is an exclusive one. If an employee seeks to enforce rights and obligations created under Chapter IV. a remedy is available to him to get an adjudication in the manner provided in chapter IV 'by the prescribed forum i.e. the Tribunal. That being so, the Tribunal cannot and in fact has no power and jurisdiction to hear the appeal on merits and only way is to ask the parties to go for arbitration.

A reading of the aforesaid para leaves no manner of doubt that the services of employees of all schools including minority unaided schools are no longer contractual in nature but are statutory and the removal of an employee of all such schools including of a minority unaided school can only be in terms of the statutory regime provided under the Delhi School Education Act and Rules, 1973."

51. Hon'ble High Court of Delhi in ***Daya Nand Adarsh Vidyalaya vs. Deepa Chibber, in Writ Petition (C) No. 1009/2012*** decided on **19.09.2013** interpreting the case 1 of ***Managing Committee of Montfort (Supra)*** has held as follows:-

"I may note that the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*, (2005) 7 SCC 472 has held that the teachers and employees of schools have statutory protection and they cannot be removed except by following the procedure laid down under the Act and Rules especially Rules 118 to 120 of the Delhi School Education Rules, 1973 which require conducting of a departmental enquiry after serving Article of Charges and the Disciplinary Authority thereafter passing an order on the basis of report of the Enquiry Officer. Para 10 of the

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judgment in the case of Montfort Senior Secondary School (supra) in relevant and the same reads as under:

"A regulation which is designed to prevent maladministration 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(1) is intended to the 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. Sidhajibai Subhai (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 unaided 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.....

It may be noted that the Supreme Court in this case of Montfort Senior Secondary School (supra) gave the benefit of statutory protection to teachers and employees of schools even for a minority unaided school and afore tiorari the observations also apply to non-minority schools."

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52. In the case of **Sunil Sikri vs. The Management Committee of Guru Harkishan Public School & Ors. (Supra)** decided by a Division Bench of Hon'ble High Court of Delhi. In para 16 of which it is held as follows:

"Though unaided minority Schools are free to adopt their own rules, however there is no bar on such a School adopting the rules under the DSEAR which have been uniformly applied to all its employees. The contention that the rules under DSEAR are not applicable to the employees of the School being a minority unaided school thus deserves to be rejected."

53. Rule 96 sub-rule (1) of Chapter 8 of Delhi School Education Act and Rules-1973 is as under:

"Rule 96. Recruitment-(1) Nothing contained in this Chapter shall apply to an unaided minority school"

54. A full Bench of Hon'ble High Court of Delhi in its judgment in the case of **Guru Harkishan Public School through Its Managing Committee vs. Director of Education & Anr., in Writ Petition (C) No.8058/2011 decided on 14.05.2015** relied upon the judgment of Frank Anthony case in para no. 41 has held as follows:

"Since Section 12 of the Delhi School Education Act. 1973 has already been struck down by the Supreme court in Frank Anthony's case (supra) its corollary would be that sub-Rule 1 of rule 96 also has to be struck down."

55. In view of the above discussion, now it is well settled legal proposition that the employees of schools including the employees of an unaided minority school can only be removed from the

*Satish Kumar
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employment following the provisions and procedure contained in Delhi School Education Act and Rules-1973 including Rule 118-120. Apart from it, the termination order affixed on the main gate wall without any justification and explanation. The action of R-1,2&4 to this effect is seems to be motivate.

It is admitted case that respondent school terminated the service of the appellant without holding any inquiry and without following the provisions of the DSEAR, 1973.

56. In view of the above ratio of judgment & law, this Tribunal is of the opinion that the impugned order dated 04.01.2023 is illegal and arbitrary hence the same is hereby set aside. Respondent school is directed to re-instate the appellant and to pay consequential benefit within a period of four weeks from date of this judgment till reinstatement. If fail to pay within four week' time the respondent school is liable to pay interest @ 9% P.A till its realisation. Apart from that the respondent school is burdened with cost of Rs. 1,000/- to be payable to the appellant within four weeks.

57. 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 respondent school 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 school is directed to decide the representation given by the Appellant within 4 weeks of receiving the same by a speaking order and to communicate

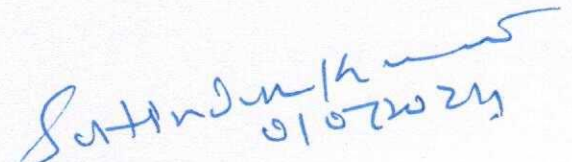
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the order along with the copy of the same to the Appellant. Order accordingly.

Announced in the open court on 01.07.2024.

File be consigned to record room.

Date: 01.07.2024


01.07.2024
Dr. Satinder Kumar Gautam,
Presiding Officer,
Delhi School Tribunal