

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

+ **W.P.(C) No. 8253/2010**

% **3rd March, 2017**

MANN PUBLIC SCHOOL Petitioner
Through: Ms. Saurabh Chadha, Advocate.

versus

SHRI KUMAR KANT JHA AND ANR. Respondents
Through: Mr. S.K. Jha, Advocate for R-1.

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, the petitioner/school, challenges the order of the Delhi School Tribunal (DST) dated 10.8.2010 by which the DST has set aside the order of the petitioner/school dated 10.3.2008 terminating the services of the respondent no. 1.

2. The DST has set aside the order of termination of the respondent no. 1 on the ground that the services of the respondent no. 1 with the petitioner/school stood confirmed after one year of service in lieu of Rule 105 of the Delhi School Education Rules, 1973. The

relevant paragraph of the judgment of the DST is para 4 and which para reads as under:-

“4. The argument put forth by the Counsel for the Respondent School is that the Appellant was on probation till his services were confirmed in writing by the Managing Committee. Rule 105 of the Rules provides for placing an employee on probation for a period of one year. The said period can also be extended by the Appointing Authority by another one year. In other words any term and condition keeping an employee on probation till his services are confirmed in writing, is against the statutory rules. Such condition even if stipulated in the letter of appointment, is not binding on the employee. Any extension of the period of appointment has to be made expressly. No employee can be kept on probation for an unlimited period. The purpose of extension of period of probation is to afford the employee an opportunity to improve his performance. In the case of an aided recognized school prior approval of the Director is required for this purpose. I am fully conscious of the fact that the case in hand relates to a private unaided school. Clearly even in the case of private unaided school extension of the period of probation has to be done in writing. There cannot be any deemed extension of probation as advocated by the Respondent School in the present case. The Appellant in the present case was appointed on 01.11.2006. He was granted increment w.e.f. 01.11.2007. He is deemed to have completed the period of probation after one year of service i.e. on 30.10.2007. Rule 105 (ii) of the Rules provides that on completion of period of probation the employee is confirmed with effect from the expiry of the period of probation. It is not the case of the parties that the appointment in question was on ad hoc or part time or daily wages basis. The Appellant had already crossed the period of one year and as per rules he stood confirmed on completion of the period of probation of one year. The impugned order dated 10.03.2008 terminating his service was, therefore, in the nature of his removal from service without holding a departmental inquiry. I am, therefore, of the view that the impugned order dated 10.03.2008 is illegal in the eyes of the law as after completion of period of probation of one year on 30.10.2007 the service of Appellant could not be terminated without following the procedure as laid-down in Rule 120 of the Rules. Appeal is hence allowed. The impugned orders dated 10.03.2008 terminating the service of the appellant is hereby set-aside. The Appellant is entitled to full back-wages. I place reliance on the judgment passed by the Hon’ble High Court of Delhi in the case of LPA No. 493/2002 M/s. Apeejay School Vs. Presiding Officer Delhi School Tribunal and Others decided on 16.12.2002. Appeal is accordingly disposed of.”

3. The DST has clearly fallen into a grave legal error because there is no deemed confirmation in terms of the ratio in Rule 105 of the Delhi School Education Rules only after one year of service of an employee of a school. This aspect of deemed confirmation has been considered by this Court in detail in the judgment in the case of *Hamdard Public School Vs. Directorate of Education and Anr.* 202 (2013) DLT 111 and *Army Public School and Anr. Vs. Narendra Singh Nain and Anr.*, in W.P.(C) No.1439/2013 decided on 30.8.2013. The ratio of the judgment in the case of *Hamdard Public School (supra)* is that there is no automatic or deemed confirmation even after a two year period of service of an employee working on probation because there is required a specific order of confirmation. This Court in *Hamdard Public School's* case (*supra*), however has held that in case the school continues the probation period for more than three years, then normally a teacher/employee will be taken as deemed to be confirmed after three years of service with the school and not before. It has been further observed in *Hamdard Public School (supra)* case that in extreme cases of grave circumstances the probation period can even go up to six years, but ordinarily probation period will not be more than three years.

4. In the present case, the admitted facts are that the respondent no. 1 was appointed as Post Graduate Teacher (PGT) (Mathematics) on 1.11.2006. Results of classes in which respondent no. 1 was teaching were found to be poor and explanation therefore was called for from the respondent no. 1 by the letter dated 25.10.2007 of the petitioner/school. Respondent no. 1 submitted his reply in writing on 29.10.2007. Petitioner/school, thereafter, continued the respondent no.1 in services to further check his performance but ultimately finding the performance of respondent no. 1 not to be satisfactory, terminated the services of respondent no. 1 vide the petitioner's letter dated 10.3.2008 and which letter reads as under:-

“To,

Mr. K.K. Jha,
PGT (Mathematics)
Mann Public School.

Date : 10-03-08

Sub : Termination of Services

Refer to this school letter dated 25th October' 07 and the reply submitted by you dated 29th October' 07.

You are hereby intimated that inspite of your commitment to show the improvement in the management of the class and having a proper control over the class, no improvement has been observed on this front. Though you have been intimated orally many time to have an effective control over class but no improvement has been seen.

The performance of the students in the mathematics classes (class-11 & 12) has been very poor. You had committed that you are planning to focus on important sections of the syllabus to bring up the students. However the Pre-Board results and Terminal Exams (class-11) shows a decline in the performance of the students.

In view of the above i.e. for not satisfactory performance in the academics and class management, your services have been terminated and you are being given 1 month's notice w.e.f. today i.e. from 10th March 2008' to 9th April 2008', after which your services will be considered as terminated.

Sd/-

Cdr. V.K. Banga (Retd.)
PRINCIPAL.”

5. It is a settled law that it is the employer which is entitled to judge the suitability of the probationer so as to decide whether or not to confirm the probationer in his services. This Court cannot substitute its judgment for that of the employer which decides that the services of the probationer employee are found to be unsatisfactory. Petitioner/school has held and observed that the services of respondent no. 1 are not satisfactory because performance of the students in class 11 and 12 on the subject of Mathematics which the respondent no. 1 was teaching was not good. This Court cannot substitute its view for the aforesaid view which has been taken by the petitioner/school.

6. In view of the above discussion, this writ petition is allowed. The impugned judgment of the DST dated 10.8.2010 is set aside. The order of the termination dated 10.3.2008 issued by the petitioner/school terminating the services of the respondent no. 1 will accordingly stand good and affirmed/valid.

7. The writ petition is allowed and disposed of accordingly, leaving the parties to bear their own costs.

MARCH 03, 2017//JK

VALMIKI J. MEHTA, J