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

% *Judgment delivered on: 20th April, 2012*

+ **W.P.(C) No.2285/2012**

KASTURI RAM INTERNATIONAL
SCHOOL AND ANR

..... Petitioners

Through: Ms. Renuka Arora, Ms. Raashi
Beri & Mr. Kunal Kohli, Advs.

versus

DIRECTORATE OF EDUCATION AND
ANR.

..... Respondents

Through: Ms. Zubeda Begum, Adv for R-1.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM APPL.No.4884/2012 (Exemption)

Exemption is allowed subject to just exceptions.

CM stands disposed of.

+ **W.P.(C) No.2285/2012**

1. Vide the instant petition, petitioner has challenged the impugned judgement dated 28.02.2012, passed by Delhi School Tribunal whereby, the Id. Tribunal allowed the Appeal of respondent no.2 herein while directing that she would be entitled to back wages @ 50% for the period w.e.f 01.7.2008 to 05.10.2008 and again @ 50%

w.e.f 15.09.2010 till date.

2. It is further directed that she will be paid full salary and other allowances from 20.02.2012 till she is reinstated in the service of respondent school.

3. It is further directed that respondent no. 2 shall be entitled to simple interest @ 8% per annum on the shares of back wages, in case the same are not paid within a period of 2 months from the date of the order.

4. Ld. Counsel for the petitioner has argued that respondent no.2 was communicated vide letter dated 01.04.2007 as under:-

“The Management of the School has reviewed your working. The Management is not satisfied with your performance and has decided to extend your period of probation for a period of one year w.e.f 1st June, 2007.

5. Thereafter, vide letter dated 01.06.2007, extended the period of probation for one year w.e.f 01.06.2007. Since the petitioner could not improve her performance, finally vide letter dated 19.05.2008, her services were terminated with immediate effect.

6. Facts in brief of the case are that respondent no. 2 joined the respondent school as Principle on 01.04.2006. On 01.07.2008, she went to respondent school after the summer vacations. However, she was not allowed to join her duties. She sent legal notice dated 08.08.2008. When the reply to the same has been filed by the

Petitioner vide their letter dated 23.08.2008, respondent no. 2 came to know that her services were terminated on 19.05.2008.

7. The contention of respondent no. 2 before the tribunal was that she was a confirmed employee and her services could not have been terminated without holding any domestic enquiry under Delhi School Education Act and Rules, 1973.

8. Petitioner School in their reply admitted that respondent no. 2 joined as a Principle on 01.04.2006. She was placed on probation for a period of one year. The said period was extended by another year vide letter dated 01.06.2007. Respondent School further submitted that the extended period of probation was to come to an end on 31.05.2008. The Managing Committee reviewed the work of respondent no. 2 and decided to terminate her services. Vide letter dated 19.05.2008, services of respondent no.2 were terminated and accordingly she was informed of it by sending the said letter through Special Messenger.

9. The Tribunal recorded in its order that it is not in dispute that the respondent no. 2 joined the services of the petitioner school as Principal on 01.04.2006 and she was placed on probation for a period of one year w.e.f that day itself. Subject of Probation is dealt under Rule 105 of Delhi School Education Act and Rules 1973 and same is reproduced as under:-

“Rule 105 Probation: (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 the 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;

[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 of another year, shall not apply in the case of any 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.]

(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.

(3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.”

10. Perusal of the aforesaid Rule shows that the period of probation can be extended by the Appointing Authority for another year. In other words, employee can remain on probation for a period of not more than 2 years. Period of respondent no. 2 was extended vide letter dated 01.06.2007. The said letter reads as under:-

“The Management of the school has reviewed your working. The Management is not satisfied with your

performance and has decided to extend your period of probation for a period of one year w.e.f 1st June, 2007. Kindly, note that your services can be terminated by the Management even prior to the said period, if your working is not satisfactory.”

11. It is further recorded that the extension of period of probation for one year w.e.f 01.06.2007 would mean extending the period of probation until 31.05.2008. The aforesaid extension, if any, is against the statute. As per Rule 105 of the Delhi School Education Rules, 1973, period of probation cannot be extended beyond 2 years.

12. In the present case, the probation period came to an end on 31.03.2008. Assuming that the petitioner school extended the period of probation vide letter dated 01.06.2007, the extension of probation in all cases should have come to an end on 31.03.2008.

13. Issue to be decided before the Tribunal was that respondent joined as Principal on 01.04.2006, therefore, the maximum period of probation could not have been beyond 31.03.2008. Respondent no.2, thereafter, was not on probation and specially on the date of termination from the services on 19.05.2008.

14. Ld. Tribunal was of the opinion that on 19.05.2008, respondent no. 2 was deemed to have been confirmed.

15. Ld. Judge relied upon on issue of deemed confirmation on the case of ***Deputy Director of Education vs. Veena Sharma 175 (2010) DLT 311*** decided by the Double Bench of this Court while relying on

the judgment of Apex Court in a case of ***High Court of Madhya Pradesh through Registrar and Others vs. Satyanarayan Jhavar*** AIR 2001 SC 3234 where the Apex Court had observed as under:-

“The question of deemed confirmation in service Jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the LPA 342/2010 Page 8 of 19 prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot

be deemed to have been confirmed merely because the said period has expired."

16. Perusal of the legal position referred to above shows that the case of employees / teachers under Act and Rules fall in second category referred to above. As per the Provision of Rule 105 of the Act and Rules initially, the period of Probation is 1 year, but the same may be extended by another year. In such cases, the maximum period of probation is only of 2 years. Therefore, ld. Trial Judge has opined that beyond this period, it is not permissible to extend the probation.

17. It is further recorded that the concept of deemed confirmation comes into play upon expiry of maximum period of probation. In other words, order of termination can be passed before expiry of the total period of probation of 2 years. In the case in hand, the maximum period of probation expires on 30.03.2008. Therefore, respondent was deemed to have been confirmed upon expiry of maximum period of probation. In this case, the order of termination was not passed clearly before the expiry of the period of probation i.e. prior to 31.03.2008. Therefore, she was deemed to have been confirmed immediately after 31.03.2008 and her services could not have been terminated without holding a domestic enquiry.

18. In view of the above discussion and settled law on probation, learned Tribunal has opined that termination order dated 19.05.2008 are illegally, arbitrary, unjust and not-sustainable in the eyes of law.

19. Ld. Counsel appearing on behalf of the petitioner submits that if

during the period of probation, her performance as not found to be up to the mark, then her services can be dispensed with.

20. In the present case, petitioner was informed about her performance not being satisfied vide letter dated 01.04.2007 and thereafter, the petitioner decided to extend her period of probation further one year. She has relied upon judgment of the Supreme Court in *Satyanarayan Jhavar (supra)* wherein observed as under:-

“10. To appreciate the point in issue, it would be useful to refer to rule 24 of the Rules which runs thus:-

R.24 (1) Every candidate appointed to the cadre shall undergo training for a period of six months before he is appointed on probation for a period of two years, which period may be extended for a further period not exceeding two years. The probationers may, at the end of period of their probation, be confirmed subject to their fitness for confirmation and to having passed, by the higher standard, all such departmental examinations as may be prescribed.

(2) During the period of probation, he shall be required to do magisterial work and acquire experience in office routine and procedure.

(3) If during the period of probation he has not passed the prescribed departmental examinations, or has been found otherwise unsuitable for the service, the Governor may, AT ANY TIME, THEREAFTER, dispense with his services.

11. The question of deemed confirmation in service Jurisprudence, which is dependent upon language of the relevant service rules, has been subject matter of

consideration before this Court times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. Other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry order of termination has not been passed. The last line of cases is where though under the rules maximum period of probation is prescribed, but the same require a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor the person concerned has passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.”

21. Ld. Counsel for the petitioner submits that in Para 11 of the judgment referred above, the respondent No.2 falls in the last line of cases, where though under the Rules maximum period of probation is prescribed, but the same require a specific act on the part of employer by issuing an order of confirmation and of passing a test for the

purpose of confirmation.

22. It is submitted that learned Tribunal has misread the judgment of *Satyanarayan Jhavar (supra)* while passing the impugned judgment.

23. In such cases, even if maximum period probation has been expired, however, neither any confirmation order has been passed, nor the person concerned has passed the requisite test, she cannot be deemed to have been confirmed merely because the said period has expired.

24. I find no force in the submission of Id. Counsel for the petitioner. In the last line of cases, the condition of passing the test is there, whereas in the present case, no such test had to be passed by the petitioner, therefore, the case of the petitioner falls under the second line of cases, where, there is a provision in the rules for initial probation and extension, thereafter, a maximum period for such extension is also provided beyond which it is not permissible to extend the probation. The inference in such cases is that officer concerned is deemed to have been confirmed upon expiry of maximum period of probation, if in cases before its expiry order of termination has not been passed.

25. In the case in hand. Termination Order has been passed after expiry of the maximum period of probation, therefore, Id. Tribunal has rightly allowed the Appeal of the respondent no.2. Therefore, I

find force no discrepancy in the order passed by the Tribunal.
Therefore, I conquer the same.

26. Accordingly, instant petition is dismissed.

27. In view of the order passed in the main petition, CM. Appl.
No.4883/2012 (Stay) become infructuous and disposed of as such.

28. No order as to costs.

SURESH KAIT, J

APRIL 20, 2012

Jg