

respondent no.1 herein who was employed by them as a Laboratory Assistant in Daisy Dales Senior Secondary School, East of Kailash (petitioner no.2 herein and which shall be referred to hereinafter as 'the School') w.e.f. 01/07/96.

2. The relevant facts may first be briefly be noticed before proceeding further to consider the grounds of challenge taken by the petitioner in this petition against the impugned judgment of the tribunal.

On 1st July, 1996 the respondent no.1 was appointed as a Laboratory Assistant in the School. The respondent no.1 claimed that was not being paid his salary as per the pay scales fixed by the 5th Pay Commission and when he started claiming that the management of the school decided to get rid of him and therefore without any rhyme or reason terminated his services w.e.f. 3rd July, 1998 by not permitting him to join duty that day when he had reported for duty after the summer vacations of the school. He was also not paid his salary for the months of April to June, 1998 when he had gone to the School on 2nd July, 1998 and had asked for his salary ,he was told that the School was not in a position to pay according to the new pay scales and was offered salary @ Rs.1900/- p.m. only which he refused to accept. . Feeling aggrieved by the decision of the School not to allow him duty w.e.f. 3rd July, 1998, the petitioner approached the Tribunal by filing an appeal on 20th

July, 1998 seeking his reinstatement in service and also for a direction to the School to pay him his salary as per the new grades and that too by cheques.

3. The School contested that petition before the Tribunal. In its reply it admitted that respondent no.1 was appointed as a Laboratory Assistant and it was also stated that he was appointed in the pay scale of 975-25-1150-EB-30-1540. It also took the plea he was given the appointment subject to his producing past experience certificate from any recognized school. However, he did not produce that certificate. The Director of Education also informed the School vide its letter dated 20th March, 1998 that the respondent no.1 was over age. The respondent no.1 had then instead of producing the experience certificate stopped coming to School from 1st April, 1998 onwards and thereafter he came to the school only on 2nd July, 1998 to claim his salary for the months of April to June, 1998 but since he was absenting from duty continuously during that period and had not reported for duty despite repeated notices he was not paid any salary. It was denied that the School had offered to pay him salary @ Rs.1900/- p.m. It was claimed that he was paid Rs.3800/- on 2nd July,1998 but not as his salary and that money was paid only to enable him to tide over his emergent need. Regarding the prayer of respondent no.1 for payment of his salary as

per the new pay scales the School's reply was that "As the new pay scales were implemented by the school only after the petitioner left/deserted his job w.e.f. 1-4-98 hence his ineligibility for the new pay scales."

4. The learned tribunal accepted the case of respondent no.1 herein that his services had been terminated illegally as a major penalty without holding any enquiry and following principles of natural justice as provided under Rule 120 of the Delhi School Education Rules, 1973 and directed his reinstatement in service with all the consequential benefits .Feeling aggrieved the management of the School has filed this writ petition for setting aside the impugned judgment of the Tribunal.

5. It was not disputed by the learned counsel for the petitioners that the School where the respondent no. 1 was appointed is governed by the provisions of the Delhi School Education Act, 1973 and the Rules framed thereunder but it was submitted that this is not a case of termination of the services of respondent no.1 by the School by way of removal or dismissal but a case of abandonment of job by him by absenting from duty from 1/04/98. It was also argued that since the appointment of respondent no. 1 was conditional upon his producing past experience certificate and since he had not produced the same his

appointment never got regularized and being temporary employment, as was evident from the appointment letter dated 1st July, 1996, it cannot be in any event said to be a case of dismissal or removal from service and so the Tribunal had no jurisdiction to entertain his appeal and order his reinstatement in service with consequential benefits. In support of these submissions learned counsel cited some decisions of this Court reported as *2000 IV AD (DELHI) 808, "Delhi Public School & Ors. Vs. Mrs. Kelki Aggarwal & Anr."*, *125 (2005) DLT 797, "Smita Paul Vs. Principal, St. Anthony's Senior Secondary School & Anr."* and *111(2004) DLT 374, "Mrs. P.L. Agarwal (since deceased through LRs) Vs. Lt. Governor, Delhi & Ors."*. It was also submitted by the learned counsel that since services of respondent no. 1 were admittedly governed by the provisions of Delhi School Education Act, 1973 and the rules framed thereunder, respondent no. 1 by virtue of Rule 105 was supposed to have been appointed on probation for a period of one year and that period of probation could be extended by the appointing authority i.e. Management of the School, with the prior approval of the Director of Education and his services could be terminated without any notice during the period of probation. It was also contended that since in the present case there was no formal order of confirmation of the services of respondent no. 1 on the completion of

initial period of probation of one year his further continuation in services was also on probation and therefore, even if it is accepted that the school had terminated his services the same could not be said to be illegal for want of any domestic enquiry against him. In support of this submission learned counsel relied upon another judgment of this Court reported as *ILR (1987) II Delhi 591, "Wing Commander S.K. Singh Vs. Lt. Governor"*.

6. On the other hand, learned counsel for the respondent no. 1 had submitted that it was a clear case of termination of the services of respondent no. 1 on the ground of alleged absence from duty and therefore, the learned Tribunal had rightly come to the conclusion that the services of the respondent no. 1 having been terminated without holding an enquiry, as provided under Rule 120 of the Delhi Education Rules, 1973, he was entitled to be reinstated in service.

7. As far as the plea taken in the present writ petition to the effect that the respondent no. 1 had been given appointment purely on temporary basis is concerned, the same cannot be entertained since no such case was pleaded nor was any appointment letter placed before the learned Tribunal. As noticed already, the School had in its reply to the appeal of the respondent no. 1 before the Tribunal had only claimed

that the appointment of respondent no. 1 was subject to his producing past experience certificate from any recognized School and it was not the stand before the Tribunal taken by the School that the services of respondent no. 1 had been dispensed with because of his failure to produce the experience certificate nor was its stand before the Tribunal that the Director of Education had asked the school to terminate the services of respondent no. 1 because of his being overage or non-production of past experience certificate by him. Similarly, the submission made by the counsel for the petitioner before this court that the employment of respondent no. 1 being on probation could in any case be terminated without any notice etc. cannot be entertained since this stand was also not taken before the Tribunal.

8. Now I come to the plea of the petitioner that it had not terminated the services of the respondent no. 1 but he himself had abandoned his services by not reporting for duty w.e.f. 1st April, 1998 onwards. It was submitted by the learned counsel for the petitioners and as had been averred in the writ petition also that since respondent no. 1 had not reported for duty despite being called upon by the School to do so his name was removed from the rolls of the School. Thus, the fact remains that the services of respondent no. 1 stood terminated because of removal of his name from the rolls of the school by the management by

treating his absence from duty as abandonment of the job by him. In my view, the name of respondent no. 1 could not have been removed from the rolls of the School by ITS management on the assumption that he had abandoned his job since there is no such Rule under the Delhi School Education Rules, 1973 giving the authority to the management of a school governed by the Delhi School Education Act, 1973 to strike off the name of any employee from its rolls because of unauthorized absence treating the same as abandonment of job by the absentee employee. The Hon'ble Supreme Court had in ***"The Regional Manager, Central Bank of India Vs. Vijay Krishna Neema & Ors."***, ***AIR 2009 SC 2200*** observed that what constitutes abandonment may be a matter of statutory provision or agreement between the employer and the employee. Here, there is no statutory provision in that regard and there was no question of any such agreement between the School and respondent no.1 since the terms of employment of the employees of the Schools governed by the Delhi School Education Act, 1973 are governed by this Act and the Rules framed thereunder. Thus, in the absence of any such rule permitting termination of services of an employee of a School on the ground of abandonment of the job by the employee the management of the school could not have removed the name of respondent no. 1 from its rolls. The Hon'ble Supreme Court

had also observed in “*V.C., Banaras Hindu University and Ors. Vs. Shrikant*”, *AIR 2006 SC 2304* that the employer cannot create a new exit door for the employee to throw him out of service on the ground of abandonment of job by the employee when the Rules do not give that authority to the employer. Therefore, in the present case the removal of the name of respondent no. 1 from the rolls of the School on the assumption that he had abandoned his job did amount to termination of his services because of the misconduct of unauthorized absence from duty on his part which, as rightly concluded by the learned Tribunal also , could not have been done without holding an enquiry in which it could be decided whether respondent no. 1 had committed the misconduct of unauthorised absence from duty or not.

9. Therefore, I do not find any merit in this writ petition and there being no scope for any interference in the impugned judgment of the Tribunal, this writ petition is dismissed with costs.

P.K. Bhasin, J

March 10, 2011/pg