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

CNR No. DLHC010998432018

+ **W.P.(C) 3461/2018 & CM APPL. 13635/2018(seeking stay)**

MANAGING COMMITTEE OF DAYANAND MODEL

SECONDARY SCHOOL

.....Petitioner

Through: Mr. Hanu Bhaskar and Mr. Anmol
Bhaskar, Advocates.

versus

DIRECTORATE OF EDUCATION AND ANR. Respondents

Through: Ms. Latika Choudhary, Advocate for
R-1.

Mr. Paritosh Singh Rajput, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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01.09.2026

1. The Petitioner, Managing Committee of Dayanand Model Secondary School¹, challenges the order dated 1st September, 2017 passed by the Delhi School Tribunal in Appeal No. 42/2015. The appeal had been preferred by Respondent No. 2, Ms. Babita Chaudhary, against the School's communication dated 12th May, 2015, by which her services were dispensed with effect from the afternoon of 8th May, 2015.

2. The Tribunal set aside that communication and directed the School to reinstate Respondent No. 2 within one month. It also awarded costs of

¹ "the School"



₹55,000, directed payment of full wages from the date of its order and, for the earlier period, required Respondent No. 2 to make a representation which the School was to consider under Rule 121 of the Delhi School Education Rules, 1973².

3. The controversy has, over time, brought three distinct questions into play. The first is whether Respondent No. 2 was ever regularly appointed, or could be regarded as a confirmed employee of the School. The second concerns her qualification for appointment as a Primary Teacher. The third is whether, irrespective of the answer to the first two, the School could have brought her engagement to an end in the manner it did on 12th May, 2015.

4. Respondent No. 2's case is that she joined the School as a Primary Teacher on 5th July, 1999 and continued to work in that capacity until May 2015. No appointment letter or confirmation order was issued to her. The School disputes the character of that engagement. According to it, Respondent No. 2 was never regularly selected under Rule 96, worked only as and when required, and her services were utilised in the primary section, nursery and for other work.

5. The present dispute took shape in 2014, when Respondent No. 2 and another teacher, Ms. Seema Sharma, approached this Court in W.P.(C) 7910/2014 seeking, *inter alia*, payment in accordance with the recommendations of the 6th Central Pay Commission³. By order dated 17th November, 2014, the writ petition was disposed of with a direction that the parties place the relevant material before the Directorate of Education⁴. The order did not accept Respondent No. 2's claim of regular employment. On

² "the Rules"

³ "CPC"



the contrary, it expressly left the School free to dispute her assertion that she had remained in its regular employment as a Primary Teacher since 1999. The Directorate was required to hear the parties and pass a speaking order.

6. The contemporaneous record now becomes important. The School's own communications do not fully support the position it later took before the Tribunal.

7. On 5th January, 2015, while responding to Respondent No. 2's complaint concerning payment under the recommendations of the 6th CPC, the School addressed a communication to the Education Officer. In that communication, the School stated that Respondent No. 2 had been appointed as a Primary Teacher on a contract basis by the then Vice-Principal of the School. It further stated that she had been engaged on a consolidated salary, which had been revised from time to time, and that she was, at that stage, drawing ₹18,350 per month.

"she was appointed as Primary Teacher on contract basis by the then Vice-Principal of the school on consolidated salary which was revised from time. At present she is drawing Rs. 18,350/- per month."

8. A separate communication issued on the same date conveyed the same position in more specific terms. The School stated that Respondent No. 2 was not a regular teacher and that her appointment had been made by the then Vice-Principal on contract. It also recorded that she was being paid a consolidated salary of ₹18,350 per month. Thus, in its contemporaneous correspondence, the School characterised Respondent No. 2's engagement as contractual and expressly distinguished it from a regular appointment.

9. A meeting was thereafter held before the Deputy Director of

⁴ "DoE/ the Directorate"



Education on 9th January, 2015. The official minutes identify Respondent No. 2 as “PRT, Dayanand Model School”. The response recorded on behalf of the Managing Committee was that the School was unable, because of financial constraints, to pay its staff in accordance with the 6th CPC. The School was consequently asked to produce its financial statements, incumbency statements and the due and drawn statements of the teachers.

10. By April 2015, the School’s position had shifted. It described Respondent No. 2 as a contractual or temporary employee, engaged to teach as and when required, and also began asserting that she lacked the qualification required for the work she was doing.

11. The Directorate, in turn, required the School to produce Respondent No. 2’s appointment letter and the terms governing her appointment. More importantly, it required the School to explain how an engagement described as contractual or temporary had been made at all, noting that the Rules contained no provision for appointment of a teacher on that basis.

12. By its reply dated 1st May, 2015, the School went further. It asserted that Respondent No. 2 was not qualified for appointment as a Primary Teacher and had initially been retained as a stop-gap arrangement on the understanding that she would acquire the necessary qualification.

13. The communication by which the School actually brought Respondent No. 2’s engagement to an end is dated 12th May, 2015. It reads:

“As you are aware that you were working on contractual/temporary basis in the school, the school is tendering a sum of Rs. 4697/- ... which is the payment for the services rendered for the month of May, 2015 i.e. from 01.05.15 to 08.05.15. You are further informed that your services are dispensed with effect from 08.05.15 (A/N) i.e. at the close of school hours.”

14. The sequence must be understood with some care. The School had



questioned Respondent No. 2's qualification before this communication was issued, and the objection was therefore not an afterthought. But that was not the ground on which her services were brought to an end. The communication neither refers to clause (c) of the Explanation to Rule 117 nor states that an unqualified teacher was being replaced by a qualified one. It proceeds only on the footing that Respondent No. 2 was working on a contractual or temporary basis and dispenses with her services on that basis.

15. The proceedings before the Directorate continued even thereafter. Eventually, on 19th January, 2016, the Deputy Director of Education passed the speaking order in compliance with this Court's earlier direction. After considering the rival material, the Directorate held that Respondent No. 2 had not been appointed as a PRT on a regular basis. Its operative conclusion was:

"the service of Ms. Babita Chaudhary was a temporary service. She was engaged as and when required by the School against the consolidated salary and further, her name as being her temporary service was never reflected in the statutory staff statement of the School ... She is not entitled to the benefits as are extended to regular teacher as appointed under section 96, DSER 1973."

16. The order did not, however, return any final finding that Respondent No. 2 was educationally unqualified for engagement as a Primary Teacher when she joined the School in July 1999.

17. Respondent No. 2 had, meanwhile, challenged the cessation of her services before the Tribunal. By the impugned order, the Tribunal noticed that she had worked with the School from 1999 until May 2015 and questioned why, if she was unqualified, the School had continued with her for so long. It also noticed the proximity between her claim for 6th CPC benefits and the cessation of service. Relying principally upon **Dr. Swami**



Ram Pal Singh Mission School v. Harvinderpal Singh Bindra⁵ and the decisions referred to in its order, the Tribunal proceeded on the basis that an employee who had continued for such a length of time could no longer be treated as merely temporary and had acquired statutory protection. It accordingly held that her services could not have been brought to an end without complying with the Act and the Rules.

18. The School challenges that reasoning. It submits that Respondent No. 2 was neither selected under Rule 96 nor appointed against a regular sanctioned post; that she did not possess the prescribed qualification for a Primary Teacher; and that the Tribunal has, in substance, regularised an engagement which was contrary to the Rules. The order dated 19th January, 2016 is also relied upon as having rejected her claim to regular status.

19. Without prejudice to these submissions, counsel for the Petitioner, on instructions, states that the School is willing to pay Respondent No. 2 a sum of ₹10,00,000 in full and final settlement of all claims arising out of the cessation of her services and the present controversy, subject to neither side pursuing any further proceedings in relation thereto. The offer was not acceptable to Respondent No. 2.

20. Respondent No. 2, on the other hand, supports the impugned order. She relies upon the School's own correspondence describing her as a Primary Teacher, the length of time for which she continued with the School, and the absence of statutory approval before her services were brought to an end. She also disputes the allegation that she was unqualified and states that she had obtained B.A. and B.Ed. qualifications before joining the School.

⁵ W.P.(C) No.12190/2009



21. The stand of the Directorate before this Court is also relevant. It does not dispute the fact of an engagement as PRT. Its counter affidavit states that, with effect from 5th July, 1999, she “was appointed as PRT by the Petitioner school *dehors* the Delhi School Education Act 1973 and rules”. At the same time, the Directorate emphasises that she was paid a consolidated salary and that her name was never reflected in the statutory staff statement.

The Claim to Regular Status

22. The School is right on one part of the case. Mere continuation for a number of years could not, by itself, lead the Tribunal to treat Respondent No. 2 as a confirmed employee.

23. The Tribunal relied upon *Dr. Swami Ram Pal Singh Mission School*, which had proceeded on the view that even an ad hoc, temporary or probationary teacher who had served in a school in Delhi for at least three years would, on completion of three years, stand confirmed, unless the school established that the probation had been extended up to three years and that the teacher’s services during that period were not satisfactory. That understanding premised on Rule 105 cannot now govern the issue.

24. In *Durgabai Deshmukh Memorial Senior Secondary School v. J.A.J. Vasu Sena*⁶, the Supreme Court considered Rule 105 in some detail. The case concerned a teacher who had been appointed, after an advertisement and selection process, as PGT (English General) on probation for one year, but was continued as a probationer for nearly five years before being discharged from service. The Court held that the words “by another year” in Rule 105(1) fix the maximum permissible period of probation at two years. At the same time, it rejected the plea of deemed confirmation,



holding that Rule 105(2) contemplates a positive order of confirmation by the appointing authority upon being satisfied with the employee's work and conduct. The two propositions operate together: mere continuation beyond the maximum period does not result in confirmation, but neither does Rule 105 permit the management to keep an employee on probation indefinitely. Upon expiry of the permissible period, the management must take a decision either to confirm the employee or to bring the probationary engagement to an end. Continuation on probation beyond the statutory ceiling was held to be in violation of Rule 105 and capable of attracting consequences against the management or the school.

25. ***Mangal Sain Jain v. Principal, Balvantray Mehta Vidya Bhawan***⁷, concerned an Accounts Clerk who had initially been appointed on an ad hoc basis and had continued with the school for several years. Relying upon the earlier line of decisions, particularly ***Army Public School v. Narendra Singh Nain***, the Court held that an *ad hoc* or temporary employee who had continued for at least three years acquired the status of a confirmed employee. ***Durgabai Deshmukh***, though rendered by the Supreme Court in the preceding year, does not appear to have been noticed. The Special Leave Petition against ***Mangal Sain Jain*** was thereafter dismissed by a non-speaking order, the Supreme Court stating only that it was not inclined to interfere. That order does not alter the precedential position. The construction of Rule 105 must therefore follow ***Durgabai Deshmukh***, which expressly rejects deemed confirmation merely from continuation beyond the permissible period of probation.

⁶ (2019) 17 SCC 157

⁷ 2020:DHC:2503



26. The position in relation to a contractual or temporary engagement was considered more directly by the Division Bench in ***Ravi Negi v. Balvantray Mehta Vidya Bhawan Anguridevi Shersingh Memorial Academy***⁸. The employee there had continued under successive contractual appointments for about five years and claimed permanent status by invoking Rule 105. The Division Bench rejected the claim. It held that the reference in Rule 105 to an “employee” is to an employee recruited in accordance with Rule 96 and whose initial appointment was on probation. Since the appellant had not been appointed in accordance with Rule 96 and had never been appointed on probation, Rule 105 had no application to his case. The Court further held that where the appointment is merely contractual and is not in compliance with the procedure prescribed by the Rules, continued contractual engagement does not confer any right to regularisation or absorption. This principle was subsequently followed by another Division Bench in ***Salwan Public School v. Director of Education***⁹, and has since been reiterated in later decisions of this Court.

27. In *Ravi Negi*, the Division Bench considered ***Secretary, State of Karnataka v. Umadevi***¹⁰ in the context of a contractual appointment in a recognised unaided school. It observed that, in the absence of a finding that the contractual appointment was a sham or a device for making a statutory appointment, treating an appointment initially made on contract as a statutory appointment would fall foul of the Constitution Bench decision in *Umadevi*, which expressly prohibited the conversion of employees initially

⁸ 2021 SCC OnLine Del 3412.

⁹ 2023:DHC:1619-DB

¹⁰ (2006) 4 SCC 1



taken on contract into regular employees by way of a “backdoor entry”. The Division Bench accordingly held that an appointment made otherwise than in compliance with Rule 96, and continuing to remain contractual, could not give rise to any right of absorption. That principle applies to Respondent No. 2’s claim to regular or confirmed status. It does not, however, answer the distinct question whether the engagement which in fact subsisted could thereafter be brought to an end without complying with the statutory requirements governing its cessation.

28. Significantly, the Directorate had already examined this very claim pursuant to the earlier order of this Court and held that the name of Respondent No. 2 did not figure in the statutory staff statements as a regular employee, and that she was not entitled to the status or benefits of a teacher appointed under Rule 96. That order has neither been challenged nor set aside in these proceedings.

29. The Tribunal’s order cannot, therefore, be sustained insofar as it treats the length of Respondent No. 2’s association with the School as sufficient, by itself, to confer upon her the status of a confirmed or regular Primary Teacher. The conclusion is confined to that issue.

The Qualification Objection

30. The School has also questioned whether Respondent No. 2 possessed the prescribed qualification for appointment as a Primary Teacher. That issue does not call for adjudication in these proceedings. Her claim to regular or confirmed status fails independently, for the reasons already recorded, without requiring a determination of her eligibility for a regular appointment in 1999. Equally, the communication dated 12th May, 2015 did not bring her services to an end on the ground that she lacked the prescribed



qualification. The Court would be travelling beyond what is necessary for the present controversy were it to return a finding, one way or the other, on that question. Nothing in this judgment should be understood as such.

Validity of the cessation dated 12th May, 2015

31. The School has throughout sought to distinguish between “termination” and “dispensation” of services. The terminology cannot determine either the character of the action or the statutory remedy. The communication dated 12th May, 2015 itself brought Respondent No. 2’s engagement to an end. It was not merely recording the expiry of a fixed tenure which had otherwise run its course.

32. In ***Shashi Gaur v. NCT of Delhi***¹¹, the Supreme Court held that the remedy under Section 8(3) extends to termination otherwise than by dismissal, removal or reduction in rank. The exception recognised was where the service itself comes to an end by efflux of the period for which the employee had initially been appointed. The principle has since been reiterated in ***Sunil Sikri v. Guru Harkrishan Public School***¹².

33. Nothing placed on record shows that Respondent No. 2 had been appointed for a fixed term which expired on 12th May, 2015. Indeed, the School’s own case is that she had continued to be engaged, albeit temporarily and on a consolidated salary, over a considerable period. The communication dated 12th May, 2015 was therefore the act which brought that subsisting engagement to an end. The Tribunal was competent to entertain the appeal against it.

¹¹ (2001) 10 SCC 445

¹² 2022 SCC OnLine SC 926.



34. The absence of prior approval under Section 8(2) must next be considered. The provision applies to an “employee” of a recognised private school, and Section 2(h) defines that expression to mean a teacher and to include every other employee working in a recognised school.¹³ The School’s own correspondence and the communication dated 12th May, 2015 proceeded on the footing that Respondent No. 2 was serving the School on a contractual or temporary basis. Once that subsisting relationship is accepted, its cessation could not be effected without complying with the statutory safeguard. In ***Raj Kumar v. Director of Education***¹⁴, the Supreme Court held that prior approval is a mandatory safeguard against arbitrary or unreasonable termination.

35. The position may be different where the very appointment has been found to be illegal or *non est*. In ***Prema Sharma v. Director of Education***¹⁵, the employee admittedly lacked the essential qualification for the post and her appointment was consequently held illegal from inception. It was in those circumstances that the Division Bench held that prior approval under Section 8(2) was unnecessary. No comparable finding exists in the present case. Respondent No. 2’s claim to regular status has been rejected, but that is not the same as holding that the engagement under which she actually worked for the School was *non est*. As already noted, this Court has consciously left the question of her qualification for regular appointment in 1999 undecided in these proceedings.

36. The distinction is material. *Ravi Negi* holds that contractual service

¹³ See also: *Laxman Public School Society (Regd.) v. Richa Arora & Anr.* in W.P.(C) 10886/2018 decided on 10th October, 2018.

¹⁴ (2016) 6 SCC 541

¹⁵ 2023:DHC:3374-DB



cannot, in the absence of recruitment under Rule 96, mature into regular or confirmed status. But it does not follow that a subsisting employment relationship may be brought to an end without complying with Section 8(2) merely because regular status is not established. Here, the School admittedly brought that relationship to an end without prior approval of the DOE.

37. The communication dated 12th May, 2015 was therefore rightly set aside, though not on the footing that Respondent No. 2 had acquired regular or confirmed status. It was unsustainable because the School brought a subsisting employment relationship to an end without complying with the mandatory requirement of prior approval under Section 8(2).

Relief

38. Setting aside the communication dated 12th May, 2015 does not make reinstatement automatic. Reinstatement and regularisation are different remedies. Restoring Respondent No. 2 to service would only revive the temporary, non-regular relationship that existed before the cessation; it would not give her any higher status. The question, therefore, is whether reviving that relationship is an appropriate relief in the circumstances now before the Court.

39. A similar remedial situation arose in ***Durgabai Deshmukh***. The claim of deemed confirmation was rejected. Yet the Supreme Court found that the management had breached Rule 105 by continuing the teacher on probation beyond the permissible period, and held that she should not be left without a remedy. The compensation there was awarded in exercise of the Supreme Court's power under Article 142, a power this Court does not possess. ***Durgabai Deshmukh*** is therefore noticed only for its limited remedial logic: failure to establish confirmed status does not wipe out an independent



statutory wrong, and relief may be shaped to address that wrong where the Court otherwise has jurisdiction to mould relief.

40. The exercise of such remedial discretion is not unfamiliar to proceedings under the Delhi School Education Act, and arises here within this Court's writ jurisdiction while examining the legality and consequences of the Tribunal's order. If the finding of illegality is sustained but reinstatement is found unsuitable in the circumstances existing when relief is granted, the Court is not bound to affirm reinstatement mechanically and may mould the relief to do substantial justice between the parties.

41. In ***Chairman, Arya Girls Senior Secondary School v. Director of Education***¹⁶, the Tribunal had set aside the dismissal of the employee and directed reinstatement, leaving the question of back wages to the Managing Committee under Rule 121. The Single Judge, while sustaining the finding that the dismissal was unlawful, considered reinstatement no longer appropriate. The employee had worked for less than two years, substantial time had elapsed since the dismissal, and the school had in the meanwhile been taken over by the DoE. Drawing upon the broader principles enunciated by the Supreme Court on relief in cases of unlawful termination, the Court held that reinstatement was not an inflexible consequence and substituted ₹5,00,000 in lieu of reinstatement and back wages. A further sum of ₹10,00,000 was awarded on account of the exceptional circumstances of that case, including the stigma of dismissal and incarceration and the prolonged civil and criminal litigation.

42. The matter was carried in appeal in ***Kritendra Sharma v. Government***

¹⁶ W.P.(C) 6257/2011, decided on 24th January, 2022.



*of NCT of Delhi*¹⁷. The employee specifically contended, relying upon *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*¹⁸, that once the dismissal had been set aside, reinstatement with back wages ought to follow. The Division Bench rejected the contention that reinstatement was the only permissible relief. It noticed the circumstances, and upheld the award of compensation made by the Single Judge. The significance of the decision for the present case lies not in the amount awarded, which turned on its own facts, but in the recognition, in proceedings under the DSE Act itself, that the relief consequent upon an unlawful termination may be moulded having regard to the nature of the employment and the circumstances existing when relief is finally granted.

43. The circumstances here warrant a similar exercise, though for reasons peculiar to this case. Respondent No. 2 had remained associated with the School for a substantial period before her engagement was brought to an end without compliance with Section 8(2). That illegality requires an effective remedy. At the same time, her claim to regular or confirmed status has not been accepted. What could now be restored, after an interruption of more than eleven years, is therefore the same temporary and non-regular employment relationship which subsisted in May 2015. Viewed together, the nature of that engagement, the long interval since its cessation, and the limited basis on which Respondent No. 2 succeeds persuade the Court that revival of the relationship at this stage would not be the most appropriate relief.

44. The compensation must nevertheless be substantial enough to reflect

¹⁷ 2026:DHC:4828-DB

¹⁸ (2013) 10 SCC 324



the wrong which has been established. Respondent No. 2 had worked with the School for a considerable period, and the School itself recorded her consolidated salary at ₹18,350 shortly before bringing the engagement to an end. Equally, the amount cannot be computed on the premise that she held a regular post under Rule 96 or was entitled to the salary, increments and other service benefits attached to such a post. Balancing these considerations, together with the period which has since elapsed, the Court considers a consolidated sum of ₹12,00,000 to be just and reasonable. The amount is not a computation of arrears of salary or back wages. It is composite monetary relief for the unlawful cessation dated 12th May, 2015, in substitution of reinstatement and the consequential monetary claims flowing from it, without recognising any regular or confirmed status.

45. The writ petition and all pending applications are disposed of in the above terms. There shall be no further order as to costs.

SANJEEV NARULA, J

SEPTEMBER 1, 2026

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