

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

+ **W.P.(C) No.4865/2001**

% **6th April, 2015**

SADHU VASWANI INTERNATIONAL SCHOOL FOR GIRLS & ANR.

..... Petitioners

Through: **Mr. Abhinav Mukerji and Ms. Tanya Shree, Advocates.**

Versus

DIRECTOR OF EDUCATION AND ANR. Respondents

Through: **Ms. Latika Chaudhary, Ms. Anchal Chaudhary , Adv.for Ms. Avnish Ahlawat, Adv. for R-1.
Ms. Sunila Sagar, GNCTD-DEO-
Zone-19.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition filed under Article 226 of the Constitution of India impugns the judgment of the Delhi School Tribunal dated 3.7.2001 by which the Delhi School Tribunal allowed the appeals filed before it by the respondent no.2 herein/employee and directed reinstatement of services of respondent no.2 herein by the petitioner no.1/school.

2. There were two issues before the Tribunal; first of the petitioner no.1/school being or not being a minority institution and second as to whether the services of the respondent no.2 were validly terminated.

3. So far as the first issue is concerned, as to whether the petitioner no.1/School is a minority institution, this question is left open for being decided in an appropriate case, inasmuch as, this case can be decided on the second aspect by assuming for the sake of argument that petitioner no.1/School is not a minority institution. The issue therefore is whether the services of the respondent no.2 herein were rightly terminated, and which petitioner no.1/School states were terminated on account of unsatisfactory services of the respondent no.2 as a probationary employee.

4. The impugned order of the School terminating the services of the respondent no.2 is dated 3.10.1996 and which reads as under:-

“No. SV/AT/PF/25

Dated: 3.10.96

Ms. Kavita Sharma,
1/19, D-1, Mehrauli,
New Delhi

Dear Madam,

Please refer to our letter dated 17.5.96 in terms of which you were given the re-assignment of Instrumental Music Teacher. You were given three months' time from 1.7.96 to 30.9.96 by the management during which your performance as Instrumental Music Teacher had to be reviewed. The management has reviewed your

performance during these three months and have come to the conclusion that you have not come upto the expected standard. Accordingly, your services are no longer required with closing hours of October 3, 1996 i.e., today.

The management is offering you one month's salary in lieu of Notice which you may collect along with your other dues.

FOR AND ON BEHALF OF SCHOOL
MANAGEMENT COMMITTEE
SADHU VASWANI INTERNATIONAL
SCHOOL FOR GIRLS”

5. It is not disputed by the respondent no.2 that she was appointed on probation inasmuch as the respondent no.2 in her counter-affidavit which is filed before this Court in para 5 specifically states that she was appointed on probation vide appointment letter dated 10.5.1994. I may note that though the letter dated 10.5.1994 does not use the word ‘probationary services’, the admitted case appearing from record including the record of the Delhi School Tribunal, shows that respondent no.2 considered herself as a probationary employee in terms of the original appointment letter dated 10.5.1994.

6. The law with respect to whether under Rule 105 of the Delhi School Education Act and Rules, 1973, that there is an automatic confirmation of probation has been dealt with by this Court in the case of

Hamdard Public School Vs. Directorate of Education and Anr. 202 (2013)

DLT III, and it has been held by this Court that there is no automatic confirmation of probationary services on expiry of the probation period.

7. The issue then arises is that whether the services of respondent no.2 with the petitioner no.1/School were satisfactory or not. In this regard, it is settled law that this Court does not substitute its opinion for that of the employer so as to decide whether or not services of the respondent no.2 were satisfactory or not. The action of the petitioner no.1/School could only have been challenged if otherwise there was sufficient material on record to show *malafides* of the petitioner no.1/School that petitioner no.1/School has not confirmed the probationary services in spite of the fact that the respondent no.2's services were satisfactory. In the counter-affidavit which is filed by the respondent no.2, and the supporting documents it is not found that respondent no.2 is able to show beyond doubt that her services were satisfactory and the petitioner no.1/School has thus wrongly arrived at a decision that her services were not satisfactory.

8. Learned counsel for the petitioners rightly contends that in the entire counter-affidavit there is no paragraph containing detailed averments as to how the respondent no.2's services with the petitioner no.1/School should be taken as satisfactory in spite of the petitioner no.1/School stating otherwise in the impugned order dated 3.10.1996.

9. In view of the above, the writ petition is allowed. The impugned judgment of the Tribunal dated 3.7.2001 is set aside. Respondent no.2 is held to have been terminated from services with the petitioner no.1/School on account of her probationary services not being satisfactory. The issue with respect to petitioner no.1/School being a minority institution is left open for being decided in appropriate proceedings. No costs.

APRIL 06, 2015
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VALMIKI J. MEHTA, J.