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

Date of decision: 24.07.2019

+ W.P.(C) 8141/2017 & CM APPL. 33486/2017

KULACHI HANSRAJ MODEL SCHOOL & ORS Petitioners

Through Mr.Himanshu Naniwal, Adv.

versus

YASHU SAYAL & ANR

..... Respondents

Through Mr.Prateek K. Chadha, Adv. for R-2.
Mr.Ashok Aggarwal, Adv. with
Mr.Anuj Aggarwal & Mr.Kumar
Utkarsh, Advs. for R-1.
Mr.K.P. Tevathia, LA for DoE.

+ W.P.(C) 8155/2017 & CM APPL. 33510/2017

KULACHI HANSRAJ MODEL SCHOOL & ORS Petitioners

Through Mr.Himanshu Naniwal, Adv.

versus

KIRTI JAIN & ANR

..... Respondents

Through Mr.Atul Jain, Adv. with Mr.Jatin
Goel, Adv. for R-1.
Mr.K.P. Tevathia, LA for DoE.
Ms.Nidhi Raman, Adv. for R-2.

+ W.P.(C) 8171/2017 & CM APPL. 33569/2017

KULACHI HANSRAJ MODEL SCHOOL & ORS..... Petitioners

Through Mr.Himanshu Naniwal, Adv.

versus

NEENA JAJODIA & ANR

Through

..... Respondents

Mr.Ashok Aggarwal, Adv. with
Mr.Anuj Aggarwal & Mr.Kumar
Utkarsh, Adv. for R-1.

Ms.Jyoti Taneja, Adv. for GNCTD.

Mr.K.P. Tevathia, LA for DoE.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

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

1. Since the facts and issues of these petitions are same and similar, therefore, this Court has decided to dispose of the same by common judgment.
2. For the convenience of the court, facts of W.P.(C) 8141/2017 shall be discussed and for the sake of brevity, the facts of the other cases shall not be discussed in this judgment.
3. Vide the present petition, the petitioner seeks direction thereby setting aside the impugned order dated 01.05.2017 as passed by the Delhi School Tribunal in the Appeal No.60 of 2015.
4. The case of the petitioner is that on 22.09.1988, the land on which the Hansvatika Day Boarding School (hereinafter referred to as petitioner no.3) school is built was allotted to the DAV College Managing Committee (hereinafter referred to as petitioner no.2) by the Government. On

03.09.2001, National Council for Teachers Education issued a letter stating the qualification for recruitment of teachers in educational institutions. The letter and schedules provide the basic education requirement for employment to Upper Primary Middle School, is Bachelor of Education. The Report of the 6th Pay Commission was published in the month of March, 2008. The Respondent no.2 vide its order dated 11.02.2009 directed all the recognized unaided private schools in the National Capital Territory of Delhi for the implementation of the recommendations of the 6th Central Pay Commission w.e.f. the academic session 2008-2009. The respondent no.2 issued a letter thereby refusing to grant recognition to the petitioner no.3, making it amply clear that the petitioner no. 3 remains unrecognized till date and is not covered under the provision of Section 10(1) of the Delhi School Education Act, 1973. On 20.05.2014, the respondent No. 1 applied for an issue of NOC from the management of petitioner No.3 to apply for the post of Nursery Teacher in the petitioner no.1 school, vide her application dated 20.05.2014, in response to the Newspaper notice advertisement in May, 2014. Petitioner no.3 issued the NOC as requested by the respondent no.1 on 29.05.2014. The said respondent in response to newspaper advertisement by the petitioner no.1, appeared for the interview

along with the NOC from the petitioner No.3. The respondent no.1 was selected for Nursery Teacher post and appointment letter dated 17.10.2014 was issued to her. On 14.10.2015, the above respondent had obtained her degree of B.Ed., by misrepresenting to the University. The act of the respondent no.1 involved moral turpitude, breach of trust and exhibiting a conduct of unbecoming an employee of the appellant, therefore, she was chargesheeted for the said misconduct and after holding an enquiry, the Enquiry Officer held her guilty of misconduct vide enquiry report dated 14.10.2015. Thereafter, on 17.10.2015, a memorandum was issued to the respondent no.1 along with the report of the Enquiry, which was replied vide her letter dated 28.10.2015. After considering the respondent no. 1 letter dated 28.10.2015, a letter for penalty of "*Removal from the service which shall not be a disqualification from the future employment*" was imposed on the respondent with immediate effect.

5. Being aggrieved, the respondent no.1 challenged the same in Delhi School Tribunal in Appeal No.60/2015 on the ground that respondent no.1 appellant was an employee of petitioner no.1 School, however, petitioner no.3 School can neither initiate inquiry proceedings against her nor can terminate/remove the respondent no.1 from the service. Consequently, it was

held that the impugned order dated 02.11.2015 of the removal of respondent no.1 appellant and all other proceedings were void-ab-initio. Consequently, the aforesaid order had been set aside with cost of ₹33,000/- to be paid by petitioner nos.1 & 2 to the respondent no.1 appellant.

6. The petitioner nos.1 & 2 were further directed to reinstate the respondent no.1 within one month from the date of the order. Respondent no.1 would also be entitled for full salary from the date of the order passed by the Tribunal with all consequential benefits.

7. The learned Tribunal, with respect to the back wages in view of Rule 121 of Delhi School Education Act and Rules 1973, the respondent no.1 was directed to make exhaustive representation to the petitioner nos.1 and 2 within a period of 4 weeks from the date of the order, as to how and in what manner the respondent no.1 would be entitled to complete wages. The petitioner nos.1 and 2 were directed to decide the representation given by the respondent no.1 within 4 weeks of receiving the same by way of a speaking order and to communicate the order along with the copy of the same to the respondent no.1.

8. The case of the respondent no.1 before the Tribunal was that she was appointed as a Nursery Teacher vide appointment letter dated 23.06.1997,

on probation for one year in petitioner no.1 school. Respondent no.1 was confirmed on the post of Nursery Teacher vide confirmation letter dated 16.03.1999 in the petitioner no.1 School w.e.f. 04.07.1998. From the date of her initial appointment, she had been continuously working as an employee of petitioner No. 1 School till her service was terminated w.e.f. 02.11.2015. Respondent no.1 was never an employee of petitioner no.3 school.

9. The Directorate of Education vide its circular dated 11.02.2009 directed all the recognized unaided schools to implement the recommendations of 6th Pay Commission. However, petitioner no.1 School continued to pay to the respondent no.1 in terms of the pre-revised scale. Respondent no.1 made several representations to petitioner no.1 School to revise her pay and emoluments as per the recommendations of 6th Central Pay Commission. However, petitioner no.1 School had not followed the directions of the circular of Directorate of Education to implement the recommendations of 6th Pay Commission. On 24.12.2014, respondent no.1 preferred to resign from her post and submitted her resignation letter dated 24.12.2014 to the principal of the school. On 22.01.2015, respondent no.1 through her Counsel served a legal notice dated 22.01.2015 to petitioner

no.1 School demanding the revision of pay scale in terms of 6th Pay Commission.

10. In the month of April 2015, respondent no.1 filed a W.P.(C) No. 3573/2015 for issuance of directions to petitioner no.1 School to implement the recommendations of 6th Central Pay Commission to the respondent no.1 w.e.f. 01.01.2006 and also to pay the arrears of the difference of the salary and allowances. Petitioner no.1 in order to avoid the payment of legitimate dues to the respondent no.1 got issued a memorandum dated 15.04.2015 through petitioner No.3 School having various allegations against her. Respondent no.1 replied the memorandum vide her reply dated 30.04.2015 to the Chairman of petitioner no.1 School.

11. In the month of May, 2015 in total disregard to the objections raised by the respondent no.1, petitioner no.1 school initiated the inquiry against the respondent no.1 and conducted various hearings on 11.05.2015, 18.05.2015, 08.06.2015, 22.06.2015 and 30.06.2015. The Inquiry Officer submitted his report on 14.07.2015. A memorandum directing the respondent no.1 to show cause as to why a penalty of removal from service which shall not be a disqualification for future employment may not be imposed upon her. Respondent no.1 replied to the memorandum vide her

reply dated 05.10.2015 addressed to chairman of petitioner no.1 School. Thereafter petitioner no.3 School without considering the reply of the respondent no.1 dated 05.10.2015 issued the order dated 02.11.2015 imposing penalty of removal from the service which shall not be a disqualification for future employment.

12. Further case of the respondent no.1 is that the order dated 02.11.2015 passed by petitioner no.3 school is illegal because respondent no.1 was never an employee of petitioner no.3 School but of petitioner no.1 School. The disciplinary authority was constituted in violation of Rule 118 of DSEAR, 1973. Inquiry was not conducted according to the provisions of Rules 118 and 120 of DSEAR, 1973 and following the principle of natural justice.

13. Further case of the respondent no.1 is that she had committed no misconduct by doing her B-Ed. as per Rule 123 of DSEAR, 1973. The punishment of removal from the service was disproportionate to the alleged gravity of misconduct. The respondent no.1 was duly qualified for the post of nursery teacher. Thus, the respondent no.1 filed the appeal before the Tribunal for setting aside the aforesaid order being illegal and arbitrarily.

14. The case of the petitioners is that the order dated 01.05.2017 passed by the learned Presiding Officer suffers from conjunctures and surmises, and errors are apparent on the face of it. The learned Presiding Officer of the Tribunal while passing impugned order dated 01.05.2017, failed to appreciate the fact that the appeal as filed by respondent no.1 is not maintainable against the petitioners as the respondent no.1 was a teacher of petitioner no.3 unrecognized school, where untrained teachers conduct pre-primary classes which is not amenable to appeal under Section 8 (3) Delhi School Education Act, 1973 and the rules framed thereunder.

15. Further case of the petitioners is that learned Presiding Officer while passing impugned order dated 01.05.2017, failed to appreciate the scope of section 8(3) of Delhi School Education Act, 1973 as enunciated by the Apex Court in ***Principal & Ors. vs. Presiding Officer and Ors.:(1978) 2 S.C.R. 507*** whereby it is observed as under:

"From the above definitions, it is clear that no school can be treated as a 'recognised school unless it is recognised or acknowledged by the 'appropriate authority'. In case of the School in question, it is the A Administrator or the officer authorised by him who could accord recognition to it. To clothe it with that status, it is essential that it should have been a 'recognised private school' as contemplated by the Act. Nothing has, however, been brought to our notice to show- that it was an 'existing school' as defined in section 2(1) of the Act. In view of all

this, we have no hesitation in holding that the School was not a 'recognised private, school on the relevant date and was, therefore, 'not an-, enable to the provisions of the Act."

16. Counsel appearing on behalf of the petitioners submits that learned Presiding Officer while passing impugned order dated 01.05.2017, erroneously relied on a Division Bench judgment of this Court in ***Shaheed Udham Singh Smarak Shiksha Samity (Regd.) & Ors. vs. Mrs. Usha Tyagi & Ors.*** in ***LPA 826/2013*** whilst clearly ignoring the settled law by the Apex Court in ***Principal & Ors. Vs Presiding Officer and Ors. (supra)***.

17. I have heard learned counsel for the parties at length and perused the material available on record.

18. A similar issue came before this court in case of ***Kirti Jain vs. Kulachi Hansraj Model School & Ors. in W.P.(C) 3573/2015*** and the issue before this court was that whether the petitioner therein was an employee of the respondent no.1 school therein or of Kulachi Hansraj Model School petitioner no.3 herein.

19. After hearing learned counsel for the parties, this court recorded an order by allowing the writ petition filed by the petitioners therein as under:

"5. It is also seen from the record that some disciplinary proceedings were initiated against the petitioner on account of the petitioner not being a qualified person

having B.Ed degree for appointment as a teacher and on conclusion of disciplinary proceedings, petitioner was removed from the services by the respondent no.2/Managing Committee DAV College as per the statement made on behalf of respondent no.1/school. Petitioner claims in her defence that for appointment as a nursery teacher no B.Ed degree was required. The issue of removal of the petitioner is now the subject matter of the appeal filed by the petitioner before the Delhi School Tribunal. I am stating these facts only for the purpose of narration because it is to be noted that the order of removal from services of the petitioner allegedly with Kulachi Hansvatika Day Boarding School is dated 2.11.2015, but the petitioner only claims monetary emoluments till 25.3.2015 when petitioner is said to have resigned from services with the respondent no.1/school.

6. I have already reproduced above the letters dated 23.6.1997 and 16.3.1999 which are issued by the respondent no.1/school and these letters are admitted documents because it is not the case of the respondent no.1/school that petitioner has forged and fabricated these documents. The letter dated 23.6.1997 and the confirmation certificate dated 16.3.1999 show that both these letters have been issued by the respondent no.1 i.e. Kulachi Hansraj Model School. The first part of the letter dated 23.6.1997 also shows that petitioner had applied for the post of Nursery Teacher with the respondent no.1/school and to which post she was appointed i.e. as a Nursery Teacher of the respondent no.1/school. I therefore cannot agree that there is a disputed question of fact once the letters of the respondent no.1/school dated 23.6.1997 and 16.3.1999 are admitted by the respondent no.1/school itself. Petitioner was therefore a teacher appointed by and to the respondent no.1/school.

7. Respondent no.1/school can derive no benefits from the three letters; one undated, second dated 8.8.2005, and the third dated 29.6.2006 relied upon by it, inasmuch as, all

the three letters are addressed by the petitioner to the respondent no.1/school. If the petitioner was not an employee of the respondent no.1/school, then, there was no need to address these letters to the respondent no.1/school. Of course, petitioner can be said to be teaching as stated in these letters at Kulachi Hansvatika Da- Boarding School, however, it is the privilege of the employer to see where the services of the employee can be utilized, but that would not in any manner derogate from the fact that petitioner was in fact appointed by and therefore an employee of the respondent no.1/school. For what purpose respondent no.1/school took signatures on provident fund form mentioning the name of the school of the petitioner as Kulachi Hansvatika Day Boarding School is not understood by this Court inasmuch as once the petitioner was appointed to the respondent no.1/school and such services have statutory protection in view of the Supreme Court judgment in the case of Management Committee of Montfort Senior Secondary School Vs. Vijay Kumar and Others, (2005) 7 SCC 472, respondent no.1/school could not have committed a fraud on statute by allegedly claiming that petitioner was not a teacher in the respondent no.1/school but was a teacher with Kulachi Hansvatika Day-Boarding School. I may also note that petitioner with her rejoinder affidavit has filed various pay slips for months each of the years 2004 and 2005 and which show that petitioner received her salary as an employee of the respondent no.1/school. Therefore, in my opinion, respondent no.1/school by alleging existence of disputed question of fact only to suit the respondent no.1's convenience cannot cast a cloud at the status of the appointment of the petitioner as a Nursery Teacher with the respondent no.1/school. I therefore reject the argument of the respondent no.1/school that petitioner was not an employee of the respondent no.1/school.

8. (i) The fact that schools in Delhi have to pay the teachers' salaries as per the 6th Pay Commission Report

cannot be doubted in view of the order of the DOE dated 11.2.2009, and therefore, petitioner will be entitled to her salary from the date when 6th Pay Commission Report became applicable to private schools in Delhi including the respondent no.1/school, and therefore the respondent no.1/school is directed to pay all the arrears which are due and payable to the petitioner by giving monetary emoluments in terms of 6th Pay Commission Report. However, since principles of the Limitation Act, 1963 apply to writ petitions by virtue of the judgment of the Supreme Court in the case of State of Orissa and Another Vs. Mamta Mohanty (2011) 3 SCC 436 accordingly petitioner will only be entitled to amounts of arrears for a period of three years i.e. from the date of three years before filing of the writ petition and which has been filed on 9.4.2015 and till the date of resignation of the petitioner on 25.3.2015. (ii) I cannot agree with the contention urged on behalf of the counsel for the petitioner that since representations were made by the petitioner on 14.2.2011 and 11.5.2012, hence petitioner is entitled to extend the period of limitation, inasmuch as, mere pendency of the representations will not extend the period of limitation unless there was an acknowledgment by the respondent no.1/school that representations were pending favorable consideration.”

20. Being aggrieved by the order dated 01.03.2017 passed in W.P.(C) 3573/2015, petitioner no.1 and others filed appeal vide LPA No.295/2017 and the same was dismissed by detailed judgment dated 19.07.2018.

21. Being aggrieved again, the petitioners herein challenged the same before the Hon'ble Supreme Court of India in SLP(Civil) No.7894/2019 and the same was dismissed vide order dated 01.04.2019. Thus, the issue raised

in the present petition has already attained finality. Thus, this court is of the considered opinion that when the private respondents were an employee of petitioner no.1 school, petitioner no.3 school can neither initiate inquiry proceedings against them nor can terminate/remove the respondents from the service. The impugned orders of removal of the respondents and all other proceedings are void and *ab initio*. In these circumstances, the DST accepted the appeal of the respondents with cost. Therefore, I find no merit in the present petitions and the same are, accordingly, dismissed.

22. Since the writ petitions have been dismissed by this court, therefore, the petitioners school are directed to allow the respondents to join and the directions passed by the Tribunal be complied with. To this effect, the joining letter will be issued within one week from the receipt of this order.

23. Since the issue raised in these petitions are already attained finality, then on the day when SLP was filed, the petitioners herein were supposed to withdraw these petitions.

24. At this stage, counsel for the petitioners submits that he did not have the instructions to withdraw these petitions. Thus, it is the fault of the petitioners who have wasted the public time, therefore, I hereby impose cost of ₹25,000/- each on the petitioners and out of the cost, ₹10,000/- each shall

be given to the private respondents and rest of the amount shall be deposited in favour of Delhi High Court Legal Services Committee within two weeks from the receipt of this order, failing which the Registrar General of this court shall take steps to recover the cost as per law.

25. I hereby make it clear that this cost shall be cumulative in all three matters, however, the petitioners need not deposit the cost separately in each case.

26. Pending applications stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 24, 2018
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