

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) No.5189/2014

%

29th April, 2015

SHATRUGHAN THAKUR

..... Petitioner

Through Mr.M.A.Niyazi with Anamika Ghai
Niyazi, Advocates.

versus

THE DIRECTOR OF EDUCATION & ORS.

..... Respondents

Through Ms.Purnima Maheswari, Advocate for
R-1.
Ms.Divia Sinderrajan, Advocate for R-
2 & 3.

W.P.(C) No.5190/2014

VIKRAM SINGH

..... Petitioner

Through Mr.M.A.Niyazi with Anamika Ghai
Niyazi, Advocates.

versus

THE DIRECTOR OF EDUCATION & ORS.

..... Respondents

Through Ms.Purnima Maheswari, Advocate for
R-1.
Ms.Divia Sinderrajan, Advocate for R-
2 & 3.

W.P.(C) No.5191/2014

RAVI KUMAR

..... Petitioner

Through Mr.M.A.Niyazi with Anamika Ghai
Niyazi, Advocates.

versus

THE DIRECTOR OF EDUCATION & ORS. Respondents
Through Ms.Purnima Maheswari, Advocate for
R-1.
Ms.Divia Sinderrajan, Advocate for R-
2 & 3.

W.P.(C) No.5344/2014

BIR SINGH Petitioner

Through Mr.M.A.Niyazi with Anamika Ghai
Niyazi, Advocates.

versus

THE DIRECTOR OF EDUCATION & ORS. Respondents
Through Ms.Bandana Shukla, Advocate for R-1.
Ms.Divia Sinderrajan, Advocate for R-
2 & 3.

W.P.(C) No.5809/2014

SHEEJA BENOY Petitioner

Through Mr.M.A.Niyazi with Anamika Ghai
Niyazi, Advocates.

versus

THE DIRECTOR OF EDUCATION & ORS. Respondents
Through Ms.Purnima Maheswari, Advocate for
R-1.

Ms.Divia Sinderrajan, Advocate for R-
2 & 3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.5189/2014

1. This matter along with the connected matters was passed over once at the request of the counsel appearing for the respondent no.3/School. Even after a passover, again a further passover is sought and which request is not acceptable considering that the issues in the present matter are covered in terms of many judgments which have been delivered by this Court in cases of different petitioners against the Army Public Schools itself. These judgments are as under:-

- I. W.P.(C) No.1439/2013 titled as Army Public School & Anr. Vs. Narendra Singh Nain decided on 30.8.2013.*
- II. W.P.(C) No.2176/2013 titled as Army Public School & Anr. Vs. Ayodhaya Pd. Semwal decided on 30.8.2013.*
- III. W.P.(C) No.2535/2013 titled as Army Public School & Anr. Vs. Anusuya Prasad decided on 30.8.2013.*
- IV. W.P.(C) No.11484/2009 titled as Satya Chchikara Vs. Management Committee of APS & Anr. decided on 03.9.2013.*
- V. W.P.(C) No.5964/2010 titled as Tejbeer Singh Vs. Directorate of Education & Ors. decided on 18.12.2013.*

- VI. *W.P.(C) No.1845/2014 titled as Anita Soharu Guleria Vs. Directorate of Education & Ors. decided on 25.2.2015.*
- VII. *W.P.(C) No.1944/2014 titled as Manju Nautiyal Vs. Directorate of Education & Ors. decided on 25.2.2015.*
- VIII. *W.P.(C) No.2112/2014 titled as Shayam Dutt Vs. Directorate of Education & Ors. decided on 25.2.2015.*
- IX. *W.P.(C) No.6180/2013 titled as Renu Barrot Vs. The Director of Education decided on 27.4.2015.*

2. A reading of the counter-affidavit in the present writ petition shows that the respondent no.3/School has not been able to substantiate as to how contractual appointment of the petitioner was on account of administrative exigency under Rule 105(3) of the Delhi School Education Rules, 1973 framed under Delhi School Education Act, 1973 (hereinafter jointly referred to as DSEAR, 1973), and once no exigency exists for temporary/contractual employment, ratio of the judgment in the case of ***Army Public School & Anr. Vs. Narendra Singh Nain & Anr.*** in W.P.(C) No.1439/2013 decided on 30.8.2013 will apply entitling the appointment of the petitioner to be treated as regular and having statutory protection under DSEAR, 1973. The relevant paragraphs 2 to 8 of this judgment in the case of ***Narendra Singh Nain (supra)*** read as under:

“2. The facts of the case are that respondent No.1 was firstly appointed as Lower Division Clerk (LDC) on contractual basis by the petitioner-school for a period of one year in terms of letter dated 3.12.2007. After

the contractual period came to an end, respondent No.1 was immediately re-appointed as LDC, however on probation, in terms of the appointment letter dated 30.5.2008. The period of probation was one year from 1.4.2008. As per the appointment letter the respondent No.1 was to continue in probation till the services were confirmed in writing by the Managing Committee of the petitioner-school. The period of probation of the petitioner was extended by the petitioner-school for one more year from 1.4.2009 (i.e till 31.3.2010) by the letter dated 31.3.2009. Respondent No.1's services were terminated by a letter dated 21.3.2010 observing that as per the performance reports and advisories given during the extended period of probation, the respondent No.1's services were to stand terminated w.e.f 29.3.2010. Respondent No.1 was however immediately again appointed on 8.4.2010 as a part-time Admission Clerk for one year w.e.f 3.4.2010. Respondent No.1 had however in the meanwhile challenged the order of the petitioner-school terminating his services vide letter dated 21.3.2010 before DST, and consequently when the notice of the appeal filed before the DST reached the petitioner-school, it is contended by the respondent No.1 that immediately thereafter on 10.6.2010, the petitioner-school terminated the contractual appointment given by the letter dated 8.4.2010 by simply stating that the petitioner school no longer requires the services of the respondent No.1.

3. On the basis of the admitted facts: in the form of various appointment letters and the termination letters which have been issued by the petitioner-school as detailed above; the provision of Rule 105 of the Delhi School Education Act & Rules, 1973; the judgment delivered by me in the case of *Hamdard Public School Vs. Directorate of Education and Anr.* in W.P.(C) No.8652/2011 decided on 25.7.2013 interpreting Rule 105; and, the judgment of the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*, (2005) 7 SCC 472 read with Division Bench judgment of this Court in the case of *Social Jurist, a Civil Rights Group Vs. GNCT & Ors.* 147 (2008) DLT 729, the issues which arise, and on which counsel for the parties have been heard, are first as to whether the respondent No.1 at all can be said to only be a contractual employee in terms of the first contractual appointment letter dated

3.12.2007 or whether the employment of respondent No.1 since inception in the peculiar facts of this case would have a statutory favour in view of the provisions of the Delhi School Education Act and Rules, 1973, and secondly as to whether the actions of the petitioner-school amount to over-reach the provision of Rule 105 and is, therefore, against the ratio not only of the categorical language of Rule 105 but also the ratio of the judgment passed by me in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** (supra). The following issues are, therefore, crystallized for decision by this Court:

(i) Should the respondent No.1's services in the facts of this case be not taken as having statutory protection in terms of the Delhi School Education Act and Rules, 1973 since the original date of the contractual appointment in terms of letter dated 3.12.2007. Related with this issue would be whether the respondent No.1 is estopped from challenging the nature of appointment as contractual inasmuch as respondent No.1 thereafter accepted services first as a probationer and thereafter again on contractual basis.

(ii) Whether all the appointment letters, whether giving contractual appointment or as appointment on probation, have to be read in their substance and not in form whereby actually the respondent No.1 should be treated as on probation either from 28.11.2007 or in any case from 1.4.2008 and since there is no mention of termination on account of unsatisfactory services in the termination letter dated 10.6.2010, and none exist as stated in the letter dated 21.3.2010, therefore, respondent No.1 would have confirmation of employment on account of language of Rule 105 and the judgment in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** (supra).

4. So far as the first issue is concerned, as to whether the respondent No.1's services originally w.e.f 28.11.2007 are contractual in nature or statutory in character, it would be necessary at this stage to refer to the relevant para 10 of the Supreme Court judgment in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra), but, before I do so I must hasten to add that the observations which are being made by me in this judgment as

regards the first issue is because of the facts of this case whereby I am not treating the first appointment as contractual in nature in spite of the letter dated 3.12.2007 so specifying because I hold this letter, and also subsequent probationary/contractual appointment letters, to be a sham and given only for denying regular employment to respondent No.1 as LDC. The repeated appointments and terminations, have persuaded me to hold that the petitioner's-school's actions are a fraud upon the requirement to normally not to appoint an employee on contract basis. Accordingly, in a case where on account of genuine exigencies a contractual appointment is required (like when a regular employee suddenly leaves etc.) then such employment will be treated as adhoc/temporary/contractual and not a statutory one having protection of the Act & Rules. With this preface let us reproduce para 10 of *Montfort Senior Secondary School's case (supra)* and which reads as under:-

“10. In St. Xaviers' case (supra) the following observation was made, which was noted in Frank Anthony's case (supra):

"A regulation which is designed to prevent mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30 is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajibjai Sabhai (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test – the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it."

The effect of the decision in Frank Anthony's case (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual

rights have to be judged in the background of statutory rights. In view of what has been stated in Frank Anthony's case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V **are no longer contractual in nature but they are statutory**. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV. The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights.....”

5. A reference to aforesaid para shows that the Supreme Court in ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) has laid down the ratio that the very nature of employment of the employees of a school are that they are no longer contractual in nature but statutory. This observation was made by the Supreme Court in spite of the fact that the minority schools had entitlement under the provisions of Section 15 and Rule 130 of the Delhi School Education Act and Rules, 1973 to have a contract of services for its employees. It be noted that so far as the non-minority schools are concerned there is no provision in the Delhi School Education Act and Rules, 1973 to have a contractual appointment. Therefore, once if minority schools’ employees cannot have contractual employment and they have to be treated as statutory employees, then a *fortiorily* non-minority schools whose employees cannot be engaged in employment on contractual basis, such employees in non-minority school would surely have statutory protection of their services. In ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) the Hon’ble Supreme Court has made it clear in the aforesaid paragraph 10 that the qualifications, leaves, salaries, age of retirement etc, removal and other conditions of services are to be governed “**exclusively**” under the statutory regime provided under the Delhi School Education Act and Rules, 1973. Once that is so, then, as per Rules 118 to 120 of the Delhi School Education Rules, 1973 the services of an employee can only be terminated on account of misconduct and that too after following the requirement of holding of a detailed enquiry and passing of the order by the Disciplinary Authority. Therefore, in view of the categorical ratio of the judgment of the

Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) and in view of the facts of this case the respondent No. 1's services from the inception cannot be taken as only contractual in nature and would be statutory in nature. Once the services are statutory in nature, and admittedly the respondent No. 1 has not been removed by following the provisions of conducting an enquiry and passing of an order by the Disciplinary Authority as required under the Rules 118 to 120 of the Delhi School Education Rules, 1973, the respondent No. 1's services cannot be said to have been legally terminated. Respondent No. 1, therefore, continues to be in services.

6. To distinguish the applicability of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra), learned counsel for the petitioner has urged the following two arguments:

(i) Respondent No.1 is estopped from questioning his first appointment as contractual, thereafter appointment on probation and his termination during the probation period and thereafter again a fresh contractual appointment and finally his termination as per the last contract dated 8.4.2010. It is argued that respondent No.1 having acted upon the aforesaid sequence of events comprised in different appointments cannot now contend that the ratio of the judgment in ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra) should come to his aid.

(ii) It is argued that the judgment in ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra) was intended only to apply to minority schools and ratio of the said judgment cannot be read to apply to non-minority schools.

7. So far as the second arguments urged on behalf of the petitioner-school to distinguish the applicability of the ratio in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra), I have already dealt with this aspect above by holding, and the same is reiterated herein, that, if for minority

schools, there cannot be contractual appointments, and which in fact was so envisaged under the relevant provisions of the Delhi School Education Act and Rules, 1973, then, surely and indubitably, so far as non-minority schools are concerned, and who do not have provisions even in terms of Delhi School Education Act and Rules, 1973 for making contractual appointments, the ratio of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)*** would squarely apply and the employees of the non-minority schools will be treated not as contractual employees of the schools but statutory employees having statutory protection in terms of the relevant provisions of the Delhi School Education Act and Rules, 1973.

8. So far as the first argument of estoppel is concerned, that argument is attractive only at the first blush, however, this argument overlooks the elementary principle that there is no estoppel against law. Of course, there may be estoppel against law where the provisions of law are only for private individual interest and not meant to be in public interest, however, considering that statutory protection is given to the employees of a school and which results in stability to the education system, the same therefore cannot be held to be as not in public interest, more so after amending of the Constitution by introduction of Article 21A by which right to education has been made as a fundamental right for children from the ages of 6 to 14 years. Also one cannot ignore the fact that right to education otherwise also is an important part of Directive Principles of State Policy vide Article 41 and Article 45 of the Constitution, and thus subject of education itself has been treated by the Supreme Court as a public function and consequently, writ petitions lie against even private educational institutions. Reference need in this regard be only made to the Constitution Bench judgment of the Supreme Court in the case of ***Unni Krishnan J.P. & Ors. etc. etc. Vs. State of A.P. & Ors. etc. etc. 1993(1) SCC 645*** and which clearly holds that the subject of education is a public function, and hence writ petitions are maintainable even against private educational institutions.”

3. The facts which are stated by the respondents for giving contractual appointments do not bring the case of respondents under Rule 105(3) of the DSEAR, 1973. The stand of respondents no. 2 & 3 in para 5 at pages 4 & 5 of

the counter affidavit is pleaded as a justification for posts to remain only contractual posts, but, this stand is in violation of the ratio of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (2005) 7 SCC 472*** and which lays down that teachers and employees of schools must have statutory protection and therefore, contractual appointments are not permissible instead of regular appointments. In ***Management Committee of Montfort Senior Secondary School***'s case (*supra*) the contractual appointments were held not be valid appointments and such employees were held to have statutory protection under DSEAR, 1973 as regards their services although the appointments were given on contract basis. Also, the pleading of strength of students being variable as urged by respondents no. 2 & 3 is only a self-serving *ipse dixit* with no material at all in support of the same, much less such statistics which are spread over many many years, and which also have to be established to the satisfaction of this Court.

4. Reliance placed by respondents no. 2 & 3 on the ratio in the case of ***T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, 2002 (8) SCC 481*** and other judgments is misplaced as entitlement to administer a private unaided school does not entitle such a school to take away statutory protection of employment given as per DSEAR, 1973 and which issue is

squarely decided against the respondent no.3/School in terms of the categorical ratio contained in para 10 of the judgment in the case of *Management Committee of Montfort Senior Secondary School (supra)*, and which has been reproduced above. Right to administer does not mean right to mal-administer i.e. right to administer has to be in accordance with the laws being DSEAR, 1973 and the employment in view of the judgment of the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School (supra)* acquires statutory flavor superseding the contractual nature of the appointment/employment. The employment of the employees/teachers in schools as contractual appointments would thus be an anathema to the required statutory nature as mandated qua their services.

5. In view of the above, the writ petition is allowed and it is held that the petitioner's services with the respondent no.3/School will be taken not as contractual employment but as regular statutory employment on the completion of third year of service with the respondent no.3/School i.e w.e.f 22.10.2008. Since the petitioner will be taken as a regular employee of the respondent no.3/School w.e.f 22.10.2008, petitioner will also be entitled to the monetary benefits taking the petitioner as a regular employee of the respondent no.3/School for a period of three years prior to filing of the writ petition i.e though regularization will be w.e.f 22.10.2008, payment of

enhanced salary and other monetary emoluments will be granted to the petitioner for a period of three years prior to filing of the writ petition and to be continued thereafter during the employment of the petitioner with the respondent no.3/School. Arrears be cleared within a period of two months from today.

6. In view of the above, the writ petition is allowed with costs of Rs.25,000/- to be paid to the petitioner by the respondent no.3/School.

7. In view of the facts as stated above, and which show that various Army Public Schools are over-reaching the provisions of Delhi School Education Act and Rules, 1973 including the present Army Public School being the branch at Delhi Cantt, Sadar Bazar Road, Delhi, the Director of Education will conduct an enquiry against the respondent no.3/School by constituting a committee to examine the records for a period of about 10 years prior to filing of the writ petition. The committee will give its report within a period of three months from today to the Director of Education, and if the respondent no.3/School is found to be violating the provisions of DSEAR, 1973 by illegally giving employment only on contractual basis instead of regular statutory employment, then, the Director of Education will take necessary action against the respondent no.3/School under DSEAR, 1973.

W.P.(C) No.5190/2014

This writ petition also stands allowed in terms of the observations made while deciding W.P.(C) No.5189/2014 and the regularization being granted to the petitioner w.e.f 14.05.2005.

Petitioner will be entitled to costs of Rs.25,000/- from the respondent no.3/School.

W.P.(C) No.5191/2014

This writ petition also stands allowed in terms of the observations made while deciding W.P.(C) No.5189/2014 and the regularization being granted to the petitioner w.e.f 02.8.2013.

Petitioner will be entitled to costs of Rs.25,000/- from the respondent no.3/School.

W.P.(C) No.5344/2014

This writ petition also stands allowed in terms of the observations made while deciding W.P.(C) No.5189/2014 and the regularization being granted to the petitioner w.e.f 05.7.2008.

Petitioner will be entitled to costs of Rs.25,000/- from the respondent no.3/School.

W.P.(C) No.5809/2014

This writ petition also stands allowed in terms of the observations made while deciding W.P.(C) No.5189/2014 and the regularization being granted to the petitioner w.e.f 08.1.2011.

Petitioner will be entitled to costs of Rs.25,000/- from the respondent no.3/School.

APRIL 29, 2015
KA

VALMIKI J. MEHTA, J.

After the judgment has been dictated, Mr. Ankur Chhiber, Advocate has put in appearance for respondent nos. 2 & 3, and he has been apprised of the above judgment.

APRIL 29, 2015
KA

VALMIKI J. MEHTA, J.