

BEFORE DR. SATINDER KUMAR GAUTAM, PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL
LUCKNOW ROAD, TIMARPUR, DELHI-110054

APPEAL NO. 34/2019

Date of Institution: 04.11.2019

Date of Disposal: 18.11.2024

In the matter of :

Ruchi Malhotra
Aged about 50 years
W/o. Sh. Tarun Malhotra
R/o A-2/62-A, Ekta Apartment,
Paschim Vihar, New Delhi-110063

.....Appellant

Through: Mr. Anuj Aggarwal, Advocate

V/s

1. Guru Nanak Public School
Through its Manager/ Managing Committee
Pushpanjali Enclave, Pitampura
New Delhi-110034

.....Respondent no. 1

Through: Mr. Tarun Kumar Tiwari, Advocate

4. Directorate of Education
The Director of Education
Govt. of N.C.T. of Delhi
Old Secretariat building,
Civil Lines, Delhi-110054

.....Respondent no. 4

Through: Mr. Amit Sharma, Advocate

Abbreviation:

DSEAR	Delhi School Education Act and Rules.
D.O.E.	Directorate of Education
PNJ	Principle of Natural Justice
R-1	Respondent no. 1/ Guru Nanak Public School
R-2	Respondent no. 2 / Directorate of Education
SMC	School Management Committee

Judgement

Introduction

1. This appeal is against the order dated 16.08.2019 passed by the respondent no. 1, whereby appellant was removed from her service after conducting the inquiry without approval of R-2. The impugned order

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of removal has been passed by incompetent persons by violating the provision of Rule 120 (2) of DSER 1973. It is the only disciplinary authority which is incompetent to pass major penalty order. The composition of the school management committee was in violation of Rule 59 as all the nominee of the Director of Education was absent in the school management committee. Secondly, Mr. S. Ravinder Singh Chawla was present in the Managing Committee meeting and acted as a witness against the appellant before the Inquiry Officer and therefore he could not be a member of School management Committee meeting. Further Mrs. Neeraj Vohra, Principal, was present in the School Managing Committee meeting, though she also examined as management witness and deposed against the appellant before the inquiry officer. Even the suspension of the appellant by the R-1 is illegal and in violation of Section 8 of DSEA 1973. As such the termination of the service of the appellant was also illegal and unjustified.

2. Brief facts as alleged by the appellant in the present appeal are that she was appointed as Assistant Teacher (Art) w.e.f. 02.07.1997. She was confirmed on 24.08.1999 and promoted as TGT (Art) w.e.f. 01.11.2010. The appellant along with other teachers filed Writ petition no. 115/2017 before Hon'ble High Court seeking pay fixation and arrear in terms of Section 10. On 13.10.2017, the appellant alongwith other teachers received a notice from the principal. On 23.10.2017 she was illegally suspended from the services. Suspension letter was issued by incompetent persons. No approval from DOE was taken for suspension. Appellant was served chargesheet and the inquiry report was given. Charges were proved. Appellant was imposed the punishment of removal from service w.e.f. 24.10.2017 (Retrospective effect). Though, the impugned order was issued on 16.08.2019, the R-1 carried a sum of Rs. 1,48,792/- as full and final amount while the appellant was given Rs. 6,16,915/-. Appellant sent a legal notice but no reply was received. Hence, the present appeal.

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3. After issuing of the legal notice the **R-1 filed its reply**, whereas briefly submitted that Article 30 of Constitution of India declare the R-1 as religious minority institution. Manager administration as per their choice. There is no direct role of the management in dispute. School has the right to appoint the staff as per choice and as prescribed by service conditions of the employees of the school is govern by the service agreement with them. Appellant was terminated through proper inquiry and charge of the misconduct. She misbehave with the teacher Ms. Inderjeet Kaur Dhawan, she stay in the school alongwith other till night. Principal advised them to go but they did not go away. Therefore the appeal has no merit. Same is liable to be dismiss.

4. The **R-2 DOE** has also filed the reply shortly. The crux of their reply whereas alleged that the respondent school did not take any approval from DOE before termination or suspension. Since the R-1 school is unaided minority school. Therefore the court may pass appropriate order as deem fit.

5. Appellant filed separate **rejoinder** of the reply of the appeal and submitted that Directorate of Education's nominee was not present in all the meetings of the Disciplinary Committee. Even though teacher representative was also absent and the Disciplinary committee was not constituted as per Rule 118 of DSER 1973.

6. The management committee in its meeting dated 16.08.2019 proposed the punishment of termination from service to be imposed upon the appellant and appellant was removed from service with retrospective effect i.e. from 24.10.2017. The composition of Management Committee is violation of DSER 1973 and Management committee is not competent to pass the termination order. The law as declared in judgment passed by the Hon'ble Delhi High Court in **Mamta Vs. School Management of Jindal Public School and Ors. MANU/DE/2424/2011**. It is also alleged that Neeraj Vohra present in the meeting of the managing committee as well as Disciplinary Committee has vitiated the entire disciplinary proceedings.

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The Hon'ble Supreme Court in **Rattan Lal Sharma Vs. Managing Committee Hari Ram (Co-education) Higher Secondary School and Ors. MANU/SC/0329/1993** held that ".....plea of bias inclusion of Sh Maru Ram in inquiry committee and is giving evidence on behalf of department has not been specifically taken by the Deputy Commissioner and the Commissioner. The Division bench has proceeded on the same footing. Sh. Maru Ram one of the member of inquiry committee stipulated through out the inquiry proceedings. Thereby vitiated the principle of natural justice and finding made by the inquiry committee was product of a bias and prejudice minds. Therefore, order of division bench set aside appeal allowed....."

7. It is also argued that termination of appellant from retrospective effect is also illegal and contention is based on the judgement of **Yogender Singh Vs. Indian Oil Corporation Lt.d decided on 20.12.2017 MANU/DE/5789/2017** it was observed in para no. 34 & 35 as under:

"34. From my above discussion, the following position emerges:

- (1) That the Enquiry Officer was justified in holding the charges as proved on the concept of preponderance of probability.*
- (2) That the order of penalty to the extent of stoppage of increment w.e.f. January 1, 1997 and January 1, 1998 is illegal.*
- (3) The order of the Appellate Authority is without application of mind as he did not deal with the grounds raised by the petitioner in his appeal.*
- (4) The period between August 25, 1992 to December 03, 1993 shall be treated as on duty for all purposes, as the order dated August 25, 1992, has become infructuous.*

35. Having said that, the question which arises is what relief the petitioner is entitled to; whether the matter should be remanded back to the Appellate Authority to pass fresh order. This Court is of the view that the petitioner having taken voluntary retirement in the year 2006 and the penalty which would survive, is only to the extent of withholding of increments w.e.f. January 1, 1999 and January 1, 2000, which is not harsh and 18 years have passed since the imposition of the punishment and moreover I have upheld the conclusion of the Enquiry Officer holding the charges as proved, it is not a fit case where the matter should be remanded back to the Appellate Authority. I uphold the penalty to the extent of withholding of increments as on January 01, 1999 and January 01, 2000. The order dated September 8, 1992 and June 26, 1998 to the extent,

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penalty of withholding of increments w.e.f January 1, 1997 and January 1, 1998 and the period between August 25, 1992 and till December 3, 1993, was treated not on duty for all purposes are set aside."

8. It is also submitted by the appellant that the DOE (R-2) in reply has supported the case of the appellant. Even Delhi High Court in WP© no. 3567/2019 vide order dated 09.12.2019 has order that the suspension of service of the appellant was illegal. The inquiry was conducted for more than one year. The Hon'ble Supreme Court in ***Prem Nath Bali Vs. Registrar High Court of Delhi and ors. MANU/SC/1461/2015*** and Delhi High Court in ***Union of India Vs. M.R. Diwan & Ors. MANU/DE/1007/2019*** provide the period of limitation to conclude the inquiry.

9. It is further alleged in rejoinder to the reply that the appellant is victimized as he has filed a writ petition before the Hon'ble Delhi High Court under Section 10 of DSEA 1973 made thereunder. The law as such has been declared by the Hon'ble Delhi High Court in ***Sardar Patel Public School Vs. Chandra Rani in LPA no. 763/2015, decided on 29.10.2015 and judgement of State of Andhra Pradesh Vs. Sree Rama Rao, MANU/SC/0222/1963.*** The appellant seeking relief of reinstatement in service with full back wages. As law relied upon in ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. Civil Appeal no. 6767 of 2013 decided on 12.08.2013 MANU/SC/0942/2013*** and the contention of the reply of the appeal is denied as wrong as well as reaffirm the contents of appeal and prayer made in the appeal.

Bone of contention of appellant

10. The appellant counsel argued that the allegations of misbehave with the Principal and stay late in the school alongwith 22 other teachers vide dated 11.07.2017 and 12.10.2017 the complaint filed by Mrs. Neeraj Vohra, Principal to the school management with the above subject. As such on 13.10.2017 the first show cause notice was issued to appellant by

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Principal Mrs. Neeraj Vohra which has been duly replied and denied all the allegations by 13.10.2017. On 13.10.2017 the management committee of the school held a meeting where purported Disciplinary Committee was constituted. In the said meeting the DOE nominee was absent. Even the composition of the Disciplinary Committee which was constituted on 13.10.2017 was in violation of Rule 118 in as much as nominee of Director of Education was missing in the said meeting. Mrs. Neeraj Vohra, Principal /complainant was also member of the Disciplinary Committee. The suspension order was placed with immediate effect vide dated 23.10.2017 and the on the same day the SMC meeting was conveyed wherein inter alia it is proposed to suspend the appellant and initiate disciplinary proceedings against her. Admittedly the DOE nominee was not present in the said meeting. Mrs. Neeraj Vohra as well as Mr. S. Ravinder Singh Chawla was part of the SMC meeting. The appellant has also given the reply on dated 09.11.2017 to the suspension order. On 28.12.2017, again a disciplinary authority meeting was conducted, wherein it is decided to issue chargesheet to the appellant on the said meeting the DOE nominee was also not present. On 28.12.2017 the charges sheet was present with level against the appellant:

- i. Temper the result of Mid-term Examination of Class IX-E (Subject Mathematics) for the academic session 2017-18.
- ii. Misbehave with the Principal.
- iii. Overstay in the school without any permission up to 08:30 pm and instigated other teachers against the school.

11. On 05.01.2018, in the said meeting it was decided that an inquiry committee will constituted to investigate into the suspension of the appellant. Even the DOE nominee was not present nor the teacher representative. On 28.03.2018 to 28.12.2018, the inquiry was conducted culminated into 22 hearings and six witnesses namely PW-1 Mr. S. Ravinder Singh Chawla Additional Chairman, GNPS, Pitampura, PW-2 Mr. Dinit Batra, Estate Officer, PW-3 Ms. Neeraj Vohra, Principal, PW 4, Ms. Manpreet Kaur, Assistant Teacher, PW 5 Ms. Inderjeet Kaur Dhawan, Punjabi Teacher, PW 6 Ms. Pinki, Support staff was examined on behalf of the management. Appellant has also examined five witness namely DW 1

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to 5 Ms. Rupinder Kaur, Ms. Monika Kukreja, Ms. Manjeet Kaur, Ms. Dipi Arora, Ms. Rajni Arora.

12. On 29.04.2019 the managing committee convened its meeting wherein DOE nominee was absent. In the said meeting Disciplinary authority was reconstituted. Since the DOE nominee was not present nor the teacher representative in the said disciplinary committee. On 22.06.2019 the Enquiry report was received by DAC. Charge no. 1 was partly proved and remaining charges were fully proved.

13. On 01.07.2019, the Disciplinary Committee commenced a meeting wherein a decision was taken to supply a copy of the inquiry report to the appellant and seek her reply. In the said meeting neither the DOE nominee nor the teacher representative was present. On 25.07.2019 the Disciplinary committee held its meeting wherein accepted the recommendations of the inquiry officer and decided to sent its decision to the appellant for her comments. Even no Doe nominee was present in the said meeting also.

14. On 09.08.2019, the disciplinary committee held its meeting recommending the punishment of termination of service of the appellant. Though the DOE nominee was present in the said meeting and proposed a penalty of termination of service. On 09.08.2019, Disciplinary committee conveyed the Managing Committee about the decision of proposed punishment of termination of service and in the said meeting DOE nominee was not present. On 16.08.2019, a managing committee in its meeting conducted to impose the punishment. Appellant was removed from service with retrospectively i.e. w.e.f. 24.10.2017.

15. Appellant also filed the WP(C) 3567/2019 wherein it was ordered vide dated 09.12.2019 that the suspension of the appellant was illegal and the appellant is entitled to full salary w.e.f. 23.10.2017 to 16.08.2019. The R-1 vide LPA no. 222/2020 against the aforesaid order of

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the High Court. The appellant also relied on the following judgment of High Court of Delhi:-

(i) The Chairman, Ryan International School & Ors. Vs. Dinesh Singh Rawat & Ors. decided on 16.05.2017 MANU /DE/6393/2017.

(ii) CBSE Vs. Mount Carmel School Society and Ors., decided on 15.01.2016, MANU/DE/0089/2016, 227 (2016) DLT 373, 2016 (154) DRJ 660,

(iii) G. Vallikumari Vs. Andhra Education Society and Ors., decided on 02.02.2010, MANU/SC/0083/2010, (2010) 2 SCC 497,

(iv) Mamta Vs. School Management of Jindal Public School & Ors., decided on 01.06.2011, 2011 (124) DRJ 12.

16. It is also argued by appellant counsel that it is a settled principle of law that no one can be judge in its own case. In the said case the Principal Mrs. Neeraj Vohra, was clearly violating the provisions as appeared as a witness before the inquiry officer and deposed against the appellant and she was also a member of the Disciplinary authority. Therefore the entire inquiry conducted against the appellant was illegal. It is also admitted that more than five members were present in the Disciplinary Committee/ authority therefore the composition of Disciplinary Committee/ Authority was in violation of Rule 118 of the DSER 1973. The appellant relied on following judgments:-

(a) Rattan Lal Sharma Vs. Managing Committee, Hari Ram (Co-education) Higher Secondary School and Ors., decided on 14.05.10993, AIR 1993 SC 2155.

(b) APEEJAY SCHOOL & ANR. VS. GOVT OF NCT OF DELHI & ANR. IN WP (C) NO. 2354/2010, DECIDED ON 17.05.2012, MANU/DE/2974/2019.

(c) MAMTA VS. SCHOOL MANAGEMENT OF JINDAL PUBLIC SCHOOL & ORS. DECIDED ON 01.06.2011, 2011 (124) DRJ 12.

17. The appellant counsel argued that Mr. S. Ravinder Singh Chawala Additional Chairman was part of the Disciplinary Authority and also acted as a management witness before the inquiry officer. Which is also violation of Principle of natural justice and relied on the aforesaid judgements.

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18. It is also argued by appellant counsel that the finding of the inquiry officer that "*But CO found to be not following the procedure adopted for publishing the mark in the school as per instruction of principal, by which she is knowingly and willfully neglecting her duties. This is in violation of Rule 123 (1) (a) (iv) of DSEAR 1973, hence this charge leveled against her is proved.*" Was not even the part of the charge sheet dated 28.12.2017. As such the appellant cannot be held guilty for not following the procedure adopted for publishing the marks in the school as per the instruction from the Principal inasmuch as the said allegations was never part of the charge sheet dated 28.12.2017. The finding of the inquiry officer was, therefore, beyond the scope of the charge sheet/inquiry and, consequently, ultra vires and illegal.

19. It is also argued by appellant counsel that the finding of the inquiry officer w.r.t. charge no. 2 was based on deposition of Mrs. Neeraj Vohra, Principal/ Complainant. Admittedly she is the part of disciplinary authority and her deposition could not be relied upon by the inquiry officer. Consequently the findings of the inquiry officer were based on mere suspension.

20. ***Hon'ble Supreme Court in Roop Singh Negi Vs. Punjab National Bank and Ors., decided on 19.12.2008, (2009) 2 SCC 570 has held that suspicions cannot substitute the requirement of a valid proof even in case of domestic enquiries.***

The charge no. 3 w.r.t. knowingly and willfully overstay in the school premises on 11.10.2017 upto 8.30 pm without permission of the Head of the school and also instigating and provoke other teachers who also overstayed with her and thus putting the security of 22 others lady teachers at stake and putting the school management in the situation of embarrassment which is violation of Rule 123.

It is argued by appellant counsel that Rule 123 (2) of DSER 1973 encourages the teachers to form an association & organizations and hold meetings for the bonafide grievances. Actually the appellant and other teachers were agitating regarding non-payment of their due salary and

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therefore there was no misconduct on the part of the appellant as far as Charge no. 3 is concerned. Therefore, the findings of the inquiry officer with respect to the Charge no. 3 is also perverse. All the defense witnesses in their statement before the inquiry officer had categorically deposed that they were present in the school for their own reasons. As such the inquiry officer completely ignored the statement of defence witnesses. Even the entire inquiry against the appellant stands lapsed on account of delay in concluding the inquiry proceedings as it took more than one year for the R-1 to conclude the inquiry against the appellant. As such in term of the judgement of Delhi High Court **Union of India Vs. M.R. Diwan and Ors. decided on 12.03.2019**, the entire inquiry against the appellant stand lapsed. The chargesheet was served on 28.12.2017, whereas the penalty order was served upon the appellant on 16.08.2019. It took more than two years for the R-1 to conclude the domestic inquiry.

21. On 27.07.2018 the defence assistant requested the inquiry officer that the inquiry be held on day to day basis and more than one witness be examined in one single days in order to expeditiously complete the inquiry proceedings. The said fact is evident from the daily order sheet no. 07 dated 27.07.2018 issued by the inquiry officer.

22. It is also argued that the appellant was an act of victimization on account of preferring writ petition (c) no. 1115/2017 seeking salary as per the 7th CPC and single out in order to set an example and deter the other teachers. The termination order dated 16.08.2019 was bad in law since the service of the appellant was removed retrospectively w.e.f. 24.10.2017, which cannot be terminated retrospectively and the removal order dated 16.08.2019 is therefore illegal. The appellant has also relied on Supreme Court judgment **R. Jeevaratnam Vs. State of Madras, decided on 13.10.1965 AIR 1966 SC 951**. Even the order 16.08.2019 was passed by incompetent authority which is incompetent to pass the removal order as contrary to Rule 120 (2) of DSER 1973. Therefore in view of the above present appeal may be allowed with the relief claimed for reinstatement with backwages, etc.

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Bone of contention of R-1

23. It is argued by the counsel for R-1 that R-1 school is a unaided minority school established under the fundamental right granted under Art. 30 of Constitution of India to religious minority to establish and administration of their educational institute as per their own choice. In the case of **Ahmedabad St. Xaviers College Society Vs. State of Gujarat, AIR 1974** it is observed in para no. 19.

*"19. The entire controversy centers round the extent of the right of the religious and linguistic minorities to administer their educational institution. The right to administer is said to consist of four principal matters. **First** is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them. **Second** is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. **Third** is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. **Fourth** is the right to use its properties and assets for the benefit of its own institution."*

With approval of above, similarly this described in **TMA PAI Judgement (2002) 8 SCC 481**.

24. The right to establish and administer broadly comprises the following rights:

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees.

25. It is argued by main counsel for respondent school that the fair inquiry has been conducted after issuing the chargesheet by the retired education officer, appellant alongwith the defence assistant participate in the inquiry proceedings and even lead her evidence against the charges. However she has not come herself in the witness box to give her own version as evidence relating to the incident. The fair opportunity was

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granted to the appellant on every step of the inquiry after concluding the enquiry. The enquiry report was also supplied and the representation of the reply of the accused was also received which is also considered. Thereafter the disciplinary action committee proposed a major punishment after the considering the reply of the appellant.

26. The management of a minority institution have power to appoint the staff and disciplinary proceedings against them Rule 118 and 120 have not applicable over the power confer under Article 30 to the minority education institution. These minority education institution have necessarily to evolve a rationale procedure for selection of the teachers as well as for taking disciplinary action with conformity with natural justice in the light of the observations in the answer to question 5 (c) in **T.M.A Pai Foundation's case quoted above.**

Chapter VIII of DSER 1973 related to "Recruitment & terms and condition of service of employee of private school" is not applicable in case of unaided minority school. Expressly bar of this chapter's applicability prescribed in Rule 96 of DSER 1973. However, after **Frank Anthony Judgement**, High Court allowed some rules to be applicable by implication being not violated the right of administration of unaided Minority school under Art. 30 of Constitution. Rule 96 to Rule 98 of DSER 1973 is not applicable upon unaided minority school and Chapter XI comprising Rule 127 to 130 of DSER 1973 govern by recruitment and service condition of employee in the unaided minority school.

27. The executive committee or Governing body for Management and administration of the Unaided Minority school required to be constituted as per their own choice with their own members. Any interference by Govt. authority or imposing any member in any committee of school doing administrative work of Unaided minority school is a clear violation of fundamental right under Art. 30 of Constitution of India by interfering into the administration of affairs of school.

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28. In regard to the Rule 120 taking prior or post approval of Director before imposing punishment, if it is read to be applicable in minority school as suggested by appellant, then it is clearly violation of Art.30 of the Constitution. Directorate have no veto power to interfere the administrative affairs of school and have only look into the academic matters of schools. Sec.8(2) of DSE Act was declared to be non applicable in Unaided Minority School and if the same condition of approval by virtue of Rule 120 be required before termination or punishment of any employee, then it is beyond the provision of main act. As such, this rule is not applicable upon unaided Minority school by implication.

29. It is further argued by respondent school that it is important to note here that in the conclusion of **T.M. PAI Judgement** related to permissible regulation through Statutory provision in Q.5(C), it has been clearly held that govt. authority can prescribed the service condition for employees of Aided Minority school but not for the Unaided Minority school. In nine-judges bench decision of Supreme court in "**Ahmedabad St. Xavier's college Society vs. St. of Gujrat (1974) 1 SCC 717**", the nominee of Govt. or university in the Governing body of Unaided Minority Educational Institution had been not permissible and found to be infringement of fundamental right of Minority Educational institution. Consequent upon pronouncement of St. Xavier Judgement, Provision of Rule 59 of DSE Rules, 1973 related to "Scheme of Management" in respect of applicability of Nominee of director in management of Unaided Minority school has been changed with their advisory role. Similarly Rule 96 of DSE Rules 1973 had amended to the extent that in the selection committee of Aided Minority school, role of nominee of Director/ Govt. Authority had been changed by limiting their involvement as advisor only, having no voting right to these nominee. By decision dated 21.11.2011 in WP (C)2845/1992 titled as "**Queen Mary's School Thru Its Principal vs. UOI**", Division bench of Delhi High court have dispensed with participation of nominee of director in selection committee of Aided Minority school even in advisory role by holding that in PARA 14.

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Even though, Rule 118 is also not applicable. If any such regulations interfere with the overall in administrative control by the Management over the staff, or abridges/ dilutes in any other manner, right to establish and administer educational institutions, such regulations, to that extent will be inapplicable to minority institution in view of T.M.Pai judgement.

30. It is also argued by main counsel for respondent no. 1 that the Judgement relied upon by appellant upon "**Mamta Vs. School Management of Jindal Public School & Ors.**" is not applicable in present case. This Judgement relied by appellant is in relation to disciplinary authority to be constituted under Rule 118 in case of recognized private school. However, the respondent school is an Unaided Minority School, and nomination of outsider is not permissible in any administrative committee including Disciplinary committee related to affairs of minority school. The judgement relied upon by Appellant upon "**CBSE Vs. Mount Carmel School Society And Ors.**" Passed in LPA 774/2010 is also not applicable in this case and not to be considered because "status quo order" has been passed by Apex Court in this case, which is still operating.

31. It is contended by the Ld. Counsel for R-1 that the allegation against the witnesses present in disciplinary committee and members of the disciplinary committee are unfounded and against the record of the proceedings. The witness namely Neeraj Vohra who was principal of the school had never participated in Disciplinary Committee meeting since the issuance of charge sheet dated 28.12.2017 to the appellant, in which her name was mentioned as a witness. Being a principal, she was part of Disciplinary committee, but when enquiry proceeding started before independent Enquiry officer, she never participated in the Disciplinary committee. Ms. Neeraj Vohra was participated in Disciplinary committee meeting dated 13.10.2017 and 23.10.2017 only and not thereafter.

32. Similarly Sh. Ravinder Singh Chawla, who was addl. Chairman of Mgt. Committee at the time of incident dated 11.10.2017 was not participated in any Disciplinary meeting after initiation of Enquiry

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proceeding before the Enquiry officer. Both witnesses was not part of disciplinary committee reconstituted on 29.04.2019 after the Change of Management committee of respondent school.

33. As stated by the appellant that participation of witnesses in Disciplinary committee are unfounded and against the record. Presence of Neeraj Vohra in Management Committee Meeting dated 22.11.2017 related to administrative matters with others member but not in Disciplinary committee on that date. It is relevant to mention here that Chargesheet was issued to Appellant on 28.12.2017 and allegation of participation of Neeraj Vohra before the start of enquiry, have no relation with the allegation of bias.

34. It is also argued that no relation between the Disciplinary proceeding initiated against the Appellant for her misconduct by the order of Mgt. Committee and her filing of Writ Petition related to correct fixation of pay scale. the appellant cannot take benefit of her own wrong. It is settled law that finality of enquiry proceeding is necessary for the benefit of Delinquent employee as well as for the Management, and so, only on account of no-completion of enquiry proceeding in one year, the enquiry proceeding would not called to be vitiated and relied on the Hon'ble Supreme Court, in **Anant R. Kulkarni vs. Y.P. Education Society, (2013) 6 SCC 515.**

35. The appellant herself has not appear as the defence witness since the allegation about misbehavior with the principal on 11.10.2017 in her room and sitting at reception till 8.30 PM with other staff even after direction of Principal. The Appellant during enquiry proceeding extensively cross examine the principal, but not suggested any question that principal directed her to stay there. She even accepted in her Written comments to the Enquiry report that actually principal was saying in authoritative manner as such delinquent had raised her voice. She changed her stand and not said about principal's instruction to stay. She also accepted to call the additional chairman at 3 PM to come to school to resolve their matter, but

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in cross examination, no question put that she had not threatened to call the police, if he will not visit the school immediately. Therefore in these circumstances the appeal is liable to be dismissed with cost.

R-1 (DOE) contention

36. **R-2 DOE also filed written statement** and argued that the appeal is against the termination order dated 16.08.2019 passed by R-1 school, which is a minority unaided school and recognized by R-2 govern under the provision of DSEA&R 1973. The employee of the R-1 is bound to the statutory provisions of DSEAR 1973 in managing the day to day affairs of the school. The main dispute in the present appeal is between the management and R-1 i.e. employer and employee alleging that no permission was obtained for suspension/ termination from the R-2, which is violation of Sub Section 2 and 4 of Section 8 of Chapter IV of DSEAR 1973 and also relied on the judgment on **Frank Anthony (Supra) and Y. Theclamma (Supra)**.

37. The respondent no. 1 school is custodian to the service record pertaining to its employee. The DOE vide circular dated 15.10.2008 directed the management of all the private schools to implement the 6th pay commission recommendations and payment of arrears in accordance with the circular dated 22.02.2008 in which it has been implemented in respect of the employee of government school. Vide letter dated 25.08.2017 the Director of education has directed the management committee of all the private unaided school to implement the 7th pay CPC in respect of the regulations of employees of the employment status in their school. No prior approval of DOE has been taken by R-1 school regarding the suspension or termination. Hence, appellant suspension / termination has been void ab initio. Termination of the service is followed by illegal procedure cannot be termed as legally justified. As per the official record of the Zone 11 District NWB-1 no legal notice sent by appellant counsel has been received through email dated 26.10.2019. No prior approval was taken for suspension or termination. No procedure of Rule 118 or 120 has been

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strictly followed by the R-1. Even 6th pay commissions recommendations have not been complied with.

Rest of the contentions of the appellant as raised has been denied as false and incorrect by reaffirming the submission as made in the previous paras and prayed that court may pass order as deem fit and appropriate.

38. Having **heard** the argument of Ld. Counsel for the parties and carefully gone through material placed on record as well as judgement as cited and written submission filed by the concerned parties.

39. The Ld. Counsel for parties re-iterated the contentions as raised in the preceding paras of the judgement in their written submissions. Same is not repeated here for sake of brevity and the law laid in the judgment as supported is uncontroverted by the pleaders.

40. The appointment of the appellant and the service conditions as well as termination is undisputed one and same is not repeated for sake of brevity. The appellant was suspended vide order dated 23.10.2017. Management of the school reply dated 13.10.2017 issued to the appellant by the Principal Ms. Neeraj Vohra seeking explanation about sitting with other colleagues teacher till 08:30 pm on 11.10.2017. After receiving the reply Management Committee found that the reply found that the dispute arose between the appellant and Ms. Inderjeet Kaur Dhawan in respect of holding the result of class 9th C without following the proper procedure as per the directions of the Principal. Further explanation has been sought from Ms. Inderjeet kaur Dhawan about the incident of 11.10.2017 she had made serious allegations of the conduct in uploading of marks of Class 11th C without her knowledge as she was re-checker. This fact was brought to the notice of the Principal. The appellant has alleged that tempering of the marks of one student using white fluid by Ms. Inderjeet Kaur Dhawan. It was also transpired that the personal allegations and foul language used in the incident on the same day before the Principal. The Principal Neeraj Vohra has submitted the report relating to the alleged behavior of

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misconduct and stay in school premises till 08.30 pm on night of 11.10.2017 alongwith 21 teachers. As well as also allegations of behaving in rowdy manner and using of unparliamentary language. Appellant has also made derogatory statement that "school hila dunggi" by thumping the table of Principal room on that day. Even not followed the instructions of school principal on 11.10.2017 while holding the dharna without permission. The management committee constituted disciplinary committee to enquire into truth. The breach of code of conduct as stipulated in Rule 123 of DEAR 1973.

41. After matter was consider by the disciplinary committee and the recording the live video footage and after considering the report of Principal. Disciplinary Action Committee decided to conduct an inquiry vide order dated 23.10.2017. The necessary document as per the list of document and the list of witnesses along with memorandum of charges has been supplied to the appellant by the additional manager. In the list of witness serial no. 1 Neeraj Vohra Principal of the school is also one of the witness. Apart from the complaint Ms. Inderjeet Kaur Dhawan, Manpreet Kaur, Dalwinder Kaur, Dineet Batra, Manpreet Singh, Dalwinder Singh, Krishna Ram and Pinki. The Principal has also given a written complaint against the appellant vide dated 12.10.2017 made the aforesaid allegations alongwith the annexures of the list of other staff who stayed late till evening. At the same time Mr. Dinit Batra estate officer and Manpreet Singh transport supervisor were present in the school as it is their duty to ensure that school is properly locked before leaving. They were in constant touch with Additional Chairman S. Ravinder Singh Chawla at around 8 pm while the principal was sitting in the office till the appellant along with the other staff remain in the school. Vide letter dated 17.03.2018, Paramjeet Kaur retired education officer was appointed as a inquiry officer in pursuance to the meeting of the Disciplinary action Committee dated 22.11.2017.

42. The order of termination from the service of the appellant from this school was passed by the management committee vide dated

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16.08.2019. Thought the appellant was appointed by the Principal Avatar Singh and Manager Santosh Singh. The suspension order was passed by Sh. Paramjeet Singh, Proxy Chairman, Ravinder Singh Chawla, Additional Chairman, Iqbal Singh Arora, Manager and S.S. Bhandari Additional Chairman. The appellant was appeared in the inquiry proceedings along with Defence Assistant Mahesh Chandra Garg. Whereas the presenting officer was Reema Punj. Ravinder Singh Chawla additional Chairman examined on 21.07.2018 who has answered to the question no. 4 that "On the 11th October 2017, around 3:00 pm Mrs. Ruchi Malhotra called me requesting me for solving a problem of lady teachers with Mrs. Dhawan and many other teachers are waiting with me. I told her on the phone that for such issues principal (Mrs. Vohra) is always there. She told me that we are waiting for you here till 4:00 pm otherwise we will call the police. I again told her that it is not possible for me to come right now as other members of the management committee (Chairman and Manager) are not available with me. For the issue we will come tomorrow and discuss with the principal....".

43. It is further answered to question no. 16 that

"I was also told by Dinit that some teachers' husbands were also in the school. I was told by the principal that around 8:00 or so that teachers have left and she was able to convince them to meet the management the next day. After that I checked back with Dinit and he gave me report that everybody including class IV employees had left".

44. Ravinder Singh Chawla was also cross examined on 21.07.2018 also narrated the entire incident and also stated charges against the appellant. Principal Neeraj Vohra was also examined on 04.08.2017 apart from the other witness as cited.

45. As per the constitution of Rule 118, the following should be the member of the Disciplinary Action Committee:-

The disciplinary committee in respect of every recognized private school, whether aided or not, shall consist of:-

- (i) the chairman of the managing committee of the school;
- (ii) the manager of the school;

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(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 Head 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.

46. The management committee meeting held on 13.10.2017 consisting of Paramjit Singh Proxy, S. Ravindra Singh, S. Iqbal Singh, Col. S.S. Bhandari, Mrs. Neeraj Vohra, Principal. Submitted the report of the incident took place on 11.10.2017 which was read out. As per annexure R1/3, R1/4 the meeting held on 28.12.2017 and 05.01.2018 in presence of Paramjit Singh, Kuldeep Singh, Ravinder S. Chawla, Manmohan Singh, Iqbal Singh, Monika and JP Singh. The management committee was held on 29.04.2019. DAC was re-constituted with the following member: Chairman, S Amarjeet Singh Bindra, S. Daljit Singh Bindra, Additional Chairman, SJS Ghuman, Director, Monica, Office Vice Principal, Jasbir Singh Chawla, Manager and was approved with the unanimous decision. The meeting of the disciplinary committee dated 01.07.2019 consisting S. Amarjit Singh Bindra Chairman, DS Bindra, Additional Chairman, JS Ghuman, Director, Monica Kukreja, office. Vice Principal, Jasbir Singh Chawla.

47. Before an action report sent to the Richa Malhotra receiving the inquiry report from Param Jeet Kaur who conducted the inquiry regarding the mis-conduct of Richa Malhotra. Vide letter dated 09.08.2019 of the Disciplinary Action Committee proposed a punishment after concluding the inquiry proceedings against the appellant which is in presence and sign of Chairman, four members of disciplinary committee. The management committee held a meeting on 16.08.2019 consisting of 12 members proposed a punishment of termination after the inquiry against the appellant.

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48. The recapitulation of previous meeting by Ms. Neeraj Vohra School Principal, several issued other than the present issues is discussed which is not relevant in the present case. It is revealed from the aforesaid consisting of the meeting of the management committee and the disciplinary committee the nominee of the Director was not present in all the meetings of the Disciplinary Committee. Even the teacher representative was absent. On 13.10.2017 in the management committee the DE nominee was absent and the Neeraj Vohra complainant was also made witness of the disciplinary committee.

49. On 23.10.2017 in the SMC meeting proposed a suspension of the appellant and initiated disciplinary actions against the appellant. Even the said meeting the DE nominee was not present. On 28.12.2017 the same positions wherein the decision of the meeting was conveyed to decide the issue of chargesheet. On 05.01.2018 the inquiry committee was constituted the investigation charges against the appellant. Even neither the DE nominee was not present nor the teacher representative was present. Similar position in 29.04.2019, 01.07.2019, 09.08.2019, which is a violation of the provision of Rule 118. It is also revealed from the inquiry proceedings that the management committee meeting held on 16.08.2019 proposed a punishment of termination from service with retrospective effect on 24.10.2017.

50. The contention raised by the Ld. Counsel for the appellant supported by the judgement has not been refuted by the respondent school with any cogent and supporting judgement. The DOE in their reply to the appeal admitted that no prior approval of DOE has been taken by the R-1 school regarding & termination the suspension of the appellant as per the provisions of Section 8 of DSEA 1973. Hence, the suspension & termination of the appellant is void ab initio. Further the terminations of the service of the appellant followed by the department enquiry cannot be treated as legally justified unless same is followed by Rule 118, 120 of DSER 1973 and principle of natural justice.

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51. The enquiry proceeding has not been completed within the stipulated time as per the law. Even the delay may be caused by the reason whatsoever. However, the inquiry on the sole ground of delay include the inquiry proceedings cannot be set aside. There may be several reasons in delaying the inquiry proceedings. The delay cannot be attributed due to the fault of the respondent school. From the ordersheet it reflects that there are several reasons for delay in the inquiry proceedings attributed to the appellants also.

52. Respondent school counsel has argued that as per the statutory provisions and regulating the facet of administration are concerned in the case unaided minority educational institution, the regulatory measures of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with but in the matter of day to day management, like the appointment of staff, teacher and non- teaching and the administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. The executive committee or the governing body of the management and the administration of the unaided minority school, required to be constituted as per their own choice with their own members. Any interference by Govt. authority or imposing any member in any committee of school doing administrative work of Unaided minority school is a clear violation of fundamental right under Art. 30 of Constitution of India by interfering in to the administration of affairs of school. If any outsider be nominated by Directorate/Govt. Authority, it is effectively an imposition of outsider as a member to participate in administrative affairs of Minority school being nominee of Govt. authority in the Selection committee, or in the Executive committee or in the Disciplinary committee. This compulsion of participation of outsider nominee or constitution of Disciplinary committee in Unaided Minority School by including a nominee of Director as provided under Rule 118 of DSE rules is also a restriction upon the freedom to manage the

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affairs of school, and this compulsion would interfere with fundamental right of Minority Institution under Art.30 of constitution and thus void under Art.30 of constitution of India. As described and decided in **TMA PAI judgement** of Supreme court by 11 judges bench in final conclusion to Q.5C in words that.....there should not be any external controlling agency.

53. It is further argued by the counsel for the respondent no. 1 that in view of the **Frank Anthony Judgement, Sec. 8(2)** of DSE Act was declared to be non applicable in Unaided Minority School and if the same condition of approval by virtue of Rule 120 be required before termination or punishment of any employee, then it is beyond the provision of main act. As such, this rule be not applicable upon unaided Minority school. And further relied on the judgement of **Ahmedabad St. Xavier's College Society Vs. St. of Gujrat (1974) 1 SCC 717**. So far as the judgement of **Mamta Vs. School Management of Jindal Public School & Ors.** is not applicable in the present case, which is in relation to disciplinary authority to be constituted under Rule 118 in case of recognized private school. However, the respondent school is unaided minority school and nomination of outside is not permissible in any administrative committee including Disciplinary Committee related to affairs of minority school.

54. So far as the allegation of the witness present in the Disciplinary Committee, it is contended by the counsel for respondent no. 1 to 3 that Neeraj Vohra Principal of the school who had never participated in the disciplinary meeting. She issued the chargesheet (28.12.2017). As per annexure R1/1 and R1/9 shows that Ms. Neeraj Vohra participated in disciplinary committee meeting dated 13.10.2017 and 23.10.2017 only and not thereafter as per annexure R1/1 and R1/2. Similarly Ravinder Singh Chawla, who was addl. Chairman of Management committee at the time of incident dated 11.10.2017, was not participated in any Disciplinary meeting after initiation of Enquiry proceeding before the Enquiry Officer. Both the witnesses was not part of Disciplinary Committee reconstituted on 29.04.2019, after the change of the management committee of the respondent school.

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55. Further, the allegation of the **victimization**, it is argued by the respondent school counsel that the disciplinary committee has consider the enquiry report of different angle then the earlier committee and the independently consider the inquiry report with all records. Even witness namely Ms.Monika Kukreja, who has also deposed in the favour of appellatant in the disciplinary proceeding was a member of newly constituted disciplinary committee constituted on 29.04.2019.

56. It is correct that there is no provision in Delhi School Education Act and Rules-1973 with regard to filing of internal appeal against the findings of Inquiry Officer/ order of Disciplinary Committee or authority like that in the Industrial Dispute Act and other Acts. In these circumstances the appeal against findings of Inquiry Officer/ order of Disciplinary Committee or authority directly lies to this Tribunal. As such this Tribunal being the first appellate court against findings of Inquiry Officer/ order of Disciplinary Committee or authority.

57. In view of Section 11(6) and the fact that provisions of Delhi School Education Act and rules -1973 do not provide any internal appeal against the findings of Inquiry Officer/ order of Disciplinary Committee or authority, this Tribunal of the opinion that it can re- appreciate the evidence and findings of Inquiry Officer/ order of Disciplinary Committee or authority being the first Appellate Court.

58. In this regard Hon'ble Supreme court in the case of **Management Committee, Montfort Senior Secondary School Vs. Vijay Kumar, (2005) 7 SCC 472** in para no 13 and 15 has held as follows:

"13. A question has been raised as to whether the Tribunal is a judicial authority and/ or whether it exercises judicial power in the background of sub-section (1) of Section 8 of the Arbitration Act. Te expression" judicial authority" has not been defined under the said Act. The Tribunal is presided by a judicial officer of equal rank of the District judge. The Expenditure incurred on the Tribunal is defrayed from the consolidated funds of India. It is vested with the power to regulate its own proceedings and is vested with the same powers as are vested in a Court of Law

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under the Code of Civil Procedure, 1908 (in short "CPC"). One important factor is that the Tribunal has a power to stay the operation of the order appealed against. Finality has been attached to the order of the Tribunal subject to any judicial review under Articles 226/227 or Article 32 of the Constitution. Meaning of the words "act judicially" and "judicial power" need to be noted at this juncture. Provisions of Section 11 of the Act clearly vest all the powers of a civil appellate court in the Tribunal while dealing with an appeal preferred before it under Section 8(3) of the ACT."

59. In para 13 of B.C. **Chaturvedi Vs. Union of India, AIR 1996 SC 484** Hon'ble Supreme Court has held as follows:

"The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re- appreciate the evidence or the nature of punishment."

60. Hon'ble Supreme Court in the case of **State of Tamil Nadu Vs. S Subramaniam, AIR 1996 SC 1232** in the end of Para no. 2, 3 and 4 has held as follows

"On Consideration of the reply to show cause notice, the respondent was removed from the service. The appeal was dismissed. After the Tribunal was constituted, the pending writ petition along with all other service cases were transferred to the Tribunal

3. *The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complainant, did not rely on it to prove the above charges. On that basis, it set aside the order of the removal. Thus this appeal by special leave.*

4. *The only question is whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323 and invested the same on the Tribunal by Central Administrative Tribunal ACT."*

61. All the authorities relied upon by the Ld. Counsel for Respondent No.1 to 3 are of writ jurisdiction under Article 226 of

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Constitution of India wherein it is held that the Court (Hon'ble High Court) cannot sit as an appellate authority over and against the findings of Inquiry Officer/ Disciplinary Authority/ Managing Committee. None of these authorities deals with the power of first appellate authority like that of Delhi School Tribunal constituted u/s 11 of DSEAR, 1973.

62. The question before this Tribunal is whether the provisions of Evidence Act are not at all applicable in the departmental/ domestic inquiries or fully applicable or strictly not applicable? This Tribunal has gone through the various authorities relied upon by the Ld. Counsels. The sum and substance of all these authorities is that the provisions of Evidence Act are not strictly applicable in departmental/ domestic inquiries. Thus in view of the ratio of law laid down in the various authorities relied upon by Ld. Counsels, this Tribunal is of opinion that provisions of Evidence Act are applicable to some extent in the departmental/ domestic inquiries but not strictly applicable.

63. However, it is not defined in any of the authorities relied upon, to which extent the provisions of Evidence Act are applicable in departmental/ domestic inquiries. In departmental/ domestic inquiries, question of bread and butter of the concerned employee is involve. Neither the Legislature nor the Court can be of the opinion/view that any employee can be shown the exit gate at the whims and fancies of Inquiry Officer. In these circumstances, this Tribunal is of opinion that though the provisions of Evidence Act are not strictly applicable in the department/ domestic inquiries yet it does not mean that the 1.0. will not even follow the basic principles of Evidence Act while holding an inquiry or recording the statements of witnesses in the departmental inquiry.

64. Hon'ble Supreme Court in **Roop Singh Negi Vs. Punjab National bank & Ors. MANU/SC/845/2008** has held as follows:

"Service-Order of Dismissal-disciplinary proceedings- Reliance on confession made before police-legality of-Sections 1208 and 380 of the Indian Penal code, 1860 (IPC) Appellant worked as peon with Respondent respondent complained of theft

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of bank draft - FIR under Section 380/120 B. IPC registered Report of Inspector doubted integrity of Appellant Disciplinary proceedings initiated against Appellant after five years of incident Appellant found guilty by Enquiry Officer relying on confession of Appellant before police authorities Disciplinary Authority directed dismissal of Appellant from service without any reason Appeal before Appellate Authority dismissed-Writ petition by Appellant before High Court dismissed- Whether dismissal of Appellant from service without any reason is justifiable -Held, order of Disciplinary Authority and Appellate Authority not supported by any reason Appropriate reasons required to be assigned as both orders lead to severe civil consequences. Purported evidence collected during investigation by the Investigation Officer against all the Accused by itself could not be treated to be evidence in the disciplinary proceeding Enquiry Officer wrongly relied on the FIR which could not have been treated as evidence - No director or indirect evidence available to show theft of draft book by Appellant-Decision of High court set aside - Appeal allowed"

65. From the above discussion, this Tribunal is of opinion that the entire evidence recorded during inquiry proceedings is inadmissibly as per law, hence the same cannot be relied upon. In these circumstances, the finding of Inquiry Officer is without any legal admissibly evidence, therefore, the same is perverse.

66. It is undisputed fact that the appellant is terminated and the service of the appellant cannot be terminated without following Rule 118 and Rule 120 of DSEAR 1973 and the principle of natural justice. In the present case the disciplinary action committee has not been constituted in accordance with provision of Rule 118 of DSER 1973. Since the complainant herself is a witness and a member of DAC. The teacher who is a member of the management committee nominated by the school committee is not a member of DAC, which is a mandatory requirement. The provision of Rule 120 DSER has not been complied with in the garb of R-1 minority unaided school and no prior approval permission has been obtained from the DOE as required U/s 8(2) of DSEA 1973. In these circumstances, the tribunal is of the opinion that the order dated 16.08.2019 passed against the respondent no. 1 whereby removed / termination of the appellant Ruchi Malhotra from the service is illegal.

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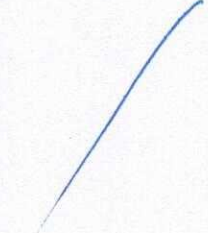
67. This tribunal has also gone through the authorities relied upon by the counsel for respondent school. There is no dispute with ratio of law laid down in this authority. However, the ratio of law in an authority is laid down according to the facts and circumstances of that particular case and the same may not be squarely applicable to the facts and circumstances of the other case. In the above case peculiar facts and circumstances of this case, ratio of law laid down in the authority relied upon by the Ld. Counsel for the respondent is not applicable.

68. In view of the above discussion impugned order dated 16.08.2019 hereby set-aside, appeal of the appellant is accepted. Respondent is directed to reinstate the appellant within one month of passing of the order. Appellant also entitled consequential benefits and full back wages from the date of this order onwards.

With respect to the back wages, in view of the Rule 121 of DSER 1973 the appellant is directed to make exhaustive representation to R-1 within one month of this order as to how and what manner the appellant is entitle for complete wages. The respondent is directed to give decision to the appellant within four weeks of receiving the same by speaking order and to communicate the order along with the copy of the same to the appellant.

Ordered accordingly.

File be consigned to record room.


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(Dr. Satinder Kumar Gautam)
Presiding Officer
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