

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

+ W.P.(C) No.6548/2008

% **10th September, 2013**

ST. ANTHONY'S SENIOR SECONDARY SCHOOL, NEW DELHI

.....Petitioner

Through: Mr. P.P.Khurana, Sr. Adv. with Mr.
Jaideep Bedi, Adv.

VERSUS

RADHIKA SHARMA AND ANR.

..... Respondents

Through: Mr. Arvind Nayar, Mr. Pradeep
Kumar and Mr. Zartab Anwar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition the petitioner-school impugns the judgment of the Delhi School Tribunal dated 30.7.2008. By the impugned judgment the Tribunal has accepted the appeal filed by the respondent no.1 herein and set aside her dismissal order dated 15.5.2008 passed by the petitioner-school. The dismissal order dated 15.5.2008 was passed observing that the respondent no.1 did not perform satisfactory services during the period of probation and therefore her services were terminated.

2. The facts of the case are that the respondent No.1 herein was first appointed on temporary basis for a fixed period of one year on account of exigencies of work. This letter though does not bear the date, it is agreed before me that the same is dated 16.3.2005. The first two paras of this letter reads as under:-

“This has reference to your application seeking appointment as a temporary Teacher and subsequent interview on 07.03.2005. We here by appoint you as a temporary teacher for a fixed period of one year 16.03.2005 to 15.03.2006. Your monthly salary would be ₹9,000/- all inclusive. You will not be entitled to any paid leave during this period.

Please note that this vacancy has occurred due to exigencies of work and is for a fixed period of one year only. Unless terminated earlier, your services will automatically come to an end upon completion of the fixed period. The School Management can also terminate your services at any time earlier than the specified period by giving one month's notice or salary in lieu thereof. Upon expiry of the fixed period of service or upon the termination of your services at any time earlier, you shall neither have any lien on the temporary post held by you nor any right for absorption on the rolls of the school.”

3. Respondent No.1 was thereafter appointed on probation in terms of the Service Agreement dated 3.7.2006, and an Appointment Letter of the same date. Paras 1,3 and 4 of the appointment letter read as under:-

“1. You will be on probation for a period of one year, in the first instance, from the date of your joining duty. This period of probation will be liable to such extensions as the school may deem fit in its sole discretion. Unless an order in writing confirming your appointment is issued by the school, you will not be deemed to have been confirmed

in service but you shall continue as a probationer. During the period of probation or any extension thereof, your employment will be subject to termination by one month notice or payment of one month salary in lieu thereof, without assigning any reasons. Similarly you may resign from the services after giving one month's notice or salary in lieu thereof.

3. On Confirmation of your services by the school you will be entitled to the benefits as available to confirmed employees according to Rules.

4. After confirmation of your services, your employment will be subject to termination without assigning any reason on three month's written notice on either side or payment of three month's salary in lieu thereof." (underlining added)

4. While extending the period of probation for one year, the petitioner-school vide its letter dated 5.10.2007 informed the respondent No.1 that her services were not up to the mark and that respondent No.1 needed to make efforts to improve her performance. This letter again specifically mentions that unless confirmation is in writing, respondent No.1 will continue to remain on probation.

5. During the extended period of probation, which was of one year from 3.7.2007, the respondent No.1 was served with a letter dated 24.3.2008 by the petitioner-school with regard to her unsatisfactory services, and this letter reads as under:-

“To

Ms. Radhika Sharma

TGT (Hindi)
B-82, Sarvodaya Enclave
New Delhi 110 017

Sub: Observation regarding work.

Dear Madam,

You have been appointed on probation w.e.f. 03/07/2006 for a period of one year which was extended for another period of one year w.e.f. 03/07/2007.

It has been observed that you have been found behaving rudely with your students and impolite with the management and other staff members in your dealings with them. Often you have, exhibited an attitude of unwillingness and not ready to contribute fully to the welfare of the School. An appraisal of your general performance reveals that you have been unable to discharge your duties effectively and can not do justice to your work. You have been verbally advised by the undersigned several times in the past, but you have failed to improve your performance.

Hence you are once again advised to take care of the above mentioned aspects and improve your performance.

Yours faithfully,

Sr. Ivy
Principal
24/03/2008”

6. A reference to this letter shows that respondent No.1's services were not found to be satisfactory for various reasons including behaving rudely with students, being impolite with the management and other staff members, and having an attitude of unwillingness to contribute fully to the

welfare of the school. Respondent No.1's services were terminated in terms of the letter dated 15.5.2008 of the petitioner-school and which reads as under:-

“To

Dated 15/05/2008

Ms. Radhika Sharma
B-82, Sarvodaya Enclave
New Delhi-110 017

Sub: Termination of Service

You have been appointed as Trained Graduate Teacher (TGT) on probation vide our letter of appointment and Service Agreement dated 03/07/2006, duly signed and accepted by you. In terms thereof, your probation was for a period of one year initially and extendable by another year. Since your performance was not found satisfactory during the first year of probation, the probation was extended for a further period of one year.

We wish to inform you that the management has again appraised your performance during the second year of probation but does not find your work satisfactory. In fact, you were advised to improve your performance but you have failed to do so. In these circumstances, your services are hereby terminated with immediate effect in terms of the stipulation in your letter of appointment/Service Agreement dated 03/07/2006. You are being paid one months notice pay in lieu of notice.

Please find enclosed one Cheque No.007587 dated 15.05.2008 for ₹22,400/- drawn on United Bank of India towards full and final settlement of your account, as per the following details.

- 1) One months notice pay ₹14,603-00
- 2) Earned salary for the month of May 2008 (15 working days).- ₹7,302-00 ₹495-00 (arrears of D.A.) Total: 22,400-00

Yours Sincerely

Sr. Ivy

Principal
30/04/2008” (underlining added)

7. I have recently had an occasion to consider the interpretation of Rule 105 of the Delhi School Education Act and Rules, 1973 in the case titled as *Hamdard Public School Vs. Directorate of Education and Anr.* in W.P.(C) No.8652/2011 decided on 25.7.2013, as to whether the said rule provides a maximum period of probation or that there is or is not a deemed confirmation at the end of the extended second year of probationary period. I have held in the judgment that Rule 105 does not provide for any maximum period of probation and nor does the same provide for automatic confirmation in service. I have also however held that considering right to education has become a fundamental right under Article 21A of the Constitution of India, probationary period of teachers cannot continue indefinitely. I have also held that issue with respect to confirmation will have to be looked into as per the specific terms of appointment of a probationary teacher. Paras 3 and 11 of the said judgment read as under:-

“3. Sub- Rule 1 of Rule 105 provides the original period of probation as one year, and which can be extended by the appointing authority. What is the period for which probation can be extended is however not provided in Sub-Rule 1. Sub- Rule 1 further provides that services of an employee can be terminated without notice during the period of probation if the work and conduct of the employee is not satisfactory. First Proviso to the Sub-Rule 1 states that the requirement of the provision of Sub-Rule 1 of seeking approval of the Director of

Education with regard to extension of period of probation by another year shall not apply in case of an employee of a minority school. The first proviso is therefore really limited for getting permission of the Director of Education for extension of the probation period “by another year”. It be noted that the expression is not “only another year” or “only another one year” or “a maximum period of another year” or “maximum period of another one year” etc. etc. The expression only uses “another year” without specifying an outer limit of the probation period. Also, even if in some manner of interpretation we take the expression “another year” to mean that there can only be one additional year of probation after the original one year of probation, even then, there is nothing found in the first proviso providing for automatic or deemed confirmation. As already stated above, first proviso only functions in a limited field qua getting permission of Director of Education. Neither the main body of Sub-Rule 1, nor the first proviso, provides for a maximum period of probation, and also they do not provide for automatic or deemed confirmation. The following conclusions therefore in my opinion can safely be drawn from reading of Sub-Rule 1 of Rule 105 alongwith its first Proviso.

(i) Sub-Rule 1 prescribes an initial probation period of one year, however, there is no maximum period of probation which is prescribed in this Sub-Rule.

(ii) Services of an employee can be terminated during the probation period (and which maximum probation period is not prescribed), if the work and conduct of the employee is not satisfactory.

(iii) Neither Sub-Rule 1 nor the first proviso provides for automatic or deemed confirmation on the expiry of the period of probation.

(iv) The first proviso only uses the expression “by another year” and not “by another one year” or “by another one year only” or “maximum by another year” i.e in the first proviso there is no outer limit of probationary period prescribed like there is none in the body of the main Sub-Rule 1.

(v) The first proviso can in a way be said to only deal with a minority school not requiring permission of the Director of Education, and the same does not concern other schools in Delhi.

I must hasten to add that in terms of the judgments which have been passed by Division Benches of this Court in the cases of ***Kathuria Public School v. Director of Education, 123 (2005) DLT 89 (DB)*** and ***Delhi Public School & Anr. v. Shalu Mahendroo & Ors. (2013) 196 DLT 147 (DB)***, in spite of certain provisions requiring prior approval of Director of Education with respect to certain acts and actions of the school, it has been held that with respect to unaided schools, no prior permission is required of the Director of Education. I am of course not touching on those aspects because such aspects are governed by the ratios of the judgments in the cases of ***Kathuria Public School (supra)*** and ***Delhi Public School (supra)***.

(vi) Neither the main Sub-Rule 1 and nor the first proviso to Sub-Rule 1 in any manner specifically and categorically not only does not provide for a maximum period of probation but they also do not provide for deemed or automatic confirmation.

11. Now that takes us to the most vexed question as to what should be a reasonable period. We will have to keep in mind Article 21A of the Constitution for this purpose. To understand the issue of what should be a reasonable period qua Rule 105 as regards a teacher, let us start with two extreme examples. One extreme example is that probation period cannot be extended at all for the third year and the other extreme example is that the probation period can be kept on extending by the management even till the age of superannuation. Obviously, both these extreme situations cannot decide what is a reasonable period. In many statutory rules and rules of many organizations, there is provided a three year period of probation like in the case of ***Lawrence School (supra)***. Therefore, probation period undoubtedly can be of 3 years under Rule 105 because as already stated there is no outer limit of probation period provided. The question is that for how long beyond the third year can a period of probation continue. In my opinion, reasonable period will have to be dependent on the facts of each case including as to what is the post or nature of employment in question, what are the terms and conditions agreed to at the time of original appointment and subject of course to

the same being in accordance with Delhi School Education Act and Rules, 1973. The nature of job or duties to be performed by the teacher will also have to be kept in mind. It will also have to be kept in mind whether the teacher will be overage for similar employment if he/she is not confirmed. Keeping in mind all the relevant facts, probation period, except in exceptional cases, so far as a teacher is concerned, should not continue beyond a period of 5 years from the first date of appointment. Even a period of 4/5 years has to be really in a very grave and exceptional case depending on the facts of that case. However, I do not express myself finally with respect to what should be a reasonable period between 3 to 5 years because Courts will necessarily examine that aspect in the facts and circumstances of each individual case. I am making these specific observations with respect to the maximum period of probation being ordinarily only of 5 years because in the absence of fixing an outer limit by the statute viz Rule 105, the entire purpose of a probation period and a probationary teacher being confirmed would be defeated by the machinations of the management of the schools in certain cases thus affecting education and bringing in of Article 21A in the Constitution. Therefore, I hold that the Rule 105 must be so interpreted that the reasonable period therein should ordinarily be around three years, should not extend beyond five years in most of the cases, and, in the rarest or rare cases, one more year upto 6 years may be considered. However again at the cost of repetition it is stated that six years period is being observed only as a most grave and rarest of rare circumstance in a case, and ordinarily, a probation period qua a teacher should not extend beyond/around three years which is a reasonable period, and as per the facts and circumstances of certain case, and which issues/decisions are of course justiciable before Courts the probation period can go up to 5/6 years as stated above.”

8. I have also had an occasion to examine a related aspect in the judgment in the case of *Army Public School and Anr. Vs. Narendra Singh Nain and Anr.* in W.P.(C) No.1439/2013 decided on 30.8.2013 wherein I have held that if there is a sequence of appointments and terminations of

appointments and again re-employment, then, Courts will hold the services of such a person as having statutory protection from the original date of appointment. I however made it clear in para 4 of the judgment that observations with respect to treating these services as statutory would not be applicable when there are genuine reasons only to give limited contractual employment. What I have said in para 4 of the judgment in the case of *Army Public School (supra)* is also made clear by sub-Rule 3 of Rule 105 which provides that Rule 105 will not apply when employment is given to fill a temporary vacancy or a vacancy that exists for a limited period. The relevant paras of the judgment in the case of *Army Public School (supra)* are paras 3 to 8 and these paras read as under:-

“3. On the basis of the admitted facts: in the form of various appointment letters and the termination letters which have been issued by the petitioner-school as detailed above; the provision of Rule 105 of the Delhi School Education Act & Rules, 1973; the judgment delivered by me in the case of *Hamdard Public School Vs. Directorate of Education and Anr.* in W.P.(C) No.8652/2011 decided on 25.7.2013 interpreting Rule 105; and, the judgment of the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*, (2005) 7 SCC 472 read with Division Bench judgment of this Court in the case of *Social Jurist, a Civil Rights Group Vs. GNCT & Ors.* 147 (2008) DLT 729, the issues which arise, and on which counsel for the parties have been heard, are first as to whether the respondent No.1 at all can be said to only be a contractual employee in terms of the first contractual appointment letter dated 3.12.2007 or whether the employment of respondent No.1 since inception in the peculiar facts of this case would have a statutory favour

in view of the provisions of the Delhi School Education Act and Rules, 1973, and secondly as to whether the actions of the petitioner-school amount to over-reach the provision of Rule 105 and is, therefore, against the ratio not only of the categorical language of Rule 105 but also the ratio of the judgment passed by me in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** (supra). The following issues are, therefore, crystallized for decision by this Court:

(i) Should the respondent No.1's services in the facts of this case be not taken as having statutory protection in terms of the Delhi School Education Act and Rules, 1973 since the original date of the contractual appointment in terms of letter dated 3.12.2007. Related with this issue would be whether the respondent No.1 is estopped from challenging the nature of appointment as contractual inasmuch as respondent No.1 thereafter accepted services first as a probationer and thereafter again on contractual basis.

(ii) Whether all the appointment letters, whether giving contractual appointment or as appointment on probation, have to be read in their substance and not in form whereby actually the respondent No.1 should be treated as on probation either from 28.11.2007 or in any case from 1.4.2008 and since there is no mention of termination on account of unsatisfactory services in the termination letter dated 10.6.2010, and none exist as stated in the letter dated 21.3.2010, therefore, respondent No.1 would have confirmation of employment on account of language of Rule 105 and the judgment in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** (supra).

4. So far as the first issue is concerned, as to whether the respondent No.1's services originally w.e.f 28.11.2007 are contractual in nature or statutory in character, it would be necessary at this stage to refer to the relevant para 10 of the Supreme Court judgment in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra), but, before I do so I must hasten to add that the observations which are being made by me in this judgment as regards the first issue is because of the facts of this case whereby I am not treating the first appointment as contractual in nature in spite of the letter dated 3.12.2007 so specifying because I hold this letter, and also subsequent probationary/contractual appointment letters, to be a sham and given only for denying regular employment to respondent

No.1 as LDC. The repeated appointments and terminations, have persuaded me to hold that the petitioner's-school's actions are a fraud upon the requirement to normally not to appoint an employee on contract basis. Accordingly, in a case where on account of genuine exigencies a contractual appointment is required (like when a regular employee suddenly leaves etc.) then such employment will be treated as adhoc/temporary/contractual and not a statutory one having protection of the Act & Rules. With this preface let us reproduce para 10 of ***Montfort Senior Secondary School's case (supra)*** and which reads as under:-

“10. 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 30 is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajibjai Sabhai (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it."

The effect of the decision in Frank Anthony's case (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of

statutory rights. In view of what has been stated in Frank Anthony's case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities 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.....”

5. A reference to aforesaid para shows that the Supreme Court in ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) has laid down the ratio that the very nature of employment of the employees of a school are that they are no longer contractual in nature but statutory. This observation was made by the Supreme Court in spite of the fact that the minority schools had entitlement under the provisions of Section 15 and Rule 130 of the Delhi School Education Act and Rules, 1973 to have a contract of services for its employees. It be noted that so far as the non-minority schools are concerned there is no provision in the Delhi School Education Act and Rules, 1973 to have a contractual appointment. Therefore, once if minority schools' employees cannot have contractual employment and they have to be treated as statutory employees, then a *fortiorily* non-minority schools whose employees cannot be engaged in employment on contractual basis, such employees in non-minority school would surely have statutory protection of their services. In ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) the Hon'ble Supreme Court has made it clear in the aforesaid paragraph 10 that the qualifications, leaves, salaries, age of retirement etc, removal and other conditions of services are to be governed “**exclusively**” under the statutory regime provided under the Delhi School Education Act and Rules, 1973. Once that is so, then, as per Rules 118 to 120 of the Delhi School Education Rules, 1973 the services of an employee can only be terminated on account of misconduct and that too after following the requirement of holding of a detailed enquiry and passing of the order by the

Disciplinary Authority. Therefore, in view of the categorical ratio of the judgment of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) and in view of the facts of this case the respondent No. 1's services from the inception cannot be taken as only contractual in nature and would be statutory in nature. Once the services are statutory in nature, and admittedly the respondent No. 1 has not been removed by following the provisions of conducting an enquiry and passing of an order by the Disciplinary Authority as required under the Rules 118 to 120 of the Delhi School Education Rules, 1973, the respondent No. 1's services cannot be said to have been legally terminated. Respondent No. 1, therefore, continues to be in services.

6. To distinguish the applicability of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra), learned counsel for the petitioner has urged the following two arguments:

(i) Respondent No.1 is estopped from questioning his first appointment as contractual, thereafter appointment on probation and his termination during the probation period and thereafter again a fresh contractual appointment and finally his termination as per the last contract dated 8.4.2010. It is argued that respondent No.1 having acted upon the aforesaid sequence of events comprised in different appointments cannot now contend that the ratio of the judgment in ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra) should come to his aid.

(ii) It is argued that the judgment in ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra) was intended only to apply to minority schools and ratio of the said judgment cannot be read to apply to non-minority schools.

7. So far as the second arguments urged on behalf of the petitioner-school to distinguish the applicability of the ratio in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra), I have already dealt with this aspect above by holding, and the same is reiterated herein, that, if for minority schools, there cannot be contractual appointments, and which in fact was so envisaged under the relevant provisions of the Delhi School

Education Act and Rules, 1973, then, surely and indubitably, so far as non-minority schools are concerned, and who do not have provisions even in terms of Delhi School Education Act and Rules, 1973 for making contractual appointments, the ratio of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)*** would squarely apply and the employees of the non-minority schools will be treated not as contractual employees of the schools but statutory employees having statutory protection in terms of the relevant provisions of the Delhi School Education Act and Rules, 1973.

8. So far as the first argument of estoppel is concerned, that argument is attractive only at the first blush, however, this argument overlooks the elementary principle that there is no estoppel against law. Of course, there may be estoppel against law where the provisions of law are only for private individual interest and not meant to be in public interest, however, considering that statutory protection is given to the employees of a school and which results in stability to the education system, the same therefore cannot be held to be as not in public interest, more so after amending of the Constitution by introduction of Article 21A by which right to education has been made as a fundamental right for children from the ages of 6 to 14 years. Also one cannot ignore the fact that right to education otherwise also is an important part of Directive Principles of State Policy vide Article 41 and Article 45 of the Constitution, and thus subject of education itself has been treated by the Supreme Court as a public function and consequently, writ petitions lie against even private educational institutions. Reference need in this regard be only made to the Constitution Bench judgment of the Supreme Court in the case of ***Unni Krishnan J.P. & Ors. etc. etc. Vs. State of A.P. & Ors. etc. etc. 1993(1) SCC 645*** and which clearly holds that the subject of education is a public function, and hence writ petitions are maintainable even against private educational institutions.”

9. On behalf of respondent No.1, it is argued before me that respondent No.1 stood automatically confirmed after the original period of probation of one year because the extended period of probation was given

after a gap of about three months. It is also argued that in terms of sub-Rule (2) of Rule 105, respondent No.1 should be held to have completed the probationary period successfully as the services were satisfactory in the probationary period. Reliance is placed in support of the arguments placed upon the judgment of a learned Single Judge of this Court in the case of ***The Management, Hindu Education Society and Anr. Vs. Govt. of NCT of Delhi and Ors. 133 (2006) DLT 83.***

10. In my opinion, to determine firstly whether respondent No.1 has satisfactorily completed the probationary services, it will be necessary to advert to the original terms of appointment as a probationer and also to the letters dated 5.10.2007 and 24.3.2008 issued by the petitioner-school. The appointment letter dated 3.7.2006, and whose paras 1,3 and 4 are reproduced above, makes it clear that there is no deemed confirmation and confirmation will only take place when a specific order in writing is passed confirming the services of the respondent No.1. Para 1 also provides that probationary period can be continued at the discretion of the petitioner-school. Though, of course, the period cannot be continued indefinitely in view of the ratio in the case of ***Hamdard Public School (supra)***, in the present case the probation has continued only for two years. Therefore, I am unable to agree

with the arguments urged on behalf of respondent No.1 that merely because there is a gap in giving the extension letter with respect to the second year of probation, respondent No.1 will stand confirmed at the expiry of first year of probation. In the judgment in the case of *Hamdard Public School (supra)* I have referred to the recent judgment of the Supreme Court in the case of *Head Master, Lawrence School, Lovedale Vs. Jayanthi Raghu and Anr. (2012) 4 SCC 793* wherein the Supreme Court has said that once the relevant rule uses the expression “if confirmed” it is necessary that a specific order is passed to show confirmation of a probationer, and that a probationer cannot argue that merely because the probationary period is completed, there would be deemed or automatic confirmation of the services of a probationer. I therefore hold that there is no deemed confirmation of services of the respondent No.1 as a probationer.

11. Also, the argument that respondent no.1 has satisfactorily completed her service and she was entitled to be confirmed as per sub-Rule 2 of Rule 105 is an argument without merit because admittedly respondent no.1 during the probationary period received the letters dated 5.10.2007 and 24.3.2008 from the petitioner-school, and both of which letters referred to the unsatisfactory services of the respondent no.1. I cannot agree with the arguments urged on behalf of respondent no.1 that these letters should not be

treated as sufficient because written memos were not issued inasmuch as there is no requirement in law that written memos should be issued for unsatisfactory work. In fact the Supreme Court has repeatedly observed that principles of natural justice have not to be followed while terminating the services of a probationer. Three judgments of the Supreme Court in this regard are *Muir Mills Unit of NTC (U.P.) Ltd. Vs. Swayam Prakash Srivastava & Anr. (2007) 1 SCC 491*, *Rajesh Kumar Srivastava Vs. State of Jharkhand and Ors. (2011) 4 SCC 447* and *Chaitanya Prakash and Anr. Vs. H. Omkarappa (2010) 2 SCC 623*.

12. I note that admittedly the respondent no.1 has given no response in writing to the two letters dated 5.10.2007 and 24.3.2008, and therefore, I find it difficult to accept the argument that petitioner-school was not justified in finding the services of the respondent no.1 as being not satisfactory in the probation period. In fact, the letter dated 24.3.2008, makes serious grievances against the respondent no.1 with respect to her services, and the same was issued around two months prior to her termination of services vide letter dated 15.5.2008.

13. Therefore, in my opinion, both the arguments urged on behalf of respondent no.1 of deemed confirmation and satisfactory services being rendered are without any basis, and are hence rejected.

14. So far as the judgment relied upon in the case of *The Management, Hindu Education Society (supra)* is concerned, I really fail to understand as to how that judgment will help the respondent no.1 to prove satisfactory nature of services or the issue of alleged deemed confirmation and which are only two issues in this case because the said judgment does not deal with the issue of deemed confirmation or on the issue as to whether services of a probationer when should be taken as satisfactory for confirming the probationer. In fact, the judgment which is relied upon is really a four paragraph order and there is no discussion as to any interpretation with respect to Rule 105, and which had been dealt with by me in the judgment in the case of *Hamdard Public School (supra)*.

15. In view of the above, the writ petition is allowed and the impugned order of the Tribunal dated 30.7.2008 is set aside. The termination letter issued to the respondent no.1 dated 15.5.2008 is upheld. Parties are left to bear their own costs. All pending applications stand disposed of.

SEPTEMBER 10, 2013
ib/Ne

VALMIKI J. MEHTA, J.