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

+ W.P.(C) 10962/2015, CM No.28193/2015

LIONS PUBLIC SCHOOL & ANR Petitioner
Through: Mr.Sunny Choudhary, Adv.

Versus

DISHA KAPIL & ANR Respondent
Through: Mr. Deepak Vashisht, Adv. for R-1
Mr.S.Banerji, Adv. with Mr.Gautam
Narayan, Adv. for R2-GNCTD

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **04.01.2016**

W.P.(C) 10962/2015

1. This is a writ petition challenging the order dated October 16, 2015 passed by the Delhi School Tribunal ('Tribunal', in short) in an appeal filed by the respondent No. 1, challenging the order dated November 20, 2014.
2. I note, that the respondent No. 1, in her appeal, had taken a plea that the Office Manager, who had issued the order dated November 20, 2014 (Ground 'G'), was not competent to relieve her.
3. The response of the petitioner school, in its counter affidavit, was as under:

“(vii) That, the contentions made in paragraph G of the Ground of Appeal was wrong and hence denied. The answering Respondents most respectfully submit that the order dated 20.11.2014 was passed by the competent authority and the Appellant was relieved from the services of the school as TGT as she was not confirmed in the services after the probation period which was a condition precedent as specifically mentioned in the service book and acknowledged by her. The order dated 20.11.2014 relieving the Appellant was non-stigmatic therefore, there was no need of any inquiry”.

4. The petitioner school had also justified the extension/non-extension of the probation of the respondent No. 1 on certain grounds including the issuance of Memos to the said respondent. The Tribunal, had allowed the appeal primarily on one ground i.e. the principle of deemed confirmation. The Tribunal primarily relied upon the judgment of the Supreme Court in the case of ***High Court of Madhya Pradesh through Registrar and Ors. Vs. Satya Narayan Jhavar, AIR (2001) SC 3234*** and on the judgment of this Court in ***Jai Prakash vs. School Management of ITL Public School, LPA 290/2014, decided on July 28, 2011***, interpreting the provisions of the appointment letter issued to the respondent No. 1, it concluded that the case of the respondent No. 1 falls in second category of cases, as propounded by this Court in ***Jai Prakash (supra)*** inasmuch as the terms of appointment stipulate a maximum period of two years of probation i.e. the initial period of probation of one year and extension thereafter for ‘one more year’. It also

held that in the absence of stipulation in the appointment letter for a specific issuance of order of confirmation, such an order is not required. Such a finding is an erroneous inasmuch the stipulation extension of probation of “one more year”, cannot be construed to mean, the maximum period of probation is of two years. In a given case, the probation can also be extended by “one more year” after two years. There should be something more, either prefixed or suffixed, to the words ‘one more year’ like the word “maximum of” (prefixed) or ‘only’ or “and not beyond that”, (suffixed) which would probably indicate, that there cannot be any extension beyond one year or maximum of two years. The case shall not fall under situation No.2. That apart, the finding of the Tribunal that in the absence of any stipulation for issuance of an order of confirmation, in the appointment letter would mean that the order of confirmation is not pre-requisite for confirmation, is also unsustainable in view of my conclusion above, that, probation in terms of the appointment letter can be extended beyond two years. If that be so, it is immaterial if the appointment letter does not stipulate issuance of an order of confirmation. I note for benefit, as the respondent No. 1 had not completed three years of service, the conclusion of this Court in *Hamdard Public School vs. Directorate of Education 2013(202) DLT 111* wherein,

this Court in para 11 has held as under:-

“11. Now that takes us to the most vexed question as to what should be a reasonable period. We will have to keep in mind Article 21A of the Constitution for this purpose. To understand the issue of what should be a reasonable period qua Rule 105 as regards a teacher, let us start with two extreme examples. One extreme example is that probation period cannot be extended at all for the third year and the other extreme example is that the probation period can be kept on extending by the management even till the age of superannuation. Obviously, both these extreme situations cannot decide what is a reasonable period. In many statutory rules and rules of many organizations, there is provided a three year period of probation like in the case of Lawrence School (supra). Therefore, probation period undoubtedly can be of 3 years under Rule 105 because as already stated there is no outer limit of probation period provided. The question is that for how long beyond the third year can a period of probation continue. In my opinion, reasonable period will have to be dependent on the facts of each case including as to what is the post or nature of employment in question, what are the terms and conditions agreed to at the time of original appointment and subject of course to the same being in accordance with Delhi School Education Act and Rules, 1973. The nature of job or duties to be performed by the teacher will also have to be kept in mind. It will also have to be kept in mind whether the teacher will be overage for similar employment if he/she is not confirmed. Keeping in mind all the relevant facts, probation period, except in exceptional cases, so far as a teacher is concerned, should not continue beyond a period of 5 years from the first date of appointment. Even a period of 4/5 years has to be really in a very grave and exceptional case depending on the facts of that case. However, I do not express myself finally with respect to what should be a reasonable period between 3 to 5 years because Courts will necessarily examine that aspect in the facts and circumstances of each individual case. I am making these specific

observations with respect to the maximum period of probation being ordinarily only of 5 years because in the absence of fixing an outer limit by the statute viz Rule 105, the entire purpose of a probation period and a probationary teacher being confirmed would be defeated by the machinations of the management of the schools in certain cases thus affecting education and bringing in of Article 21A in the Constitution. Therefore, I hold that the Rule 105 must be so interpreted that the reasonable period therein should ordinarily be around three years, should not extend beyond five years in most of the cases, and, in the rarest or rare cases, one more year upto 6 years may be considered. However again at the cost of repetition it is stated that six years period is being observed only as a most grave and rarest of rare circumstance in a case, and ordinarily, a probation period qua a teacher should not extend beyond/around three years which is a reasonable period, and as per the facts and circumstances of certain case, and which issues/decisions are of course justiciable before Courts the probation period can go up to 5/6 years as stated above.”

5. The conclusion of the Tribunal that the probation would come to an end after two years is unsustainable and need to be set aside. As the Tribunal has allowed the appeal only on this ground without adjudicating/dilating on the other grounds raised by the respondent No. 1, I deem it appropriate to remand the matter back to the Tribunal for considering the appeal of the respondent No. 1 on other grounds, including the competency of the Office Manager to issue the order of relieving as well as the on the merit of impugned order relieving the respondent No. 1 from the services of the petitioner school.

6. The parties shall appear before the Tribunal on February 9, 2016. If the parties choose to produce such other record/documents in support of their case, such a request shall be made to the Tribunal and the Tribunal would consider the same in accordance with the law.

7. The writ petition is disposed of, in the aforesaid terms.

CM No.28193/2015

In view of the order passed in the writ petition, the present application is disposed of as infructuous.

V. KAMESWAR RAO, J

JANUARY 04, 2016/akb