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

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Reserved on : 04.08.2020

Pronounced on: 10.08.2020

+ **W.P.(C) 3415/2012**

MANGAL SAIN JAIN

.....PETITIONER

Through **Mr. Rajiv Shukla, Ms. Shivani
Kapoor and Mr. Gorang Goyal,
Advocates**

versus

PRINCIPAL, BALVANTRAY MEHTA VIDYA

BHAWAN & ORS.

.....RESPONDENTS

Through **Mr. Imran Khan, Advocate for R-
1, 2 and 4.
Ms.Vibha Mahajan Seth, Advocate
for R-3**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Present petition lays a siege to an order dated 15.03.2012 passed by the Delhi School Tribunal (hereinafter referred to as 'DST') whereby it has dismissed the appeal of the Petitioner and upheld the Discharge order dated 21.04.2008. The grievances or the umbrage raised by the Petitioner are primarily structured on applicability of statutory provisions of Delhi School Education Act and Rules, 1973 (hereinafter referred to as the 'DSEA&R') and thus does not require a detailed factual narrative.

2. Shorn of unnecessary details, the facts to the extent they are necessary and relevant are that the Petitioner was appointed as an Accounts Clerk in Balwantray Mehta Vidya Bhawan / Respondent No.1 (hereinafter referred to as the 'School'), which is run by Respondent No.4, a Society.

3. As the case of the Petitioner goes, he was given a warning/oral censure for alleged minor irregularities in the month of July 2003, though unwarranted, however the real trouble started when the renovation of the School building was completed by July 2007. Being an Accounts Clerk, Petitioner was directed by the then Manager to survey the market rates of construction items as the contractors had raised exorbitant bills. Following the orders, Petitioner surveyed the market and prepared a detailed report with comparative charts for different items. Resultantly, the Bills of the contractors were reduced by 35% and this annoyed Respondent No.1/Principal, as the contractors hired by him were paid at reduced rates. As soon as the term of the then Manager expired on 12.12.2007 and the new Acting Manager took over, Principal called the School Auditor for a surprise check of the Accounts. The vendetta of the Principal led to issuance of a Show Cause Notice dated 19.01.2008 to the Petitioner, followed by a Chargesheet dated 05.02.2008. Vide letter dated 20.02.2008, Petitioner was placed under suspension and vide letter dated 21.02.2008, he was directed to hand over the charge to another employee.

4. As per the Petitioner the inquiry was initiated in violation of the provisions of DSEA&R and there were irregularities even while conducting the same. Inquiry Report rendered by the Inquiry Officer was

sent to the Petitioner along with a Notice dated 08.04.2008 and the Petitioner represented against it on 13.04.2008. Disciplinary proceedings culminated into a penalty of Discharge and vide order dated 21.04.2008, Petitioner's services were dispensed with. The Discharge order was assailed in an appeal before the DST under Section 8(3) of the DSEA&R. Being unsuccessful in its challenge before the DST, Petitioner filed the present petition.

5. Broadly, the legal issues which this Court is called upon to decide are as under :-

- (a) Whether the Petitioner is a probationer/confirmed employee and entitled to protection of procedural safeguards of the provisions of DSEA&R ?
- (b) If the provisions of DSEA&R are applicable, whether the Chargesheet was issued by the Disciplinary Committee, as per the mandate of Rules 118 and 120 of DSEA&R and if not, the effect thereof ?
- (c) Whether the Discharge order passed without prior approval of the Director of Education, as required under Section 8(2) of DSEA&R, is liable to be quashed ?

6. The first and foremost contention raised by learned counsel for the Petitioner is that Rule 120 of DSEA&R provides a detailed procedure for imposing major penalty and requires the Disciplinary Authority to frame definite charges on the basis of the allegations on which the inquiry is

proposed to be held. Rule 59 in Chapter V of DSEA&R gives a detailed Scheme of Management of Recognized Schools and Sub-Rule 2(e) clearly stipulates that the Scheme of Management shall provide for the duties, powers and responsibilities of the Managing Committee, which amongst others, clearly includes disciplinary action. Rule 118 provides that the Disciplinary Committee in respect of every recognized private school, whether aided or not, shall consist of the Chairman of the Managing Committee of the School, the Manager of the School, a Nominee of the appropriate Authority, Head of the School and a Teacher, who is Member of the Managing Committee of the School nominated by the Chairman. It is submitted that the Managing Committee never constituted the Disciplinary Committee in terms of Rule 118. Since the allegations against the Petitioner were never placed before the Disciplinary Committee and the Chargesheet was not framed by it, the Chargesheet itself is not sustainable in law and thus further proceedings stand vitiated.

7. In support of the argument that the procedures stipulated under Rules 118 and 120 of DSEA&R are mandatory, learned counsel relies upon the judgement in the case of ***Dr. Swami Ram Pal Singh Mission School v. Harvinderpal Singh Bindra and Others* 2017 (2) SLJ 12 (Delhi)**, wherein a Co-ordinate Bench of this Court relying on the earlier judgements of this Court in ***Hamdard Public School v. Directorate of Education and Anr.* 202 (2013) DLT 111** and ***Army Public School and Anr. v. Narendra Singh Nain and Anr.* in W.P. (C) No. 1439/2013, decided on 30.08.2013** held that the appointment of an employee of a

School has statutory protection by virtue of provisions of DSEA&R and thus cannot be terminated except by following the due process as envisaged under Rules 118 and 120 of DSEA&R. For the same proposition, reliance is placed on *Managing Committee Hindon Public School and Anr. v. Hemant Kumar and Anr.* 2012 (132) DRJ 287, *The Management of Rukmani Devi Jaipuria Public School v. The Directorate of Education and Ors.* 2018 (2) SLJ 41 (Delhi).

8. The second contention raised by the learned counsel is that the order of Discharge was passed without complying with the provisions of Section 8(2) of DSEA&R, which mandates prior approval of the Director of Education, before imposing the penalty of dismissal, removal or reduction in rank. To support the argument, learned counsel relies on a recent judgement of a Co-ordinate Bench of this Court in *Meena Oberoi v. Cambridge Foundation School and Ors.* 265 (2019) DLT 401, decided on 05.12.2019, wherein the Court has held that prior approval of Director of Education is mandatory before taking any action contemplated by Section 8(2). Reliance has been placed in the said judgement on the judgement of the Supreme Court in *Raj Kumar v. Director of Education and Others*, (2016) 6 SCC 541 wherein the Supreme Court has in no uncertain words emphasized the mandate of prior approval under Section 8(2) of DSEA&R. Additionally, Learned counsel relies on judgements in *Rukmani Devi (supra)*, *Laxman Public School Society (Regd.) and Ors. v. Richa Arora and Ors.* W.P. (C) 10886/2018 decided on 10.10.2018 and *School Management of Ring Midways Senior Secondary Public School v. Riva Singh and Ors.*

W.P.(C) No. 67/2017 decided on 06.01.2017 delivered by Co-ordinate Benches of this Court reiterating the proposition.

9. The third legal proposition sought to be argued is really the fulcrum of the case. The argument is that the Petitioner was initially appointed on ad-hoc basis, but having worked for over 3 years his status changed to that of a confirmed employee by virtue of Rule 105(1) of DSEA&R, as interpreted by several judgements of this Court. Services of the Petitioner thus could not have been terminated without following Rules 118 and 120 and the mandate of Section 8(2) of DSEA&R. Under Rule 105(1) even a probationer cannot be terminated without the approval of the Director and the Rule as read would encompass every employee, including ad-hoc. He further submits that being a confirmed employee, Petitioner shall be entitled to reinstatement with back wages and as he crossed the age of superannuation, during the pendency of the petition, relief of retiral benefits should also be granted.

10. In so far as the Director of Education / Respondent No.3 is concerned, Ms. Vibha Mahajan Seth learned counsel supports the Petitioner in so far as he assails the impugned order on foundation of non-compliance of Rules 118 and 120 and Section 8(2) of the DSEA&R and candidly submits that compliance of these provisions is mandatory. This position in law, according to her, is no longer *res integra*. She further points out that Respondent No.3 has taken a clear stand in its Reply Affidavit that no approval was given to the School for imposing the penalty of Discharge on the Petitioner. Ms. Mahajan also relies on the judgement of the Supreme Court in ***Raj Kumar (supra)*** and ***Meena***

Oberai (supra) and emphasizes on the requirement of compliance with procedural safeguards laid down in DSEA&R.

11. Mr. Khan appearing on behalf of Respondent Nos.1, 2 and 4 submits that the DST has rightly dismissed the appeal of the Petitioner and upheld the order of Discharge. Principles of natural justice were complied with by the School in the inquiry and chance was given to the Petitioner to defend himself. He further submits that DST has rightly observed that the Petitioner was found guilty of serious allegations relating to integrity which cannot be compromised. Petitioner was appointed as an Accounts Clerk on 01.07.1999 and in the years 2001-2002 and 2002-2003, penalty of *oral censure* was imposed for certain irregularities in the Accounts. Petitioner admitted his mistake and a lenient view was taken. However, since he once again committed financial irregularities in 2007-2008, inquiry was held against him and the punishment so awarded is proportionate to the charges levelled against him. No arguments have been made with respect to alleged non-compliance of provisions of Section 8(2) or Rules 118 and 120 of DSEA&R.

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

13. First issue regarding the status of the Petitioner needs to be decided at the outset as its determination shall decide the fate of the other issues that arise in this case. Having been appointed on ad-hoc basis, is the Petitioner entitled to seek protection of provisions of DSEA&R is a

question which shall have to be answered in the light of provisions of Rule 105 of DSEA&R and the judgements interpreting the said Rule. Rule 105(1) provides that every employee on initial appointment will be on probation for a period of one year extendable by the Appointing Authority and subject to termination without notice during the period of probation on account of unsatisfactory work and conduct. The words used in the Rule are “every employee”. The word “employee” has been defined in Section 2(h) of the Act and means a teacher and includes every other employee working in a recognized school. Rule 105(1) and Section 2(h) of DSEA&R are as follows :-

“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 prior approval of 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. (h) “employee” means a teacher and includes every other employee working in a recognized school”

14. In *W.P.(C) 1439/2013 titled Army Public School & Anr. vs. Narendra Singh Nain & Anr. and other connected matters, decided on 30.08.2013*, this Court observed that so far as Non-Minority Schools are concerned, there is no provision in the DSEA&R to have contractual appointment. Under provisions of Section 15 and Rule 130 of the DSEA&R, the Minorities Schools have an entitlement to have a contract of service for its employees, yet the Supreme Court in *Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar & Ors. (2005) 7 SCC 472*, held that the very nature of the employment of employees of a School is that it is not contractual, but statutory. Therefore, if the Minorities Schools' can have contractual employment and yet their employees have to be treated as statutory employees, then as a fortiori Non-Minority Schools' employees also have statutory protection of their services. The Court held that once the nature of employment of every employee is statutory in nature, the provisions of Rules 118 and 120 of the DSEA&R would apply and services can be terminated only after complying with the said provisions.

15. Examining the nature of employment in this light, Court in *Laxman Public School Society (supra)* held as under:

"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.""

16. In the case of **Dr. Swami Ram Pal** (*supra*), the Court was dealing with an employee who was appointed on contract basis and was terminated on account of certain complaints from students. DST held that the employee was on a probation for one year and thereafter there was no order extending the probation. Treating the employee to be a regular

employee, the termination order was quashed, as the same was passed without the due process of law under DSEA&R. In a challenge to the order of the DST before this Court by the Management, a Coordinate Bench of this Court upheld the order of the DST and held as under:

“5. The issue to be decided in the present case has been settled in terms of the ratios of the judgments passed by this Court in the cases of Hamdard Public School v. Directorate of Education and Anr. 202 (2013) DLT 111 and three connected cases with the lead case being Army Public School and Anr. v. Narendra Singh Nain and Anr. in W.P. (C) No. 1439/2013 decided on 30.8.2013 that even an ad hoc/temporary teacher or even a probationary teacher if has served with a school in Delhi at least for three years, then on completion of three years such a teacher will stand confirmed to his post unless the school proves that probation period was not found to be extended up to three years and within the period of three years the probationary services were not found to be satisfactory. In the present case, it is noted that Delhi School Tribunal notes that respondent No. 1's probation period was extended beyond the initial period of one year w.e.f. 2.3.1998. Also I may state that there is no letter on record that petitioner/school observing that the services of the respondent No. 1 as a probationary employee were unsatisfactory, and therefore, the services were terminated.

6. It has been observed in the judgments in the cases of Hamdard Public School (supra) and Army Public School (supra) that the appointment of an employee of a school is statutory appointment with statutory protection in terms of the Delhi School Education Act and Rules, such employment cannot be terminated except by following the due process of rules contained in the Delhi School Education Act and Rules, being Rules 118 and 120

requiring disciplinary proceedings to be initiated for removal of a permanent employee.

7. Also, Supreme Court in the case of Raj Kumar v. Directorate of Education and Others (2016) 6 SCC 541 has held that there cannot be termination of an employee of a school without prior approval of the Director of Education under Section 8(2) of the Delhi School Education Act. Admittedly in this case, no approval has been obtained by the petitioner/school for termination of the services of the respondent No. 1, and for this additional reason also the impugned letter dated 24.2.2001 is liable to be set aside.”

17. Perusal of para 5 of the judgement, as extracted above, shows that reliance was placed on an earlier judgement in the case of ***Army Public School (supra)***, wherein it was held that even an ad-hoc/temporary teacher would be treated as a confirmed employee, if he has worked for at least 3 years, unless it is shown that within the three years, he did not render satisfactory service.

18. Useful would it be in this regard to allude to a judgement of the Supreme Court in the case of ***Union Public Service Commission v. Dr. Jamuna Kurup (2008) 11 SCC 10*** where the Supreme Court has held that the ordinary meaning of word ‘employee’ is any person employed on salary or wage by an employer. The word ‘employee’ would include both permanent or temporary, regular or short term, contractual or ad-hoc, in the absence of any restrictive definition. Para 14 of the judgement in this context is already extracted above in Para 15.

19. What emerges by a combined reading of the judgements collated above juxtaposed with Section 2(h) and Rule 105 of DSEA&R is that the word 'employee' has been given a wide meaning and is not restricted to 'regular' employee for the applicability of the provisions therein. This interpretation is strengthened by the use of word 'every' as a prefix to the word 'employee' in Section 2(h). Thus even an ad-hoc employee is covered under the definition of 'employee'. In case he is a probationer he is entitled to protection and his services cannot be terminated without prior approval of the Director of Education under Rule 105. If he has worked for at least 3 years, he acquires status of confirmed employee as held in several judgements and all procedural safeguards will have to be complied with under the DSEA&R, before imposing a penalty contemplated under Section 8(2). Going a step forward, as elucidated by plethora of judgements, as the appointment is a statutory appointment, it *ipso facto* entitles the employee to all protections and procedural safeguards envisaged in DSEA&R by the Legislature.

20. Case of the Petitioner would need examination on this anvil. Petitioner was appointed on 01.07.1999 and continued to serve in the School until the order of his Discharge was passed on 21.04.2008. Applying the provisions of Rule 105(1) and the judgements alluded to above, it is crystal clear that the Petitioner was an 'employee' under Rule 105(1) and thus acquired the status of a confirmed employee and his appointment being statutory in character, provisions of Rules 118 and 120 and Section 8(2) of DSEA&R would hold the field. In this light, what now remains to be analyzed is if the School initiated and conducted the

inquiry in accordance with Rules 118 and 120 and/or if the discharge order can be sustained in the absence of approval by the Director of Education.

21. Before proceeding further, it is necessary to examine the judgement of the DST, which is impugned before this Court. Petitioner had argued before the Tribunal that the Principal and the Manager of the School were not competent to issue the Chargesheet and the subsequent penalty order, as they were not the Disciplinary Committee and thus there was violation of Rules 118 and 120 of DSEA&R. DST observed that, as per the record, the Principal had simply conveyed the orders of the Disciplinary Committee and not acted on his own. On this basis, the plea was rejected and the judgements relied upon by the Petitioner were distinguished. In a short and sketchy manner, if I may say, the Tribunal dismissed the appeal by simply noting as under :

“6. Appellant has contended that the Principal and the Manager of the Respondent School were not competent to issue the show cause notice, charge-sheet and the impugned orders etc. Perusal of the records shows that the Principal has simply conveyed the orders of the Disciplinary Committee and has not acted simply on his own. The plea thus raised is devoid of merits. I have perused all the judgements referred to above and relied upon by the Counsel for the Appellant. The judgement in the case of Leela Ajrnani (Supra) decided by this Tribunal on 10.09.1998 refers to the violation of principles of natural justice. In the said case the employer/school concerned had not violated the procedures laid down under Rule 120 of the Delhi School Education Act & Rules 1973.

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9. Coming to the case in hand a domestic inquiry was conducted against the Appellant. He was found guilty on many of the counts. The allegations against the Appellant related to his integrity which cannot be compromised. The punishment awarded is thus not disproportionate to the charges proved. I am, therefore, of the considered opinion that the appeal is devoid of merits. The same is hence dismissed. File be consigned to record room."

22. Petitioner has in Grounds (a), (d) and (f) of the present writ petition specifically averred that the Chargesheet was not issued by the Disciplinary Committee as none was ever constituted by the Managing Committee and the Chargesheet as well as the Discharge order was signed only by the Manager and the Principal in their individual capacities. There is no denial to the specific averments of the Petitioner in reply or the written submissions filed by the School and even during the course of arguments, apart from simply stating that principles of natural justice were complied with, nothing has been said to support that the Disciplinary Committee was ever constituted. No record was produced to contradict the plea of the Petitioner in this regard. In its absence, an inference will have to be raised in favour of the Petitioner that there was no Disciplinary Committee and hence the Chargesheet was not framed as per law. Chargesheet placed on record bears only the signatures of the Principal and the Manager and since nothing is forthcoming to indicate that the action was by or pursuant to a decision of the Disciplinary Committee, the inevitable conclusion is that there was non-compliance of the mandatory provisions of Rules 118 and 120 of DSEA&R. In the

absence of there being a Disciplinary Committee, even the Penalty order is without jurisdiction and liable to be set aside.

23. Law is now as settled as still water that if the disciplinary proceedings are not initiated or conducted as per procedural safeguards formulated under the statutory provisions, being Rules 118 and 120 of DSEA&R, against an employee of the School, the proceedings shall vitiate. The consequential penalty order would then be rendered illegal. This has been so held in *Dr. Swami Ram Pal (supra)* and there have been repeated affirmations as in the case of *Hindon Public School (supra)* as well as *Rukmani Devi (supra)*, to refer a few, wherein the penalty orders have been set aside on account of non-compliance of Rule 120 of DSEA&R.

24. The next issue urged herein, with respect to Section 8(2) of the DSEA&R, in my view, does not pose any challenge and requires no exposition or a comprehensive analysis, being well settled. Provisions of Section 8(2) of DSEA&R clearly provide that no employee of a Recognized Private School shall be dismissed, removed or reduced in rank nor shall his services be otherwise terminated except with the prior approval of the Director. Section 8(2) of DSEA&R is extracted herein under:

“8.(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.”

25. Supreme Court in ***Raj Kumar (supra)***, has clearly held that Section 8(2) of DSEA&R is one of the precautionary safeguards which needs to be followed to ensure that employees of Educational Institutions do not suffer unfair treatment at the hands of the Management. Supreme Court in the case before it declared the Termination order to be bad in law on the ground that the Management Committee had not obtained prior approval, from the Director of Education as required under Section 8(2) of the DSEA&R, before passing order.

26. The judgement in ***Raj Kumar (supra)*** is particularly significant in the present case as one of the objections taken in the Counter Affidavit of Respondent No.3 is that Petitioner was employed with the Primary School, which was unaided and hence provisions of Section 8(2) were inapplicable. Supreme Court has, ruling on this aspect, erased the distinction between unaided and aided Educational Institutions, in so far as applicability of Section 8(2) of DSEA&R is concerned. Elucidating the Section and the intent of the Legislature in enacting it, Court observed that the Division Bench of this Court had erred in striking down Section 8(2) in ***Kathuria Public School vs. Director of Education, 2005 SCC OnLine Del 426*** and held that while the functioning of both aided and unaided Educational Institutions must be free from unnecessary Government interference, the same however, needs to be reconciled with the conditions of employment of the employees of these Institutions and provision of adequate precautions to safeguard their interests such as Section 8(2) of DSEA&R would help in preventing unfair treatment by the Management. Division Bench while striking down Section 8(2) in

Kathuria Public School (supra) has not correctly applied the law laid down in *Katra Education Society vs. State of U.P. AIR 1966 SC 1307*, wherein the Constitution Bench of the Supreme Court with reference to a provision similar to Section 8(2) of the DSEA&R, held that regulation of service conditions of employees of private recognized schools is required to be controlled by Educational Authorities and the State Legislature is empowered to Legislate such a provision in DSEA&R. Relevant paras of the Judgement are as under:

“50. The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] by placing reliance on the decision of this Court in T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , as the subject-matter in controversy therein was not the security of tenure of the employees of a school, rather, the question was the right of educational institutions to function unfettered. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.

51. The Division Bench of the Delhi High Court, while striking down Section 8(2) of the DSE Act in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del

312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] has not correctly applied the law laid down in *Katra Education Society v. State of U.P.*, AIR 1966 SC 1307], wherein a Constitution Bench of this Court, with reference to provision similar to Section 8(2) of the DSE Act and keeping in view the object of regulation of an aided or unaided recognised school, has held that the regulation of the service conditions of the employees of private recognised schools is required to be controlled by educational authorities and the State Legislature is empowered to legislate such provision in the DSE Act. The Division Bench wrongly relied upon that part of the judgment in *Katra Education Society v. State of U.P.*, AIR 1966 SC 1307] which dealt with Article 14 of the Constitution and aided and unaided educational institutions, which had no bearing on the fact situation therein. Further, the reliance placed upon the decision of this Court in *Frank Anthony Public School Employees' Assn. v. Union of India* [Frank Anthony Public School Employees' Assn. v. Union of India, (1986) 4 SCC 707 : (1987) 2 ATC 35] is also misplaced as the institution under consideration in that case was a religious minority institution.

52. The reliance placed by the learned counsel appearing on behalf of the respondents on *T.M.A. Pai* [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] is also misplaced as the same has no bearing on the facts of the instant case, for the reasons discussed supra. The reliance placed upon the decision of the Delhi High Court in *Kathuria Public School* [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] is also misplaced as the same has been passed without appreciating the true purport of the Constitution Bench decision in *Katra Education Society v. State of U.P.*, AIR 1966 SC 1307]. Therefore, the decision in *Kathuria*

Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] , striking down Section 8(2) of the DSE Act, is bad in law.

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55. The respondent Managing Committee in the instant case did not obtain prior approval of the order of termination passed against the appellant from the Director of Education, Govt. of NCT of Delhi as required under Section 8(2) of the DSE Act. The order of termination passed against the appellant is thus, bad in law.”

27. The law laid down by the Supreme Court in ***Raj Kumar (supra)*** has been followed thereafter in several judgements, but to avoid prolixity I am referring to only few. In ***School Management of Ring Midways (supra)*** Court held as follows:-

“2. A reading of the impugned order of the Delhi School Tribunal shows as under:-

(v) Admittedly the respondent no. 1 was a confirmed teacher and she was removed from services without following the due procedure provided in Rule 120 of the Delhi School Education Rules, 1973 of setting up of a disciplinary authority, enquiry report being submitted after allowing both the parties to lead evidence, a disciplinary authority validly constituted which has accepted the report of the enquiry officer against the respondent no. 1 / teacher, and whereby the respondent no. 1/teacher has been held/accepted to be illegally appointed and hence she has to be removed. Therefore, there is admitted violation of the

provisions of the Delhi School Education Rules which require that a confirmed employee can only be removed from services after following the due process of law and by conducting of an enquiry as per the Delhi School Education Act and Rules.

(vi) No prior permission of the Director of Education was taken as required by Section 8(2) of the Delhi School Education Act, and which prior permission has been held to be mandatory by the Supreme Court in its recent judgment in the case of Raj Kumar Vs. Director of Education and Others, (2016)6 SCC 541 Civil Appeal No. 1020/2011 decided on 13.4.2016; and as so observed by the Delhi School Tribunal in para 24 of its judgment. Therefore, without actual permission having been taken or being actually available, the act of the petitioner/school in removing the respondent no. 1 from services is violative of Section 8(2) of the Delhi School Education Act read with ratio of the judgment of the Supreme Court in Raj Kumar's case (supra).

3. All the aforesaid aspects arise from the record and could not be effectively disputed or challenged by the petitioner/school in this Court and thus once the respondent no. 1 was a confirmed employee and whose services have not been terminated after following the due process of enquiry as required under Rules 118 and 120 of the Delhi School Education Rules and also that admittedly no disciplinary authority was constituted and which took decision to remove the respondent no. 1, and which aspects have to be taken with the fact that no permission was obtained by the Director of Education for removal of the respondent no. 1, clearly, hence there is no illegality found in the impugned judgment of the Delhi School Tribunal allowing the appeal of the respondent no. 1 and

reinstating the respondent no. 1 in the services of the petitioner/school.”

28. In a similar vein, a Coordinate Bench of this Court in a recent judgement in ***Meena Oberoi (supra)*** has quashed an order of termination of an employee, appointed as Office Assistant in a Private Recognised School, on the ground that there was no prior approval of the Director of Education, before passing the order of termination. Applicability of the provision to an unaided school has been emphasized based on the enunciation of law on this aspect by the Apex Court in ***Raj Kumar (supra)***.

29. An important issue that arises at this juncture and needs to be dealt with is the applicability of the judgement of ***Raj Kumar (supra)*** to the present case, as the Petitioner herein was discharged on 21.04.2008, while the judgement was delivered by the Supreme Court on 13.04.2016. This conundrum also stands resolved by a Co-ordinate Bench of this Court in ***Meena Oberai (supra)***. In the said case, the Petitioner was terminated by an order dated 21.07.2009. One of the pleas raised before the Court was that the judgement of the Supreme Court was delivered in 2016 and could only have a prospective effect, thereby disabling the Petitioner to derive the benefit of the law laid down therein.

30. A judgement of this Court in ***Red Roses Public School vs. Reshmawati & Ors. 2019 SCC OnLine Del 10937*** was brought to the notice of the Court, wherein the Division Bench was of the view that the judgement in ***Raj Kumar (supra)*** would not apply to cases in which the employee was removed or terminated from service, prior to the rendering

of the decision in ***Raj Kumar (supra)***. Judgement of Division Bench was distinguished and it was noted that the concern of the Division Bench was that if the judgement of ***Raj Kumar (supra)*** was to apply from an anterior date, it would lead to reopening of the claims which stood settled in terms of ***Kathuria Public School (supra)***, while in the case before the said Bench the proceedings were still pending and it could not be said that applying the ratio of ***Raj Kumar (supra)*** would unsettle or reopen any claims which stood settled. Court also noticed that reading of the judgement in ***Red Roses Public School (supra)*** revealed that the attention of the Court was not invited to the judgement rendered by the Supreme Court in ***Marwari Balika Vidyalaya v. Asha Srivastava 2019 SCC OnLine SC 408***. In the said case, the services of the Respondent were terminated on 20.02.2001 i.e. prior to the decision in ***Raj Kumar (supra)***. Even so, relying on ***Raj Kumar (supra)***, Supreme Court upheld the setting aside of the termination order on the ground that requisite approval of the higher authorities had not been obtained. Relevant portion of the judgement in ***Meena Oberai (supra)*** is as under:

“53. It is apparent, from a reading of the aforesaid passages, as extracted, from Red Roses Public School, that the Division Bench of this Court chose to apply the law, enunciated in Raj Kumar (2016) 6 SCC 541 prospectively, on the ground that giving effect to the decision in Raj Kumar (2016) 6 SCC 541 from an anterior date would lead to reopening of claims which stood settled in terms of Kathuria Public School (2005) 123 DLT 89. Inasmuch as the present proceedings are pending, as on date, before this Court, it cannot be said that following Raj Kumar (2016) 6 SCC 541 would result in unsettling, or reopening of, any claim of the petitioner, which stands settled. The

main consideration on which the Division Bench, in Red Roses Public School, chose not to follow Raj Kumar (2016) 6 SCC 541 may not, therefore, apply in the present case.

54. That apart, a reading of the decision in Red Roses Public School reveals that the attention of this Court was not invited, in the said case, to the judgment rendered by the Supreme Court in Marwari Balika Vidyalaya. Marwari Balika Vidyalaya 2019 SCC OnLine SC 408 was also a case in which the services of the respondent Asha Srivastava were terminated on 20th February, 2001, prior to the rendition of decision in Raj Kumar (2016) 6 SCC 541. Even so, relying on Raj Kumar (2016) 6 SCC 541, the Supreme Court upheld the setting aside, of the termination of the respondent Asha Srivastava, on the ground that requisite approval, of the higher authorities, had not been obtained.”

31. As held by a Co-ordinate Bench of this Court in **Meena Oberai (supra)**, if the proceedings are pending and the benefit of a judgement is given to a party, it cannot be said that it would unsettle or reopen any claim of the Petitioner, since the claim is yet to be settled. In **Marwari Balika Vidyalaya (supra)**, Supreme Court has upheld an order setting aside a Termination order passed in 2001 in view of the decision in **Raj Kumar (supra)**.

32. Having gone through the judgement in **Marwari Balika Vidyalaya (supra)** and **Meena Oberai (supra)**, I am of the view that though the Discharge order in the present case dates back to 21.04.2008, the ratio of the judgement in the case of **Raj Kumar (supra)** would clearly apply to the present case. The impugned order is admittedly passed without the

prior approval of the Director of Education and being in violation of the mandate under Section 8(2) of the DSEA&R, is bad in law.

33. In this context, it is also necessary to refer to the Statement of Objects and Reasons of the DSEA&R, which is as follows:

“In recent years the unsatisfactory working and management of privately managed educational institutions in the Union Territory of Delhi has been subjected to a good deal of adverse criticism. In the absence of any legal power, it has not been possible for the Government to improve their working. An urgent need is, therefore, felt for taking effective legislative measures providing for better organisation and development of educational institutions in the Union Territory of Delhi, for ensuring security of service of teachers, regulating the terms and conditions of their employment. ... The Bill seeks to achieve these objectives.”

34. The Statement of Objects and Reasons, in my view, reflects the exegesis of the intent of the Legislature, while enacting Section 8(2), being clearly to grant security of tenure to the School employees and provide a regulatory mechanism for the terms and conditions of their service. This was undoubtedly with a view to ensure that there is no unfair treatment suffered at the hands of the Management and if so, the Director of Education is in a position to set right the same, by declining to grant approval for imposing the penalties enumerated in Section 8(2), if the circumstances do not permit or so warrant. The salutary purpose behind the said provision can hardly be underscored and as rightly held by the Court in ***Meena Oberai (supra)***, it is not open to this Court to uphold a Termination order, which is in utter violation of the salutary

provisions of Section 8(2) of DSEA&R and the clear observations of the Supreme Court in *Raj Kumar (supra)*.

35. The DST was, therefore, not right in upholding the order of Discharge being in violation of the provisions of Rules 118 and 120 and Section 8(2) of DSEA&R. As noticed above, DST has simply held that the Principal had only conveyed the orders of the Disciplinary Committee and did not even deal with the issue urged by the Petitioner that a Disciplinary Committee had not been constituted by the Management Committee. What seems to have weighed with the DST is that the allegations against the Petitioner relating to his integrity could not be compromised and therefore, by holding that the punishment was not disproportionate, dismissed the Appeal. This consideration cannot outweigh the requirement of following the procedures and Rules of inquiry. The order of the DST thus deserves to be set aside.

36. The question that next arises is the relief to which the Petitioner is entitled at this stage. Learned counsel for the Petitioner submitted that the Petitioner during the pendency of the present Petition has reached the age of superannuation on 01.07.2016. In view of this uncontroverted position, only a relief of notional reinstatement can be granted to the Petitioner.

37. In view of the above, Chargesheet dated 05.02.2008, inquiry proceedings and the Discharge order dated 21.04.2008 as well as the order of the DST dated 15.03.2012 are hereby quashed and set aside. Petitioner is entitled to reinstatement with effect from the date of discharge upto the date of his superannuation.

38. Amongst the myriad nuances of this case arises the issue of back wages. Petitioner was wrongfully discharged on 21.04.2008. Since then he has suffered the agony of loss of livelihood and has been broiled in the tough journey of litigation, with all its expenses, added. Though this Court has quashed the Discharge order on grounds of non-compliance of Statutory provisions but it needs to be annotated at this stage that the victimization and passing of a wrongful order is evident from the fact that in the impugned Chargesheet, the School also sought to include allegations for which the Petitioner had been warned or admonished or absolved. It is not the case of the School that the Petitioner was gainfully employed during the pendency of the Appeal before the DST or this petition. The reinstatement is thus granted with 50% back wages from the date of discharge upto the date of superannuation.

39. A paragraph from the judgement of the Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidhyalaya and Ors.*** 2013 10 SCC 324 will be relevant in this context and is as under:-

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money...The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants

to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emolument.”

40. From the date of superannuation Petitioner will be entitled to the retiral benefits, in accordance with law.

41. Directions shall be complied with by the School within four weeks from today and in the event of delay School shall be liable to pay interest @ 9% per annum.

42. Petition is allowed in the above terms with no order as to costs.

JYOTI SINGH, J

AUGUST 10th, 2020
yg/rd