

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

Judgment Reserved on: July 15, 2015

% *Judgment Delivered on: July 28, 2015*

+ **LPA 290/2014**

JAI PRAKASH

..... Appellant

Represented by: Mr.Rajkumar Sherawat,
Advocate.

versus

SCHOOL MANAGEMENT OF ITL PUBLIC
SCHOOL & ANR

..... Respondents

Represented by: Ms.Shobha, Advocate.
Mr.D.S.Kunwar, Pairvi Officer.

+ **LPA 445/2014**

JAI PRAKASH

..... Appellant

Represented by: Mr.Rajkumar Sherawat,
Advocate.

versus

SCHOOL MANAGEMENT OF ITL PUBLIC
SCHOOL & ANR

..... Respondents

Represented by: Ms.Shobha, Advocate.
Mr.D.S.Kunwar, Pairvi Officer.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Two writ petitions were filed one by Jai Prakash, the appellant herein i.e. W.P.(C) No.6789/2012 and the other by School Management of ITL Public School (in short the Management) i.e. the respondent herein being W.P.(C) No.6414/2012. The prayers in the two writ petitions were as under:

“W.P.(C) No.6789/2012

(a) issue a writ in the nature of mandamus or any other writ or writ(s) directing the respondents to release arrears of Six Pay Commission, and

(b) Pay salary in pay scale of ₹5500-175-9000 and its arrears and other benefits such as LTC and Bonus from the date of his appointment as per section 10 of Delhi School Education Act, 1973; and

(c) Modify the order dated 27.08.2012 passed by Delhi School Tribunal in Appeal No.10/2012 to the extent of payment of 100% back wages to the petitioner for the period he remained unemployed after termination of the service by the respondent school instead of 50% as allowed by Delhi School Tribunal;

(d) declare the petitioner to be employee of respondent school from 19.11.2005 and accordingly the petitioner is entitled for all the benefits as prayed from 19.11.2005 instead of 20.06.2007 when he was given formal appointment;

(e) cost of litigation

W.P.(C) No.6414/2012

(a) issue appropriate writ of certiorari, order or direction, quashing the impugned order dated 27.8.2012 passed by the Delhi School Tribunal in Appeal No.10/2012 thereby directing reinstatement of the respondent with 50% back wages; and/ or,

(b) pass such other order or orders which this Hon'ble Court may deem fit and proper in the interest of justice.

2. A brief exposition of facts. Appellant (Jai Prakash) possesses a degree of Master of Physical Education from Nagpur University and was appointed in the Respondent School (School Management of ITL Public School) on temporary basis and on a consolidated salary of ₹5500/-. He worked in two spells i.e. from July 01, 2005 to May 05, 2006 and from July 01, 2006 to May 15, 2007. On June 20, 2007 Jai Prakash was issued an

appointment letter for the post of Physical Education Teacher in the pay scale of ₹4500-7000 and was placed on probation for a period of one year. His period of probation was extended for another year i.e. up to June 30, 2009. Vide order dated June 16, 2009 the respondent Management terminated the services of the Appellant.

3. Jai Prakash had earlier filed a writ petition being W.P.(C) No.11978/2009 against the order of termination dated June 16, 2009 before this Court, however vide order dated February 06, 2012 the same was transferred to the Delhi School Tribunal with directions to dispose of the same and thus the writ petition was treated as an appeal before the Tribunal. The basis of the grievance in W.P.(C)No.6789/2012 and W.P.(C) No.6414/2012 is the order of the Tribunal dated August 27, 2012 whereby the appeal of Jai Prakash under Section 8(3) of the Delhi School Education Act, 1973 (in short the DSE Act) was partly allowed setting aside the order of termination and directing reinstatement of service with 50% back wages and full salary and allowance with effect from the date Jai Prakash resumes his duties in the school of the Management and in case the back wages were not paid within a period of one month he was entitled to simple interest @ 12% p.a.

4. Vide the impugned judgment dated July 30, 2013 in W.P.(C) No.6414/2012 filed by the management, the learned Single Judge set aside the order dated August 27, 2012 passed by the Tribunal and held that the services of Jai Prakash will be taken to have been terminated from the school in terms of the letter dated July 16, 2009. Hence LPA No.445/2014 filed by Jai Prakash. Vide the impugned judgment dated July 30, 2013 in W.P.(C) No.6789/2012, inter alia, demanding release of arrears as per Sixth Pay

Commission salary in the pay scale of ₹5500-175-9000, arrears and benefits under LTC and bonus, modification of the order dated August 27, 2012 passed by the Tribunal seeking 100% back wages and benefits from November 19, 2005 instead of June 20, 2007, the learned Single Judge held that Jai Prakash was entitled to the payment of benefits in terms of Sixth Pay Commission report for the period he served with the school management and payment of arrears be thus done within a period of three months along with interest @ 6% p.a. from the date it is payable till the amount is paid and hence the LPA No.290/2014 seeking the remainder reliefs as noted above.

5. Thus, it is necessary first of all to decide whether the termination of services of Jai Prakash on completion of the extended period of probation was over was justified or not as the other reliefs would be consequential thereto except the one already granted in W.P.(C) No.6789/2012.

6. The case of Jai Prakash before the Tribunal was that in terms of Rule 105 of the Delhi School Education Act (in short the DSE Act and Rules) his services during the period of probation could be terminated on the sole ground that his work and conduct during the relevant period was not satisfactory. However, the management did not terminate the services of Jai Prakash on that count and issued letter dated June 16, 2009 which reads as under:

“This has reference to your appointment letter dated 20th June 2007 appointing you on probation for a period of one year which was further extended by letter No.ITL/303/MGR/2008 dated 20th June 2008 on the same terms and conditions.

Please note that your probationary services will come to an automatic end on 30th June, 2009. You can settle your accounts on handing over the charge to the Office Superintendent.”

7. Simultaneously, the management issued a certificate dated August 11, 2009 to Jai Prakash stating that his work and conduct was found satisfactory during the period from July 02, 2007 to June 16, 2009 as under:

“This is to certify that Mr. Jai Prakash s/o Mr. Jai Kishan Gehlot worked in our institution as Physical Education Teacher on regular basis as per details mentioned below. His date of birth as per class X certificate is 06.11.1980.

<i>Designation</i>	<i>Period</i>	<i>PayScale</i>
<i>PET</i>	<i>02.07.2007 to 16.06.2009</i>	<i>4500-125-7000</i>

During the above period of his services his work and conduct were found to be satisfactory.”

8. The case of the respondent/ management in its counter affidavit before the Tribunal was that since services of Jai Prakash were terminated before the expiry of period of two years i.e. during the period of probation he had no lien to the post and since his performance was not satisfactory even after extension of period of probation by another year his services were terminated. However, he was issued letter dated August 11, 2009 stating that the work and conduct of Jai Prakash was satisfactory during the period of probation as the management did not want to spoil his carrier.

9. The Tribunal came to the conclusion that under Sub-Rule 2 of Rule 5 of the DSE Rules probationer is required to be confirmed with effect from the date of expiry of period of probation unless his work and conduct are not satisfactory and a perusal of the order dated June 16, 2009 passed by the management would reveal that there is no averment regarding the work and conduct of Jai Prakash being found not satisfactory during the period of probation. Termination of service was therefore based on the assumption

that the services came to an end automatically on completion of the period of probation and for no other reason. The order dated June 16, 2009 being illegal the same was set aside and reinstatement was directed. However, since Jai Prakash during the period of termination of his services worked in Max Fort School, Dwarka, Delhi from December 2009 to March 2010, in Blue Bells Public School, Gurgaon from July 2010 to May 15, 2011 and from July 2011 to May 2012 and in Pole Star Public School, Gurgaon from August 01, 2012 till the date of order, thus he was entitled to only 50% of back wages.

10. The learned Single Judge vide the impugned judgment dated July 30, 2013 referring to his earlier decision in Hamdard Public School Vs. Directorate of Education W.P.(C) No.8652/2011 decided on July 25, 2013 held that there was no maximum period of probation which is prescribed under Rule 105 of the DSE Rules and there is no deemed confirmation as the language of the said Rule does not provide for deemed confirmation or automatic confirmation. It was held that terms of appointment would be relevant to decide the period of probation and the issue of deemed confirmation. The probationary period should ordinarily be around three years which could be extended for five years for grave and valid reasons which should be justifiable and in rarest of rare case the same can be extended up to six years. Since there was no order of confirmation, there is no illegality in the action of the school management in terminating the services of Jai Prakash at the end of the probationary period.

11. Rule 105 of the DSE Rules provides as under:

“105. Probation (1) Every employee shall, on initial appointment, be on probation for a period of one year which

may be extended by the appointing authority 1 [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work, and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:

[Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year, shall not apply in the case of an employee of a minority school:

Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.]

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation as the case may be, confirmed with effect from the date of expiry of the said period.

(3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.”

12. The Supreme Court in the decision reported as (2012) 4 SCC 793 Head Master, Lawrence School, Lovedale Vs. Jayanthi Raghu and Anr. while dealing with Rule 4.9 of the Rules of Lawrence School, Lovedale (Nilgiris) noted the various decisions of the Supreme Court. It was noted that in Sukhbans Singh Vs. State of Punjab AIR 1962 SC 1711 it was held that a probationer cannot after the expiry of probationary period automatically acquire the status of a permanent member of the service unless of course the Rules under which he is appointed expressly provide for such a result. Even

in G.S.Ramaswamy Vs. Inspector General of Police AIR 1966 SC 175 the Supreme Court while dealing with the language employed under Rule 486 of the Hyderabad District Police Manual held that a probationer cannot after the expiry of the probationary period automatically acquire the status of a permanent member of the service unless of course Rules under which he is appointed expressly provide for such a result. Even the subsequent Constitution Bench decisions in State of U.P. Vs. Akbar Ali Khan AIR 1966 SC 1842; State of Punjab Vs. Dharam Singh AIR 1968 SC 1210 and the seven-Judges Bench in Samsher Singh Vs. State of Punjab (1974) 2 SCC 831 reiterated the same position that if a probationer continues in the post even after the period of probation expires, without any specific order of confirmation he should be deemed to continue in his post as a probationer only in the absence of any indication to the contrary in the original order of appointment or promotion or the service Rules.

13. Rule 105 DSE Rules cannot be interpreted to be imbuing the concept of deemed confirmation in the absence of any specific stipulation on the said count.

14. Though the order dated June 16, 2009 terminating the service of Jai Prakash ostensibly on the count that his probationary services comes to an automatic end on June 30, 2009 may not be very happily worded but the intention of the management was explicit that neither his period of probation has been extended nor he is confirmed. Further, by giving Jai Prakash a letter dated August 11, 2009 stating that his work and conduct during the period was satisfactory so that no stigma is attached and he can seek employment in any other institution, the management cannot be faulted for their benevolent act.

15. The law on deemed confirmation of a probationer is clear and stands very clearly noted in the decision reported as 2001(7) SCC 161 High Court of MP Vs.Satya Narayan Jhavar followed with approval by the Supreme Court in the decision reported as (2005) 13 SCC 179 Rajender Singh Chauhan & Ors. Vs.State of Haryana & Ors. Three situations result in two different results is the ratio which can be culled out from the said two decisions. Situation one is where in the service rules or in the letter of appointment a period of probation is specified with a power to extend the same without prescribing any maximum period of probation and no order is passed confirming the probationer. The second situation is where the rules for initial probation and extension thereof provide a maximum period it is not permissible to extend the probation. The third is where the rules prescribe a maximum period of probation but also require a specific act on the part of the employer to issue an order confirming the appointment. It was held that cases falling under situation one or three cannot be treated as a case of deemed confirmation. Only under situation two would it be treated as a case of deemed confirmation.

16. The logic of the reasoning is clear. If, as in situation two a maximum period for probation is provided with a negative stipulation that beyond said period probation cannot continue, it follows automatically that if the probation continues beyond the maximum period it has to be treated as a case of deemed confirmation for the reason the negative stipulation prohibiting continuation of probation beyond the maximum period prescribed must take its effect.

17. Consequently, we find no infirmity in the impugned order dated July 30, 2013 passed in W.P.(C) No.6414/2012 setting aside the order dated

August 27, 2012 passed by the Tribunal directing reinstatement and 50% back wages. Thus, LPA No.445/2014 is dismissed.

18. In view of the decision of this Court in LPA No.445/2014 the prayers of the appellant Jai Prakash seeking 100% back wages for the period he remained unemployed after termination instead of 50% back wages, declaration that he is entitled to all benefits from November 19, 2005 cannot be allowed. As regards release of arrears of Sixth Pay Commission are concerned, this relief has already been granted to Jai Prakash vide the impugned order dated July 30, 2013 in W.P.(C) No.6789/2012 wherein the learned Single Judge directed the respondents to make payments of the benefits in terms of Sixth Pay Commission report for the period Jai Prakash served with the management. No counter appeal having being filed by the management, to this extent the order of learned Single Judge attains finality. Consequently, LPA No.290/2014 is also dismissed.

19. No costs.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 28, 2015
‘ga’