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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 27.08.2020

Pronounced on: 09.09.2020

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W.P.(C) 4951/2020 & C.M. No.17880/2020

RITU HOODA

....Petitioner

Through Ms. Shantha Devi Raman,
Advocate

versus

DIRECTORATE OF EDUCATION & ORS.Respondents

Through Ms. Vibha Mahajan, Advocate for
R-1 & 2
Mr. Rohit Bhardwaj, Adv. for R-3

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W.P.(C) 4201/2020 & C.M. No.15089/2020

PRAGYA GUPTA

.....Petitioner

Through Mr. Aman Panwar, Mr. Mudit
Gupta and Mr. Harsh Gattani,
Advocates

versus

DIRECTORATE OF EDUCATION & ORS.Respondents

Through Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh and
Ms. Palak Rohmetra, Advocates
for R-1 & 2
Mr. Rohit Bhardwaj, Adv. for R-3

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. In both these petitions the Petitioners lay a challenge to the order dated 23.06.2020 and seek a direction to the Respondents to reinstate the Petitioners with continuity of service and consequential benefits accruing from the same. In W.P.(C) 4951/2020, the Petitioner has additionally assailed the order dated 25.06.2020. Due to the similitude of the issues involved in the petitions and the impugned order being the same, the petitions are being decided by a common judgement.

2. For the sake of convenience, the Petitioner in W.P.(C) 4951/2020 is being referred to as Petitioner No.1 and the Petitioner in W.P.(C) 4201/2020 is being referred to as Petitioner No.2 hereinafter.

3. The case as set up by the Petitioner No.1 is that on acquiring Bachelor Degree in Physical Education and being qualified and eligible to apply for the post of PET (Physical Education), Petitioner No.1 applied for the said post in response to an advertisement dated 09.04.2018 issued by Respondent No.3 (hereinafter referred to as School). She was asked to remain present with her original testimonials for verification of the documents at the School on 29.05.2018. Certificates of the Petitioner were duly verified by the concerned officials of the School and she was informed to appear for the interview on 18.06.2018. On successful clearing of the interview, offer of appointment dated 31.07.2018 was issued by the School and Petitioner was directed to join the School on 13.08.2018.

4. As per the terms of the Offer Letter, Petitioner No.1 was to be placed on probation for a period of one year. On receipt of the Offer

Letter, with the hope of a bright career and future ahead, Petitioner No.1 joined the School as PET on 13.08.2018 and started discharging her duties with utmost dedication.

5. At the time of appointment, an undertaking was taken from Petitioner No.1 that her appointment shall be subject to approval of Respondent Nos.1 and 2/ Director of Education (hereinafter referred to as DOE) as this was the requisite procedure as per law and that the formality shall be completed in a few months. However, the appointment was not approved and Petitioner No.1 did not receive her salary for August 2018 till October 2019. Various representations for release of salary were of no avail.

6. It is the case of Petitioner No.1 that in August 2019 she was informed that vide letter dated 30.07.2019 DOE had approved her appointment. Vide letter dated 20.08.2019 Petitioner No.1 requested for a copy of the approval letter.

7. In August 2019 itself the School informed Petitioner No.1 that since her appointment had been approved, she should submit duly filled up New Pension Scheme and HRA Forms. An employee ID was also allotted to her and an online account was created. She started marking her attendance on the online portal which was directly connected to the official website of DOE. Finally, the salary of Petitioner No.1 pending for 13 months was paid to her on 17.10.2019. Subsequently, however, in December 2019 payment of salary was again stopped. This constrained Petitioner No.1 to file a writ petition in this Court being W.P.(C) 3345/2020 and Court vide order dated 04.06.2020 directed the Respondents to release her salary within four weeks.

8. While Petitioner No.1, according to her, was awaiting the release of her emoluments, on 26.06.2020, received the impugned order dated 23.06.2020, which revealed that an Enquiry Committee had been constituted to enquire into the recruitment process. Committee submitted its report on 08.01.2019, finding certain irregularities in the recruitment process. As per the order, a Show Cause Notice had been issued to the School as to why the selection should not be considered void *ab initio* and after considering the reply, the Competent Authority decided that the entire selection process and the appointment of the 5 teachers recruited thereunder was illegal and declared the same to be void *ab initio*. DOE directed the School to cancel the appointments made pursuant to the said selection process. Consequent to the directions of DOE, the School issued an order dated 25.06.2020, declaring the selection process and the appointments void *ab initio* and discontinuing the services of Petitioner No.1.

9. The narrative of facts as given above is same in respect of Petitioner No.2, except for qualifications and the post on which she was appointed and is thus not repeated for the sake of brevity. Distinct fact that needs a mention is that Petitioner No. 2 being a Graduate in Home Science and having a B.Ed. Degree as well as Post Graduate Diploma in Dietetics and Public Health Nutrition was appointed with the School to the post of TGT (Home Science) in August 2018 and continued serving the School, till passing of the impugned order.

10. Petitioners have taken several grounds in the writ petitions assailing the impugned orders, on merits. Counsel appearing on behalf of the School argued that the School had received an order dated

23.06.2020 from the DOE informing the School that the entire process of recruitment/selection and appointments of the five directly recruited teachers was treated as void *ab initio* and therefore cancelled. School was directed that all candidates who had been issued appointment letters as a consequence of the said selection process must be terminated and a fresh recruitment process be held in accordance with law. Pursuant to the said order and direction of the DOE, the School vide order dated 25.06.2020 discontinued the services of the Petitioners with effect from 23.06.2020, the date of issue of the order by DOE. He submits that the action of the School is only a consequence of the process of selection being declared as void *ab initio* and refusal to grant approval by DOE and cannot be faulted.

11. Learned counsels Mrs. Ahlawat and Ms. Vibha Mahajan appearing for DOE at the outset took a preliminary objection to the maintainability of the present petitions before this Court. It was argued that the remedy of the Petitioners to challenge the impugned orders is only by way of an Appeal before the Delhi School Education Tribunal (hereinafter referred to as ‘Tribunal’) constituted under Section 11 of the Delhi School Education Act and Rules, 1973 (hereinafter referred to as ‘Act’). In support of the said contention, learned counsels placed reliance on the judgement of the Supreme Court in ***Shashi Gaur vs. NCT of Delhi, [(2001) 10 SCC 445]*** wherein the Supreme Court has held that all kinds of termination except where the service comes to an end by efflux of time, are amenable to be challenged before the Tribunal. Learned counsels further contended that in several cases, Co-ordinate Benches of this Court, following the judgement in ***Shashi Gaur (supra)*** have

repeatedly held that all modes of termination, excluding the exception carved out by the Supreme Court, can only be assailed, by way of an Appeal, before the Tribunal and that the High Court in a writ petition under Article 226 of the Constitution of India cannot directly entertain a challenge to the termination order. Reliance is placed on the following judgements of this Court :-

1. ***Hem Singh vs. Army Public School in WP (C) No. 1184/2010 decided on 01.11.2010.***
2. ***Amar Nath vs. Director of Education, Govt. of NCT of Delhi and Ors. in CWP No. 970/2003 and CM No. 1496/2003 decided on 21.07.2003.***
3. ***GD Goenka Public School and Ors. vs. Vinod Handa and Ors. 262 (2019) DLT 154.***
4. ***Maharaja Agarsain Education Society and Ors. vs. Mithlesh Gupta and Ors. in W.P. (C) 2518/2012 and CM 5392/2012 decided on 30.09.2013.***
5. ***Daya Nand Adarsh Vidyalaya vs. Deepa Chibber & Anr. W.P.(C) 1009/2012 decided on 19.09.2013.***

12. Controverting the preliminary objection, learned counsels for the Petitioners contended that the preliminary objection is totally misconceived and the Petitions are liable to be entertained and heard on merits. Twofold arguments were raised in opposition to the argument of maintainability.

13. The first contention was that a bare perusal of Section 8(3) of the Act leaves no doubt that the provisions confer jurisdiction on the

Tribunal only in cases where the action is taken or the penalty is imposed by the 'Management of the School' against a 'teacher/employee'. In the present case, there exists no dispute between the Petitioners and the Management of the School as the latter neither took any initiative to cancel the process of selection nor imposed any penalty pursuant to any action initiated by it. The Management has only conveyed that it was discontinuing the services of the Petitioners on account of a direction to do so by the DOE. The DOE passed the impugned order dated 23.06.2020 on a complaint made by some unsuccessful candidates and illegally held that the recruitment process was vitiated and the appointments were void *ab initio*. In fact, a show cause notice was issued to the School who had clearly explained that the selection process was in accordance with the Rules, norms and procedures required to be followed. Therefore, the dispute, if any, was between the Petitioners and the DOE, which does not fall within the purview of provisions of Section 8 (3) of the Act, so as to oust the Petitioners from the writ jurisdiction of this Court.

14. Learned counsels placed reliance on the judgement of the Full Bench of this Court in ***Presiding Officer Delhi School Tribunal vs. GNCTD [2011 (124) DRJ 513 (FB)]*** wherein the Full Bench has held as under:-

“15. To have a complete and correct picture of jurisdictional facet of the tribunal more so after the decision rendered in T.M.A Pai Foundation (supra) it is apposite to refer to para 64 of the said decision. It reads as follows:

“64. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted,

and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the Management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a Court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a Civil Court for the purpose of seeking redress is not in the interest of general education. **Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal,** unless there already exists such an educational Tribunal in a State - the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in

number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the Government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.”

15. The second contention of the learned counsels for the Petitioners was that Section 8 (3) of the Act provides for an Appeal against an order of dismissal, removal or reduction in rank and not against any order of termination. It is argued that Sub-section (2) of Section 8 of the Act, provides for obtaining prior approval of the Directorate before dismissal, removal or reduction in rank or otherwise terminating the services of an employee of a recognized private school. The expression ‘otherwise termination’ which occurs in Sub-section (2) is conspicuously absent in Sub-Section (3) which demonstrates that against an order of termination, which does not come within the expression ‘dismissal, removal or reduction in rank’, the Legislature did not intend to provide an Appeal to the Tribunal, constituted under Section 11 of the Act.

16. Learned counsels in support of the submission relied on the observations of the Supreme Court in ***The Principal and Others vs. The Presiding Officer and Others, 1978 SCC (L&S) 70; [1978 (1) SCC 498]*** where the Court had observed that for applicability of Section 11 of the

Act, twin conditions must co-exist (1) the employee should be an employee of a recognized private school and (2) that he should have been visited within either of the three major penalties i.e. dismissal, removal or reduction in rank. Relevant para reads as under:-

“8. Re Point 3: Under sub-section (3) of section 8 of the Act it is only an employee of a recognised private school against whom an order of dismissal, removal or reduction in rank is passed who is entitled to file an appeal against such order to the tribunal constituted under section 11 of the Act within three months from the date of communication to him of the order. For the applicability of this Provision of the Act, two conditions must co-exist. These are (1) that the employee should be an employee of a recognised private school: and (2) that he should be visited with either of the three major penalties of dismissal, removal or reduction in rank. As the school was neither a recognised private school on the relevant date nor was the impugned order one of dismissal, removal or reduction in rank but was an order simpliciter of termination of service, the aforesaid appeal filed by Respondent 2 to the Tribunal constituted under Section 11 of the Act was manifestly incompetent and the order passed therein by the Tribunal was clearly without jurisdiction.”

17. Learned counsels also placed reliance on the judgement of the Full Bench of this Court in ***Presiding Officer 2011 (supra)***, more particularly the questions framed by the Full Bench and paragraphs 24, 25 and 31 which are as follows:-

“2. ...The questions those have been referred by the tribunal are as follows:

“(i) As to whether this Tribunal has jurisdiction to deal with all the grievances of school teachers and employees including minor penalties as defined in Rule 117 (a) of the Delhi School Education Rules,

1973 in view of the judgment of the Hon"ble Supreme Court in "T.M.A. Pai foundation and Others vs. State of Karnataka" (supra).

(ii) If your Lordships reach to a conclusion that this Tribunal has the jurisdiction in case of all grievances of the teachers and employees of recognized schools, then the pending matters before various Benches of Hon"ble High Court of Delhi filed by the aggrieved teachers/employees may please be transferred to Delhi School Tribunal for their disposal as per law; and

(iii) Either declare Delhi School Tribunal as a "Court" under the Contempt of Courts Act or direct the Administrator to frame rules for implementation of Section 27 of the Delhi School Education Act, 1973 or to devolve power of a Civil Court under Order XXI of Code of Civil Procedure, 1908 on this Tribunal to enable enforcement of judgments and orders passed by the Tribunal."

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24. In the case at hand, if the provisions under Sections 8(3) and 8(4) are scanned, it is luminously clear that the provision of appeal is a restricted and constricted one. The legislature has laid down that an employee can prefer an appeal if he is dismissed, removed or reduced in rank. The Apex Court in Shashi Gaur (supra) after analysing the subtle facets of subsections 2 and 3 of Section 8 expressed the view that the statute has provided for a tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. Their Lordships ruled that an appeal would lie against an order not only of dismissal, removal or reduction in rank which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially appointed.

25. *In view of the restricted provision, the right to prefer an appeal by the particular categories of employees and relating to the particular lis its spectrum cannot be enlarged as that would cause violence to the provision. It is well settled in law that where the language of the Statute is plain and clear and does not permit any other kind of interpretation, the same has to be strictly interpreted and we are disposed to think that the said principle is attracted to the case at hand.*

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31. *In view of our preceding analysis, we answer the question No.(i) that Delhi School Tribunal has no jurisdiction to deal with all the grievances of the school teachers and employees including minor penalties as defined in Rule 120(3) of the Rules. That apart a matter of suspension or a prolonged suspension cannot be a matter of challenge before the tribunal as that has not been so envisaged or in the provision of appeal. In the absence of such engrafting, it is difficult to clothe the appellate tribunal with such jurisdiction.”*

18. Emphasis was placed on the observations of a Co-ordinate Bench of this Court in ***Yenni Srinivasa Rao vs. Andhra Education Society (regd.) & Anr. (2011) 124 DRJ 625***, wherein the Court was dealing with a similar issue. Petitioners were discharged from service on account of being ineligible for appointment and the appointments were cancelled as being erroneous and under a mistaken belief. Relying on the decision of the Full Bench in ***Presiding Officer 2011 (supra)***, Court held that Petitioners could not be said to be the employees of a School, who have been dismissed or removed and therefore the remedy of an Appeal was not available to them. Relevant paras are as follows:-

“12. I will first take up the aspect of maintainability of the writ petitions owing to the availability of the alternative remedy of

appeal before the Delhi School Tribunal. Section 8(3) of the Delhi School Education Act, 1973 provides for the remedy of appeal to any employee of a recognized private school who is dismissed, removed or reduced in rank. Though the Division Bench of this Court in Kathuria Public School v. Director of Education, 123 (2005) DLT 89 (DB) : 2005 (83) DRJ 541 [DB] had held that the said remedy of appeal is available against all grievances of the employees but the Full Bench of this Court in O.REF. 1/2010 titled Presiding Officer Delhi School Tribunal v. Govt. of NCT of Delhi decided on 27th August, 2010 has held that the remedy of appeal to the Tribunal under Section 8(3) (supra) is available only to employees who are dismissed, removed or reduced in rank.

13. The petitioners in the present case have been discharged from service for the reason of being not eligible for appointment and/or their appointment being erroneous and/or under a mistaken belief. That being the stand of the respondents and which is to be adjudicated, strictly speaking the petitioners cannot be said to be employees of a school who have been dismissed or removed, for the remedy of appeal to be available to them. Even otherwise, I am of the opinion that the writ petitions having been entertained and the interim relief having been granted and arguments on merits having been heard and entailing questions of reservation, it is not deemed expedient to football the petitioners to the Delhi School Tribunal. Thus it is deemed expedient to entertain the writ petitions.”

19. Learned counsels for Petitioners also placed reliance on the judgement of this Court in **Kiran Jain vs. Government of NCT of Delhi and Others** in **WP(C) No. 10549/2018, decided on 01.10.2019** and argued that in the said case the services of the Petitioner were terminated on account of certain irregularities in the procedure of appointment and that the petition was entertained by this Court, although it was dismissed on merits. Reliance was also placed on another judgement of this Court

in *Chairman, Managing Committee Bhai Biba Singh Khalsa Sr. Secondary School and Ors. vs. Director of Education, Govt. of NCT of Delhi and Ors.* in *W.P.(C) No. 7733 of 2013* and a connected batch of petitions decided on 21.03.2017, wherein DOE had rejected the appointments of the Petitioners again on certain irregularities in the selection process and the petitions were decided on merits by this Court.

20. In so far as the judgement in *Shashi Gaur (supra)* is concerned, the same is sought to be distinguished on the ground that the action challenged by the Petitioners in the said case was an act of termination by the Management as is evident from reading para 7 of the judgement and in that view of the matter, the Court had held that the Statute provided a remedy to the teachers to approach the Tribunal when they are taken out of service by the caprices and whims of the Management of the private institutions. In the present case, the impugned action is the direction of cancellation of the appointments of the Petitioners by the DOE and the Management has only communicated the same and discontinued the services as a consequence of the directions. On account of this crucial difference in fact and law, the ratio of the judgement in *Shashi Gaur (supra)* shall not apply to the present petitions. In view of the judgement of the Full Bench and the Co-ordinate Bench referred to and relied upon by the Petitioners, it is strenuously argued that the Petitioners herein were neither dismissed nor removed from service and therefore, they are not amenable to the jurisdiction of the Tribunal and the appropriate remedy is a writ petition under Article 226 of the Constitution of India.

21. I have heard the learned counsels for the parties and examined their rival submissions.

22. In order to decide the jurisdiction of this Court to entertain the present petitions it is significant to examine the provisions of the Section 8 (3) of the Act. Section 8 (3) of the Act is as under:-

“8. Terms and conditions of service of employees of recognised private schools -

(3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.”

23. Section 8 (3) on a nuance scrutiny enables an employee of a recognized private school to appeal against an order dismissing, removing or reducing him/her in rank, before the Tribunal constituted under Section 11 of the Act. Fulcrum of the argument of the Petitioners for not invoking the remedy of an Appeal before the Tribunal is that the Legislature has restricted the scope of penalties which are subject to the appellate jurisdiction of the Tribunal, only to dismissal or removal, as a mode of termination. Since the services of Petitioners have been discontinued due the selection process being declared void and they are not dismissed or removed, the remedy of writ is the appropriate remedy. No doubt, the argument does Appeal in the first blush, but in my view cannot be accepted.

24. Supreme Court in the case of ***Shashi Gaur (supra)*** while interpreting sub-Sections (2) and (3) of Section 8 observed that it would be inappropriate to give a narrow construction to sub-Section (3),

thereby taking the teachers whose services were terminated not by way of dismissal or removal, but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. Statute has provided a Tribunal, to confer a remedy to the teachers, who are taken out of service on the whims of the Management of private institutions and Governmental Authorities have been given certain control over them and if an appeal to the Tribunal is not provided to the employee as a remedy, he would have to approach a Court under Article 226 of the Constitution, which is a discretionary remedy. The additional reason that weighed with the Supreme Court, to observe so, was that the remedy of an appeal was a more efficacious remedy. In this background, the Court held that Section 8(3) of the Act provides an appeal for challenging any termination except where the service comes to an end by efflux of time. Relevant paras read as under :-

“5. Mr. Das, the learned senior Counsel appearing for the appellant, contends that Section 8(3) provides for an appeal against an order of dismissal, removal or reduction in rank and not against any order of termination as is apparent from the provisions contained in Sub-section (2) of Section 8, which provides for obtaining prior approval of the Director before dismissal, removal or reduction in rank or otherwise terminating the services of an employee of a recognised private school. The very fact of absence of the expression "otherwise termination" available in Subsection (2) from the provisions of Sub-section (3) clearly demonstrates that against an order of termination which does not come within the expression "dismissal, removal or reduction in rank", the Legislature has not provided for an appeal to the Tribunal constituted under Section 11 of the Act.

6. In support of this contention, the Counsel also placed reliance on Rule 117 Explanation, which indicates that replacement of a teacher who was not qualified on the date of his appointment by a qualified one, will not amount to a penalty within the meaning of the said Rule [see Explanation (c)]. The learned Counsel also placed before us the observations made by this Court in the case of *The Principal and Ors. v. The Presiding Officer and Ors.* MANU/SC/0046/1978 : [1978] 2 SCR 507 wherein this Court had observed that for applicability of the provisions of Section 11 two conditions must co-exist, namely, (i) that the employee should be an employee of a recognised private school and (ii) that he should be visited with either of the three major penalties, i.e., dismissal, removal or reduction in rank.

7. This judgment and the interpretation put to the provisions of Subsections (2) and (3) of Section 8 undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Governmental authorities having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the

present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that availability of an alternative remedy ousts the jurisdiction of the Court under Article 226 of the Constitution.”

25. From the aforementioned observations of the Supreme Court, it is palpably clear that all species of termination, save and except where the service comes to an end by efflux of time, can be challenged only before the Tribunal by invoking the provisions of Section 8(3) of the Act. “Termination” by its plain meaning means ‘bring to an end’, ‘conclude’ or ‘cease’. As understood in common parlance and in service jurisprudence, once there is a cessation of an employer-employee relationship, it can be termed as termination. Thus, broadly understood, termination brings to an end the employment of an employee through varied modes of termination and there is a ‘cause’ and ‘effect’. The cause can be several such as misconduct, leading to disciplinary proceedings, irregular process of selection, non-fulfilment of essential qualifications or could be resignation, voluntary retirement, etc. but the effect of all these causes is termination of service. Once the Supreme

Court has by its judicial interpretation held that Section 8(3) of the Act covers all kinds of termination, it is not open to the Petitioners herein to contend that only because the cause of the cessation of their employment is that the selection process has been held to be irregular and void *ab initio*, the Petitioners are not amenable to the jurisdiction of the Tribunal. The alleged irregular selection is only the causative factor but the consequence or the effect is “termination of service” and is covered in the ambit and scope of the provisions of Section 8(3) of the Act. In view of the binding dicta of the Supreme Court there is no reason why the present petition should be entertained under Article 226 of the Constitution, without the Petitioners exhausting the remedy of Appeal before the Tribunal.

26. I am fortified in my view by the observations of a Co-ordinate Bench of this Court in ***Daya Nand (supra)***, relevant paras of which are as under :-

“3. So far as the first ground that an appeal is not maintainable before the Delhi School Tribunal is concerned, I may note that the Supreme Court in the case of Shashi Gaur Vs. NCT of Delhi, MANU/SC/2349/2000 : (2001) 10 SCC 445 has held that any and every removal of a teacher/employee of a school has to be challenged by means of appeal which is to be filed before the Delhi School Tribunal.....

4. In view of the aforesaid judgment of the Supreme Court in the case of Shashi Gaur (supra), in my opinion, there can be no doubt that once a teacher/employee of a school takes up a case that she has been illegally removed, this aspect very much falls within the jurisdiction of the Tribunal. The mere fact that in determining this issue the Tribunal has also to consider that whether or not the

teacher or employee has resigned or not cannot mean that Tribunal will have no jurisdiction because it is only on arriving at a conclusion that there is no valid resignation, would thereafter the Tribunal arrive at a decision of illegal removal of a teacher/employee of a school. Surely, a teacher/employee who is illegally removed, will naturally approach the Tribunal as per the ratio of the Supreme Court in the case of Shashi Gaur (supra), and surely the defence which is laid out by the school to justify the action of the school would not mean that the issue will not remain that of removal of the teacher/employee from the school. In fact, it is reiterated that it is because of the assertion of the respondent no. 1 that she has been illegally removed from the school, and which case has been accepted by the Tribunal, that the impugned judgment has been passed in favour of respondent no. 1 and against the petitioner.”

27. In **Daya Nand (supra)**, the Court was confronted with the question of maintainability of the Appeal before the Tribunal in a situation where the Petitioner had resigned from the Service and the Court held that it was one of the modes of illegal removal from service and would be within the purview of provisions of Section 8(3) of the Act.

28. In a recent judgement by another Co-ordinate Bench of this Court, similar view has been taken in the case of **G.D. Goenka (supra)**. Here again, the issue before the Court was whether “resignation” would be covered within the provisions of Section 8(3) of the Act, wherein the Legislature has referred to only dismissal or removal as mode of termination. Court placed reliance on the judgement of the Supreme Court in **Shashi Gaur (supra)** and **Daya Nand (supra)** and held that the expression “removed” is wide and comprehensive in its scope and ambit and in the absence of any restrictive definition attributed to the said

expression under the Act, it has to be accorded its widest possible meaning. In doing so, the principle, well settled in law, that the law is always required to be so interpreted as to confer, rather than exclude jurisdiction on a judicial or a quasi-judicial authority, is reaffirmed.

29. I may also at this stage usefully refer to a passage from the judgement of the Supreme Court in ***Chandrakant Tukaram Nikam v. Municipal Corporation of Ahmedabad***, (2002) 2 SCC 542, though in the context of the Industrial Disputes Act, 1947. Para 4 of the said judgement reads as under :-

“4.....The Court held in the aforesaid case that if a statute confers a right and in the same breath provides for a remedy for enforcement of such right the remedy provided by the statute is an exclusive one. It further held that under Section 9 of the Code, the courts have subject to certain restrictions, jurisdiction to try suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The Court examined the provisions of the Industrial Disputes Act and came to the conclusion that the Act envisages collective bargaining, contracts between the union representing the workmen and the management and such a matter was held to be outside the realm of the common law or Indian law of contract. The Court also held that the powers of the authorities deciding industrial disputes under the Industrial Disputes Act are very extensive, much wider than the powers of a civil court while adjudicating a dispute which may be an industrial dispute. But under the provisions of the Industrial Disputes Act since the workman cannot approach the Labour Court or tribunal directly and the Government can refuse to make a reference even on grounds of expediency, such handicap would lead to the conclusion that for adjudication of an industrial dispute in connection with a right or obligation under the general or common law and not created under the Act, the remedy is

not exclusive, and on the other hand is an alternative, and therefore, the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act and not otherwise. In other words, it was held that if the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act, the remedy lies only in the civil court. But if the dispute is an industrial dispute arising out of the right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is an alternative, leaving it to the election of suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy. It was also held that if the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act. Mr. Ahmadi, learned counsel appearing for the appellants strongly relied upon the aforesaid observations for his contention that the dispute in the case in hand cannot be held to be a dispute arising out of a right or liability under the Act, and on the other hand, is a dispute arising out of a right or liability under the common law, and as such, the jurisdiction of the civil court could not have been held to have been barred. This decision of the Court was considered by this Court in **Rajasthan SRTC v. Krishna Kant** [MANU/SC/0786/1995: (1995) 5 SCC 75: 1995 SCC (L & S) 1207: (1995) 31 ATC 110]. After quoting the principles enunciated by the Court in *Premier Automobiles case* [MANU/SC/0369/1975: (1976) 1 SCC 496: 1976 SCC (L & S) 70] and on consideration of a large number of decisions, it was held:

"28.It says that most of the industrial disputes will be disputes involving the rights and obligations created by the Act. It, therefore, says that there will hardly be any industrial dispute which will fall under Principle 2 and that almost all of them will fall under Principle 3. This statement cannot be

understood as saying that no industrial dispute can ever be entertained by or adjudicated upon by the civil courts. Such an understanding would not only make the statement of law in Principle 2 wholly meaningless but would also run counter to the well-established principles on the subject. It must accordingly be held that the effect of Principle 2 is in no manner whittled down by para 24. At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and the State Legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning

them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them.”

30. The three-Judge Bench in ***Rajasthan SRTC v. Krishna Kant, (1995) 5 SCC 75*** culled out certain principles which are relevant in the present context with respect to efficacious remedy and are as under :-

“35. (1) Where the dispute arises from general law of contract i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an 'industrial dispute' within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like the Industrial Employment (Standing Orders) Act, 1946 -- which can be called 'sister enactments' to the Industrial Disputes Act -- and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of the Industrial Disputes Act or where such enactment says that such dispute

shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to civil court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

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(7) The policy of law emerging from the Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

31. In fact it is pertinent to observe here that in **G.D. Goenka (supra)**, the Court has followed and applied the above principles and by an analogy held that there was no reason why the grievance of a teacher

whose services with the School stand severed by reason of resignation should not be permitted to be agitated by following recourse to an expedient course of action under Section 8(3) of the Act, rather than by any other modus which could be more inexpedient and time consuming. The same principle was followed in the case of ***Maharaja Agarsain Education Society (supra)***.

32. Learned counsels for the Petitioners have taken pains to argue that the case of the Petitioners is squarely covered by the observations of the Full Bench of this Court in ***Presiding Officer 2011 (supra)*** and since the services of the Petitioners have been discontinued and there is no dismissal or removal, the remedy of appeal is not available to them. I may only notice in this context that the Full Bench has only observed that the provisions of Section 8(3) providing for an appeal are restricted and constricted. The Legislature has provided an appeal to an employee who is dismissed, removed or reduced in rank. Taking note of the judgement of the Supreme Court in ***Shashi Gaur (supra)***, the Full Bench reproduced the observations made by the Supreme Court and concluded that in view of the restricted provision, right to prefer an appeal by a particular category of employees and relating to a particular *lis* cannot be enlarged in its spectrum as that would cause violence to the provisions.

33. In my view, the said judgement does not inure to the advantage of the Petitioners. A plain reading of paras 23 and 24 of the judgement of the Full Bench shows that the Full Bench only observed that Section 8(3) of the Act has to be interpreted and given its normal meaning and reiterated the wordings of the Supreme Court in ***Shashi Gaur (supra)***. Once the Full Bench holds that provisions of Section 8(3) of the Act

have to be given their normal meaning, in my view, the normal meaning can only be the interpretation given to the words by the Supreme Court in *Shashi Gaur (supra)*. The Full Bench has nowhere held that contrary to the interpretation and meaning assigned to Section 8(3) of the Act, no appeal shall lie where the termination of the service of an employee is for a reason other than dismissal or removal.

34. To the same effect is the view taken by the Co-ordinate Bench in *Daya Nand (supra)* and I quote the relevant passage as follows :-

“6. The Full Bench judgment of this Court in the case of Presiding Officer(supra) also in my opinion, does not help the petitioner because the paras which are relied upon in the judgment on behalf of the petitioner, being paras 23 and 24 only state that the language of Section 8(3) has to be interpreted as per its normal meaning, but surely that normal meaning is the meaning which has to be ascribed by the judgment in the case of Shashi Gaur (supra). The Full Bench judgment of this Court in the case of Presiding Officer (supra) has referred to the ratio in the case of Shashi Gaur (supra). The observations which were made in the case of Shashi Gaur (supra) in paras 23 & 24 were with respect to whether an order of suspension can or cannot be challenged before the Delhi School Tribunal, although, the word 'suspension' is not found in Section 8(3) of the Act, and therefore, the observations of the Full Bench in paras 23 and 24 were in aid to the conclusion that the order of suspension cannot be appealed before the Delhi School Tribunal under Section 8(3) of the Act.

I therefore reject the argument that the appeal filed by respondent no. 1 before the Delhi School Tribunal was not maintainable.”

35. Reliance is also placed by the Petitioners on the judgement of the Co-ordinate Bench in *Yenni Srinivasa Rao (supra)* wherein the Court was dealing with the aspect of maintainability of the writ petition on account of an objection of the availability of the remedy of appeal before the Tribunal, amongst other grounds assailing the discharge orders of the petitioners. The Court relying upon the judgement of the Full Bench in *Presiding Officer 2011 (supra)* held that the petitioners were discharged from service being ineligible for appointment and since the appointment was erroneous or under a mistaken belief, the petitioners cannot be said to be employees of the School, who have been dismissed or removed and cannot thus, avail the remedy of appeal before the Tribunal. With respect to the said argument, suffice would it be to state that in the said judgement no specific reference has been made to the binding judgement of the Supreme Court in *Shashi Gaur (supra)*. While the learned counsels for the Petitioners sought to argue that the Court has taken note of the judgement of the Full Bench, which in turn noticed the judgement in *Shashi Gaur (supra)*, but the fact remains that the Court has in *Yenni Srinivasa Rao (supra)* neither specifically referred to *Shashi Gaur (supra)* nor its dicta and therefore there was no occasion to deal with the observations of the Supreme Court, that all modes of termination except the one excluded by the judgement, will be covered within the purview of provisions of Section 8(3) of the Act. It may also be noted that in *Yenni Srinivasa Rao (supra)*, the additional factor which weighed with the Court to entertain the petition was that in the said case the petitions had been entertained, interim relief had been granted and arguments on

merits had been heard and it was not expedient at that stage to dismiss the petitions and relegate the Petitioners to the remedy of an appeal. In any case, in view of the binding dicta of the Supreme Court, the present petitions cannot be entertained. Insofar as reliance is placed on the judgements in the case of **Kiran Jain (supra)** and **Chairman, Managing Committee Bhai Biba Singh Khalsa Sr. Secondary School (supra)**, it is evident by a reading of the judgements that in neither of the two judgements an objection was taken to the maintainability of the petition on the ground of availability of the remedy of appeal to the Petitioners therein under Section 8(3) of the Act and thus the Court had no occasion to deal with the issue of maintainability. The judgements can therefore be of no help to the petitioners.

36. In view of the above, the issue of the maintainability of the present petitions is decided in favour of Respondent Nos.1 and 2 and the objection of Respondent Nos.1 and 2 that the Petitioners have a remedy of Appeal under Section 8(3) of the Act before the Tribunal is sustained.

37. The second and the only other contention of the learned counsels for the petitioners was that the provisions of Section 8(3) of the Act shall apply only when there is a dispute between the Management and the employee, while in the present case there is no dispute between the Petitioners and the Management as the impugned action is of the DOE. It was also argued, to buttress this contention, that the School was bound by the directions of the DOE, to discontinue the services of the Petitioners, once DOE refused to grant approval and declared the selection process as void. School has not, on its own accord initiated any action and had no option in the matter after receiving the impugned order

of DOE.

38. In my view, there is no force in this argument of the Petitioners. No doubt it is the DOE who after holding an inquiry into the matter found that there were some irregularities in the selection process and declared the process void, but it cannot be overlooked that on the recommendations of the DOE, it is the Management which decided to discontinue the services of the Petitioners and passed an order to that effect on 25.06.2020, which has been assailed by the Petitioner in W.P.(C) 4951/2020. From a perusal of the said order dated 25.06.2020, it can be deciphered that the Management has supported and endorsed the view and recommendations of the DOE and thereby discontinued the services of the Petitioners. It can thus hardly be argued that there is no dispute between the Petitioners and the Management and in my view the said order is certainly open to be challenged before the Tribunal.

39. This Court cannot agree with the contention of the Petitioners that the Management is bound by the directions of the DOE and therefore the action taken by the Management is only consequential and out of sheer compulsion. It was certainly open to the Management, in law, to assail the order of the DOE and cases are not unknown or uncommon, where the School Managements have challenged orders passed by the DOE, which in their perception, are illegal. Therefore, clearly the dispute has arisen between the Petitioners and the Management and even on this count, the remedy of the Petitioners is to approach the Tribunal, by way of an Appeal under Section 8(3) of the Act.

40. In view of the above, the present petitions cannot be entertained and deserve to be dismissed on the ground of maintainability, leaving it

open to the Petitioners to approach the Tribunal and challenge the impugned orders. It is made clear that this Court has not expressed any opinion on the merits of the case. Arguments were heard only on the maintainability of the present petitions and judgement was reserved on this limited aspect.

41. Both the petitions along with the pending applications are accordingly dismissed. No orders as to costs.

JYOTI SINGH, J

SEPTEMBER 9th, 2020

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