

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

+ **W.P.(C) No.12190/2009**

% **7th February, 2017**

DR. SWAMI RAM PAL SINGH MISSION SCHOOL Petitioner

Through: None.

versus

SHRI HARVINDERPAL SINGH BINDRA & ANR. Respondents

**Through: Mr. Varun Nishal, Adv. for
GNCTD.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 and Article 227 of the Constitution of India, petitioner/Dr. Swami Ram Pal Singh Mission School impugns the judgment dated 29.4.2009 passed by the Delhi School Tribunal (DST) allowing the appeal filed before it by the present respondent no.1 and setting aside the letter of the petitioner/school dated 24.2.2001 terminating the services of the respondent no.1 with the petitioner/school.

2. The facts of the case are that the respondent no.1 claimed that he was appointed with the petitioner/school as PGT (Commerce) w.e.f 1.12.1997 and that the Management of the petitioner/school was

taking back Rs.4500/- in cash at the time of paying of salary by cheque. It was pleaded that the respondent no.1 objected to the same and also served a legal notice to the petitioner/school to stop the said alleged practice. The respondent no.1 worked till 24.2.2001 when petitioner/school through its manager terminated the services of the respondent no.1 by issuing a letter dated 24.2.2001.

3. The case of the petitioner/school was that the respondent no.1 was appointed on contract basis for three months w.e.f 1.12.1997 and thereafter on probation for 12 months w.e.f 2.3.1998. It was further pleaded by the petitioner/school that the respondent no.1 thereafter preferred to take contractual appointment and hence was paid contractual salary. Petitioner/school pleads that the conduct of the respondent no.1 was below dignity and having adverse effect on the reputation of the petitioner/school and for which respondent no.1 reprimanded and he expressed his regrets with assurance not to repeat such incidence in future. Since respondent no.1 did not mend himself and he continued to exhibit reprehensible conduct towards the girls students resulting in the complaints from the girls students, respondent no.1 was terminated from services.

4. The Delhi School Tribunal by the impugned judgment has held that respondent no.1's employment admittedly was for a probation

period of one year and that there was no letter on record that the probation period of the respondent no.1 was extended i.e respondent no.1 had become a regular employee of the petitioner/school on completion of one year period of probation. The Delhi School Tribunal accordingly held that since the respondent no.1 was a regular employee, his services could not be terminated except as per due process of rules provided under the Delhi School Education Act and Rules, 1973. The Delhi School Tribunal has also held that the respondent no.1 simply because he had signed the contract employment, the same will not derogate from the fact that the respondent no.1 cannot be treated as a contractual employee and that respondent no.1 should be taken as a regular employee.

5. The issue to be decided in the present case has been settled in terms of the ratios of the judgments passed by this Court in the cases of ***Hamdard Public School Vs. Directorate of Education and Anr. 202 (2013) DLT 111*** and three connected cases with the lead case being ***Army Public School and Anr. Vs. Narendra Singh Nain and Anr.*** in W.P. (C) No.1439/2013 decided on 30.8.2013 that even an *ad hoc*/temporary teacher or even a probationary teacher if has served with a school in Delhi at least for three years, then on completion of three years such a teacher will stand confirmed to his post unless the

school proves that probation period was not found to be extended up to three years and within the period of three years the probationary services were not found to be satisfactory. In the present case, it is noted that Delhi School Tribunal notes that respondent no.1's probation period was extended beyond the initial period of one year w.e.f 2.3.1998. Also I may state that there is no letter on record that petitioner/school observing that the services of the respondent no.1 as a probationary employee were unsatisfactory, and therefore, the services were terminated.

6. It has been observed in the judgments in the cases of ***Hamdard Public School (supra)*** and ***Army Public School (supra)*** that the appointment of an employee of a school is statutory appointment with statutory protection in terms of the Delhi School Education Act and Rules, such employment cannot be terminated except by following the due process of rules contained in the Delhi School Education Act and Rules, being Rules 118 and 120 requiring disciplinary proceedings to be initiated for removal of a permanent employee.

7. Also, Supreme Court in the case of ***Raj Kumar Vs. Directorate of Education and Others (2016) 6 SCC 541*** has held that there cannot be termination of an employee of a school without prior approval of the Director of Education under Section 8(2) of the Delhi

School Education Act. Admittedly in this case, no approval has been obtained by the petitioner/school for termination of the services of the respondent no.1, and for this additional reason also the impugned letter dated 24.2.2001 is liable to be set aside.

8. In view of the above, there is no merit in this writ petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 07, 2017/ib

VALMIKI J. MEHTA, J

