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

% *Date of decision: 12th May, 2023*

+ W.P.(C) 13859/2018

DR. ASHWANI KUMAR KALA Petitioner
Through: Mr. Sourabh Ahuja, *Amicus Curiae*.
versus

SCHOOL MANAGEMENT OF HIRA LAL JAIN SENIOR
AND ANR. Respondents
Through: Ms. Meenakshi Midha and
Ms. Samiksha Gupta, Advocates for R-1.
Ms. Latika Chaudhary, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. By this writ petition, Petitioner lays a challenge to the order dated 10.12.2018 passed by the Delhi School Tribunal (hereinafter referred to as the 'DST') whereby it has dismissed the appeal of the Petitioner being Appeal No. 53/2017 and upheld the order dated 28.04.2017 whereby Petitioner was removed from the services of the School while working on the post of PGT (Commerce). The umbrage raised by the Petitioner is primarily predicated on applicability of the statutory provisions of Delhi School Education Act & Rules, 1973 and does not require a very detailed factual narrative.

2. Facts to the extent necessary are that Respondent No. 1/School Management of Hira Lal Jain Senior Secondary School (hereinafter referred to as the 'School') is a recognized and aided Senior Secondary School claiming to have a minority status. Petitioner possessing a Doctorate degree was appointed as PGT (Commerce) on 02.08.1995 in the School. On 11.11.2006 Petitioner was suspended

and feeling aggrieved with his alleged continuance discrimination in the School on various issues, he tendered his resignation on 05.12.2006, which was subsequently withdrawn on 02.03.2007. Respondent No. 2/Directorate of Education ('DoE') directed the School to reinstate the Petitioner w.e.f. 02.03.2007, which was duly complied with. As per the Petitioner, he was continuously harassed and discriminated even thereafter and this vindictiveness and hostile attitude resulted in issuance of a show cause notice/memorandum dated 06.04.2017, whereby Petitioner was called upon to explain and respond to allegations pertaining to delayed checking of answer-sheets and submission of result of Class XI-B, low pass percentage for Class XI for the academic year 2016-2017 and submission of two different award lists of Class XI-B (Arts-Business Studies). Petitioner filed a response to the memorandum and finding his reply to the memorandum unsatisfactory, it was decided by the managing committee to remove him from services. Pursuant to the unanimous resolution of the managing committee, services of the Petitioner were terminated vide letter dated 28.04.2017, tendering payment of Rs.2,53,080/- in lieu of three months' notice salary and by the same letter, DoE was informed of the action taken. By another letter dated 04.05.2017, the School responded to DoE's letter dated 29.04.2017 and informed the DoE that being a minority institution, prior approval of DoE was not required under Section 8(2) of Delhi School Education Act, 1973 (hereinafter referred to as the 'Act 1973').

3. Aggrieved with the termination order, Petitioner preferred an appeal being Appeal No. 53/2017, before the DST and vide order dated 13.02.2018, DST dismissed the appeal on the ground that there was no improvement in the work and conduct of the Petitioner and this was not conducive to the interest of the students. In respect of non-compliance with provision of Section 8(2) of Act 1973, DST held

that the said provision was inapplicable to the School being a minority institution.

4. Order of DST was challenged by the Petitioner before this Court in W.P. (C) 1785/2018 and vide order dated 26.02.2018, Court set aside the DST order dated 13.02.2018 and remanded the matter back for deciding the appeal afresh after examining two crucial issues: (a) whether the procedure for inquiry prescribed under Rule 120 of Delhi School Education Rules, 1973 (hereinafter referred to as the 'Rules 1973') could be dispensed with; and (b) effect of not constituting the disciplinary committee in accordance with Rule 118 of Rules 1973. The appeal was re-heard by DST and finally by the impugned judgment dated 10.12.2018 the appeal was dismissed and it is this judgment which is assailed in the present writ petition.

5. Reading of the impugned judgment shows that the Appeal was dismissed for the reasons: (a) Rule 120 is only directory and not mandatory and this is fortified by use of the words 'as far as may be' instead of 'shall' in the Rule by the Legislature; (b) show cause notice was issued by the School containing allegations of misconduct committed by the Petitioner, however, he did not give proper and specific explanation in his reply, which amounted to admission of the allegations and thus holding an inquiry would have been a futile exercise; (c) decision to remove the Petitioner was taken by the managing committee, which was comprised of all members who are required to be a part of the disciplinary authority as stipulated in Rule 118 of Rules 1973 and thus there was no error or illegality in not constituting a separate disciplinary committee.

6. The first two contentions raised by the learned *Amicus Curiae* on behalf of the Petitioner and which are inextricably linked are that compliance with provisions of Rules 118 and 120 is mandatory and not directory. Rule 118 provides a specific constitution of the

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disciplinary committee and only a properly and validly constituted committee can frame the charges under Rule 120(1)(a). It is urged that the School is an aided and recognized school and bound by provisions of the Delhi School Education Act and Rules, 1973 and therefore major penalty of removal from service could have been imposed upon the Petitioner only after holding an inquiry as per the procedure prescribed in Rule 120 and violation of the said provision vitiates the termination order.

7. It is argued that DST has gravely erred in upholding the termination order by holding that Rule 120 is directory as this finding and conclusion is against the settled law on the subject. In ***Mamta and Others v. School Management of Jindal Public School & Ors., 2011 SCC OnLine Del 2536***, it was held that disciplinary authority under Rule 118 is distinct from the managing committee, else there was no need to separately provide Rule 118 laying down a definite composition of a disciplinary authority. In ***The Chairman, Ryan International School & Ors. v. Dinesh Singh Rawat & Anr., 2017 SCC OnLine Del 8310***, this Court held that Rule 118 is a statutory Rule and needs to be followed in the manner it exists, without any deviation. In the present case, no inquiry was held under Rule 120 and the removal order was signed and issued by the Manager of the School pursuant to a Resolution of the managing committee and not by a disciplinary committee constituted under Rule 118 and the termination order cannot be sustained in law.

8. It is contended that DST further erred in holding that Rule 120 could be dispensed with since Petitioner had not categorically denied the allegations in the show cause notice, which amounted to admission of the allegations levelled. This view of DST completely overlooks not only the provision of Rule 120 but also several judgments where Courts have held that a penalty order passed without following the

procedure laid down in Rule 120 cannot be upheld, even if reply to the show cause notice is not comprehensive or is evasive. Reliance is placed on the judgments of this Court in *Mangal Sain Jain v. Principal, Balvantray Mehta Vidya Bhawan and Others*, 2020 SCC OnLine Del 2608 and *School Management of Ring Midways Senior Secondary Public School v. Ms. Shashi Rawat and Anr.*, 2017 SCC OnLine Del 6457, where the Courts have held that an employee/teacher of a School in Delhi can only be terminated after following the provisions of Rules 118 and 120, which entail constituting a disciplinary committee, holding of inquiry, furnishing of inquiry report and its acceptance by the disciplinary authority. If this procedure is not followed, it cannot be held that services of an employee have been legally terminated. In *Jaswant Singh v. State of Punjab and Others*, (1991) 1 SCC 362 and *Tarsem Singh v. State of Punjab and Others*, (2006) 13 SCC 581, the Supreme Court has held that disciplinary authority is not expected to dispense with the disciplinary inquiry lightly or arbitrarily. In the present case, there was no material placed by the School before DST, which would have even remotely indicated why it was not reasonable/practicable to hold an inquiry and/or the reasons which compelled the School to follow the extreme path of dispensing the inquiry.

9. The next and the only other plank of argument assailing the order of removal is that the same was passed without complying with the provision of Section 8(2) of Act 1973, which mandates prior approval of DoE before imposing penalty of dismissal, removal or reduction in rank. To support the proposition, reliance is placed on the judgment of the Supreme Court in *Raj Kumar v. Director of Education and Others*, (2016) 6 SCC 541 and of this Court in *Vinita Tyagi v. Bala Pritam Guru Harkrishan Int. Public School and Others*, 2023 SCC OnLine Del 1935.

10. Ms. Latika Chaudhary, counsel for DoE supports the case of the Petitioner and submits that compliance with Rules 118 and 120 as well as Section 8(2) is mandatory and not directory and DST has completely erred in holding to the contrary and dismissing the appeal of the Petitioner. She reiterates the arguments urged on behalf of the Petitioner and relies on the same judgments as referred to and relied upon by the *Amicus Curiae*, which are not referred to again for the sake of brevity.

11. Ms. Meenakshi Midha, counsel appearing for the School, *per contra*, defends the impugned judgment of DST and submits that Petitioner has throughout been negligent in the conduct of his duties. Even earlier show cause notice was issued to him in 2003, whereupon he had tendered an oral apology. Despite numerous warnings, Petitioner failed to improve and repeatedly failed to conduct classes as per the timetable, maintain the attendance register, refused to evaluate the answer sheets of Classes XI and XII on time and even proceeded on unsanctioned leaves from time to time and his conduct was all through unbecoming of a teacher.

12. It is submitted that Petitioner again violated the code of conduct with respect to evaluation of answer sheets and results of class XI for 2016-2017 session and thus a memorandum was issued to him on 06.04.2017 to explain his conduct. Instead of responding to the allegations and denying them, Petitioner raised irrelevant issues in his reply dated 11.04.2017. On account of his repeated misbehavior and misconduct and deemed admission of the allegations levelled, it was resolved by the managing committee by a unanimous decision to dispense with his services. Managing committee authorized the manager to issue the order of removal as also to intimate the DoE of this action. Since the School is a minority institution it was not required to comply with the mandate of prior approval from DoE

under Section 8(2) of Act 1973.

13. Justifying the impugned judgment of DST, it is urged that the Tribunal rightly observed that conduct of the Petitioner and his continuance defiance was evident from the ACRs and since he had not denied the allegations in reply to the show cause notice, School was justified in terminating his services. DST rightly relied on various judgments as mentioned therein to hold that inquiry under Rule 120 is not mandatory, which is evident from the expression ‘as far as may be’ in Rule 120(1). Moreover, as rightly held by DST, once the Petitioner did not deny the allegations levelled in the show cause notice/memorandum it amounted to admission of guilt and holding an inquiry would have been a futile exercise. With respect to Rule 118, it is submitted that DST rightly concluded that there could be an overlap between the managing committee and disciplinary authority and once all members envisaged under Rule 118 are a part of the managing committee, requirement of the provision is met.

14. Ms. Midha, relies on the judgment of this Court in *Avinash Nagra v. Navodaya Vidyalaya Samiti and Others, (1997) 2 SCC 534* to contend that there is no hard and fast rule that an inquiry under Rule 120 must precede a termination order as inquiry is not a panacea but a nail in the coffin. Reliance is also placed on the judgment of the Supreme Court in *Viveka Nand Sethi v. Chairman, J&K Bank Ltd. and Others, 2005 SCC OnLine SC 910*, wherein the Supreme Court held that if the facts are admitted, an inquiry would be an empty formality. In *Samarth Shiksha Samiti (Regd.) v. Directorate of Education & Anr., 2011 SCC OnLine Del 1919*, this Court ruled that had the intent of Legislature been that the procedure prescribed in Rule 120 was to be strictly followed before imposition of any major penalty, Legislature would not have used the words ‘as far as may be’ in the said Rule. Use of these words indicates that the provision is

directory and not mandatory. Reliance is correctly placed by the DST on the judgment of this Court in *Managing Committee, Naval Public School v. Neera Chopra & Anr., 2013 SCC OnLine Del 1648*, wherein it was held that it cannot be said that the action of the managing committee of the School in framing the charges is *ex facie* illegal or contrary to the Rules.

15. I have heard learned counsels for the Respondents and *Amicus Curiae* appointed to represent the Petitioner.

16. Before proceeding to adjudicate the issues that arise in the present petition, it is necessary to take a bird's eye view of the judgment of DST, impugned herein. Briefly encapsulated the reasons for dismissing the appeal are: (a) Rule 118 requires that disciplinary authority should be comprised of Chairman of the managing committee of the School, manager of the School, nominee of DoE in case of an aided school or nominee of appropriate authority in case of unaided school, Head of School and Teacher who is member of the managing committee and in the present case the managing committee which passed the impugned order comprised of all these members; (b) in *Managing Committee, Naval Public School (supra)*, this Court has held that it is open to the managing committee to issue the charge sheet; (c) Rule 120 is not mandatory but directory in nature which is evident from the expression 'as far as may be' in Rule 120(1) and this position is upheld by this Court in *Samarth Shiksha Samiti (Regd.) (supra)*; (d) Supreme Court in *Avinash Nagra (supra)* has held that where the conduct of an employee is not befitting of higher responsibilities and he has betrayed the trust and faith of the employer, especially in noble professions, inquiry will not be mandatory as it is not a panacea but a nail in the coffin; (e) conduct of the Petitioner was throughout callous, rigid and uncooperative and despite repeated warnings he did not perform his duties as expected by attending

classes as per timetable or checking the answer sheets and submitting results on time etc.; and (f) Petitioner had not denied the allegations levelled against him in the show cause notice/memorandum, which amounted to admission of allegations and therefore holding the inquiry would have been a futile exercise.

17. First and foremost, the contention of the School that Rules 118 and 120 are not mandatory deserves to be rejected outrightly. In ***School Management of Ring Midways Senior Secondary Public School (supra)***, a Co-ordinate Bench of this Court held as follows:-

“5. All the arguments urged by the petitioner/school lack complete substance whatsoever. The reasons for rejecting the arguments of the petitioner/school are given hereinafter : -

(i) The first issue is that whether respondent no. 1 stood terminated from the petitioner/school with effect from 1.4.2014. An employee/teacher of a school in Delhi can only be terminated from the services with the school in terms of Rules 118 and 120 of the Delhi School Education Rules, and which Rules require constituting of a disciplinary committee, holding of inquiry proceedings ending with the inquiry officer's report, inquiry officer's report being accepted by the disciplinary authority and which imposes the punishment of termination of services. Counsel for the petitioner/school concedes that no such proceedings as envisaged under Rules 118 and 120 have taken place and therefore once the services of respondent no. 1 have been terminated without following the provisions of the Delhi School Education Act and Rules, it cannot be held that the services of respondent no. 1 stood legally terminated with effect from 1.4.2014. In addition to the above facts, in view of the recent judgment of the Supreme Court in the case of Raj Kumar v. Director of Education, (2016) 6 SCC 541, since no prior permission, or even permission till date, has been obtained from the Directorate of Education for termination of services of respondent no. 1, the respondent no. 1's services with the petitioner/school cannot be said to have legally come to an end.

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18. In ***Mangal Sain Jain (supra)***, this Court held as follows:-

“23. Law is now as settled as still water that if the disciplinary proceedings are not initiated or conducted as per procedural safeguards formulated under the statutory provisions, being Rules 118 and 120 of DSEA&R, against an employee of the School, the proceedings shall vitiate. The consequential penalty order would then be rendered illegal. This has been so held in Dr. Swami Ram

Pal (supra) and there have been repeated affirmations as in the case of Hindon Public School (supra) as well as Rukmani Devi (supra), to refer a few, wherein the penalty orders have been set aside on account of non-compliance of Rule 120 of DSEA&R.”

19. I may also refer to a passage from the judgment in ***Dr. Ashwani Kumar Kala v. School Management of Hira Lal Jain Senior Secondary School and Ors., 2018 SCC OnLine Del 7492***, as under:-

“4. Upon hearing and perusal of impugned order and the material on record, I find that Delhi School Tribunal has not considered vital aspect of dispensing with the enquiry which as per Rule 120 of Delhi School Education Rules, 1973 is mandatory. Merely because there is no proper reply to the show cause notice, it would not justify dispensing with the enquiry as it has to be determined as to whether under the Delhi School Education Rules, enquiry can be dispensed with or not. This crucial aspect has not been dealt with by the learned Tribunal. What would be the effect of not constituting disciplinary committee and as to whether the composition of the disciplinary committee and the Managing Committee being overlapping has not been considered by the learned Tribunal. This aspect goes to the root of the matter.”

20. In view of the aforesaid judgments, it is not open to the School to contend that provisions of Rule 120 can be dispensed with and without following the procedure laid therein, extreme penalty of removal of service could have been imposed on the Petitioner. Rule 120(1) provides that the disciplinary authority shall frame definite charges on the basis of the allegations on which inquiry is proposed to be held. Constitution of the disciplinary authority in respect of employees of recognized private school, whether aided or not, is stipulated in Rule 118. Contention of the School that Rule 118 is not mandatory or in the alternative once the managing committee comprises of members which are envisaged in Rule 118 the requirement of the provision is satisfied, cannot be accepted in view of wealth of judicial decisions holding to the contrary on this aspect. In ***Mamta and Others (supra)***, this Court has clearly held as under:-

“10. The counsel for the respondents has today produced the record and from which it transpires that the Managing Committee of the respondent School constituted under Rule 59 authorized the Chairman of the respondent School to issue the charge sheet and an

Inquiry Officer was also appointed by the Chairman. The counsel for the respondent School has contended that the members of the Managing Committee are the same as the members of the Disciplinary Committee prescribed under Rule 118. He has with reference to the minutes of the meeting of the Managing Committee where the decision aforesaid was taken shown that the Chairman of the Managing Committee of the School, the Head of the School i.e. Principal as well as a teacher who is a member of the Managing Committee of the School, were present in the said meeting of the Managing Committee. It is further stated that the nominee of the DOE was informed of the meeting and having not opted to attend the meeting is deemed to be present; that there is no Manager of the respondent School. It is thus contended that the Managing Committee which took the decision to issue the charge sheet to the petitioners and to hold the inquiry is also the Disciplinary Authority/Committee.

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16. *I am of the opinion that the Managing Committee cannot be held to be the Disciplinary Authority/Committee for the following reasons:—*

(i) had the intent been to constitute the Managing Committee as the Disciplinary Authority/Committee also, there was no need in Rule 118 to prescribe the constitution of the Disciplinary Authority/Committee and it would have been sufficient to merely provide that the Managing Committee of the School shall also be the Disciplinary Authority/Committee;

(ii) while under Rule 59(1)(b)(v), of the two members of the Managing Committee to be nominated by the DOE, one is required to be an educationist and the other an officer of the DOE, Delhi, under Rule 118(iii), the member of the Disciplinary Authority/Committee is required to be either a nominee of the DOE in the case of an aided School or a nominee of the “appropriate authority” in the case of unaided School. “Appropriate Authority” is defined in Section 2(e) of the Act as, in the case of a School recognized by the Delhi Administration, as the respondent School is the Administrator or any other officer authorized by him in this behalf. Moreover, there is no qualification for such nominee, either of the DOE or of the Appropriate Authority as is in the case of the nominees of the DOE in the Managing Committee;

(iii) in some of the other cases coming before this Court, it has been seen that the DOE has been appointing nominee in the Disciplinary Authority/Committee expressly and did not take a stand that the nominee appointed to the Managing Committee would also be a nominee for the Disciplinary Authority/Committee;

(iv) though vide Rule 59(2)(e) the scheme of management is to also provide for the disciplinary action and control on staff but in view of the specific Rule 118 dealing with the Disciplinary

Authority/Committee and further in view of Section 5 supra requiring the scheme of management to be in accordance with the Rules/the scheme of management qua disciplinary action and control on staff cannot be contrary to Rule 118.

(v) Managing Committee under Rule 59 is a much bigger Body than a Disciplinary Authority/Committee under Rule 118. To hold the two to be the same would tantamount to vesting the powers of the Disciplinary Authority/Committee also in persons other than those provided under Rule 118; Rule 118 does not permit presence in the Disciplinary Authority/Committee of persons other than those mentioned therein.

(vi) In the face of the Rules which are statutory in character expressly providing separately for Managing Committee and the Disciplinary Authority/Committee and further in face of Rule 120(1)(d) expressly empowering the Disciplinary Authority/Committee constituted under Rule 118 to also impose major penalty, it has to be necessarily held that the Rules have taken away the power under the general law of the Managing Committee as the Appointing Authority to take disciplinary action for and to impose a major penalty on the employee of the School.

Thus, it follows that notwithstanding the presence of a nominee of the DOE in the Managing Committee of the School and notwithstanding the Administrator, Delhi even if has delegated powers as an appropriate authority to the DOE, the Managing Committee cannot be treated as the Disciplinary Authority/Committee.

17. I find that the Division Bench of this Court in P.K. Bansal v. UOI, 37 (1989) DLT 37 also held that the Managing Committee has no power to review the decisions of the Disciplinary Authority/Committee constituted under Rule 118. I may however mention that the subsequent Division Bench of this Court in Kathuria Public School v. Director of Education, 123 (2005) DLT 89 : 2005 (83) DRJ 541 [DB] without noticing the earlier Division Bench, in para 39 generally observed that the ultimate power vests in the Managing Committee and the constitution of the Disciplinary Authority/Committee does not in any manner take away the powers of the Managing Committee to take necessary action in matters of discipline relating to teachers and employees. With due respect to the Division Bench, I am humbly of the opinion that it is not so reflected in the Rules. Moreover, the said observation came to be made in the context of the delay by the DOE in nominating the members to the Disciplinary Authority/Committee and for which a time period of two weeks was laid down by the Division Bench. The Supreme Court in Steel Authority of India v. Presiding Officer, Labour Court, (1980) 3 SCC 734 held that where under the Service Rules the Personnel Manager was the Disciplinary Authority, the Resolution of the Board of Directors of the Company and the orders of the Managing Director of the Company delegating the powers for disciplinary action to another officer would be of no avail. Thus, the

observations aforesaid of the Division Bench in Kathuria Public School (supra) of the ultimate power vesting in the Managing Committee is contrary to what has been held by the Apex Court.

18. *Once it is held that the Disciplinary Authority/Committee under Rule 118 is distinct from the Managing Committee, the action if any taken by the Managing Committee would not be in accordance with law and of no avail."*

21. In ***The Chairman, Ryan International School & Ors. (supra)***, the Court not only reiterated and emphasized on the mandate of Rule 118 but also held that Rule 118 in view of the clear pronouncement of the Supreme Court in ***Frank Anthony Public School Employees' Association v. Union of India and Others, (1986) 4 SCC 707*** would apply even to unaided minority institutions. The Court held that Section 12 of the Act 1973 makes all provisions of Chapter IV inapplicable to unaided minority institutions and therefore as a corollary Rule 96 which excludes applicability of Chapter VIII including Rule 118 shall be applicable to minority schools. The Court in ***The Chairman, Ryan International School & Ors. (supra)*** held as follows:-

"8. *Having heard the learned counsel for the parties, I am unable to agree with the contention of Mr. Chacko that Rule 118 of DSER is not applicable to the petitioners. It is a clear pronouncement of the Supreme Court in Frank Anthony Public School (Supra), wherein the Supreme Court has held that Section 12 of the Delhi School Education Act which makes all provisions of Chapter IV inapplicable to an unaided minority institution as discriminatory and void. As a corollary Rule 96 which excludes applicability of Chapter VIII, including Rule 118 relating to Disciplinary Committee, the said Chapter shall also be applicable to an unaided minority school. Insofar as the second contention of Mr. Chacko that no prejudice has been caused to the petitioners as the disciplinary proceedings from the issuance of chargesheet to the penalty have been ratified by the Management Committee of the School, i.e., a larger body, which also have same members who would have constituted the Disciplinary Committee is concerned, I am unable to agree with this submission of Mr. Chacko inasmuch perusal of Rule 118 shows the composition of the Disciplinary Committee has to be as under:*

"118. Disciplinary authorities in respect of employees- The disciplinary committee in respect of every recognised private school, whether aided or not, shall consist of:—

- (i) *the chairman of the managing committee of the school;*
- (ii) *the manager of the school;*
- (iii) *a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;*
- (iv) *the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Mead of the school, the Head of any other school, nominated by the Director;*
- (v) *a teacher who is a member of the managing committee of the school; nominated by the Chairman of such managing committee."*

9. *The Chairman of the Management Committee of the School is part of the Disciplinary Committee. That apart, the nominee of the Director in the case of an aided school or a nominee of the appropriate authority in the case of an unaided school, are also part of the Disciplinary Committee. Perusal of the Minutes of the meeting of the Management committee held on 1st April, 2013 wherein the Management Committee stated to have ratified the disciplinary action taken by the Principal against respondent no. 1 reveals the Chairman was absent. That apart on a specific query to Mr. Chacko, whether any representative of the Directorate of Education was present, his answer was in the negative. If that be so, two functionaries, who would constitute the Disciplinary Committee were conspicuous of their absence in the meeting of the Management Committee held on 1st April, 2013 when a decision was taken to ratify the disciplinary action against respondent no. 1. That apart, there is nothing in Rule 118, which contemplates, delegation of Disciplinary Powers to the Principal as has been done in this case. Further a statutory Rule needs to be followed in the manner it exists without any deviation. But the plea of Mr. Chacko that the Tribunal should have remanded back the matter to the Disciplinary Authority for taking appropriate action in accordance with the rules appeals this Court. It is a case where Delhi School Tribunal has set aside the impugned order of dismissal on a technical ground of the Disciplinary Committee having not been constituted in accordance with the Rule 118 of DSER. The charges against the petitioners are of very serious nature and cannot be overlooked and the same need to be enquired. The plea of the learned counsel for the respondent no. 1 that the proceedings need to be initiated or not should be left to the Disciplinary Committee is also appealing. In the facts, the Tribunal should have remanded back the matter to the Disciplinary Committee to take a decision afresh, in accordance with law.*

10. *In view of my above discussion without dilating further, I set aside the order dated 17th October, 2016 and remanded the matter back to the Disciplinary Committee to take a decision, whether to proceed against the respondent no. 1 in a departmental enquiry, if not, then the matter shall be treated as closed, if it is otherwise, then the respondent shall conduct the proceedings in terms of Rule 120*

and pass orders with regard to the period post dismissal of respondent No. 1 in accordance with law, in terms of the judgments referred to by the counsel for the respondent No. 1 and Rules on the subject. The aforesaid direction shall be complied within eight weeks from the receipt of the copy of this order. The writ petition is disposed of.”

22. Recently, this Court in **Anjna Luthra v. Govt. of NCT of Delhi and Others, 2023 SCC OnLine Del 3061**, relying on the judicial precedents on the mandate of Rule 118, held as under:-

“16. Rule 118 of Rules, 1973 provides that Disciplinary Committee in respect of every recognized private school, whether aided or not, shall consist of the Chairman of the Managing Committee of the School, Manager of the School, Nominee of the Director in case of aided school or Nominee of the Appropriate Authority in case of unaided school, Head of the School and a Teacher, who is a Member of the Managing Committee nominated by the Chairman. Where the inquiry is contemplated against the HOS, the Head of any other school will be nominated by the DoE. In Dr. Swami Ram Pal Singh Mission School v. Shri Harvinderpal Singh Bindra, 2017 SCC OnLine Del 6928, a Co-ordinate Bench of this Court was ceased of several issues amongst which one was whether provisions of Rule 118 are mandatory. The Court held that appointment of an employee of a school has statutory protection and cannot be terminated except by following due process envisaged under Rules 118 and 120 of Rules, 1973. In Mangal Sain Jain v. Principal, Balvantray Mehta Vidya Bhawan, 2020 SCC OnLine Del 2608, this Court had the occasion to examine the same issue and it was held as under:—

“22. Petitioner has in Grounds (a), (d) and (f) of the present writ petition specifically averred that the Chargesheet was not issued by the Disciplinary Committee as none was ever constituted by the Managing Committee and the Chargesheet as well as the Discharge order was signed only by the Manager and the Principal in their individual capacities. There is no denial to the specific averments of the Petitioner in reply or the written submissions filed by the School and even during the course of arguments, apart from simply stating that principles of natural justice were complied with, nothing has been said to support that the Disciplinary Committee was ever constituted. No record was produced to contradict the plea of the Petitioner in this regard. In its absence, an inference will have to be raised in favour of the Petitioner that there was no Disciplinary Committee and hence the Chargesheet was not framed as per law. Chargesheet placed on record bears only the signatures of the Principal and the Manager and since nothing is forthcoming to indicate that the action was by or pursuant to a decision of the Disciplinary Committee, the inevitable conclusion is that there was non-compliance of the mandatory provisions of Rules 118 and 120 of DSEA&R. In the absence of there being a

Disciplinary Committee, even the Penalty order is without jurisdiction and liable to be set aside.

23. Law is now as settled as still water that if the disciplinary proceedings are not initiated or conducted as per procedural safeguards formulated under the statutory provisions, being Rules 118 and 120 of DSEA&R, against an employee of the School, the proceedings shall vitiate. The consequential penalty order would then be rendered illegal. This has been so held in Dr. Swami Ram Pal (supra) and there have been repeated affirmations as in the case of Hindon Public School (supra) as well as Rukmani Devi (supra), to refer a few, wherein the penalty orders have been set aside on account of non-compliance of Rule 120 of DSEA&R.”

17. In Rosary Senior Secondary School v. Directorate of Education, 2022 SCC OnLine Del 1871, challenge was laid by the School to an order passed by the Delhi School Tribunal in Appeal No. 11/2017 whereby Tribunal had allowed the appeal and set aside the charge-sheet, appointment of the Inquiry Officer and the penalty of removal of Respondent No. 2. One of the grounds raised by Respondent No. 2 before the Tribunal was that Disciplinary Committee was not constituted as per Rule 118 and the Tribunal found in favour of Respondent No. 2. This Court while examining the order of the Tribunal came to a conclusion in favour of the employee and upheld the order of the Tribunal on two-fold grounds i.e. violation of Rules, 1973 and principles of natural justice as well as perverse findings of the Enquiry Officer beyond the charge framed. In order to come to the said conclusion, the Court took note of Rule 118 and the constitution of the DAC envisioned therein. The Court found that the charge-sheet was signed by the Manager of the School on behalf of the Managing Committee and not by the DAC which had been constituted for a limited purpose of considering the reply of Respondent No. 2 to the enquiry report and not at the initial stage for approving the charge-sheet.

18. In view of the settled law that provisions of Rule 118 are mandatory and if DAC is not constituted as per the constitution provided in the said Rule or charge-sheet is not approved by the DAC, it would be non est and liable to be quashed. As aforementioned in the present case, both the DE Nominee as well as the Head of school nominated by DoE as members of the DAC in consonance with Rule 118 were not a part of the DAC on 18.01.2020 and did not approve the charge-sheet. An argument is raised on behalf of the School that even if these two members were not physically present, in the absence of their objection to the draft charge-sheet, there will be a deemed approval. This argument is to support and defend the Minutes of Meeting dated 18.01.2020, wherein it is recorded that the charge-sheet is deemed to be approved. This contention only deserves to be rejected, as there is no concept of deemed approval of charge-sheet. It needs no emphasis that the exercise of approval of a charge-sheet is not a mechanical exercise and includes application of mind to see if charges are at all made out, in which case the

charge-sheet may not be issued at all or may be issued with lesser charges. This would entail deliberations and meeting of minds of the members of DAC and thus the concept of 'deemed' approval is wholly alien to the procedure involving approval of charge-sheet. The impugned charge-sheet is non est and deserves to be quashed."

23. This being the settled law on the requirement of following Rules 118 and 120, DST in my view has gone wholly wrong in holding that there was no requirement of following the procedure laid down in the said Rules. In fact, a very strange reasoning has been adopted by DST for dispensing with the inquiry under Rule 120 that Petitioner had failed to give a comprehensive reply to the show cause notice and not denying the allegations amounted to admissions and therefore holding the inquiry would have been a futile exercise as also that once the employee admits the allegations there is no requirement of an inquiry which is not a panacea. This observation of DST is not only in the teeth of judgments of this Court as referred to above, but is also factually flawed. When the show cause notice was issued to the Petitioner, he responded by questioning the jurisdiction of the manager to issue the same and sought documents to effectively defend the same. This cannot amount to admission or even deemed admission of the allegations so as to dispense with the inquiry. Moreover, a response to a show cause notice however incomprehensive cannot be a ground to bypass the procedure of full-fledged inquiry and in this context suffice would it be to note that this very contention of the School was negated by this Court in ***Dr. Ashwani Kumar Kala (supra)*** and relevant para of the judgment has been extracted above, wherein Court observed that merely because there is no proper reply to the show cause notice, it would not justify dispensing with the inquiry. In ***Chairman, Arya Girls Senior Secondary School v. Director and Others, 2022 SCC OnLine Del 253*** a similar contention was negated by this Court and I quote the relevant passages as

Signature Not Verified follows:-

Digitally Signed by: KAMAL KUMAR
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Signing Date: 16.06.2023 12:00:06
W.P.(C) 13859/2018

“39. *The DSE Act and DSE Rules are a self-contained Code and provide a comprehensive mechanism for holding an inquiry against the delinquent employee. It has been held by the Co-ordinate Bench of this Court in the cases of Army Public School (supra) and Hamdard Public School (supra) that an employee of a school has a statutory protection and his services cannot be terminated except by following due process of law. In service jurisprudence, it is well settled that no employee can be terminated on allegations of misconduct, without giving him or her, an opportunity of hearing and proving his innocence. Audi alteram partem is a well-known Latin phrase, which means ‘listen to the other side’. This is based on a fundamental principle that no person should be judged or condemned without a fair hearing in which each party is given the opportunity to respond. Three main requirements of principles of natural justice must be met in every case, viz. adequate notice, fair hearing and no bias. It would not be an exaggeration to state that the principle of audi alteram partem is one of the twin pillars of natural justice, primarily aimed at giving an individual the opportunity to present his point of view, before he is confronted with an order of penalty, leading to loss of livelihood or property etc. It needs no reiteration that a decision becomes void if it violates the right of hearing. In the field of administrative action, the omnipotence inherent in the said doctrine is that no one should be condemned unheard and is applied to ensure fair play and justice to the affected party. In the present case, the doctrine has been completely ignored and despite serious allegations of cheating, no inquiry was held, before imposing the extreme penalty of dismissal, depriving Respondent No. 2 of his right to livelihood.*

40. *In view of the above, the argument of the School that memos and show-cause notices were issued to Respondent No. 2, to which there was no response and thus, holding an inquiry would have been a futile exercise, though ingenious, cannot be accepted. It has been repeatedly held in several judgments that rule of law does not permit any person to be proceeded against, save and except in a manner known to law and procedure prescribed in law. DSE Act and Rules prescribe a mechanism and procedure to hold an inquiry and memos and show cause notice can be no substitute. Where law prescribes a manner in which a thing has to be done, that thing must be done in that manner or not done at all, is an age old aphorism, deeply engrained in legal lore. Insofar as the judgments in R. Vishwanatha Pillai (supra), Vice Chairman, Kendriya Vidyalaya Sangathan (supra) and Regional Manager, Central Bank of India (supra) relied upon by the School are concerned, the same are distinguishable on facts, as in those cases, the caste scrutiny committee had examined the caste certificates in question, whereas in the present case, there was no examination/scrutiny of the documents allegedly forged and furnished by Respondent No. 2, by a competent or expert body. Stand of Respondent No. 2, that he had furnished documents different from the ones relied upon by the School was also not examined. In Mohd. Sartaj (supra), the concerned employees did not have the requisite educational or other qualifications, which is not the case here and*

in Guardsman Nanar Ram (supra), Army Act, 1950 itself provides for 'administrative dismissal', i.e., without holding a departmental inquiry and thus, these judgments will not inure to the advantage of the School.

41. *There is yet another dimension to the present case, which cannot be overlooked. While as aforesaid, holding an inquiry into the allegations leveled is a facet of the doctrine of audi alteram partem and is a sine qua non before imposing a penalty, more so, in the Scheme of the DSE Act and DSE Rules, in the present context, it assumes greater significance, for the reasons that follow hereinafter. Respondent No. 2 has taken a categorical stand in paras 6 and 7 of the counter affidavit, filed in response to the writ petition, that the plea of the School that Respondent No. 2 sought employment in the School in 1993 on the basis of certain documents, which were found to be fake and forged in 1995, is completely false, inasmuch as the mark sheets and the certificates and the University degree, relied upon by the School were never submitted by Respondent No. 2 and were fabricated by the School Authorities. It is further averred that the said documents were mischievously fabricated and forged, at the behest of Mr. Chandolia and Mr. Hoshiyar Singh, to falsely implicate Respondent No. 2 and settle scores with him. Respondent No. 2's marriage with Mr. Chandolia's niece, triggered the dismissal order and the FIR. Respondent No. 2 has also averred that he had submitted originals of the mark sheets and certificates of the school and degree of the University, where he had studied. Relevant paras of the counter affidavit are as follow:—*

*"6. That deponent has joined the service of the petitioner school on 03.08.1993 in the capacity of Upper Divn. Clerk in the pay scale of Rs. 1200-2040. A copy of the appointment letter dated 31.7.93 as issued and marked as **Annexure R-1**. The entire case alleged against the respondent by the School Authorities is based on certain documents which according to the petitioner school were submitted by the respondent at the time of seeking employment in the school in 1993 and the same were found to be fake and forged at later stage i.e. in 1995. The above plea of the petitioner school is false to their own knowledge inasmuch as the mark-sheet and certificates which have been relied upon by the petitioner School were never submitted by the respondent to the school nor such documents were ever received by the respondent from any of the school or University, As a matter of fact, these alleged fake mark sheets were mischievously arranged and procured by the then Chairman and Manager of the School namely Mr. Chandolia and Mr. Hoshiar Singh to make a false case against the respondent because of his marriage with a girl who belonged to the community of the aforesaid school officials and the respondent's marriage was strongly opposed by the above school officials and family of the respondent's wife. Marriage of the respondent took place on 15.1.95. Not only this, the above named School Officials by filing false complaint on the-basis of such illegal documents got the respondent arrested in February, 1995 and during his*

detention in police custody the respondent was forced by the police at the instance of the above named Chairman and the Manager of school to sign certain papers including a covering letter purportedly written on 07.05.2003 giving the impression as if the respondent had submitted the aforesaid alleged fake and forged documents to the school authorities along with the said letter. The respondent reserves his right to point out self-contradiction, inconsistencies and deficiency in the documents relied upon by the petitioner school to support their illegal and mischievous decision.

*7. That the respondent had submitted the original mark sheets and certificates of his school and college education. These were submitted to the appellant School authorities at the time of joining the post of UDC after receiving the appointment letter dated 03.08.1993. The respondent, after filing of the false complaint by the above named school officials, which led to criminal case against the respondent, procured duplicate copies of the mark sheets from the Institutions where the respondent had actually studied. Duplicates of all such valid mark sheets originals of which were already submitted with the school authorities in August, 1993 are being filed herewith as **Annexure R-2 (Colly)**. Original of these documents were submitted by the respondent to the school authorities before joining the post of UDC, whereas the documents relied upon by the petitioner school while dismissing respondent are totally different documents some of which even relate to a totally different Institution altogether where the respondent never studied. In this view of the matter, it is submitted that the above named Chairman and Manager of the petitioner school who indulged in illegal acts and unfair practice by falsely implicating the respondent who did not obey the dictates of the then Chairman and Manager of the school and went ahead with the marriage with a girl belonging to their community. The petitioner fell in love with a girl named Miss. Manjula who happen to be niece of one Mr. R.N. Chandolia, Chairman of the Managing Committee of the petitioner school. It was a case of inter-caste marriage. He married the said girl against the wishes of her parents. Thereafter the deponent was implicated in a false case by the Petitioner School to teach him a lesson. The case bearing FIR No. 47/95 is still, pending in the court of Metropolitan Magistrate Delhi. It is the case of the deponent where he had alongwith his application form for the post of UDC furnished the educational qualification certificate which are genuine ones. Respondent also underwent judicial custody for a few days from 17.2.1995 and later on released on bail. After getting released on bail he made an attempt to join the School. He was not allowed to enter the premises. He submitted a number of representation. He was not allowed to enter the school. His salary was not released. No representation of his was replied to. First such representation was allegedly made on 20.04.1995. The last representation is dated 17.7.2003. Finally,*

*his wife Smt. Manjula Sharma sought the information from the Respondent School under Right to Information Act. She was informed that her husband Shri. Kritendra Sharma was dismissed from service for furnishing the certificate of B.Sc. degree from Meerut University which was later on found fake. Decision to dismiss him from service was taken by the school Management Committee in its meeting held on 14.02.1995. The Appellant filed the appeal on the grounds inter alia that the orders of dismissal as conveyed to his wife vide orders dated 22.08.2003 are illegal. This has not been issued under Rule 120 of Delhi School Education Act and Rules 1973. He was never given an opportunity to explain his position. Principles of natural justice were not followed. Director of Education never accorded his prior approval to the alleged dismissal. The ex-post facto approval referred to in the impugned orders is also illegal for the reason that the dismissal orders could not be issued before the receipt of the approval from the Directorate of Education. A copy of the appeal filed by the deponent is annexed herewith and marked as **ANNEXURE R-3**. It is an admitted case of the petitioners have not taken approval from the respondent No. 1. Therefore, during the pendency of the appeal, the respondents tried to take the approval which has been challenged by the deponent before this Hon'ble Court vide **Writ Petition (Civil) No. 3083/2005**. This Hon'ble Court had set aside the said approval. However, upon an appeal by the petitioner, the Division Bench of this Hon'ble Court directed that the appeal is to be decided by the Delhi Education Tribunal. It is submitted that the respondent was never served with the order dated 14.02.95 either through Regd. Post or otherwise. The respondent came to know about the decision of dismissal of the Managing Committee only through Directorate of Education order dated 22.08.2003 passed by the Deputy Director of Education on the application of the respondent seeking information under the Right to Information Act regarding the approval of the competent authority. This application was submitted by the respondent himself which was followed up by his wife by visiting the office of Directorate of Education. Inadvertently in the appeal it was stated that the said application was submitted by the wife of the respondent. In this regard, a copy of the application and fee receipt deposited by the respondent are annexed herewith and marked as **Annexure R-4 (Colly)**. ””*

24. Therefore, the impugned judgment of DST on the aspect of Rules 118 and 120 is wholly erroneous and the findings to this extent cannot be sustained in law. Insofar as the grievance of the Petitioner with respect to non-compliance with Section 8(2) of Act 1973 is concerned, this to my mind is totally fatal to the case of the School.

Admittedly, in the present case no prior approval of DoE was sought by the School before imposing the penalty of removal from service. A categorical stand is taken in the counter affidavit by the School that by a resolution, the managing committee unanimously decided to terminate the services of the Petitioner and the manager of the School was authorized to issue the termination order as well as to apprise the DoE of the termination. This methodology adopted by the School is against the provision of Section 8(2) and all canons of service jurisprudence that have developed over the years by judicial decisions. That the procedure required to be followed under Section 8(2) is mandatory is no longer *res integra*. In this context, I may refer to the judgment of the Supreme Court in **Raj Kumar (supra)** where it was held that Section 8(2) is one of the precautionary safeguards which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management. In **Mangal Sain Jain (supra)** this Court had relied on the judgment in **Raj Kumar (supra)** and relevant passages are as under:-

“24. The next issue urged herein, with respect to Section 8(2) of the DSEA&R, in my view, does not pose any challenge and requires no exposition or a comprehensive analysis, being well settled. Provisions of Section 8(2) of DSEA&R clearly provide that no employee of a Recognized Private School shall be dismissed, removed or reduced in rank nor shall his services be otherwise terminated except with the prior approval of the Director. Section 8(2) of DSEA&R is extracted herein under:

“8.(2) Subject to any rule that may be made in this behalf, no employee of a recognised 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.”

25. Supreme Court in Raj Kumar (supra), has clearly held that Section 8(2) of DSEA&R is one of the precautionary safeguards which needs to be followed to ensure that employees of Educational Institutions do not suffer unfair treatment at the hands of the Management. Supreme Court in the case before it declared the Termination order to be bad in law on the ground that the Management Committee had not obtained prior approval, from the

Director of Education as required under Section 8(2) of the DSEA&R, before passing order.

26. *The judgment in Raj Kumar (supra) is particularly significant in the present case as one of the objections taken in the Counter Affidavit of Respondent No. 3 is that Petitioner was employed with the Primary School, which was unaided and hence provisions of Section 8(2) were inapplicable. Supreme Court has, ruling on this aspect, erased the distinction between unaided and aided Educational Institutions, in so far as applicability of Section 8(2) of DSEA&R is concerned. Elucidating the Section and the intent of the Legislature in enacting it, Court observed that the Division Bench of this Court had erred in striking down Section 8(2) in Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 426 and held that while the functioning of both aided and unaided Educational Institutions must be free from unnecessary Government interference, the same however, needs to be reconciled with the conditions of employment of the employees of these Institutions and provision of adequate precautions to safeguard their interests such as Section 8(2) of DSEA&R would help in preventing unfair treatment by the Management. Division Bench while striking down Section 8(2) in Kathuria Public School (supra) has not correctly applied the law laid down in Katra Education Society v. State of U.P., AIR 1966 SC 1307, wherein the Constitution Bench of the Supreme Court with reference to a provision similar to Section 8(2) of the DSEA&R, held that regulation of service conditions of employees of private recognized schools is required to be controlled by Educational Authorities and the State Legislature is empowered to Legislate such a provision in DSEA&R. Relevant paras of the Judgment are as under:*

“50. The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] by placing reliance on the decision of this Court in T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1], as the subject-matter in controversy therein was not the security of tenure of the employees of a school, rather, the question was the right of educational institutions to function unfettered. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.

51. The Division Bench of the Delhi High Court, while striking down Section 8(2) of the DSE Act in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC

OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] has not correctly applied the law laid down in Katra Education Society [Katra Education Society v. State of U.P., AIR 1966 SC 1307], wherein a Constitution Bench of this Court, with reference to provision similar to Section 8(2) of the DSE Act and keeping in view the object of regulation of an aided or unaided recognised school, has held that the regulation of the service conditions of the employees of private recognised schools is required to be controlled by educational authorities and the State Legislature is empowered to legislate such provision in the DSE Act. The Division Bench wrongly relied upon that part of the judgment in Katra Education Society [Katra Education Society v. State of U.P., AIR 1966 SC 1307] which dealt with Article 14 of the Constitution and aided and unaided educational institutions, which had no bearing on the fact situation therein. Further, the reliance placed upon the decision of this Court in Frank Anthony Public School Employees' Assn. v. Union of India [Frank Anthony Public School Employees' Assn. v. Union of India, (1986) 4 SCC 707 : (1987) 2 ATC 35] is also misplaced as the institution under consideration in that case was a religious minority institution.

52. The reliance placed by the learned counsel appearing on behalf of the respondents on T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] is also misplaced as the same has no bearing on the facts of the instant case, for the reasons discussed supra. The reliance placed upon the decision of the Delhi High Court in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] is also misplaced as the same has been passed without appreciating the true purport of the Constitution Bench decision in Katra Education Society [Katra Education Society v. State of UP., AIR 1966 SC 1307]. Therefore, the decision in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541], striking down Section 8(2) of the DSE Act, is bad in law.

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55. The respondent Managing Committee in the instant case did not obtain prior approval of the order of termination passed against the appellant from the Director of Education, Govt. of NCT of Delhi as required under Section 8(2) of the DSE Act. The order of termination passed against the appellant is thus, bad in law."

27. The law laid down by the Supreme Court in Raj Kumar (supra) has been followed thereafter in several judgments, but to avoid prolixity I am referring to only few. In School Management of Ring Midways (supra) Court held as follows:—

“2. A reading of the impugned order of the Delhi School Tribunal shows as under:—

(v) Admittedly the respondent no. 1 was a confirmed teacher and she was removed from services without following the due procedure provided in Rule 120 of the Delhi School Education Rules, 1973 of setting up of a disciplinary authority, enquiry report being submitted after allowing both the parties to lead evidence, a disciplinary authority validly constituted which has accepted the report of the enquiry officer against the respondent no. 1/teacher, and whereby the respondent no. 1/teacher has been held/accepted to be illegally appointed and hence she has to be removed. Therefore, there is admitted violation of the provisions of the Delhi School Education Rules which require that a confirmed employee can only be removed from services after following the due process of law and by conducting of an enquiry as per the Delhi School Education Act and Rules.

(vi) No prior permission of the Director of Education was taken as required by Section 8(2) of the Delhi School Education Act, and which prior permission has been held to be mandatory by the Supreme Court in its recent judgment in the case of Raj Kumar v. Director of Education, (2016) 6 SCC 541 Civil Appeal No. 1020/2011 decided on 13.4.2016; and as so observed by the Delhi School Tribunal in para 24 of its judgment. Therefore, without actual permission having been taken or being actually available, the act of the petitioner/school in removing the respondent no. 1 from services is violative of Section 8(2) of the Delhi School Education Act read with ratio of the judgment of the Supreme Court in Raj Kumar's case (supra).

3. All the aforesaid aspects arise from the record and could not be effectively disputed or challenged by the petitioner/school in this Court and thus once the respondent no. 1 was a confirmed employee and whose services have not been terminated after following the due process of enquiry as required under Rules 118 and 120 of the Delhi School Education Rules and also that admittedly no disciplinary authority was constituted and which took decision to remove the respondent no. 1, and which aspects have to be taken with the fact that no permission was obtained by the Director of Education for removal of the respondent no. 1, clearly, hence there is no illegality found in the impugned judgment of the Delhi School Tribunal allowing the appeal of the respondent no. 1 and reinstating the respondent no. 1 in the services of the petitioner/school.”

28. In a similar vein, a Coordinate Bench of this Court in a recent judgment in Meena Oberoi (supra) has quashed an order of termination of an employee, appointed as Office Assistant in a Private Recognised School, on the ground that there was no prior approval of the Director of Education, before passing the order of termination. Applicability of the provision to an unaided school has

been emphasized based on the enunciation of law on this aspect by the Apex Court in Raj Kumar (supra).

29. *An important issue that arises at this juncture and needs to be dealt with is the applicability of the judgment of Raj Kumar (supra) to the present case, as the Petitioner herein was discharged on 21.04.2008, while the judgment was delivered by the Supreme Court on 13.04.2016. This conundrum also stands resolved by a Co-ordinate Bench of this Court in Meena Oberai (supra). In the said case, the Petitioner was terminated by an order dated 21.07.2009. One of the pleas raised before the Court was that the judgment of the Supreme Court was delivered in 2016 and could only have a prospective effect, thereby disabling the Petitioner to derive the benefit of the law laid down therein.*

30. *A judgment of this Court in Red Roses Public School v. Reshmawati, 2019 SCC OnLine Del 10937 was brought to the notice of the Court, wherein the Division Bench was of the view that the judgment in Raj Kumar (supra) would not apply to cases in which the employee was removed or terminated from service, prior to the rendering of the decision in Raj Kumar (supra). Judgment of Division Bench was distinguished and it was noted that the concern of the Division Bench was that if the judgment of Raj Kumar (supra) was to apply from an anterior date, it would lead to reopening of the claims which stood settled in terms of Kathuria Public School (supra), while in the case before the said Bench the proceedings were still pending and it could not be said that applying the ratio of Raj Kumar (supra) would unsettle or reopen any claims which stood settled. Court also noticed that reading of the judgment in Red Roses Public School (supra) revealed that the attention of the Court was not invited to the judgment rendered by the Supreme Court in Marwari Balika Vidyalaya v. Asha Srivastava, 2019 SCC OnLine SC 408. In the said case, the services of the Respondent were terminated on 20.02.2001 i.e. prior to the decision in Raj Kumar (supra). Even so, relying on Raj Kumar (supra), Supreme Court upheld the setting aside of the termination order on the ground that requisite approval of the higher authorities had not been obtained. Relevant portion of the judgment in Meena Oberai (supra) is as under:*

“53. It is apparent, from a reading of the aforesaid passages, as extracted, from Red Roses Public School, that the Division Bench of this Court chose to apply the law, enunciated in Raj Kumar (2016) 6 SCC 541 prospectively, on the ground that giving effect to the decision in Raj Kumar (2016) 6 SCC 541 from an anterior date would lead to reopening of claims which stood settled in terms of Kathuria Public School (2005) 123 DLT 89. Inasmuch as the present proceedings are pending, as on date, before this Court, it cannot be said that following Raj Kumar (2016) 6 SCC 541 would result in unsettling, or reopening of, any claim of the petitioner, which stands settled. The main consideration on which the Division Bench, in Red

Roses Public School, chose not to follow Raj Kumar (2016) 6 SCC 541 may not, therefore, apply in the present case.

54. That apart, a reading of the decision in Red Roses Public School reveals that the attention of this Court was not invited, in the said case, to the judgment rendered by the Supreme Court in Marwari Balika Vidyalaya. Marwari Balika Vidyalaya 2019 SCC OnLine SC 408 was also a case in which the services of the respondent Asha Srivastava were terminated on 20th February, 2001, prior to the rendition of decision in Raj Kumar (2016) 6 SCC 541. Even so, relying on Raj Kumar (2016) 6 SCC 541, the Supreme Court upheld the setting aside, of the termination of the respondent Asha Srivastava, on the ground that requisite approval, of the higher authorities, had not been obtained."

31. As held by a Co-ordinate Bench of this Court in Meena Oberai (supra), if the proceedings are pending and the benefit of a judgment is given to a party, it cannot be said that it would unsettle or reopen any claim of the Petitioner, since the claim is yet to be settled. In Marwari Balika Vidyalaya (supra), Supreme Court has upheld an order setting aside a Termination order passed in 2001 in view of the decision in Raj Kumar (supra).

32. Having gone through the judgment in Marwari Balika Vidyalaya (supra) and Meena Oberai (supra), I am of the view that though the Discharge order in the present case dates back to 21.04.2008, the ratio of the judgment in the case of Raj Kumar (supra) would clearly apply to the present case. The impugned order is admittedly passed without the prior approval of the Director of Education and being in violation of the mandate under Section 8(2) of the DSEA&R, is bad in law.

33. In this context, it is also necessary to refer to the Statement of Objects and Reasons of the DSEA&R, which is as follows:

"In recent years the unsatisfactory working and management of privately managed educational institutions in the Union Territory of Delhi has been subjected to a good deal of adverse criticism. In the absence of any legal power, it has not been possible for the Government to improve their working. An urgent need is, therefore, felt for taking effective legislative measures providing for better organisation and development of educational institutions in the Union Territory of Delhi, for ensuring security of service of teachers, regulating the terms and conditions of their employment. ... The Bill seeks to achieve these objectives."

34. The Statement of Objects and Reasons, in my view, reflects the exegesis of the intent of the Legislature, while enacting Section 8(2), being clearly to grant security of tenure to the School employees and provide a regulatory mechanism for the terms and conditions of their service. This was undoubtedly with a view to ensure that there is no unfair treatment suffered at the hands of the Management and if so, the Director of Education is in a position to set right the same, by declining to grant approval for imposing the

penalties enumerated in Section 8(2), if the circumstances do not permit or so warrant. The salutary purpose behind the said provision can hardly be underscored and as rightly held by the Court in Meena Oberai (supra), it is not open to this Court to uphold a Termination order, which is in utter violation of the salutary provisions of Section 8(2) of DSEA&R and the clear observations of the Supreme Court in Raj Kumar (supra).

35. *The DST was, therefore, not right in upholding the order of Discharge being in violation of the provisions of Rules 118 and 120 and Section 8(2) of DSEA&R. As noticed above, DST has simply held that the Principal had only conveyed the orders of the Disciplinary Committee and did not even deal with the issue urged by the Petitioner that a Disciplinary Committee had not been constituted by the Management Committee. What seems to have weighed with the DST is that the allegations against the Petitioner relating to his integrity could not be compromised and therefore, by holding that the punishment was not disproportionate, dismissed the Appeal. This consideration cannot outweigh the requirement of following the procedures and Rules of inquiry. The order of the DST thus deserves to be set aside."*

25. Very recently, the Supreme Court again considered the issue of the binding nature of Section 8(2) in ***Gajanand Sharma v. Adarsh Siksha Parisad Samiti and Others, 2023 SCC OnLine SC 54*** and reiterated that in cases of termination/removal of an employee of a recognized institution under the Act 1973, prior approval of DoE has to be obtained. In fact, the Supreme Court observed that the judgment in ***Raj Kumar (supra)*** was binding upon the High Court from which the appeal had come before the Supreme Court and that the High Court erred in not following the said decision. The Supreme Court was dealing with a *pari materia* provision being Section 18 of Rajasthan Non-Governmental Educational Institutions Act, 1989. The judgment of the Division Bench of the High Court wherein termination order passed without prior approval of DoE was upheld was set aside by the Supreme Court and the order of the Tribunal setting aside the order of termination was upheld. Relevant paras are as under:-

"14. At the outset, it is required to be noted that and it is an admitted position that parties are governed by the Rajasthan Non-Governmental Educational Institutions Act, 1989. Section 18

provides that no employee of a recognized institution shall be removed, dismissed, or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken and that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorized by him in this behalf has been obtained. The learned Tribunal set aside the order of termination on non-compliance of Section 18 of the Act, 1989 inasmuch as before terminating the services of the appellant - employee prior approval of the Director of Education was not obtained. The same came to be confirmed by the learned Single Judge, however, by the impugned judgment and order taking a contrary view, the Division Bench of the High Court has allowed the appeal and has restored the order of termination.

15. *From the impugned judgment and order passed by the High Court, it appears that before the High Court the decision of this Court in the case of Raj Kumar (supra) taking a contrary view and taking the view that before terminating the services of an employee of a recognized institution prior approval of the Director of Education is required was pressed into service. However, though impermissible the Division Bench of the High Court has not followed the said binding decision by observing that in the case of Raj Kumar (supra), this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra). Apart from the fact that the same is wholly impermissible for the High Court even the said observations are factually incorrect. If the decision in the case of Raj Kumar (supra) is seen in more than 8-9 paragraphs, this Court had referred to and as such dealt with the decision of this Court in the case of T.M.A. Pai Foundation (supra). Even the decision in the case of T.M.A. Pai Foundation (supra) was explained and considered by this Court in the case of Raj Kumar (supra). Therefore, the Division Bench of the High Court is factually incorrect in observing that while deciding the decision in the case of Raj Kumar (supra) this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra). Before commenting upon the decision of this Court in the case of Raj Kumar (supra) the Division Bench of the High Court ought to have thoroughly read and/or considered the decision in the case of Raj Kumar (supra). Even after making the incorrect observations that in the case of Raj Kumar (supra) this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra) the Division Bench of the High Court has considered few decisions of judicial discipline which were not applicable at all. Judicial discipline also requires that the judgment/decision of this Court should be considered and read thoroughly. As observed hereinabove, the decision of this Court in the case of Raj Kumar (supra) was binding upon the High Court. Therefore, the Division Bench of the High Court has seriously erred in not following the decision of this Court in the case of Raj Kumar (supra).*

16. Now so far as the decision of this Court in the case of *Raj Kumar (supra)* is concerned, this Court was considering *pari materia* provisions under the DSE Act. This Court was considering Section 8 of the DSE Act, which reads as under:—

“8.(2) Subject to any rule that may be made in this behalf, no employee of a recognised 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.”

17. Similar is the provision so far as Section 18 of the Act, 1989 is concerned which reads as under:—

“18. Removal, dismissal or reduction in rank of employees.- Subject to any rules that may be made in this behalf, no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken;

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained.”

18. In the case of *Raj Kumar (supra)* while dealing with the *pari materia* provision under the DSE Act and after considering the decision of this Court in the case of *T.M.A. Pai Foundation (supra)*, it is specifically observed and held by this Court that in case of a recognized institution, before terminating the services of an employee, prior approval of the Director of Education is required. Therefore, a contrary view taken by the Larger Bench of the High Court relied upon by the Division Bench of the High Court is not a good law. It is required to be noted that the decision of this Court in the case of *Raj Kumar (supra)* has been considered by this Court in the case of *Marwari Balika Vidyalaya (supra)* and also by the Delhi High Court in the case of *Mangal Sain Jain (supra)*. In the case of *Marwari Balika Vidyalaya (supra)* this Court considered the decision in the case of *Raj Kumar (supra)* and object and purpose of Section 8 of DSE Act in paragraphs 13 and 14 as under:—

“13. In *Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111]* this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed : (SCC p. 560, para 45)

“45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent

school. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.”

14. This Court has laid down in Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short “the DSE Act”) was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.”

19. Even on fair reading of Section 18 of the Act, 1989, we are of the opinion that in case of termination of an employee of a recognized institution prior approval of the Director of Education or an officer authorised by him in this behalf has to be obtained. In Section 18, there is no distinction between the termination, removal, or reduction in rank after the disciplinary proceedings/enquiry or even without disciplinary proceedings/enquiry. As per the settled position of law the provisions of the statute are to be read as they are. Nothing to be added and or taken away. The words used are “no employee of a recognized institution shall be removed without holding any enquiry and it further provides that no final order in this regard shall be passed unless prior approval of the Director of Education has been obtained.” The first part of Section 18 is to be read along with first proviso. Under the circumstances, taking a contrary view that in case of dismissal/removal of an employee of a recognized institution which is after holding the departmental enquiry the prior approval of the Director of Education is not required is unsustainable and to that extent the judgment of the Larger Bench of the Rajasthan High Court in the case of Central Academy Society (supra) is not a good law.

20. Therefore, on true interpretation of Section 18 of the Act, 1989, it is specifically observed and held that even in case of termination/removal of an employee of a recognized institution after holding departmental enquiry/proceedings prior approval of the Director of Education has to be obtained as per first proviso to Section 18 of the Act, 1989.

21. In view of the above and for the reasons stated hereinabove, the impugned judgment and order passed by the Division Bench of the High Court restoring the order of termination which as such was

without obtaining the prior approval of the Director of Education deserves to be quashed and set aside and is accordingly quashed and set aside. The order of learned Tribunal setting aside the order of termination confirmed by the learned Single Judge is hereby restored. Consequently, the appellant shall have to be reinstated in service and considering the fact that the respondent(s) is/are unaided institution and the order of termination was passed as far as back in the year 1998, we direct that the appellant shall be entitled to 50% of the back wages, however, he shall be entitled to all other benefits notionally including the seniority etc., if any.”

26. In view of the aforementioned judgments of the Supreme Court in ***Raj Kumar (supra)*** and ***Gajanand Sharma (supra)*** neither can the School argue that provision of Section 8(2) is not mandatory or binding nor can the Tribunal disregard the said provision and uphold the removal order, passed in violation thereof.

27. The argument of the School that being a minority aided school the provisions of Rules 118 and 120 or Section 8(2) would be inapplicable and that they have complete autonomy to take disciplinary action by unanimously resolving through the managing committee, cannot be accepted. In ***Frank Anthony Public School Employees’ Association (supra)***, the Supreme Court held that Section 12 of the Act 1973 which makes all provisions of Chapter IV inapplicable to an unaided minority institution were discriminatory and void. In ***The Chairman, Ryan International School & Ors. (supra)***, a Co-ordinate Bench of this Court in the same vein has held that as a corollary to this binding dictum of the Supreme Court, Rule 96 which excludes applicability of Chapter VIII including Rule 118 relating to disciplinary authority would also apply to unaided minority schools.

28. DST has relied on certain judgments, wherein according to the Tribunal it is held that Rules 118 and 120 are not mandatory and counsel for the School has also placed reliance on the same judgments. However, in my view, none of the judgments are

applicable and/or inure to the benefit of the School. In *Samarth Shiksha Samiti (Regd.) (supra)*, a Co-ordinate Bench of this Court has observed that had the intent of the Legislature been that procedure prescribed in Rule 120 was to be strictly followed before imposition of any major penalty on an employee of the school, expression ‘as far as may be’ would not have been used in the said Rule. DST has, in my view, overlooked the context in which the observation was made. In the said case, Court was dealing with a case where the School while writing to the DoE for appointing its nominee in the disciplinary committee had informed of the issuance of the charge sheet to the employee. Court noted that DoE while appointing its nominee was fully aware of the charge sheet issued and this according to the Court was sufficient ratification of the charge sheet. However, having so observed the Court also noted that the charges being grave there may have been a need to immediately proceed against the employee and therefore while initially the charge sheet was issued without complying with Rules 118 and 120, however, immediately on the objection being taken by the employee, steps were taken for constitution of the disciplinary committee in accordance with Rule 118 *albeit* the committee did not choose to frame a fresh charge sheet and proceeded on the earlier charge sheet. A holistic reading of the judgment does not lead to a conclusion that the Court was of the view that as a matter of routine, procedure prescribed under Rules 118 and 120 can be dispensed with. In any event, the expression ‘as far as may be’ cannot be interpreted to mean that general rule is not to follow the procedure prescribed and the exception is otherwise. The interpretation can only be that ordinarily as a mandate and matter of rule and practice, procedures prescribed under the two Rules have to be followed, as held in various judgments referred to above and it is only in very exceptional and rare or extraordinary circumstances in a

given case, School may adopt an alternate path and those exceptional circumstances must be pleaded and established. Perusal of the impugned judgment passed by DST shows that it has proceeded purely on the basis that Rule 120 is not a mandate and has not even taken the trouble of going into the issue if there were any obtaining exceptional or rare circumstances which compelled the School to dispense with and bypass the procedures prescribed under Rules 118 and 120. Infact, significantly, it was not even the case of the School that there were circumstances entailing bypassing an inquiry under Rule 120. For the same reason the case of *Managing Committee, Naval Public School (supra)* is inapplicable to the present case which pertains to the issue of ratification in a case where the charge sheet signed by the Chairman of the managing committee had been subsequently ratified by resolution of the disciplinary committee. The Division Bench of this Court has nowhere held that the procedures prescribed under Rules 118 and 120 can be dispensed with and on the contrary the Division Bench observed that Rule 120(1)(a) provides for the disciplinary authority to frame definite charges which includes tentative charge already having been framed by the managing committee and therefore once the managing committee of the School before seeking nomination of the disciplinary authority proposes a charge, there is no reason to hold that it is not possible for the disciplinary authority, if it is of the opinion that the tentative charge is appropriate, to adopt the same charge. The Court further observed that just like the disciplinary authority can ignore the charges proposed by the school and frame its own charge, similarly if the authority is satisfied with the proposed charges, it can proceed ahead instead of framing fresh charges which would be an exercise in futility.

29. Much emphasis was placed by the DST and the counsel for the School on the judgment of the Supreme Court in *Avinash Nagra*

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(*supra*), to argue that inquiry is not a panacea for terminating an employee. In the said case, the Supreme Court was considering an issue whether the dismissal of the Appellant therein in terms of his letter of appointment was vitiated by law and whether he was entitled to full-fledged inquiry and opportunity to cross-examine the girl students who had given the statements against him. Appellant therein was a PGT appointed in the concerned School and was terminated in terms of his appointment letter giving salary in lieu of notice on account of an immoral sexual behavior towards a girl student. Navodaya Vidyalaya Samiti had issued a Notification dated 23.12.1993 according to which regular inquiry could be dispensed with under the Rules in a case of a temporary employee whose integrity and conduct is doubtful but it is difficult to prove with sufficient documentary evidence the allegations levelled against him and at the same time whose retention in service is prejudicial to the Institution's interest or is likely to result in embarrassment to a class of employees etc. It is in this context and looking to the nature of allegations as well as the sanctity of the student-teacher relationship, the Supreme Court held that the Director of Education had taken a correct decision not to conduct an inquiry exposing the girl students to tardy process of cross-examination when the statements made by them had already been given to the Appellant with an opportunity to controvert their correctness. The Supreme Court held that under these circumstances, conduct of the Appellant was unbecoming of a Teacher much less a *loco parentis* and therefore dispensing with regular inquiry under the Rules and denial of cross-examination was legal and not violative of principles of natural justice. The judgment in my view does not even remotely deal with the issue arising in the present petition.

30. Reliance on the judgment in *Viveka Nand Sethi (supra)*, is wholly misplaced as in the present case Petitioner never admitted the allegations levelled against him in the show cause notice/memorandum. He only questioned the jurisdiction of the manager to issue the memorandum and sought certain documents to file his reply effectively. In this context I may allude to the judgement of the Supreme Court in *Imperial Tobacco Company of India Ltd. v. Workmen, AIR 1962 SC 1348*, where it was held that even when the delinquent employee withdraws from the inquiry, it is the duty of the employer to prove its case *albeit ex parte* by leading evidence. DST has therefore proceeded on an erroneous presumption that Petitioner admitted the allegations and having chosen a wrong path came to a wrong conclusion that in view of the admissions/deemed admissions, the School was justified in dispensing with the inquiry.

31. For all the aforesaid reasons, this Court finds merit in the contentions of the Petitioner and thus the impugned judgment passed by DST on 10.12.2018 in Appeal No. 53/2017 cannot be sustained in law and is quashed and set aside. Accordingly, order dated 28.04.2017 removing the Petitioner from the services of the School is also set aside and Petitioner is held entitled to all consequential benefits including reinstatement, save and except, back wages and other allowances for which a decision shall be taken by the managing committee of the School under Rule 121 of the Rules 1973 within 12 weeks from today. Needless to state a reasoned and speaking order shall be passed, which shall be communicated to the Petitioner, who will be at liberty to take recourse to legal remedies in case of any surviving grievances.

32. Nothing however precludes the School to proceed against the Petitioner *de novo*, if so advised, by strictly following principles of natural justice and in accordance with the provisions of Delhi School

Education Act and Rules, 1973, including Rules 118 and 120 and Section 8(2), thereof.

33. At this stage, Ms. Latika Choudhry, appearing on behalf of DoE submits that it is the School which is responsible for taking illegal actions against the Petitioner without following the laid down procedures and therefore the back wages and/or any other pay and allowances which the managing committee of the School decides to award to the Petitioner should be paid by the School and the DoE should not be saddled with the said liability as DoE is not at fault. This Court entirely agrees with the submission and it is therefore directed that Petitioner will be entitled to receive back wages/any other pay and allowances from the School and this responsibility will not be shifted on DoE.

34. Writ petition is allowed and disposed of in the aforesaid terms.

35. This Court expresses its profound appreciation for the valuable assistance rendered by Mr. Sourabh Ahuja, learned *Amicus Curiae*.

JYOTI SINGH, J

MAY 12, 2023
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