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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on 23rd July, 2018

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LPA 477/2017

MANISH KAUSHIK

....Appellant

Through : Mr. Krishna Chandra Dubey, Advocate.

Versus

ST. THOMAS SCHOOL

..... Respondent

Through : Mr. Pramod Gupta and Mr. Mangoya Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

1. The appellant has preferred the present appeal under Clause 10 of Letters Patent assailing the order dated 13.04.2017 passed by the learned Single Judge in W. P. (C) 1264/2016 whereby the order dated 10.12.2015 passed by the Delhi School Tribunal was set aside.
2. The brief facts which have given rise to the present appeal are that after completion of process of interview, the respondent school appointed the appellant as Physical Education Teacher (PET) on probation initially for a period of one year and issued a letter of appointment dated 04.04.2011. As per the Terms and Conditions dated 28.03.2011, the period of probation was to continue till the services were confirmed by the Managing Committee in writing. The appellant was granted regular increment in April, 2012 and July,

2012. Suddenly, on 05.03.2014, the appellant was informed by the receptionist that his services were no longer required by the respondent school. On 18.03.2014, the appellant went to the school when the Accountant informed him that his services had been terminated with immediate effect and his entry was restricted in the school. The appellant moved the Delhi School Tribunal against his termination from the school and the Delhi School Tribunal passed an order dated 10.12.2015 in favour of the appellant. Aggrieved by the decision of the Delhi School Tribunal, the respondent school herein filed a writ petition challenging the order dated 10.12.2015 passed by the Delhi School Tribunal, which was allowed vide order dated 13.04.2017 by the learned Single Judge. Hence, the present appeal.

3. Counsel for the appellant referred to the terms and conditions of the Contract of Services dated 04.04.2011 and contended as per the terms and conditions dated 04.04.2011, he was to remain on probation for a period of one year which could be extended by the Managing Committee but not beyond the period of total two years. Hence, the learned Single Judge fell in error while relying on the Terms and Conditions of appointment dated 28.03.2011 as per which he was to continue on probation till the services were confirmed in writing by the Managing Committee, was redundant. It is further contended that having worked for a period of 2 years 11 months, the probation period had come to an end. He further contended that the services of the appellant were deemed to have been confirmed immediately after

completion of two years of probation period and it was not required for the Managing Committee to confirm the same in writing and the termination of the appellant was in gross violation of principle of natural justice.

4. Counsel for the respondent contended that there was no illegality and infirmity in the impugned order passed by the learned Single Judge and has placed reliance on *Hamdard Public School Vs. Directorate of Education and Anr.* reported in 202 (2013) DLT 111, *Head Master, Lawrence School Lovedale Vs. Jayanthi Raghu & Ors.* reported in AIR 2012 SC 1571 and *High Court of Madhya Pradesh through Registrar & Ors. Vs. Satya Narayan Jhavar* reported in (2001) 7 SCC 161.
5. We have heard the counsels for the parties and perused the material available on record.
6. Before delving into merits of the case, we find it appropriate to reproduce the relevant portion of the Terms and Conditions of the appointment dated 28.03.2011, appointment letter dated 04.04.2011 and Contract of Service dated 04.04.2011.
7. Relevant portion of Terms and Conditions dated 28.03.2011 reads as under:
 - "1. Initially, you will be in probation for a period for the one year from the date of joining. The said period of probation is further liable to be extended for one year solely at the direction of the Managing Committee. During or at the expiry of the said period of probation or

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the extended period of probation, the Managing Committee shall have the right to terminate your services without assigning any reason. **You will continue to be on the probation till your services are confirmed in writing by the Managing Committee."**

8. Appointment letter dated 04.04.2011 reads as under:

"Ref. No. STTHMS/18//2011 Dated : 04 April, 2011

To,

Shri Manish Kaushik
S/o Shri Sugreev Kaushik
VDP, Dhnsa, New Delhi-110073.

SUB. : APPOINTMENT LETTER

Madam/Sir,

This is with reference to your interview for the post of PET in this school, I am pleased to inform you that you have been selected for the post in the pay scale of Rs.12450 + 4660. The appointment will be governed by DSER and rules 1973 framed there under. **Further, you are informed that your appointment will be on probation period for one year and thereafter on being satisfied, the Managing Committee will review your work for regularization of your service.**

You are requested to join by 04.04.2011 (Forenoon) along with your acceptance in writing.

Sd/-
Manager
St. Thomas School
Divya Guatam
Goyla Vihar, Near Sec. - 19,
Dwarka, New Delhi-71"

9. Relevant part of Contract of Service reads as under:

"1. The Party No. 1's employment shall begin from the 4th day April, 2011. He shall be employed in the first instance on probation for a period of one year/on temporary basis in the pay scale of Rs.12540 + GP Rs.4600 plus allowances in accordance with the rates as prescribed by the State / Central Govt. from time to time and applicable to his case. The period of probation may be extended by the Managing Committee for a further period not exceeding one year. The total probationary period shall not in no case exceed two years."

10. Learned counsel for the appellant argued that as per appointment letter dated 04.04.2011 the initial period of probation was for one year and the Managing Committee was empowered to extend the period of probation for a period of one year and in any case the probation period was to extend two years. Counsel for the appellant has placed reliance on a decision passed by the Apex Court in *Jai Prakash Vs. School Management of ITL Public School & Anr. Reported in (2015) 222 DLT 157 (DB)* wherein three situations may arise, have been discussed, which read as under:

- i) First, where in the service rules or in the letter of appointment a period of probation is specified with a power to extend the same without prescribing any maximum period of probation and no order is passed confirming the probationer.

- ii) The second situation is where the rules for initial probation and extension thereof provide a maximum period it is not permissible to extend the probation; and
- iii) The third is where the rules prescribe a maximum period of probation but also require a specific act on the part of the employer to issue an order confirming the appointment.

11. Learned counsel for the appellant submits that the case of the appellant would fall within the aforesaid second category and having been completed 2 years 11 months on probation, no further extension of probation was required and the services of the appellant deemed to have been confirmed.
12. Having said so, though the appellant worked beyond the period of two years, a written communication by the Managing Committee of respondent school was mandatory in view of the joint reading of Terms and Conditions dated 28.03.2011 and Contract of Service dated 04.04.2011. The respondent school chose not to confirm the services of the appellant in writing. The case of the appellant does not fall within the category of 'Deemed Confirmation' and therefore the respondent school was well within their right to terminate the services of the appellant.
13. In the instant case, the appellant was appointed as PET and his probation period commenced on 04.04.2011 for a period of one year which continued for two years as per the terms of Contract of Service.

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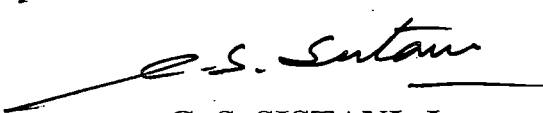
In our view, the case of the appellant falls under third category as it is categorically stated in the Terms and Conditions of Appointment that *"You will continue to be on the probation till your services are confirmed in writing by the Managing Committee."* A joint reading of Terms of Contract of Service and Terms and Conditions of Appointment goes to show that a written confirmation is required by the Managing Committee of the respondent/school to confirm the services of the appellant.

14. The Apex Court in case of ***Head Master, Lawrence School, Lovedale Vs. Jayanthi Raghu and Anr.*** reported in (2012) 4 SCC 793, has held that if in the relevant rule even if a maximum period of probation is provided yet, if the self same rule uses the expression 'if confirmed', there is no automatic or deemed confirmation after the maximum period of probation, and there would be required a specific order of confirmation of an employee.
15. The above ratio was followed in ***Hamdard Public School (Supra)***, wherein, it was held that *"Neither the main body of Sub- Rule 1, nor the first proviso, provides for a maximum period of probation, and also they do not provide for automatic or deemed confirmation."*
16. Admittedly, the appellant was appointed as PET on 04.04.2011 and terminated on 18.03.2014 from the services. A bare reading of Terms and Conditions of the service makes it abundantly clear that there is no deemed confirmation and confirmation will only take place when a specific order in writing is passed confirming the services of the

appellant. In the absence of any written communication by the respondent, the appellant cannot be said to have completed the probation unless a specific order to that effect is passed.

17. We do not find any illegality in terminating the services of the appellant and infirmity in the order passed by the learned Single Judge.


SANGITA DHINGRA SEHGAL, J.


G. S. SISTANI, J.

JULY 23, 2018
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