

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

Date of decision: 25th October, 2017

+ **W.P.(C) 10310/2015 & C.M. 25676/2015**

ANDHRA EDUCATION SOCIETY & ANR. Petitioners

Through: Mr. Hanu Bhaskar, Advocate

Versus

DIRECTORATE OF EDUCATION & ANR. Respondents

Through: Mr. Sanjay Ghose & Mr. Rishabh,
Advocate for respondent No.1 Mr. D. Rama
Krishna Reddy, Advocate for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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1. Petitioner-Society's school is a recognized, aided school from Delhi Administration and is linguistic minority institution, who had discharged respondent No.2 from service vide order of 22nd May, 2013. The said order was challenged by second respondent by filing an appeal before the Delhi School Tribunal, which has set aside impugned order of 22nd May, 2013 with direction to petitioner to reinstate second respondent with all consequential benefits.

2. The facts, which are not disputed, are that second respondent was

appointed on the post of Post Graduate Teacher (PGT) by petitioner-Society on 18th June, 2008. As per her appointment letter, she was to remain on probation for one year from the date of her joining the service. On 11th February, 2010, petitioner had extended period of probation of second respondent by one year as her performance was found to be unsatisfactory. Again on 30th November, 2011, probation of second respondent was extended by petitioner for a period of one year while taking into consideration the Performance Assessment Reports for the period of probation/ extended period probation, physical observation of the class room sessions and report of periodical interactions of Co-Chairman, Manager and Head of the School with the teacher. Before the period of extended period could come to an end, petitioner vide order 22nd May, 2013 had discharged second respondent from service.

3. After taking note of the factual position, learned Tribunal in the impugned order has relied upon Supreme Court's decision in *High Court of M.P. through Registrar & ors. Vs. Satya Narayan Jhavar* (2001) 7 SCC 161 and had concluded that the case of second respondent falls in the second category, as carved out in Supreme Court's decision in *Satya Narayan Jhavar (Supra)* and while considering the decision of this Court in *Hamdard Public School Vs. Directorate of Education & anr.*, in W.P.(C) 8652/2011, decided on 25th July, 2013, came to a conclusion that the instant case does not fall in the category of '*rarest or rare cases*' requiring extension of probation up to five or six years.

4. Learned counsel for petitioner-Society submits that the impugned order incorrectly notes that second respondent had worked for more than five years and actually she had worked for four years ten months or so

and the learned Tribunal while considering the decision in *Hamdard Public School (Supra)*, has in Paragraph No. 21 correctly noted that the period of probation of an employee can be extended up to five years and in rarest of rare cases up to six years. It is next submitted that learned Tribunal has erroneously concluded that the instant case does not fall in the category of ‘*rarest of rare cases*’. It is also submitted that conduct of second respondent had been unsatisfactory from the very beginning and despite serving her Memo of 11th November, 2010, she had availed leave without permission and had proceeded on earned leave whereas it was inadmissible to her.

5. Attention of this Court is drawn by petitioner’s counsel to leave record of second respondent to show that she was habitual of erratically proceeding on leave quite often. It is further submitted by petitioner’s counsel that the Memo of 11th November, 2010 speaks for itself about conduct of second respondent, which amply justifies the extension of probation and dispensing with her service.

6. The Memo of 11th November, 2010 reads as under:-

**“ANDHRA EDUCATION SOCIETY
SMT DURGABHAI DESHMUKH MEMORIAL SR. SEC. SCHOOL,
1 DEEN DYAL UPADHYAYA MARG, NEW DELHI-110002**

Dt. 11/11/10

MEMO

1. You are found of the following acts of omissions

- a. Carelessness in maintaining the Class Attendance Register.*
- b. Habitual absence without leave.*

- c. *Continued late attendance.*
 - d. *Willful in subordination/ disobedience to the lawful order of superior.*
 - e. *Disorderly detrimental to the decorum of the School.*
 - f. *Misconduct detrimental to the decorum of the School.*
 - g. *Breach of established norms/procedure.*
 - h. *Malingering / idling time during working hours.*
2. *You are directed to show cause why disciplinary action cannot be initiated against you for the delinquency committed by you which is an offence exhibiting a conduct unbecoming of a teacher.*

XXXXXXXXXX”

7. Attention of this Court was also drawn by petitioner’s counsel to Division Bench decision of this Court in *Dy. Director of Education & Anr. Vs. Veena Sharma* 2010 VII AD (DELHI) 655 to submit that while interpreting Rule 105 of *Delhi School Education Act & Rules, 1973* it has been ruled that there is no deemed confirmation and no fixed period of probation and that the confirmation is subject to suitability and satisfactory service rendered by an employee. Lastly, it is submitted by petitioner’s counsel that the instant case falls in the first category, as culled out by Supreme Court in *Satya Narayan Jhavar (Supra)* and that the learned Tribunal has erred in holding that the instant case comes within the second category, as spelt out in *Satya Narayan Jhavar (Supra)* and so, the impugned order deserves to be set aside and petitioner’s order of 22nd May, 2013 discharging second respondent from service, deserves to be restored.

8. On the contrary, learned counsel for second respondent supports the impugned order and submits that there is no infirmity in it, as the

learned Tribunal has rightly put the instant case in the second category, as spelt out in *Satya Narayan Jhavar (Supra)* and has rightly distinguished the decision in *Hamdard Public School (Supra)* as the instant case does not fall in the category of ‘*rarest of rare cases*’. It is pointed out by counsel for second respondent that she was to remain on probation only for a period of one year and that the second respondent had replied to the Memo of 11th November, 2010 and thereafter only second extension was given to her. This is controverted by petitioner’s counsel, who maintains that it was not replied to.

9. It is pointed out by counsel for respondent No.2 that in case of *Veena Sharma (Supra)*, the service rendered was of one year and three months whereas in the instant case, second respondent has rendered service of more than four years and ten months and that appointment in *Veena Sharma (Supra)* was subject to confirmation whereas it is not so in the instant case and so, this petition deserves to be dismissed.

10. Upon considering the submission advanced by both the sides and on perusal of impugned order, material on record and the decisions cited, I find that the first category, as spelt out in *Satya Narayan Jhavar (Supra)* is of cases where period of probation is specified and power to extend the same is conferred upon the authority without prescribing any maximum period of probation and if an employee has continued beyond the prescribed or extended period, he/ she cannot be deemed to be confirmed. The second category, as spelt out in *Satya Narayan Jhavar (Supra)* is of cases where there is a provision in rules for extension of period of probation and maximum period of probation is also provided and in such case, it is impermissible to extend the probation and the inference in such

cases is that the employee is deemed to be confirmed.

11. Upon careful perusal of impugned order, I find it strange as to how the Tribunal has come to a conclusion that the instant case comes in the second category, as spelt out in *Satya Narayan Jhavar (Supra)*. It is quite clear that the instant case falls in the first category, as maximum period of probation has not been spelt out in the appointment letter and so, it is not the case of deemed confirmation. The issue in hand stands clinched by a Division Bench decision of this Court in *Veena Sharma (Supra)* wherein while interpreting Rule 105 of *Delhi School Education Act & Rules, 1973* in question, it has been categorically held that under this Rule, there is no concept of deemed confirmation and the confirmation is subject to work and conduct of an employee being satisfactory. Meaning thereby, if the work and conduct of an employee is not found to be satisfactory, the employer can discharge such an employee. What is the reasonable period within which an employee ought to be discharged, has been considered by a Coordinate Bench of this Court in *Hamdard Public School (Supra)*. This Court is of the opinion that the learned Tribunal in paragraph No.21 has correctly noted the ratio of *Hamdard Public School (Supra)* but has erred in concluding that the second respondent had put in more than five years of service. In fact, second respondent had rendered service of four years and ten months. Since an employee can be discharged within the bracket of service period of five years, therefore, I find that petitioner had rightly discharged second respondent in the face of Memo of 11th November, 2010 and her leave record etc.

12. In the light of aforesaid conclusion, I find that the impugned order cannot be sustained and is accordingly set aside and petitioner's order of

22nd May, 2013 discharging second respondent is restored.

13. This petition and pending application are disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

OCTOBER 25, 2017

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