

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

% **Reserved on: 1st September, 2022**
Pronounced on: 11th November, 2022

+ W.P.(C) 5570/2012, CM APPL. 40319/2019, CM APPL. 29200/2022, CM APPL. 32530/2022, CM APPL. 33610/2022 & CM APPL. 38344/2022

P.K.JAIN

..... Petitioner

Through: Mr. Arun Bhardwaj, Sr. Advocate
with Mr. Nikhil Bhardwaj, Mr.
Abhishek Sharma and Ms.
Gauraan Advocates alongwith
petitioner.

versus

DIRECTORATE OF EDUCATION AND ANR Respondents

Through: Mr. Neeraj Bansal, Advocate for
GNCTD.
Mr. R.K. Saini and Mr. Sunil
Beniwal, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of Mukherjee Memorial Senior Secondary

School, through its Principal P.K. Jain, praying for *inter alia* the following reliefs:-

- “i) Issue writ, order or direction in the nature of certiorari quashing and set aside the impugned order dated 9.8.2012 passed in Appeal No. 51/2011 may kindly be quashed and set aside and the appeal filed by the respondent No. 2 before the School Tribunal may be dismissed with costs.*
- ii) Cost of the proceedings be awarded in favour of the Petitioner and against the Respondents.”*

FACTUAL MATRIX

2. A perusal of the record reveals that the following course of events culminated into the controversy in the instant matter before this Court:-

- a. The petitioner School appointed respondent no. 2, as TGT (Mathematics) on 8th July 2008, along with 17 other appointees, in the pay scale of Rs. 5500-9000. Respondent no. 2, accordingly, joined his services with the petitioner School on 14th July 2008.
- b. The appointment letter of the newly appointed teachers mentioned that their appointment was subject to two years' probation. The appointment letter also stated that after completion of two years' satisfactory service, the services of the appointee shall be confirmed.
- c. During the course of his probation, the respondent no. 2 was issued various letters and memos for his misconduct and unsatisfactory performance in the School. Pursuant to such memos, the Management Committee of the petitioner School decided to

extent the probation period of the respondent no. 2 for a further period of six months, i.e., till 31st December 2010 after expiry of the two years' probation period. The respondent no. 2 was also intimated that he and his performance during the extended probation period would be under scrutiny.

d. On 30th August 2010, the respondent no. 2 was issued a Show Cause Notice to explain his unsatisfactory work and conduct. A subsequent memo was also issued to him on 9th September 2010 and a reply to the same was submitted by him. Thereafter, on 27th December 2010, the Management Committee of the School decided to extend the probation period of respondent no. 2 for further six months, i.e., till 30th June 2011.

e. Another memo and a subsequent reminder were issued to respondent no. 2 on 7th May 2011 and 14th June 2011, respectively, seeking explanation of his behavior when he failed to go to a class despite being present in the School and where students got into a fight leading up to the matter being reported to the Police Station Seemapuri. Again, the probation period of the respondent no. 2 was extended for six months, i.e., till 31st December 2011.

f. On 7th October 2011, the respondent no. 2 was ultimately terminated from his services upon his overall performance and conduct being found unsatisfactory.

g. Against the order of removal from service, the respondent no. 2 filed an Appeal bearing no. 51/2011 with the Delhi School

Tribunal, where vide order dated 9th August 2012 while allowing his Appeal, the Tribunal quashed the order of termination of services and directed the School to reinstate the respondent no. 2 with all consequential benefits as well as 50% back wages.

3. The petitioner, by way of filing the instant appeal, has assailed the said order passed in Appeal No. 51/2011 dated 9th August 2011.

SUBMISSIONS

4. Mr. Arun Bhardwaj, learned senior advocate appearing on behalf of the petitioner School submitted that the letter of appointment issued to the respondent no. 2 mentioned that his appointment would be subject to a two-year probation period and being satisfied of his performance his services would be confirmed. It is submitted that since the performance and conduct of the respondent no. 2 was found unsatisfactory, he was given the opportunity to improve and therefore, his probation period was expressly extended three times. After giving him ample opportunities to improve, his services were ultimately terminated. Moreover, there was no challenge to the extension of probation period on behalf of the respondent no. 2.

5. It is submitted that the following memos were issued to the respondent no. 2 during the course of his employment with the petitioner School:-

a. 1st April 2009 – for misbehaving with a teacher and going to his class very late.

- b. 23rd April 2009 – for giving an opportunity to reform himself on the recommendation of the Disciplinary Authority.
 - c. 2nd May 2009 – for seeking explanation after being counseled.
 - d. 9th November 2009 – for not going to his class and because of him habitually being late for classes and often not even going to them.
 - e. 17th November 2009 – for not being able to control a chaotic class.
 - f. 7th January 2010 – for improving the atmosphere of the school and discipline in his class and to also be punctual.
 - g. 30th August 2010 – for intimating respondent no. 2 that his work and conduct was not satisfactory.
 - h. 9th September 2010 – seeking explanation for checking only two copies in one day.
 - i. 14th September 2010 – for advising the respondent no. 2 to refrain from unnecessary verbose.
6. Learned senior counsel for the petitioner submitted that Rule 105 of the Delhi School Education Act and Rules, 1973 (hereinafter “DSEAR”) provides that the period of probation on initial appointment shall be one year which may be extended and the service of 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 satisfactory. This Rule also provides that an employee shall be confirmed only if the work and conduct of an employee during the period of probation is found to be satisfactory. It is submitted that Tribunal fell into an error in holding in para 7 of the impugned judgment while observing that, *“initially, the period of probation is one year and the same may be extended by another year. In such cases, the maximum period of probation is only of two years and beyond this period, it is not permissible to extend the probation.”* This is an erroneous view since upper limit of two years has not been fixed by the DSEAR.

7. Learned senior counsel appearing on behalf of the petitioner submitted that the Tribunal while passing the impugned order erred in holding that after the expiry of the maximum period of probation, the respondent's services were deemed to be confirmed. It is wrongly concurred that termination order could be passed only before the expiry of total period of probation of two years. It is submitted that there is no principle of confirmation in the eyes of law and an employee can be said to be confirmed only when a specific order of confirmation has been issued by the employer.

8. It is submitted that 22nd February 2011, the petitioner School had sought approval of the Director of Education seeking termination of the period of probation from the Directorate, which was never replied to. The petitioner School cannot be forced to keep an employee who is not suitable for his post to continue as such against the interest of the

students. The said action of termination was not punitive but was taken when the respondent no. 2 was found to be not unfit for the post of TGT (Mathematics).

9. Learned senior counsel for the petitioner submitted that the petitioner School has lost complete faith in respondent no. 2 and therefore, he cannot be reinstated in the services. Reliance has been placed upon the judgment of *State Bank of Travancore vs. Prem Singh, 2019 SCC OnLine Del 8258*, to submit that when an employee acts in a manner by which the management loses confidence in him, his reinstatement cannot be ordered because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. In case of loss of confidence, only compensation can be awarded. Reliance has also been placed on *Durgabai Deshmukh Memorial Sr. Sec. School vs. J.A.J. Vasu Sena., (2019) 17 SCC 157*, where the employee who had worked for 5 years was compensated with Rs. 5,00,000/- and therefore, the learned senior counsel for the petitioner submitted that in the instant petition as well the respondent no. 2 may be granted such monetary compensation to the tune of Rs. 3,00,000/- for working for 3 years with the petitioner School.

10. Placing reliance on *Durgabai Deshmukh Memorial (Supra)* the learned senior counsel also submitted that there was no deemed confirmation of the services of the respondent no. 2 since no confirmation

order was passed after his services were found unsatisfactory. The relevant portion of the judgment is reproduced hereunder:-

“56. The first respondent was continued as a probationer for nearly five years in contravention of Rule 105 of the 1973 Rules as well as the appointment letter dated 18-6-2008. There was no order of confirmation. Though the first respondent cannot claim a deemed confirmation of service without the issuance of an order of confirmation, the power of this Court to do complete justice under Article 142 of the Constitution must be invoked in an appropriate manner. While there can be no deemed confirmation in the favour of the first respondent, the relief can be suitably moulded by an award of ex gratia compensation. A teacher who has spent five valuable years of her life and may now be overaged to get suitable employment elsewhere must not be left in the lurch. A management which has defied the law must be put to terms, which we propose to do under Article 142.

57. We hold and declare that:

57.1. The words "by another year" in Rule 105(1) of the 1973 Rules stipulate that the maximum period of probation permissible is two years. The limit equally applies to minority institutions covered by the first proviso to Rule 105.

57.2. Rule 105(2) stipulates a condition precedent to the issuance of an order of confirmation. The continuation of the services of a probationer beyond the period of probation does not amount to a deemed confirmation of service. It is only upon the

issuance of an order of confirmation by the appointing authority that a probationer is confirmed in service.

58. *We direct, in the exercise of the jurisdiction of this Court under Article 142 of the Constitution, that the appellants shall pay over to the first respondent a sum of INR 5,00,000 within a period of four weeks from the date of receipt of a certified copy of this order, failing which the amount shall carry an interest of 9% p.a. till the date of realisation."*

11. It is submitted on behalf of the petitioner that during the period of probation the performance and conduct of the respondent no. 2 was under watch by the petitioner being the employer in so far as the petitioner/employer is the most suited entity to determine the satisfactory performance of the employee. Learned senior counsel for the petitioner has relied upon the judgment of ***St. Thomas School vs. Manish Kaushik, W.P. (C) 1264/2016*** dated 13th April 2017. It is submitted that the appointment letter itself stipulated the condition that on being satisfied with the services of the respondent no. 2, his services would be confirmed and from the very beginning the conduct and performance of the respondent no. 2 was not satisfactory, therefore, his services were terminated during the extended probation period.

12. It is further stated on behalf of the petitioner that departmental inquiry is not required for termination during probation period for which he has relied upon the judgments of ***Muir Mills Unit of NTC (UP) Ltd. vs. Swayam Prakash Srivastava, (2007) 1 SCC 491*** and ***Hem Singh vs. Director of Education, W.P. (C) 5788/2011*** dated 26th August 2013.

13. Learned senior counsel for the petitioner School had duly informed the Directorate of Education at every stage and representative of the Directorate of Education was present at every relevant meeting with respect to Respondent teacher's service and the Directorate of Education knew that the respondent no.2's work and conduct was not satisfactory. It is submitted that despite repeated reminders despite repeated reminders from the petitioner, no response was received from the Directorate of Education.

14. Therefore, it is submitted that the impugned order be set aside.

15. *Per Contra*, Mr. Neeraj Bansal, learned counsel for GNCTD and Mr. R.K. Saini, learned counsel appearing on behalf of respondent no.2 vehemently opposed the instant petition and submitted that there is no error or illegality in the order passed by the Tribunal.

16. It is submitted on behalf of the respondent no. 2 that there is no provision of law which provides for initial probation and extension thereof. A maximum period for such extension is provided beyond which it is not permissible to extent the probation and inference in such cases is that the officer concerned is deemed to have been confirmed upon the expiry of maximum period of probation in case before its expiry the order of termination has not been passed. It is submitted that the appointment letter stipulated that upon completion of two years' probation, the services of the respondent no. 2 shall be confirmed and therefore, after successfully completing the maximum period of probation of two years in terms of appointment letter on 13th July 2010, which also is the maximum

period of probation as provided under Rule 105 of DSEAR, the services of the respondent no. 2 stood confirmed. Therefore, the order of termination of services of respondent no. 2 passed on 7th October 2012, treating him as a probationer, was misconceived and without jurisdiction.

17. It is further submitted that being a private aided school, the petitioner School was required to seek approval of the Directorate of Education for termination of services of an employee as per Rule 120 (2) of the DSEAR. However, no such approval was ever received by the petitioner.

18. It is submitted by the learned counsel that the termination order was passed based on the conduct of the respondent no. 2, however, no domestic enquiry was carried out by the petitioner School at any point of time during his tenure. The petitioner School was bound to issue notice, invite reply, hold enquiry and then take the final decision regarding the employment of the respondent no. 2. Therefore, the termination was ordered without following the due process of law and against the principles of natural justice.

19. It is submitted on behalf of the respondent no. 2 that the order dated 9th August 2012 passed by the Tribunal, reinstating the petitioner with consequential benefits, clearly reveals that all the relevant factors were taken into consideration while passing a well-reasoned order without any legal infirmities and same is not liable to be interfered by way of the instant writ petition.

20. Heard learned counsel for the parties at length. This Court has perused the record, including the impugned order dated 9th August 2012.

ANALYSIS AND FINDINGS

21. The petitioner School has approached this Court aggrieved by the decision of the Delhi School Tribunal dated 9th August 2012 in Appeal No. 51/2011 whereby the respondent no. 2 to the order passed by the petitioner School terminating his services was set aside and he was directed to be reinstated. The limited question before this Court is whether the order passed by the Tribunal suffered from any illegality or error apparent on the face of record.

22. To adjudicate upon the impugned order dated 9th August 2012, it is deemed significant to reproduce the relevant contents of the operative decision passed by the Tribunal:-

“6. Now the question arises as to whether the acceptance of the Appointment letter stipulating the period of probation as two years is binding upon the Appellant. It is an established law that an agreement between two parties cannot be against the statute. Rule 105 of the Rules provides for a period of probation of one year only. Even if the letter of appointment provided for a period of two years, it cannot prevail upon the statutory provisions of Rules 105 of the Rules. Obviously the period of probation has to be governed by Rule 105 of the Rules which provided that the initial appointment of an employee shall be for a period of one year. The objection thus raised by the Respondent School is devoid of merits. The same is hence dismissed.

8. *Hon'ble High Court of Delhi has dealt with the issue of 'deemed confirmation' at length in the case of Dy. Director of Education vs. Veena Sharma, 175 (2010) DLT 311 (DB). The Hon'ble High Court noticed the case of High Court of Madhya Pradesh through Registrar and Others vs. Satya Narayan Jhavar, AIR (2001) SC 3234 where Apex Court had observed as under:*

"The question of deemed confirmation in service Jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been

confirmed upon expiry of the maximum period of probation in case before its expiry the order, of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

9. *Perusal of the abovesaid legal position shows that the cases of employees/ teachers under Act and Rules fall in the second category referred to above. As per provisions of Rule 105 of the Act & Rules, initially the period of probation is one year but the same may be extended by another year. In such cases the maximum period of probation is only of two years. Beyond this period, it is not permissible to extend the probation. The concept of 'deemed confirmation' comes into play upon expiry of the maximum period of probation. In other words, an order of termination can be passed before the expiry of the total period of probation of two years.*

10. *In view of the law discussed above, once an employee appointed under Delhi School Education Act & Rules-1973 is deemed to have been confirmed upon expiry of maximum period of probation of two years, the question of any further extension in the period of probation (beyond two years) of services*

does not arise. All the abovesaid extensions in the period of probation in the present case, therefore, are illegal unjustifiable and bad in the eyes of law even if such letters were accepted by the Appellant without any objection.

11. The Appellant completed two years of period of probation on 13.07.2010 and no letter terminating his services prior to this date was issued to him. Admittedly, the Respondent School did not obtain the prior approval of the Director of Education while extending the periods of probation. Perusal of proviso 105 of the Rules reproduced above shows that a prior approval of the Director of Education is required for extending the period of probation of an employee by another year (employee having been placed on probation on initial appointment for a period of one year). Similarly proviso ii to Rule 105 of the Rules reproduced above provides for seeking prior approval of the Director of Education in terminating the services of an employee on probation. Assuming for the sake of arguments that the Appellant was on probation on 07.10.2011 i.e. the date on which his services were terminated, matter required a prior approval of the Director of Education. No approval of the Director of Education was admittedly sought by the Respondent School.

*12. A careful perusal of the impugned orders shows that the Respondent School not only referred to the 'unsatisfactory performance' but also referred to the 'conduct' of the Appellant. The impugned orders when it refers to the 'conduct' of the Appellant as the basis for terminating the services, it clearly casts a stigma on him. In such a case, the services could not have been terminated without conducting a domestic inquiry. I place reliance upon the case of **Dipti Prakash Banerjee vs. Satyendra Nath Bose***

National Centre for Basic Sciences, Calcutta and Others, (1999) 3 SCC 60.

13. In view of the reasons given above, I am of the considered opinion that the impugned orders are bad in the eyes of law. The same are hence set aside. The Appellant is directed to be reinstated in service with all consequential benefits. The Appellant is entitled to back-wages @50%. The Appellant will be paid full salary and other allowances from today till he is reinstated in service by the Respondent School. Appellant shall be entitled to simple interest @8% per annum on the arrears of back-wages in case the same are not paid within a period of two months from today. The appeal is accordingly disposed of.
.....”

23. A part of the preliminary arguments on behalf of the respondent no. 2, before this Court as well as before the Tribunal is that the probationary period of two years and its extension thereof by the petitioner was not in accordance with law.

24. The law regarding probation is clear and has been reiterated by the Division Benches of this Court as well as by the Hon'ble Supreme Court. Being an appointee of a private recognized aided school, the services of respondent no. 2 are governed by the Delhi School Education Act and Rules, 1973, as per Rule 4 (f). The DSEAR makes provision for the probationary period of an employee under its Rule 105, which is reproduced hereunder:-

“105. Probation (1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing

authority [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work, and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:

[Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation by another year, shall not apply in the case of an employee of a minority school:

Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director.]

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

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

25. The DSEAR stand amended by the amendment of 1990 which made significant changes to the provision in question. The words ‘*prior approval or the Director*’ as well as the two provisos to the Rule were added by way of this amendment. Therefore, there is no doubt to the fact that prior to the amendment of 1990, the appointing authority held the absolute power to extend the period of probation as it deemed fit and for as long as it willed. However, the powers are now subject to the approval

of the Director of Education, as defined under Section 2 (g) of the Delhi School Education Act, 1973.

26. The Hon'ble Supreme Court makes observation with respect to the question being adjudicated by this Court *qua* the requirement for guidelines to be borne in mind while granting and extending probation period in the judgment of ***Durgabhai Deshmukh (Supra)*** as follows:-

“51. In the present case, the first respondent served as a probationer for nearly five years. Rule 105(1) permits the appointing authority to extend the period of probation with the prior permission of the Director. The proviso stipulates that no prior approval of the Director is required for the extension of the probationary period by the appointing authority of a minority institution. The amending history of the provision shows that prior to the amendment in 1990, no prior approval of the Director was required. By virtue of the amending Rules, 1990 the prior approval of the Director was made mandatory, save and except for extensions in the case of minority institutions, for the grant of any extension in the probationary period. The absolute discretion vested with the appointing authority of an institution was made subject to the prior approval of the Director.

52. The power vested in the Director serves as a check on the absolute discretion of the appointing authority to extend the probationary period. The power vested in the Director, however, to approve a request of the appointing authority is not unbridled. Rule 105(1) stipulates that the services of a probationer may be terminated without notice during the period of probation where the services of the

probationer are not "in the opinion of the appointing authority, satisfactory". Rule 105(2) stipulates that an order of confirmation may be issued if, in the opinion of the appointing authority, the performance of the probationer is satisfactory. The discretion of the Director must be exercised objectively on the basis of the material produced by the appointing authority bearing on the performance of a probationer.

53. The prior approval of the Director, save and except for minority institutions, is mandatory and must be complied with as a condition precedent for the valid exercise of the power to extend the period of probation. The Director is required to assess the determination of the appointing authority and based on that assessment, to decide whether to approve an extension of the probationary period. The provision which mandates that the prior approval of the Director shall be sought before extending the period of probation ensures that the appointing authority may not extend the probationary period without legitimate reason. The extension of the probationary period by the appointing authority, save and except for minority institutions, without the prior approval of the Director is impermissible in law."

27. The Hon'ble Supreme Court in ***Durgabhai Deshmukh (Supra)*** has also categorically settled the position regarding maximum period permissible for keeping the employee on probation and has held as follows:-

"23. Rule 105(1) of the 1973 Rules mandates that every employee shall be appointed on probation for a period of one year. The appointing authority may extend the period of probation "by another year"

with the prior approval of the Director. Rule 105(1) also stipulates that if the work and conduct of the probationer during the probationary period is found unsatisfactory, the appointing authority may, without notice, discharge the probationer from service. The first proviso to Rule 105(1) stipulates that where the appointing authority of a minority institution extends the probationary period "by another year", the prior approval of the Director shall not be required. This Court is required to construe whether the words "by another year" appearing in Rule 105(1) and the first proviso of Rule 105 imply one additional year, or one year at a time without any limit.

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25. *The consistent meaning imparted to the word "another" is a single addition or one more. The ordinary and literal construction of the words "another" read with the words "for a period of one year" in Rule 105(1) implies that the appointing authority may extend the period of probation by one additional year. The contention that the words "by another year" imply that the appointing authority can extend the period of probation by one year at a time without any limit cannot be accepted as this would amount to rewriting the provision by substituting the words "by another year" with the words "by one year at a time", which is impermissible in law. Further, had the delegate of the legislature intended that there is no limit on the permissible probationary period, the words "by another year" would have been omitted.*

26. *The words of a statute should be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. This principle should be a*

useful guide in interpreting the provisions of delegated legislation in this case, namely, Rule 105. The purpose of probation is to enable an assessment to be made of the performance of an employee. It serves as an opportunity for probationers to establish by the dint of their work which is rendered during the period of probation, that they are suitable for being retained in service. On the part of the employer, probation enables the appointing authority to determine the suitability of the probationer for retention in service.

27. The limit placed on the permissible extension of the probationary period draws a balance between the opportunity that must be afforded to a probationer to modify and improve the quality of service and a mandate that the appointing authority of an educational institute hires qualified teachers. To impart a meaning to the words "by another year" that the appointing authority may extend the probationary period one year at a time without a limit will allow an appointing authority to extend the probationary period, with the prior approval of the Director, of a probationer ad nauseum. This would allow an appointing authority to convert a period of probation, which serves the limited and time bound purpose of ascertaining suitability, into a temporary appointment and defeat the purpose of probationary service in educational institutions. Though the legislature or the delegated authority is empowered in a given case to stipulate that there is no bar on the period of probation, the interpretation that we have adopted is supported by the words of Rule 105(1) and the ordinary meaning imparted to the word "another".

28. The plain reading of the words "by another year" implies that the appointing authority of an institution

may extend the period of probation by one additional year over and above the mandatory year of probation with the prior approval of the Director. Rule 105(1) of the 1973 Rules therefore stipulates a limitation on the total probationary period to two years.

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54. *Rule 105(1) of the 1973 Rules, by stipulating a maximum permissible period of probation of two years, draws a balance between the interests of the appointing authority in extending the period of probation to ensure the quality of education and the interests of probationers in their services not being extended on probation ad nauseum. The continuation of the services of a probationer beyond the period permissible under the 1973 Rules defeats the salutary purpose underlying the limit stipulated on the period of extension that may be effected in the probationary period. Upon the expiry of the period of probation, the appointing authority is required by law to either confirm the services of the probationer or terminate their services. The continuation of the services of a probationer by the appointing authority under Rule 105 of the 1973 Rules beyond the maximum permissible period of probation, constitutes a violation of law. Though as we have held, there is no provision for deemed confirmation, the conduct of the management may result in other consequences, including a decision in regard to whether the recognition of a school which consistently violates the law should be withdrawn.*

57. *We hold and declare that:*

57.1. *The words "by another year" in Rule 105(1) of the 1973 Rules stipulate that the maximum period of*

probation permissible is two years. The limit equally applies to minority institutions covered by the first proviso to Rule 105.

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59. We affirm the view of the Delhi High Court to the extent that the maximum permissible period of probation under Rule 105 of the 1973 Rules is two years, although for the reasons that we have indicated above.”

28. The principal provision under Rule 105 provides for an initial probation period of one year and, with the proviso, confers the power to the appointing authority to extend the probation period. This power is also subject to the condition that the period of probation may be extended by ‘another year’ with the prior approval of the Director. The debate before this Court as well as the Hon’ble Supreme Court has been whether there is a maximum period prescribed under the Rule 105 for which an employee can be continued on probation. The aforesaid judgement of ***Durgabhai Deshmukh (Supra)*** clarifies the position. The legislature, by way of Rule 105 of the DSEAR, sought to offer a protection to the employees kept on probation indefinitely on the ground of unsatisfactory performance. A balance was also sought to be brought about by keeping a check on the appointing authority. Therefore, the intention of the legislature as well as a bare reading of the Rule, which has also been interpreted by the Hon’ble Supreme Court, clarifies that there is a limit to the period for which an employee may be kept on probation under the

DSEAR. The mandate is for an initial year of probation with a subsequent year of extension of services with the prior approval of the Director.

29. It is also evident from the above observations of the Hon'ble Supreme Court that the approval of the Director is a condition which cannot be dispensed with if the appointing authority is seeking to extend the period of probation of an appointee. The condition acts as a safeguard against the absolute powers of the appointing authority and also as a protective measure for the probationary employees ensuring that their services are not kept under watch in the garb of probation unreasonably and without following the due process of law.

30. In the case at hand, admittedly, after completion of two years of service of the respondent no. 2, neither any confirmation of services nor any termination of services order was passed by the petitioner but the period of probation of the petitioner was extended by virtue of three subsequent orders extending the period thereof. The petitioner School sought to extend the probation period of respondent no. 2 when his conduct and performance was found unsatisfactory. This extension was granted three times for a period of six months each, however, at no occasion was the approval of Director had been obtained by the School. Since, the provision in its bare language mandates the approval of the Director for extension of probation period and the Hon'ble Supreme Court has also reiterated the necessity of such an approval, an action of the petitioner School extending the period of probation of respondent no.

2 failing to comply with this substantial condition cannot be said to be an action taken in accordance with law.

31. However, the peculiar facts and circumstances of the instant petition, also suggest that the teacher whose probation and its extension thereof is in consideration, i.e., respondent no. 2, had acted in defiance of the conduct and standard norms and practices of its employer, i.e., the petitioner. Accordingly, as the table as placed before indicated, there were several memos and letters issued to him intimating him about such defiance and also granting him an opportunity to mend his ways. The extension of period of probation of the respondent no. 2 was also such opportunity granted to him not once but three times to improve his performance and match the quality expected by the petitioner to ensure welfare of the students and suit their best interest. The extensions were not an affirmation of his performance but were chances given to the respondent no. 2 to act in such a manner that would enable the confirmation of his services. Yet, as per the record, it is evident that the respondent no. 2 did not mend his ways and continued to act in defiance and could not deliver the quality of teaching that was reasonably expected from him. Therefore, an extension of probation period by the petitioner could not have been said to be an absolute confirmation of services but was only an opportunity to an employee to keep working at his job.

32. The question, at this juncture, which arises and falls for consideration and adjudication by this Court is that considering the probation to be extended wrongly, whether the services of the petitioner

were deemed to be confirmed after the initial probation period, as per the appointment letter and also in accordance with the provision under Rule 105 of the DSEAR, of two years ended.

33. The respondent no. 2 was appointed by the petitioner School vide appointment letter dated 8th July 2008, which is appended as Annexure P-2 to the petition. The appointment of respondent no. 2 was subject to two years' probation. The condition of the appointment letter prescribing the period of probation is reproduced hereunder:-

“The appointment is subject to two years probation. After completing two years satisfactory service, the service shall be confirmed and benefit of Provident Fund shall be started in accordance with rules.”

34. This probation period prescribed in the appointment letter also stipulated a condition that on completing two years' satisfactory services, the services shall be confirmed. A perusal of the record reveals that respondent no. 2 joined the services on 14th July 2008, which means that his officially stipulated probation period ended on 14th July 2010, whereafter, the School was to either confirm his appointment, upon being satisfied of his performance, or terminate his services in accordance with law. However, the petitioner School, did not take either course of actions and availed a third option, extending the period of probation of the respondent no. 2 for further six months at first, and subsequently, two more extensions were afforded by the petitioner. While the respondent before the Delhi School Tribunal argued that his case was squarely covered by the principle of deemed confirmation, the petitioner argued

the contrary. To this effect, in the impugned order, the Tribunal observed in the favour of the respondent no. 2.

35. The principle of deemed confirmation does not find its mention in the statute of DSEAR, but has been interpreted time and again by the Hon'ble Supreme Court. The sum and substance of the principle is that it confers entitlement to probationary employee to seek deemed confirmation of services upon completion of their probationary period in the absence of any notice of confirmation or termination of their services. However, this principle also has limitations and conditions guiding its implementation to ascertain as to at what stage and under what conditions would the entitlement arise.

36. The primary guidelines and directions to this question that have been relied upon time and again were made in the landmark judgment of the Hon'ble Supreme Court in ***High Court Madhya Pradesh and Ors. vs. Satya Narain Jhavar, (2001) 7 SCC 161***. The relevant contents of the said judgment are reproduced hereunder:-

“11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond

the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.”

37. Hence, the three situations that are probable to arise are the ones enumerated above and are referred to hereafter to examine whether the services of the respondent no. 2 were deemed to be confirmed. *First*, is the category of cases where the appointment letter or the respective service rules specify a period of probation alongwith the power of extending the same but there is no mention of any maximum period of probation. *Second*, are the cases consisting of those where there is a provision for an initial period of probation and a provision for extension of this period as well, however, a maximum period for extension is

provided beyond which the probation period may not be extended. And finally, *third*, is the category which comprises of instances where although under the rules, a maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. The Hon'ble Supreme Court categorically states that only the cases of services falling under the second category shall be deemed to be confirmed when the maximum prescribed period of probation ends.

38. In ***Kasturi Ram International School and Anr. vs. Directorate of Education and Anr.***, LPA 457/2012 decided on 14th October 2015, the following was observed by a Division Bench of this Court *qua* Rule 105 of the DSEAR and deemed confirmation of services:-

“8. Admittedly no order confirming the service of Ms.Upma Saxena as Principal has been passed. The law on deemed confirmation of a probationer is settled and noted in the decision reported as 2001(7) SCC 161 High Court of MP Vs.Satya Narayan Jhavar followed by the Supreme Court in the decision reported as (2005) 13 SCC 179 Rajender Singh Chauhan & Ors. Vs.State of Haryana & Ors. Three situations result in two different results is the ratio which can be culled out from the said two decisions. Situation one is where in the service rules or in the letter of appointment a period of probation is specified with a power to extend the same without prescribing any maximum period of probation and no order is passed confirming the probationer. The second situation is where the rules for initial probation and extension thereof provide a maximum period it is not permissible to extend the probation.

The third is where the rules prescribe a maximum period of probation but also require a specific act on the part of the employer to issue an order confirming the appointment. It was held that cases falling under situation one or three cannot be treated as a case of deemed confirmation. Only under situation two would it be treated as a case of deemed confirmation.

9. The logic of the reasoning is clear. If, as in situation two a maximum period for probation is provided with a negative stipulation that beyond said period probation cannot continue, it follows automatically that if the probation continues beyond the maximum period it has to be treated as a case of deemed confirmation for the reason the negative stipulation prohibiting continuation of probation beyond the maximum period prescribed must take its effect.

10. Rule 105 DSE Rules cannot be interpreted to be imbibing the concept of deemed confirmation in the absence of any specific stipulation on the said count. This has already been held by this Court in the decision reported as 222 (2015) DLT 157 Jai Prakash vs. School Management of ITL Public School & Anr.”

39. Further, another Division Bench of this Court in ***Mitul Goel vs. Food Corporation of India and Others, 2020 SCC OnLine Del 1773***, also expressed a similar opinion while adjudicating an issue where the appellant was discharged from services on the ground of not being able to complete his probation period satisfactorily observing as under:-

“12. Therefore, there cannot be any disagreement on the proposition of law that there cannot be any

automatic confirmation on the expiry of the period of probation. The terms of the appointment or the recruitment rules have to be examined to come to the correct conclusion. Since the relevant clause in the letter of appointment stipulates an affirmative and positive act on the part of the employer to confirm the probationer, we cannot hold that the appellant was confirmed by way of implication, as there is no order confirming him on the said post. ...”

The Bench referred to the judgment of ***Medical Council of India vs. Sangeeta Sharma and Another***, 2019 SCC OnLine Del 8276, wherein the following was observed:-

“19. In Head Master, Lawrence School, Lovedale (supra), the respondent/probationer was appointed on the post of a Mistress in the Petitioner School. It was stipulated in her letter of appointment that she would be on probation for a period of two years which may be extended for one year, if necessary. An order of termination simplicitor was passed against the respondent-probationer. The said termination order was assailed before the High Court and was set-aside by the Id. Single Judge. The LPA preferred against the said order was also dismissed. The appeal preferred against the judgment of the Division Bench of the High Court was ultimately allowed by the Supreme Court, wherein it was held that the status of confirmation of employment had to be earned and conferred. The Supreme Court held that there was nothing in the terms of the letter of appointment from which it could be construed that after the expiry of the period of probation, the probationer could have been treated as a deemed confirmed employee. Had the rule making authority intended that the probationer would be entitled for

automatic confirmation upon the expiry of the period of probation, the recruitment rules would have been couched in such specific language. Supreme Court further went on to hold that confirmation of employment does not occur with efflux of time. An affirmative or positive act is the requisite by the employer to confirm a probationer which had not been done in the present case. The Supreme Court considered several earlier decisions in this judgment. The relevant excerpts of Head Master, Lawrence School, Lovedale (supra) read as follows:

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16. In G.S. Ramaswamy v. Inspector General of Police [AIR 1966 SC 175], another Constitution Bench, while dealing with the language employed under Rule 486 of the Hyderabad District Police Manual, referred to the decision in Sukhbans Singh [AIR 1962 SC 1711] and opined as follows: (G.S. Ramaswamy case [AIR 1966 SC 175], AIR p. 179, para 8)

“8. ... It has been held in that case that a probationer cannot after the expiry of the probationary period automatically acquire the status of a permanent member of a service, unless of course the Rules under which he is appointed expressly provide for such a result. Therefore even though a probationer may have continued to act in the post to which he is appointed on probation for more than the initial period of probation, he cannot become a permanent servant merely because of efflux of time, unless the rules of

service which govern him specifically lay down that the probationer will be automatically confirmed after the initial period of probation is over.

17. In *State of U.P. v. Akbar Ali Khan* [AIR 1966 SC 1842] another Constitution Bench ruled that : (AIR p. 1845, para 6)

“6. ... If the order of appointment itself states that at the end of the period of probation ... in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of probation.”

20. This Court in *V.K. Mittal (supra)* culled out law on deemed confirmation of employment upon successful completion of probation period, as follows:

“64. The legal position on “deemed confirmation” can be summarised as under:

(a) If in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed. At the end of such probation he becomes merely qualified or eligible for substantive permanent appointment.

(b) There is the other line of cases where even though there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The presumption about continuation, beyond the period of probation, as a probationer stands negated by the fixation of a maximum time-limit for the extension of probation. In such cases the officer concerned must be deemed to have been confirmed.

(c) A third line of cases is where though under the rules maximum period of probation is prescribed, it requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired, and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

(d) While there could be some other cases where the rules do not contemplate issuance of such a specific order in writing but merely require that there will not be any automatic confirmation or some acts, other than issuance of specific orders, are required to be performed by the parties. Even in those cases, there would be no 'deemed confirmation'."

21. Thus, whenever a person is appointed as a probationer for a specified period, he does not automatically stand confirmed upon the expiry of such probation period, unless the maximum period of probation is prescribed and the person is allowed to continue even after the expiry of such maximum period of probation. Unless and until the relevant recruitment rules or the terms of appointment specifically provide for either deemed confirmation - by providing for a maximum period of probation, or confirmation is effected by passing an order to that effect, merely because the express probation period has expired, it cannot be said to confer on the probationer the status of deemed confirmed."

40. The Hon'ble Supreme Court has also expressed its opinion on the issue of probation and deemed confirmation in the judgment of ***Durgabhai Deshmukh (Supra)*** and has made the following observations in this regard:-

"40. The High Court concluded that Rule 105 fixes a maximum probationary period of two years and that consequently, the continuation of the services of the probationer beyond the period of probation would amount to a deemed confirmation of service even without an order of confirmation. Consequently, the case of the first respondent was according to the

High Court within the second category of cases enumerated in Satya Narayan Jhavar [High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161 : 2001 SCC (L&S) 1087] . This Court in Satya Narayan Jhavar [High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161 : 2001 SCC (L&S) 1087] enumerated three lines of cases. The third stipulates those cases where the rules prescribe a maximum period of probation but also require a specific act on the part of the employer of issuing an order of confirmation for the purposes of confirmation. In such cases, there is no deemed confirmation of the services of a probationer on their continuation in service beyond the maximum period of probation.

41. *Admittedly, the appointment letter does not stipulate that the first respondent shall be confirmed upon the expiry of the probationary period. Rule 105(2) stipulates that an order of confirmation may be issued “if the work and conduct of an employee during the period of probation is found to be satisfactory”. Rule 105(2) lays down a condition precedent to the issuance of an order of confirmation. It is only if the appointing authority is satisfied with the performance of the probationer that an order of confirmation may be issued. Rule 105(2) contains an explicit stipulation requiring the issuance of an order of confirmation by the appointing authority upon its assessment that the performance of the probationer has been satisfactory. The mere continuation of the services of a probationer beyond the period of probation does not lead to a deemed confirmation in service. It is only upon the issuance of an order of confirmation by the appointing authority that probationer is granted substantive appointment in the post.*

42. In G.S. Ramaswamy v. Inspector General of Police [G.S. Ramaswamy v. Inspector General of Police, (1964) 6 SCR 279 : AIR 1966 SC 175] , a Constitution Bench of this Court considered the promotions of Sub-Inspectors of Police under Rule 486 of the Hyderabad District Police Manual which stipulated that all officers who are promoted will be on probation for a period of two years and that they may be reverted during the aforesaid period if their work and conduct is not found satisfactory. Noting that the rule stipulated that “promoted officers will be confirmed at the end of their probationary period if they have given satisfaction”, this Court held thus : (AIR p. 179, para 8)

“8. ... Therefore even though a probationer may have continued to act in the post to which he is appointed on probation for more than the initial period of probation, he cannot become a permanent servant merely because of efflux of time, unless the rules of service which govern him specifically lay down that the probationer will be automatically confirmed after the initial period of probation is over. ... It is true that the words used in the sentence set out above are not that promoted officers will be eligible or qualified for promotion at the end of their probationary period which are the words to be often found in the rules in such cases; even so, though this part of Rule 486 says that “promoted officers will be confirmed at the end of their probationary period”, it is qualified by the words “if they have given satisfaction”. Clearly therefore the rule does not contemplate automatic confirmation after the probationary period of two years, for a promoted officer can only be confirmed under

this rule if he has given satisfaction. This condition of giving satisfaction must be fulfilled before a promoted officer can be confirmed under this rule and this condition obviously means that the authority competent to confirm him must pass an order to the effect that the probationary officer has given satisfaction and is, therefore, confirmed.”

43. *In Kedar Nath Bahl v. State of Punjab [Kedar Nath Bahl v. State of Punjab, (1974) 3 SCC 21], the appellant was appointed to a post in the Punjab Provincial Service Class I. The appointment letter stipulated that the period of probation shall be six months. The appellant continued on probation beyond the stipulated period of six months and was eventually reverted back to his previous post. He instituted proceedings challenging his order of reversion. The appellant contended that upon the expiry of the period of probation, he was deemed to be confirmed in service. Rejecting this contention, a three-Judge Bench of this Court held thus : (SCC p. 26, para 9)*

“9. ... The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming

the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer. ... The terms of appointment do not show that the appellant would be automatically confirmed on the expiry of the first six months of probation nor is any rule brought to our notice which has the effect of confirming him in the post after six months of probation.”

This view is also affirmed by the judgments of this Court in Municipal Corpn., Raipur v. Ashok Kumar Misra [Municipal Corpn., Raipur v. Ashok Kumar Misra, (1991) 3 SCC 325 : 1991 SCC (L&S) 1046] ; Jai Kishan v. Commr. of Police [Jai Kishan v. Commr. of Police, 1995 Supp (3) SCC 364 : 1995 SCC (L&S) 1233] ; State of Punjab v. Baldev Singh Khosla [State of Punjab v. Baldev Singh Khosla, (1996) 9 SCC 190 : 1996 SCC (L&S) 1210] and SBI v. Bijoy Kumar Mishra [SBI v. Bijoy Kumar Mishra, (1997) 7 SCC 550 : 1997 SCC (L&S) 1778] .

44. Recently, in Lawrence School v. Jayanthi Raghu [Lawrence School v. Jayanthi Raghu, (2012) 4 SCC 793 : (2012) 1 SCC (L&S) 798] , a two-Judge Bench of this Court held that even where the relevant rule prescribes a maximum period of probation, the use of the words “if confirmed” denote a condition precedent and that there is no deemed confirmation of service unless a specific order of confirmation is issued. The Court held thus : (SCC p. 804, para 38)

“38. Had the rule-making authority intended that there would be automatic confirmation, Rule 4.9 would have been couched in a different language. That being not so, the wider interpretation cannot be placed on the

rule to infer that the probationer gets the status of a deemed confirmed employee after expiry of three years of probationary period as that would defeat the basic purpose and intent of the rule which clearly postulates “if confirmed”. A confirmation, as is demonstrable from the language employed in the rule, does not occur with efflux of time. As it is hedged by a condition, an affirmative or positive act is the requisite by the employer. In our considered opinion, an order of confirmation is required to be passed.”

45. *It emerges from the consistent line of precedent of this Court that where the relevant rule or the appointment letter stipulates a condition precedent to the confirmation of service, there is no deemed confirmation of service merely because the services of a probationer are continued beyond the period of probation. It is only upon the issuance of an order of confirmation that the probationer is granted substantive appointment in that post. Rule 105(2) stipulates the satisfaction of the appointing authority as a condition precedent to the issuance of an order of confirmation. The argument advanced by the learned counsel for the first respondent that there is a deemed confirmation upon the continuation of service beyond the expiry of the period of probation is negated by the express language of Rule 105(2). In this view, the continuation of services beyond the period of probation will not entitle the probationer to a deemed confirmation of service. The High Court has erred in holding that there is a deemed confirmation where the services of a probationer are continued beyond the expiry of the probationary period.*

50. In the view that we have taken, the High Court has erred in concluding that the case of the first respondent falls within the second category of cases enumerated in Satya Narayan Jhavar [High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161 : 2001 SCC (L&S) 1087] . Rule 105(2) stipulates the satisfaction of the appointing authority as a condition precedent to the issuance of an order of confirmation. Admittedly, no order of confirmation was issued by the appointing authority. The case of the first respondent falls squarely within the third category of cases enumerated in Satya Narayan Jhavar [High Court of M.P. v. Satya Narayan Jhavar, (2001) 7 SCC 161 : 2001 SCC (L&S) 1087] wherein though the rules prescribe a maximum period of probation and the probationer is continued beyond the expiry of the probationary period, the substantive appointment of the probationer is subject to a specific act on the part of the appointing authority of issuing an order of confirmation. In the absence of an order of confirmation, the first respondent did not acquire the status of a confirmed employee.”

41. The facts of the instant matter being similar to the situation in this judgment, to the extent that the appointment letter of the respondent no. 2 did not stipulate that his services shall stand confirmed upon the expiry of the probationary period, shall invite the same applicability of the guidelines issued by the Hon’ble Supreme Court. The principle that in the absence of a condition stipulated in the appointment letter or the relevant rules being met there shall be no deemed confirmation of service merely for the reason of continuance of the services of the respondent no. 2 the

services of a probationer are continued beyond the period of probation fits wholly to the situation at hand.

42. In the instant case, the Delhi School Tribunal, in its order dated 9th August 2012, on the question of deemed confirmation, noted as under:-

“6. Now the question arises as to whether the acceptance of the Appointment letter stipulating the period of probation as two years is binding upon the Appellant. It is an established law that an agreement between two parties cannot be against the statute. Rule 105 of the Rules provides for a period of probation of one year only. Even if the letter of appointment provided for a period of two years, it cannot prevail upon the statutory provisions of Rules 105 of the Rules. Obviously the period of probation has to be governed by Rule 105 of the Rules which provided that the initial appointment of an employee shall be for a period of one year. The objection thus raised by the Respondent School is devoid of merits. The same is hence dismissed.

8. *Hon'ble High Court of Delhi has dealt with the issue of 'deemed confirmation' at length in the case of Dy. Director of Education vs. Veena Sharma, 175 (2010) DLT 311 (DB). The Hon'ble High Court noticed the case of High Court of Madhya Pradesh through Registrar and Others vs. Satya Narayan Jhavar, AIR (2001) SC 3234 where Apex Court had observed as under:*

"The question of deemed confirmation in service Jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject matter of consideration before

this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order, of termination has not been passed. The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the

requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

9. *Perusal of the abovesaid legal position shows that the cases of employees/ teachers under Act and Rules fall in the second category referred to above. As per provisions of Rule 105 of the Act & Rules, initially the period of probation is one year but the same may be extended by another year. In such cases the maximum period of probation is only of two years. Beyond this period, it is not permissible to extend the probation. The concept of 'deemed confirmation' comes into play upon expiry of the maximum period of probation. In other words, an order of termination can be passed before the expiry of the total period of probation of two years.*

10. *In view of the law discussed above, once an employee appointed under Delhi School Education Act & Rules-1973 is deemed to have been confirmed upon expiry of maximum period of probation of two years, the question of any further extension in the period of probation (beyond two years) of services does not arise. All the abovesaid extensions in the period of probation in the present case, therefore, are illegal unjustifiable and bad in the eyes of law even if such letters were accepted by the Appellant without any objection."*

43. This Court, however, differs in opinion with the position presented by the Tribunal. As discussed in the foregoing paragraphs, the petitioner School is governed by the DSEAR, which makes provision for probation of employees working at the schools falling under the ambit of the Act & Rules. The petitioner School being a private recognized aided school also

falls under the DSEAR. Rule 105 of the DSEAR provides for an initial period of probation of one year and an extension by another year. Hence, in the case at hand, there were relevant rules in place applicable to the petitioner School prescribing the maximum probation period for respondent no. 2. Further, the relevant provision subjects confirmation of service after probation to satisfaction of the appointing authority by postulating that *'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'* and therefore, provides for a condition for passing a test for the purposes of continuation of service. The appointment letter dated 8th July 2008 also made a specific mention of the condition that *'after completing two years satisfactory service, the service shall be confirmed'*.

44. Therefore, the position of law stands settled when it comes to the issue of deemed confirmation by an examination of the judgments referred to above. An examination of the relevant provision read with the appointment letter reveals that there was a maximum period of probation is prescribed, but the same required a specific act on the part of the employer, by issuing an order of confirmation and passing a test, for the purposes of confirmation of employment. Therefore, the reasonable conclusion that follows is that the case of the petitioner falls under the third line of cases as detailed in the judgment of ***Satya Narain Jhavar (Supra)*** and not under the second category as noted by the Tribunal.

Unless there is an express condition to the effect that the services of an employee shall stand confirmed on the end of expiry period, there remains nothing to suggest that the principle of deemed confirmation will stand in way in discharge of services. The position stands different for cases where there is a negative stipulation that beyond the said period, probation of the respondent no. 2 could not have continued, in which case the reasonable and legal consequence that would follow would be deemed confirmation of services, however, this is absolutely not the case before this Court in the dispute between the instant parties.

45. After the period of probation prescribed expired and neither any order of confirmation had been passed nor had the person concerned passed the requisite test, his services could not deemed to have been confirmed merely because the said period had expired. This Court distinguishes with the observations of the Tribunal and finds that the services of the respondent no. 2 were not deemed to be confirmed after his probation period expired, irrespective of the fact that such period was prescribed and extended rightly or wrongly. This Court relies upon the aforesaid judgments while differentiating the decision of the Delhi School Tribunal on the issue of deemed confirmation and holds that the principle does not favour the petitioner and could not have been interpreted as so by the Tribunal.

46. The petitioner School vide order dated 7th October 2011 discharged the respondent no. 2 from services after not being found suitable for the post of TGT (Mathematics) for which he was appointed. Challenging the

said order, the respondent no. 2 approached the Delhi School Tribunal and passed the impugned order dated 9th August 2012 and set aside the termination order. After the elaborate and comprehensive discussion on the issue of deemed confirmation, there does not remain much to examine with respect to the termination order. After the probationary period of the respondent no. 2 ended, there was admittedly no order of confirmation of services. Therefore, had there been no extension of the period of probation and even a termination order, the services of the respondent no. 2 were deemed to be terminated considering that he failed to fulfil the necessary condition of completion of two years' satisfactory service and that there was no express order of confirmation of employment of the petitioner.

47. The petitioner School has also raised objection to the impugned order directing it to reinstate the respondent no. 2 to service on the ground of loss of confidence and strained relationship with the employer. It is not the case of the petitioner that there were only a few isolated cases against the respondent no. 2 which led to his discharge from services. The record reveals that every few weeks a Show Cause letter or a memo was being issued to the respondent no. 2 regarding his conduct or performance. The petitioner School had several reasons to conclude that the performance of the respondent no. 2 was unsatisfactory. The students, who are at the center of focus for the petitioner, were not benefitting in any way from the employment of the respondent no. 2, since during his service, neither classes were being conducted properly, nor the classwork and homework

of the students was being checked and corrected. An incident of argument and fight between certain students leading up to filing of an FIR also came up during arguments which again indicates the incapability of respondent no. 2 to fulfil his duties. It is certain that there is a question on the eligibility and credibility of the respondent no. 2 when it comes to his service with the petitioner School and there is no doubt that the petitioner School would have lost confidence in respondent no. 2 due to his conduct and performance. A person unsuitable for a specific post may not be employed on the same especially when it is the education of children which is at stake.

CONCLUSION

48. Keeping in view the position reiterated by the Division Benches of this Court as well as by the Hon'ble Supreme Court it is conclusively held that at no point of time were the services of the respondent no. 2 deemed to be confirmed since the case of respondent no. 2 did not fall under the category of cases of deemed confirmation as per the guidelines issued and interpreted with respect to Rule 105 of the DSEAR. Moreover, it is also to be seen that the petitioner, being a custodian of welfare of all the children falling under its purview, has to ensure the best of its students' interests. It has the responsibility to ensure that the students bestowed with the kind of quality education that will shape them into the leaders of tomorrow. In this process, the School makes certain decisions which may not always be in the best interest of an individual but will indisputably benefit the students and enhance the quality of education

they are being imparted. After being granted several opportunities of improvement, the performance and demeanor of the respondent no. 2 remained to be such which undoubtedly required interference and action on part of the petitioner School.

49. Therefore, after thorough consideration of the facts, circumstances, material on record, contents of the impugned order, submissions made on behalf of the parties before this Court as well as the contentions raised in the pleadings and written submissions, it is found that the Tribunal has committed an error while setting aside the order of the petitioner School terminating the services of the respondent no. 2. This Court finds merit in the objections raised by the petitioner to the impugned order passed by the Delhi School Tribunal and finds it apposite to set the same aside.

50. Accordingly, the instant petition stands allowed and the order dated 9th August 2012 passed in Appeal No. 51/2011 by the Delhi School Tribunal along with directions *qua* reinstatement of the respondent no. 2 are set aside.

51. Pending applications, if any, also stand disposed of.

52. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

NOVEMBER 11, 2022

Aj/MS

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