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

Appeal No. 06/2020

Date of Institution :23.01.2020
Date of Disposal : 26.05.2025

IN THE MATTER OF:-

Shyamal Sharma (Deceased) through
Anubhuti Bhardwaj (Wife of deceased appellant)
Aged about 48 years
R/o Flat No. 003, Plot No. 30
Shalimar Garden, Extension 1st,
Sahibabad Ghaziabad, Uttar Pradesh
Mob No. 9810153480 ...Appellant
(Through Mr. Anuj Aggarwal, Advocate)

Versus

1. Siddharth International Public School
   Through its Manager/Managing Committee,
   Main Wazirabad Road,
   Delhi-110093 ...Respondent No.1

2. Siddharth International Public School,
   Through its Chairman/President.
   Panchsheel Park, Sahibabad,
   Ghaziabad, Uttar Pradesh ...Respondent No.2

3. Siddharth International Public School
   Pocket-B, Facility Center, Gurudwara, Road
   Dilshad Garden Delhi-110095
   Through its Management Committee/Manager
   (Through Mr. P.M. Sinha, Advocate for R1 to R3) ...Respondent No.3

4. Directorate of Education
   Director of Education,
   Govt. of NCT of Delhi
   Old Secretariat, Delhi-110054
   (Through Mr. Satender Kumar, Advocate) ...Respondent No.4

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Abbreviation:

DSEAR	Delhi School Education Act and Rules.
D.O.E.	Directorate of Education
PNJ	Principle of Natural Justice
R-1	Respondent no. 1
R-2	Respondent no. 2
R-3	Respondent no. 3
R-4	Respondent no. 4
IO/EO	Inquiry Officer/Enquiry Officer
DE	Delinquent Employee

Judgment

This judgment shall disposed of Appeal no. 06/2020 Shyamal Sharma (deceased) Vs Siddharth International Public school Since, the issue of termination of the appellant vide impugned order no. 179/SIPS WR/2019 dated 26.12.2019. During the tribunal proceedings, an application filed by the appellant counsel U/O XXII Rule 3 of the Code of Civil Procedure, 1908 for substituting/ impleading the legal heir of the deceased appellant and to take on record the amended memo of parties. Appellant Late Sh. Shyamal Sharma on 22.05.2021 unfortunately expired. As the right to sue and to continue the present appeal survives in favour of the legal representative of the deceased appellant. The legal heir Mrs. Anubhuti Bhardwaj wife of late Shyamal Sharma would be made as having legal heir as appellant in view of the application being allowed vide dated 12.08.2021.

1. Brief fact as alleged are that the appellant was appointed by the Siddharth International Public School/ respondent no. 2, Panchsheel Park, Sahibabad, Ghaziabad, Uttar Pradesh as "Maths Teacher" on contract basis on 01.07.2000. Appellant was not issued appointment letter by the respondent no. 2 school. The appellant had unblemished and uninterrupted record of service in the said school for about 14 years. From March 2014 till 31.07.2014 appellant was given artificial break on 01.08.2014 the appellant was again appointed as Assistant Teacher, with R-3. Appellant was getting salary from R-3 however, made to work in R-1. Appellant was appointed as "Teacher/ Employee" w.e.f. 01.08.2014. The

action on the part of the respondent school in making an appointment by R-3 and making appellant work in R-1 is illegal; unjustified and suffers from malice. Appellant worked uninterrupted continuously in the R-1 till 26.12.2019 on which date his service were illegally terminated by Siddharth International Public School/ R-1. The appellant was also issued a service agreement dated 25.12.2018 by R-1, whereby the appellant was appointed as Assistant Teacher in the scale of Rs. 9300-34800, it was also declared that the appellant will be on probation for a period of one year from the date of joining. The appellant deemed to be confirmed employee on account of working for more than three years continuously in the same school i.e. Siddharth International Public School/ R-1.

2. It is also submitted that Mrs. Alka Chaudhary, Director of Education visited the Siddharth International Public School/ R-1 for inquiry from the teachers, including the appellant enquired as to whether the teachers were getting salary in terms of the provisions of the Section 10 of DSEA 1973 or not. The said inquiry was pursuant to a complaint by the other staff members, other than the appellant. In the said inquiry, the appellant stated that he was not getting the appropriate salary, DA and other allowance in conformity with the Section 10 of DSEA 1973. However, school management thereafter pressurized and forced the appellant to revoke/ change his statement as made to the DOE (nominee). The appellant however refused to change his statement/ stand as taken before the DOE's nominee. Infuriated by the said action, respondent school issued a show cause notice dated 13.12.2019, allegations in which is factually wrong & concocted. The appellant replied to the aforesaid show cause notice dated 13.12.2019 and categorically denied all the allegations leveled against him vide reply dated 18.12.2019.

3. The termination of the appellant vide impugned order no. 179/SIPS WR/2019 dated 26.12.2019 was illegal. The appellant sent a legal notice via email dated 16.01.2020 to the respondents but no response to the said legal notice has been received by the appellant till date. The order no. 179/SIPS WR/2019 dated 26.12.2019 is illegal, unjustified,

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arbitrary, discriminatory, punitive, perverse, unreasonable, unconstitutional, violative of Articles 14, 16, 1 & 311 of Constitution of India and violative of the principles of natural justice and suffers from malice and also violative of the provisions of DSEA 1973. Appellant deemed confirmed employee after working for more than three years with the school management in terms of Rule 105 of DSER 1973. Further as per Hon'ble High Court of Delhi in ***Hamdard Public School Vs. Directorate of Education and Anr. 202 (2013) DLT 111 and Sonia Mehta Vs. Dayanand Model School and Ors. in WP (C) no. 3061/2011*** decided on 06.09.2013, it was held that an employee of a school is deemed to be confirmed in service after a period of three years of service.

4. It is also contended that the impugned termination order is in violation of Rule 118, 120 and 123 of DSER 1973. No disciplinary authority was ever constituted and no inquiry as provided under Rule 120 r/w 123 of DSER 1973 conducted by the R-1 before terminating the service of the appellant and therefore the termination of service of the appellant is illegal. The appellant has not committed any misconduct as such the termination order is punitive in nature and therefore inquiry ought to have been conducted by the respondent no. 1 before terminating the appellant.

5. It is further submitted that the appellant is terminated because he raised his voice before Mrs. Alka Chaudhary, DOE nominee for his right of full dues and salary. The termination is contrary as per law declared by the Division Bench of the Hon'ble Delhi High Court in ***Ms. Sadhna Payal and Ors Vs. Director of Education & Ors. WP(C) no. 5046 of 1999.*** The head of school who issued the impugned termination order no. 179/SIPS WR / 2019 dated 26.12.2019 was not a competent authority to terminate the service of the appellant. As per DSER, 1973 it is only the Disciplinary Authority which is competent to terminate the service of an employee of a recognized private school. The appellant without issuing the confirmation letter, school is extracting work for 19 years, which is itself illegal, unjustified and is a violation of Rule 105 of the DSEAR 1973. R-1 school

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has violated Section 10 of DSEAR and Rules 105, 118, 120 and 123 of DSEAR 1973.

6. It is further submitted that the termination of service of the appellant is in violation of Section 8(2) of DSEA 1973 as no prior approval was taken from Director of Education GNCT of Delhi. Even in case of probationer the R-1 school was required to take approval from DOE before terminating the services of the appellant. As per the law laid down by Hon'ble Supreme Court in ***Raj Kumar Vs. Director of Education (2016) 6 SCC 541,*** prior approval had to be obtained from Director of Education, GNCT of Delhi as required under Section 8 (2) of DSEA 1973. The order of termination passed without prior approval would be thus bad in law.

7. It is submitted that the appellant is employed since the date of his illegal termination despite his best efforts, has not been able to procure any employment. Therefore, entitled to full back wages and continuity of service on account of his enforced employment. R-1 school continued the appellant on probation/ temporary which is illegal, unjustified amount to unfair labour practice suffers from malice and contrary to law declared by Hon'ble Supreme Court as well as Hon'ble Delhi High Court in catena of judgement.

8. R-1 school has deliberately violated the provisions of DSEA 1973 therefore it is statutory duty of R-4 to take appropriate action against the R-1 school. However, R- 4 DOE has failed to discharge its statutory duty. It is prayed to set aside the impugned termination order no. 179/SIPS WR /219 dated 26.12.2019 and to reinstate the appellant in service as well as continuity of service and with full back wages/ salary, arrears with all consequential benefits (monetary as well as non-monetary).

Bone of contention of Respondent no.1 & 3 to appeal filed U/s 8 (3) of DSEA 1973. However no reply filed on behalf of R-2 nor vakalatnama though attendance marked for R1 to R3.

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It is submitted that the R-1 is a private unaided recognized senior secondary school situated at main Wazirabad Road, Delhi-93 and run by the registered society named as Ravi Bharti Shiksha Samiti (Reg.). Further, the R-3 is also a private unaided recognized senior secondary school situated at Pocket B, Facility Center, Gurudwara Road, Dilshad Garden Delhi-95 and run by the registered society named as Ravi Bharti Shiksha Samiti (Reg.). The appellant was appointed as an Assistant Teacher for a probation period of one year, with effect from 2014. The probation period was not extended to another year. The services of the appellant expired/ terminated by efflux of time. The appellant thus ceased to have been on probation and to have been in service. So approval of DOE was not required. The services of the appellant were never confirmed by the answering respondent. The appellant so has no right on service. The work and conduct was not satisfactory does not make any difference because in all the cases neither approval of DOE is required or any disciplinary action is required.

9. The appellant again applied and was appointed as Assistant Teacher for a probation period of one year, with effect from 01.01.2019. Even on the second time the probation period was not extended to another year. The services of the appellant expired/ terminated by efflux of time. The appellant thus ceased to have been on probation and to have no more in service. The appellant in fact had no right in service. The appellant has never been regular employee in R-1 school. In addition to above the appointment letter of the appellant itself states that there will be no automatic deemed confirmation of the appellant on the service at the expiry of the probation period unless and until the appointing authority confirms the service of the appellant in writing.

Rule 105 (1) of DSE Act & Rules 1973

(1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the

employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:

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

Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.]

Second proviso would have been applicable in the case in hand only if the services of the appellant was terminated during the probation period and would not have been applicable since the appellant was removed because the probation period is not extended since the work, conduct, or character was not found satisfactory, after the expiry of the probation period. Therefore, in the case in hand the respondents do not require any prior approval of the Directorate of Education before terminating the appellant from the service.

Rule 105 (2) of Delhi School Education Rules 1973.

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

Hence, it is not that after the completion of the probation period the probationary shall be automatically deemed confirmed. In support of above the Hon'ble Supreme Court of India in the case ***Durgabai Deshmukh Memorial vs. J.A.J. Vasu Sena & ors***. Civil appeal no. 5926 of 2019 has observed as follows;

"49. We hold and declare that:
(1) The words "by another year" in Rule 105(1) of the 1973 Rules stipulate that the maximum period of probation permissible is two years. The limit equally applies to minority institutions covered by the first proviso to Rule 105; and (ii) Rule 105 (2) stipulates a condition precedent to the issuance of an order of confirmation. The continuation of the services of a probationer beyond the period of probation does not amount to a deemed confirmation of service. It is only upon the issuance of an order of confirmation by the appointing authority that a probationer is confirmed in service."

The constitutional bench of the Supreme Court in ***GS Ramaswamy vs. Inspector General of the Police, 1966 AIR 175,*** case has observed the following;

> *"8..... he cannot become a permanent servant mainly because efflux of time, unless the Rules of Service which governs specifically lay down that the probationary will be automatically confirmed after the initial period of probation is over..... even so, though this part of Rule 486 says that "promoted officers will be confirmed at the end of their probationary period", it is qualified by the words "if they have given satisfaction". Clearly therefore the Rule does not contemplate automatic confirmation after the probationary period of two years, for a promoted officer can only be confirmed under this Rule if he has given satisfaction. This condition of giving satisfaction must be fulfilled before a promoted officer can be confirmed under this Rule and this condition obviously means that the authority competent to confirm him must pass an order to the effect that the probationary officer has given satisfaction and is therefore confirmed."*

10. The constitutional bench of Hon'ble Supreme Court in the case ***Secretary, State of Karnataka & Ors. vs. Uma Devi AIR 2006 Supreme Court 1806*** has observed the following;

> *"..Similarly a temporary employee could not claim to be made permanent on the expiry of his term of employment. It has also to be clarified that merely because a temporary employee of the casual wages worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in the regular services or made permanent, merely on the strength of such continuance,*
>
> *"While directing that appointments, temporary or gradual, be regularized or made permanent the court are swayed by the effect that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with the open eyes. It may be proved that he is not in a position to bargain - not at arm's length- since he might have been searching for some employment so as to eke out his livelihood and accept whatever he gets. But on that ground only, it would not be appropriate to the jettison the constitutional scheme of appointment and to take the view that a person who was temporary or casual got employed should be directed to be continued permanently."*

11. The impugned order is well within the legal frame work of Rule 105 of DSE Rule. The service of the appellant is otherwise illegal because the appellant at the time of joining the service i.e. in the year 2019 was over aged for the post of Assistant teacher. The maximum age for being an Assistant teacher as per the Rule is 30 years and in the case in hand, the appellant at the time of joining the service was of approx. 44 year. The appellant applied in 2014 and was offered the post of Assistant Teacher for a probation period of one year by R-3 vide appointment letter date nil. In 2018 the appellant applied and was offered the post of Assistant Teacher for a probation period of one year by R-1 vide appointment letter dated nil. On 25.12.2018, the appellant enters into service agreement with R-1 and agree to serve on probation period of one year w.e.f. 01.01.2019.

12. On 13.12.2019 R-1 issued a show cause notice dated 13.12.2019 against the appellant for the negligent behavior towards the job. The appellant filed reply dated 18.12.2020 to the show cause notice. The reply was in routine manner and in appropriate. On 26.12.2019 the HOS has not extended the service of the appellant as a probationer w.e.f. 26.12.2019.

13. Respondent school denied that the appellant was illegally terminated by R-1. It is also vehemently denied by the respondent school that the appellant has unblemished and uninterrupted record of service. The service of the appellant expired by afflux of time. The probation period was not extended to another year because of the poor work and conduct of appellant in the school. It is also denied that the subsequent appointment letter is illegal, unjust and suffers from malice.The termination letter is in accordance to Rule 105 of the DSEAR 1973. Respondent school also denied that appellant is being working from last three years in the school as an assistant teacher.

14. It is also denied that the termination amounts to victimization of the appellant. R-1 is always paying the salary as per the appointment letter executed in the year 2018. It is further denied that R-1 or R-3 has

extracted work from the appellant for almost 19 years. The service of the appellant expired by afflux of time. The provision of Section 8(2) is not denied.

15. After notice of the appeal **R-4/DOE** also filed reply to the appeal. The service of the employee can only be terminated by following the due process as per laid down provisions of the DSEAR 1973. As per Rule 8(2) of DSEAct, 1973 subject to any rule that may be made in this behalf, no employee of a recognized private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director. The Disciplinary Authority may be constituted in accordance of Rule 118 to take action against the employee. As per Rule 120 (2) no order with regards to imposition of a major penalty shall be made by Disciplinary Authority except after the receipt of the approval of the Director. No Disciplinary Committee were constituted as per Rule 118 nor any approval of Director of Education was obtained by the school authority, therefore, its violation of Rule 8 (2), Rule 118 and Rule 120 (2) of DSEAR, 1973 by the School. The order of termination of the appellant is not legal as per provisions laid down under DSEAR, 1973, under acceptable circumstances and facts.

16. The appellant filed **rejoinder** to the reply of the appeal and denied the averment made in the reply as wrong, false and baseless. The averment made in the appeal are re-iterated and re-affirm and repeated the prayer made in appeal.

17. There is no reply to appeal filed on behalf of R-2 nor vakalatnama, however counsel for R-1 and R-3 mark attendance on several date of hearing for R-2 also, therefore pleading of R-1 & R-3 also be treated for R-2 also or non-est.

Having heard the detail argument of Ld. Counsel for parties and gone through the material on record, relevant law and judgement.

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18. In the present case the question is whether the service of the appellant were allegedly terminated on expired by afflux of time. Thus, cease to have been on probation and to have been on service, approval of director of education is not required. Even the service of the appellant was never confirmed so the appellant has no right in service. Even it is also alleged by the R-1 that the appellant has abandon the job by afflux of time or has not extending the probation period because the work and conduct was not satisfactory, it does not make any difference because in all cases neither approval of DOE is require nor any disciplinary action is require. The R-1 school has also relied on the judgements:

- ***Durgabai Deshmukh Vs. JAJ Vasu Sena & Ors.*(Supra)**
- ***GS Ramaswamy vs. Inspector General of the Police* (Supra)**
- **State of Karnataka & Ors. vs. Uma Devi (Supra)**

19. The stand of R-4 DOE is more appealable and plausible that the respondent school even being recognized as to follow the DSEAR 1973. The service of the appellant was terminated by the respondent school without prior approval of DOE as mandate u/s 8(2) of DSEA 1973. The Hon'ble Supreme Court of India in ***Raj Kumar Vs. Director of Education & Ors.*** (Supra) held that prior approval of DOE under section 8 (2) is mandatory. As per the Rule 122, no order with regard to imposition of major penalty shall be made by the disciplinary authority except after receiving the approval of the director. In the present matter neither the disciplinary committee was constituted as per Rule 118. Nor prior approval of the Director as per Rule 120 has been obtained by the respondent school authority before imposing the major penalty of termination of service of the appellant. As such, it is the clear case of violation of Section 8(2) Rule 118 and Rule 120(2) of DSEA&R 1973 by the respondent school. The order of termination of the appellant is not legal and provision as laid in the DSEAR 1973. Order of termination is illegal and as per law laid down appeal is liable to be allowed.

20. It is also contented by R-4 (DOE) that the services of the appellant is illegally terminated by R-1 with immediate effect without follow

the mandatory provision of Section 8(2) Rule 118 and Rule 120 of DSEAR 1973 which is also illegal and un-justified as well as violation of principle of natural justice. The appellant termination is punitive in nature and therefore inquiry has to be conducted for terminating of the services of the appellant. It is also revealed that DOE failed to discharge its statutory functions by not taking any appropriate actions against the R-1 school who is violating of provision of DSEAR 1973. DOE has interalia power to de-recognize the respondent school under the facts and circumstances of the present case.

21. There is no issue in expressing confirmation letter to the appellant, which is inter alia violation of Rule 105. No resignation was being tender by the appellant at any point of time in their service tenure. The impugned action on the part of R-1 of continuing the appellant on probation/temporary by itself is tantamount practically suffer from malice in contrary to Rule 59 of DSEA&R 1973, DOE ought to have taken appropriate action against the respondent school.

22. The appellant has also relied on the judgement as under:-

- ***DAV College Managing Committee vs. Surinder Rana, (2011) 3 ESC 427, decided on 03.02.2011.***
- ***Laxman Public School Society Regd. & Ors. vs. Richa Arora & Ors., MANU/DE/3902/2018.***
- ***The Chairman, Bharat Mata Saraswati Bal Mandir Senior Secondary School & Ors. vs. Ms. Anita & Anr., W.P. (C) No. 7045/2022, decided on 06.05.2022 by the Hon'ble Delhi High Court.***
- ***Smt. Smita vs. Siddharth International Public School & Anr., Appeal No. 29 of 2020, decided on 02.06.2022 by the Delhi School Tribunal.***
- ***Arjun Singh vs. Siddharth International Public School, Appeal No. 30 of 2020, decided on 02.06.2022, decided by the Delhi School Tribunal.***

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- ***Sahdeo Singh Solanki Vs. Government of NCT of Delhi, decided on 01.11.1996 by the Hon'ble High Court of Delhi MANU/DE/0939/1996.***
- ***Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors. decided on 02.12.1977 by the Hon'ble Supreme Court of India.***

23. Having gone through discussion, judgement and relevant law, material placed on record, circular, rules and regulations. Rule 105 of DSER deal with the probation and prescribe the period of probation. The second proviso to Sub Section 1 of Rule 105 clearly provides that "no termination from the service of the employee on probation shall be made by the school other than minority except with previous approval of Director". It is not disputed that the R-1 school is a private unaided recognized school and govern under the DSEAR 1973.

24. The aforesaid detailed pleadings categorically lead to the conclusion that the termination / removal from service without follow the principle of natural justice and provision of DSEAR 1973 are stigmatic and fall within the definition of the misconduct. It is no more res-integra that in case of disengagement of services of a probationer as well an inquiry was required to be conducted in cases of misconduct. The reason to say so is inferable from the mandate of ***Managing Committee Mount Sr. Mary's School Vs Nirvikalp Mudgal*** *bearing W.P.(C) No. 7375/2012*, decided on 03.10.2013, reported in MANU/3509/2013. Relevant portion of para no. 1 to 3 are reproduced:

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

will have complete statutory protection and all statutory rights under all the provisions of Delhi School Education Act and Rules, 1973. The judgment in the case of ***Management Committee of Montfort Senior Secondary School*** *(supra) is relevant and the same 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 mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article is intended to he real and effective and not a mere pious and abstract sentiment, it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of ***Rev. Sidhajbhai Sabhai*** *(Supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant 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 of reasonableness and the test that is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it.*

The effect of the decision in ***Frank Anthony's case*** *(supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in Frank Anthony's case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter-IV. The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights...*

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

25. Rule 120 of DSEA&R, 1973 uses the words "no order imposing on an employee any major penalty shall be made except after an inquiry". Rule 120 (3) uses the word "any employee". A conjoint reading of section

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2(h), section 8(2), rule 105, legal precedents and conclusion drawn hereinbefore lead me to conclude without any hitch that if the conduct of any employee falls within the ambit of rule 123, then conduct of inquiry is must w.r.t. every employee vis-à-vis probationer, contractual, ad-hoc/ temporary/permanent, admittedly it has not been so done in their case.

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

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

28. In the SCN, Memo's itself it has been mentioned that numerous deficiencies were found in the work of the appellant. This will come within the definition of Rule 123(1)(a)(i) as a teacher who has abundance or deficiencies in his work, can be said to be knowingly or willfully neglecting his duties as such an inquiry was required to be conducted as per rule 118 & 120, which has not been conducted in the instant case, therefore termination order dated 26.12.2019 is illegal and bad in law.

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

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30. In ***Laxman Public School Society (Regd.) and Ors. V/s Ms. Richa Arora and Anr.,*** bearing W.P(C) 10,886/2018 decided on 10/10/2018 Richa Arora was appellant before Delhi School Tribunal (DST).

> *Ms. Richa Arora was appointed on probation period of one year which was further liable to be extended in terms of appointment letter dated 22/05/2015. Ms. Richa Arora was terminated within first year of service vide letter dated 13/05/2016. Only one ground, out of many other grounds otherwise taken, in appeal No. 46/2016 decided on 18/05/2018 by my Ld. Predecessor Sh. V.K Maheshwari, was passed that the termination order dated 13/05/2016 was illegal as approval from DOE was not taken which was mandatory. Per contra stand of the school was that appellant was appointed as computer teacher on probation for one year and was intimated vide letter dated 22/05/2015 wherein the term & conditions of her appointment as TGT (Computer) were detailed. That the said letter was duly received by the appellant and a copy of the said letter with her declaration of acceptance of terms & conditions mentioned in the letter duly signed by Ms. Richa Arora was returned to the school on 01.06.2015. Further stand of the school was that appellant was neither a diligent worker nor a proficient teacher. She did not have good control over the class. That in review of her work time and again the aforementioned deficiencies were revealed. She has been in the habit of physical reprimanding of the students and despite having been given ample opportunities, she did not improve.*

31. In ***Mangal Sain Jain V/s Principal, Balwant Rai Mehta Vidya Bhawan and others*** reported in law finder's document #1740651, judgement of Meena Oberoi W.P.(C) No. 3415 of 2012 decided on 10.08.2020 was relied. Hon'ble Ms. Justice Jyoti Singh has explained the concept further. It was observed that prior approval has to be obtained irrespective of nature of employment i.e temporary, permanent, contractual, probationary, ad hoc etc.

In Para 5 of this judgement 3, issues were framed which are as under:-

> *(a) Whether the Petitioner is a probationer/confirmed employee and entitled to protection of procedural safeguards of the provisions of DSEA&R?*
>
> *(b) If the provisions of DSEA&R are applicable, whether the Charge sheet was issued by the Disciplinary Committee, as per the mandate of Rules 118 and 120 of DSEA&R and if not, the effect thereof?*
>
> *(c) Whether the Discharge order passed without prior approval of the Director of Education, as required under Section 8(2) of DSEA&R, is liable to be quashed?*

The operative portion of this judgement starts from Para 12 onwards.

In Para 13, it has been mandated that every employee on initial appointment will be on probation for a period of one year extendable by

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another year by the appointing authority. It is observed that the words used in rules are 'every employee' and word 'employee' has been defined in Section 2(h) and means a teacher and includes every other employee working in a recognized school.

In Para 18, ***Union Public Service Commission V/s Dr. Jamuna Kurup 2008(11) SCC 10*** has been referred and it has been held that word 'employee" would include both permanent or temporary, regular or short term, contractual or ad hoc, in absence of in any restrictive definition. Para 19 being the fulcrum about definition of 'employee' is apposite and reads as under:-

> *"19. What emerges by a combined reading of the judgments collated above juxtaposed with Section 2(h) and Rule 105 of DSEA&R is that the word 'employee' has been given a wide meaning and is not restricted to 'regular' employee for the applicability of the provisions therein. This interpretation is strengthened by the use of word 'every' as a prefix to the word 'employee' in Section 2(h). Thus even an ad-hoc employee is covered under the definition of 'employee'. In case he is a probationer he is entitled to protection and his services cannot be terminated without prior approval of the Director of Education under Rule 105. Going a step forward, as elucidated by plethora of judgments, as the appointment is a statutory appointment, it ipso facto entitles the employee to all protections and procedural safeguards envisaged in DSEA&R by the Legislature."*

32. Judgment passed by this tribunal in appeal no. 37/1997 dated 15/01/2002 was challenged in W.P.(C) No. 1249/2002 by school which was disposed on 8.2.2006 by Hon'ble Mr. Justice S. Ravinder Bhatt, the then Ld. Single Judge (now, a Judge of Hon'ble Supreme Court). It was observed as under:

> *"There is no dispute about the fact that the Appellant was working in the Respondent School as Store Keeper. The appointment letter filed by the Appellant shows that he was appointed on 1.8.96 and was put on probation for an initial period of one year. This being the situation, services of the Appellant could have been terminated only in accordance with the provisions of Rule 105 of the Delhi School Education Rules, 1973."*

33. This judgment of Ld. Single Judge was challenged before Double Bench by the school in LPA No. 492/2006. L.P.A was dismissed on 30.11.2006 and it was observed as follows:-

"11. We are in entire agreement with the observation made by the Learned Single Judge in affirming the order of the Tribunal. We also feel that the Tribunal could not have decided in the favour of the Appellant since the appellant failed to provide any documentary proof to substantiate their claims that they are a minority institution and could thus invoke the right guaranteed under Article 29(2) of the Constitutional since they are a religious minority under Article 30(1)."

"13. The records of this case reveal that the Respondent No. I was a victim of bureaucratic delay and complete apathy of the Appellant. We are satisfied thus that there is no reason whatsoever for us to interfere with impugned judgment of the Learned Single Judge".

34. Hon'ble High Court decision of LPA was challenged in Civil Appeal No. 2719/2007, decided on 03.02.2011. This appeal was also dismissed. It was held by Hon'ble Apex Court as follows:

2. Rule 105 of the Delhi School Educational Rules, 1973 deals with probation and prescribes the period of probation. The second proviso to sub-Rule (1) of Rule 105 clearly provides that no termination from service, of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director."

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

36. In view of above discussion, facts and circumstances this tribunal is of the view that the termination order dated 26.12.2019 is illegal, bad in law. Same is hereby set aside. The appellant Mr. Shyamal Sharma since expired on 22.05.2021 and vide application U/O XXII Rule3 CPC r/w Section 151 allowed vide dated 12.08.2021, the wife of the deceased appellant namely Mrs. Anubhuti Bhardwaj, step into shoes of the deceased appellant as such entitle to the relief as prayed except reinstatement. Therefore, the relief of reinstatement cannot be granted. However the appellant entitled for all other consequential benefits including the backwages from date of suspension till date of judgement. Therefore respondents are directed to pay all consequential benefits alongwith regular increment within four weeks' time, failing which respondents will be

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liable to pay the above said amount along with interest @9% P.A till its realization.

37. With respect to back wages, in view of Rule 121 of DSEA&R 1973, read in the light of Guruharkishan Public School, through its managing committee Vs. Directorate of Education reported in 2015 Lab IC 4410 (Delhi High Court) full bench, appellant is directed to submit an exhaustive representation before the management of respondent school within a period of four weeks from today as to how and in what manner he is entitled to complete wages. The Respondent school is directed to decide the representation to be given by the appellant within four weeks of receiving of the same by a speaking order and to communicate the order alongwith the copy of the same to the appellant.

38. Copy of this Judgment be sent to the Director of Education, Old Secretariat, Delhi for strict enforcement of the provisions of the DSEAR, 1973. Timely supervision and review at the level of Director of Education through concerned DDE is required. Computerization and digitization of data in a manner which can take care of deterring effect upon the private school and school management can be violating the provisions of DSEA&R, 1973, Principal of Natural Justice and mandate of Constitution of India. Information sought must include the maximum details viz-a-viz date of appointment, date of birth, pay scale, educational qualifications, applicable gazette notifications circular etc to the employee and thereafter of the private school, if any violation, strict suitable action be also taken.

39. Accordingly, the present Appeal No. 06/2020 titled as Shyamal Sharma Vs. Siddharth International Public School & Ors. allowed and stands disposed of on 26th may 2025.

File be consigned to record room.

26-5-2025

(Dr. Satinder Kumar Gautam)
Presiding Officer
Delhi School Tribunal
26.05.2025