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

+ **LPA 983/2013 and CM APPL.Nos.20695-96/2013**

% **Date of Decision : 3rd January, 2014**

RAJKUMARI KHANCHANDANI Appellant
Through : Mr. Akhil Sachar, Advocate

versus

**THE MANAGEMENT OF SES,
BABA NEBHRAJ SR SEC SCHOOL AND ANR** Respondents
Through : None

CORAM:
HON'BLE MR. JUSTICE P.K. BHASIN
HON'BLE MR. JUSTICE J.R. MIDHA

CM No.20695/2013

Allowed, subject to just exceptions.

The application is disposed of.

CM No.20696/2013

The delay in re-filing the appeal is condoned.

This application stands disposed of.

LPA 983/2013

We have heard the learned counsel for the appellant.

2. The appellant is aggrieved by the judgment dated 26th August, 2013 passed by the learned Single Judge allowing the writ petition of respondent no.1-School and reversing the order of the Delhi School Tribunal dated 11th August, 2011 whereby termination of services of the appellant by the

management of respondent no.1–School, where she was employed as an Assistant Teacher, was held to be illegal, unfair and unjust and she was directed to be reinstated with 50% back wages, has been set aside.

3. The appellant was appointed as an Assistant Teacher in the respondent no. 1 School vide appointment order dated 30.10.1987 according to which she was to be on probation for a period of two years. During the said period of probation her services came to be terminated vide termination order dated 27th October, 1989 which is re-produced below:-

“SINDHI EDUCATION SOCIETY’S BABA NEBHRAJ
SENIOR SECONDARY SCHOOL
(GOVT. AIDED AND RECOGNIZED)

No.P52/(RK)SESBN/89/359 Dated : 27th October, 1989

**Sub : Termination of services of Mrs. Rajkumari
Khanchandani Asstt. Teacher.**

Mrs. Rajkumar Khanchandani Asstt. Teacher on probation is hereby informed that the Managing Committee of this school after careful consideration have come to the conclusion that her work and performance etc. as Asstt. Teacher in this School during her probationary period has been most unsatisfactory and her continuance in that capacity is detrimental to the interest of this institution.

Accordingly the School Managing Committee in this Emergent Meeting held on 26.10.89, unanimously decided to terminate her services forthwith.

In view of the above the services of Mrs. Rajkumari Khanchandani as Asstt. Teacher in this School are hereby terminated w.e.f. After noon of 27th October, 1989.

Manager
SES, Baba Nebhraj Sr. Sec. School,
Lajpat Nagar-I, New Delhi-110024

To,
Mr. Rajkumari Khanchandani,
Asstt. Teacher on probation”

4. Feeling aggrieved, the appellant filed an appeal before the Delhi School Tribunal under Section 8(3) of the Delhi School Education Act, 1973. In the appeal, the appellant had herself pleaded that she was put on probation for a period of two years at the time of her initial appointment on 02.11.1987. She further pleaded that her services had been terminated with ulterior motives on 27.10.1989. It was also alleged in the appeal that the management of respondent no.1–School was in the habit of exploiting its employees.

5. The learned Presiding Officer of the Tribunal allowed the appeal vide judgment dated 11th August, 2011. While allowing the appeal the Tribunal ordered re-instatement of the appellant with 50% back wages. Feeling aggrieved by the decision of the Tribunal the respondent no.1–School filed a writ petition in this Court which, as noticed already, has been allowed by the learned Single Judge vide impugned judgment dated 26.08.2013. In that judgment the learned Single Judge has come to the conclusion that the termination of the services of the appellant was admittedly during the period of probation and also that it was non-stigmatic.

6. The learned counsel for the appellant has submitted that this Court has already admitted one LPA (being LPA No.749/2013) in which the interpretation of Rule 105 of the Delhi School Education Rules, 1973 is involved and in the present case also interpretation of the same Rule is involved and, therefore, this appeal should also be admitted. It has also been submitted that even though in the appointment letter of the appellant it was

period of two years. The impugned orders dated 27.10.1989 suffer from an illegality as it says that the services had been terminated during the period of probation. Appellant admittedly joined the services of the Respondent School on 02.11.1987. Her period of probation of one year comes to an end on 01.11.1988. No order was passed by the Respondent School extending the period of probation after 01.11.1988. Appointment letter dated 30.10.1987 does not stipulate that the confirmation of the Appellant would take place only after an express letter of conformation was issued to her... I am, therefore, of the considered opinion that placing the Appellant on probation for a period of two years in itself is illegal and any termination of services after the expiry of one year without domestic enquiry is bad in the eyes of law, whatever the reasons for termination are.

9. Now, coming to the aspect of reasons for termination, the Respondent School issued a memo dated 16.08.1989 to the Appellant which is reproduced below:

- “1. The Principal S.E.S. Baba Nebhraj Sr. Sec. School has reported to the management that Mrs. Raj Kumari Khanchandani had misbehaved with her in the staff meeting held on 31.07.1989 in her room and spoke unparliamentarily language to the Principal as well as for the management. Principal further says that Mrs. Rajkumari used abusive language which was unwarranted.*
- 2. Mr. J.D. Khanchandani, Mrs. Khanchandani’s husband had in his letter written that the Society had received grant of Mrs. Rajkumari’s salary for the period 02.11.1987 to 31.01.1988, but the Society had not paid the said salary to her.*

Mr. J.D. Khanchandani must have addressed letter to the Principal with the approval/knowledge of Mrs. Rajkumari. Mr. J.D. Khanchandani has spoken ‘lie’ that grant of salary has been received by the Society. This lie reflects Mrs. Rajkumari Khanchandani.

- 3. The above two points establish that Mrs. Rajkumari is guilty of following C.C.S. (Conduct rules.)*
 - (i) Her conduct is pre-judicial to the reputation of the institution.*
 - (ii) Her conduct is incompatible with peaceful discharge of her duties to the institution.*
 - (iii) Her conduct is such that any reasonable person will say that she can not be trusted.*
 - (iv) She was abusive and has disturbed the peace at the place of employment (i.e. staff meeting).*
 - (v) Principal cannot rely on her faithfulness.*

4. *School is a temple where the character is taught to the students by perception.*
5. *Mrs. Khanchandani may please explain why Disciplinary action under rule, may not be initiated against her.*
6. *Mrs. Khanchandani may please reply within seven days from the date of receipt of this memo. Her silence will be considered that she accepted her guilt and further action in the matter will be taken accordingly."*

Resolution of School Managing Committee held on 02.08.1989 is also relevant in this context. The same is reproduced below:

"Unanimously resolved that the SMC in todays meeting (of 02.08.1989) expresses shock and displeasure at the misbehavior of Mrs. Rajkumari Khanchandani, Asstt. Teacher (on probation) and shouting and using abusive language at the Principal and unanimously decided that the services of Mrs. Rajkumari Khanchandani be terminated forthwith for such a behavior and some instances of past misconduct also, which were brought to the notice of the members in the SMC meeting of today (02.08.1989) by the Principal. Further resolved that the Director (of Education, Delhi) may be approached to accord his prior approval to this termination of services (if Mrs. Rajkumari Khanchandani Asstt. Teacher on probation) as per provisions in Rule 105 of DSER, 1973 as continuance of this teacher shall be further detrimental to the interests/cause of the educational institution/our school".

10. *Now the question arises as to whether her order of termination dated 27.10.1989 was punitive or simplicitor? The Respondent School in its meeting of the Managing Committee dated 02.08.1989 conceded that there was an allegation of shouting and using the abusive language at the Principal by the Appellant. It also took note of some instances of past misconduct. The memo dated 16.08.1989 refers to the letter written by the husband of the Appellant to the Principal. It also refers to the alleged misbehavior of the Appellant with the Principal on 31.07.1989. The Hon'ble Supreme Court in the case of **Dipti Prakash Banerjee vs. Satyendra Nath Bose National Center for Basic Sciences, Calcutta & Others**, (1999) 3 Supreme Court Cases 60 observed as under:*

"20. This Court in that connection referred to the principles laid down by Krishna Iyer, J. in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] . As to "foundation", it was said by Krishna Iyer, J. as follows: (SCC p. 617, para 53)

"[A] termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the

delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.” (emphasis supplied) and as to motive: (SCC pp. 617-18, para 54)

“54. On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge.”

(emphasis supplied)

As to motive, one other example is the case of State of Punjab v. Sukh Raj Bahadur where a charge-memo for a regular enquiry was served, reply given and at that stage itself, the proceedings were dropped and a simple termination order was issued. It was held, the order of simple termination was not founded on any findings as to misconduct. In that case, this Court referred to A.G. Benjamin v. Union of India where a charge-memo was issued, explanation was received, an enquiry officer was also appointed but before the enquiry could be completed, the proceedings were dropped and a simple order of termination was passed. The reason for dropping the proceedings was that “departmental proceedings will take a much longer time and we are not sure whether after going through all the foundation, we will be able to deal with the accused in the way he deserves”. The termination was upheld.

21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as “founded” on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a

circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.”

In the present case the Management of the Respondent School acted on the alleged misbehaviour of the Appellant with the Principal on 31.07.1980. No regular departmental inquiry was held. It clearly acted as a foundation and not a motive.

11. Now another question arises as to whether the impugned orders dated 27.10.1989 contained a stigma? The impugned orders dated 27.10.1989 are reproduced below:

“Sub: Termination of services of Mrs. Rajkumari Khanchandani.

*Mrs. Rajkumari Khanchandani Asstt. Teacher, on probation is hereby informed that the Managing Committee of this school after careful consideration, have come to the conclusion that her work and performance etc. as Asstt. Teacher in this school during her probationary period has been most unsatisfactory **and her continuance in that capacity is detrimental to the interest of this institution.***

Accordingly, the School Managing Committee in its Emergent meeting held on 26.10.1989, unanimously decided to terminate her service forthwith.

In view of the above, the services of Mrs. Rajkumari Khanchandani as Asstt. Teacher in this School are hereby terminated w.e.f. after noon of 27th October, 1989.”

12. Perusal of the impugned orders dated 27.10.1989 shows that the continuance of the Appellant was found detrimental to the interest of the institution. The findings definitely would come in the way of the career of the Appellant when she seeks employment elsewhere. The words used in the impugned orders dated 27.10.1989 clearly amount to stigma. For this too I place reliance upon the case of **Dipti Prakash Banerjee (Supra)**. In view of the position that emerges the impugned orders dated 27.10.1989 is stigmatic and it could not have been passed without holding a full-fledged departmental inquiry.”

8. We find from a perusal of the grounds of appeal taken before the Tribunal by the appellant that she had not raised any grievance before the

Tribunal that there was some illegality in her appointment letter or that she could not have been put on probation straightaway for a period of two years at the time of her appointment or that the termination order was in any event stigmatic for the reasons highlighted by the Tribunal in its order as noticed in the preceding para. The principal ground taken by the appellant in that appeal was that her services had been terminated with ulterior motives. So, in our view, the Tribunal was not justified in giving a finding that the clause in the appointment letter of the appellant that she was being put on probation for two years was illegal and that after one year of the appointment of the appellant her services stood confirmed in the absence of an express order of extension of her probation period and consequently the termination was not during the period of probation.

9. Similarly, since there was no ground taken in the appeal by the appellant that the impugned termination order was stigmatic the Tribunal was nor justified in coming to the conclusion on its own that the termination of the services of the appellant was stigmatic. We have already re-produced the termination order which, in our view, in any case is clearly non-stigmatic and could be issued by respondent no.1 in legitimate exercise of its right to terminate the services of a probationer employee during the period of probation. The management of the School in the present case had not conducted any regular enquiry against the appellant for any misconduct and so there was no occasion for any misconduct having been made the foundation for the termination of the services of the appellant during the period of probation. So, the judgment of Hon'ble Supreme Court in the case of **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre**

for Basic Sciences, Calcutta & Ors., (1999) 3 SCC 60 relied upon by the Tribunal in its impugned decision and also by the learned counsel for the appellant today before us does not advance the case of the appellant. In that case it was observed that if an enquiry is conducted by the employer for some misconduct on the part of a probationer at his back before terminating his services and the result of that enquiry is made the basis for termination then the termination becomes stigmatic. No such enquiry was held in the present case. So, mere reference to some incident of misbehavior with principal by the appellant in the resolution passed by the management for the termination of her services with deciding to hold a any enquiry will not make the termination in question stigmatic.

10. Similarly the judgment of this Court in “MGT. Hindu Educational Society Shri Kurukshetra (Regd.) & Anr. v. Govt. of NCT of Delhi & Ors.”, 158 (2009) DLT 212 (DB) relied upon by the counsel for the appellant also does not come to the rescue of the appellant inasmuch as in the facts of that case the termination order referred to some past misconduct of serious nature which the employer chose not to mention in the termination order so that the employee’s future prospects should not get affected. That is not the position here. The learned Single Judge has noticed several judgments of the Supreme Court wherein the law relating to termination of services of a probationary employee was laid down. Those judgments include some judgments wherein even in the termination order itself it had been mentioned that services of the probationary employee were being terminated as the employee was indisciplined, duffer, etc. Still the

Supreme Court did not hold the termination of services of the probationary employee to be stigmatic.

11. We, therefore, do not find any infirmity in the order of the learned Single Judge to the effect that the services of the appellant had been terminated during the period of probation by a non-stigmatic order.

12. This appeal is accordingly dismissed *in limine*.

P.K. BHASIN, J.

J.R. MIDHA, J.

JANUARY 03, 2014

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