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

Date of decision: 10th October, 2018

+ W.P.(C) 10886/2018

LAXMAN PUBLIC SCHOOL SOCIETY
(REGD) & ORS

..... Petitioners

Through: Mr. Sanjiv Kakra, Adv.

versus

RICHA ARORA & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

1. This writ petition, at the instance of the Laxman Public School Society (Regd.), assails order dated 18th May, 2018, passed by the Delhi School Tribunal (hereinafter referred to as the “learned Tribunal”) in Appeal bearing no. 49/2016, preferred before it by the respondent, Richa Arora.

2. The facts are brief.

3. Pursuant to her applying, and being interviewed, for the post, the respondent was appointed as TGT (Computer), on a basic pay of Rs.12,540/- with usual allowances, with effect from 1st July, 2015.

4. Clauses 1 and 2 of the terms and conditions of her appointment,

as contained in the letter dated 22nd May, 2015, read thus:

“1. Initially you will be on probation for a period of one year from the date of joining. The said period of probation is liable to be extended further at the discretion of the Management Committee. During or at the expiry of the said period of probation or the extended period of probation, the Managing Committee shall have the right to terminate your services without any notice or without assigning any reason. You will continue to be on the probation till your services are confirmed in writing by the Managing Committee

2. After confirmation, your services shall be liable to be terminated on three month's notice or salary in lieu thereof except on disciplinary grounds in which case no such notice or payment in lieu thereof shall be necessary.”

5. It appears that, prior to the expiry of the period of her probation, the services of the respondent were terminated *vide* order dated 13th May, 2016 which read thus:

“ You were appointed in our school initially on probation for a period of one year. As per the terms of your appointment letter dated 22.05.2015 issued to you, please refer to Clause no.1 of your appointment letter. We are terminating your services w.e.f 14.05.2016 in accordance to provision of Rule 105 of DSEAR 1973.

Please find enclosed herewith a Demand draft of Rs.18,976/- (Rs. Eighteen Thousand Nine Hundred Seventy Six Only) bearing no. 597887 dated 13.05.2016 issued by Allahabad bank payable at Delhi, towards full and final settlement of your dues.”

6. This prompted the petitioner to approach the learned Tribunal, by way of Appeal No. 49/2016, which, as already noted hereinabove, stands disposed of, by the impugned order dated 18th May, 2018.

7. The learned Tribunal has proceeded on the ground that it was incumbent, on the petitioner, to, prior to terminating the services of the respondents, obtain approval of the Director of Education, under Section 8(2) of the Delhi School Education Act, 1973, read with Rule 105 of the Delhi School Education Rules, 1973, which is reproduced as under, for ready reference:

Section 8(2), DSE Act:

“(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

Rule 105, DSE Rules:

105. Probation

(1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority with the prior approval of the Director and the services of an employee may be terminated without notice during the period of probation if the work, and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory: Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year, shall not apply in the case of an employee of a minority school: Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation as the case may be, confirmed with effect from the date of expiry of the said period.

(3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.”

8. Reliance has also been placed, by the learned Tribunal, on the judgment of the Supreme Court in ***Raj Kumar v. Director of Education, (2016) 6 SCC 541.***

9. The petitioner has challenged the aforementioned order, dated 18th May, 2018 of the learned Tribunal principally on the ground that ***Raj Kumar (supra)*** dealt with the case of a regular employee, whereas the respondent was still on probation on the date when her services were terminated. The contention of the petitioner is, therefore, that the rigour of Section 8(2) of the Delhi School Education Act, 1973 and Rule 105 of the Delhi School Education Rules, 1973, would not apply when services of a probationer were terminated during the period of probation.

10. It is not possible to accept such a contention.

11. The following passage, from the judgment of the Supreme Court in ***Raj Kumar (supra)***, merits reproduction, in this regard:

“45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent-School. *Section 8(2) of the DSE Act is a procedural safeguard in favor of an employee to ensure that an order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognized private school.*”

(Emphasis Supplied)

12. There is nothing, in the judgment of the Supreme Court in ***Raj Kumar (supra)***, which limits its applicability to the case of a regular employee, and does not extend the scope thereof to the termination of a probationer. Rather, Rule 105 of the Delhi School Education Rules, itself states that, “every employee shall, on initial appointment, be on probation for a period of one year.....”. This itself indicates that, even during the period of probation, the employee continues to remain an employee. The second proviso to Rule 105 mandates that, except in the case of a minority school, no termination from service, of an employee on probation, shall be made by school, except with the previous approval of the Director of Education. There is no dispute about the fact that, prior to terminating the services of the petitioner, no approval of the Director of Education was taken.

13. One may also refer to the definition of “employee”, as set out by the Supreme Court in the judgment ***Union Public Service Commission v. Dr. Jamuna Kurup, (2008) 11 SCC 10***, of which para 14 is reproduced as under:

“14. The term “employee” is not defined in the Delhi Municipal Corporation Act, 1957, nor is it defined in the advertisement of UPSC. The ordinary meaning of “employee” is *any person employed on salary or wage by an employer. When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word “employee” would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD, whether permanent or contractual will be “employees of MCD.”*

(Emphasis Supplied)

14. Clearly, therefore, the mandate of Section 8(2) of the Delhi School Education Act, 1973 and Rule 105 of the Delhi School Education Rules, 1973, especially the second proviso thereto, would apply, with equal force, to employees on probation, as it applies to other employees.

15. Resultantly, no exception can be found with the impugned order passed by the learned Tribunal.

16. The writ petition is dismissed, *albeit* without any order as to costs.

C. HARI SHANKAR, J.

OCTOBER 10, 2018

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