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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 5th July, 2023

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W.P.(C) 5973/2019 & C.M. APPL. 25832/2019, 53607/2019**UPASANA GUPTA**

..... Petitioner

Through: Mr. Deeptakirti Verma,
Advocate

versus

**DIRECTORATE OF EDUCATION GOVERNMENT OF NCT
OF DELHI AND ANR.**

..... Respondents

Through: Mr. Yeeshu Jain, Additional
Standing Counsel with Ms. Jyoti Tyagi and
Ms. Manisha, Advocates for R-1.
Mr. Indu Shekhar, Advocate for R-2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This writ petition has been filed by the Petitioner seeking direction to Respondent No.1/Directorate of Education ('DoE') to ensure that Petitioner is treated as a regularly appointed teacher and her pay scales are accordingly fixed as per Section 10(1) of the Delhi School Education Act, 1973 (hereinafter referred to as the '1973 Act').

2. Counter affidavit has been filed by Respondent No.2/Mount Columbus School (hereinafter referred to as 'School') as well as DoE. In the counter affidavit filed by the School, a preliminary objection is raised to the maintainability of the writ petition on the ground that Petitioner has a statutory remedy of appeal before the Delhi School Tribunal (hereinafter referred to as 'DST') under Section 8(3) of the



1973 Act and therefore the writ petition is not maintainable. No rejoinder has been filed by the Petitioner refuting the preliminary objection.

3. First and foremost, this Court is required to examine the preliminary objection on maintainability of the writ petition and for which the narrative of facts as captured in the petition is as follows:-

(A). Petitioner was appointed as TGT (Maths) in the School on 13.11.2017 and according to the Petitioner, the appointment was on a regular basis and which is why she was placed on probation;

(B). School was not paying the salary of the teachers including the Petitioner and despite the Petitioner having joined soon after the appointment and having worked continuously, her appointment was not being confirmed. This led to the Petitioner, along with some other teachers, filing a complaint on 22.05.2018 with DoE;

(C). As a counterblast to the complaint, School issued a backdated appointment letter showing the appointment of Petitioner as a 'Guest Teacher' instead of a permanent/regular employee and *malafidely* followed it up with an appointment letter dated 05.09.2018 in which also the Petitioner was shown as a Guest Teacher appointed on temporary basis at a fixed salary of Rs.20,000/- per month. Having no other option, Petitioner accepted the appointment letter under the threat of losing her job;

(D). Petitioner thereafter submitted a representation dated 25.03.2019 to the School referring to certain Circulars of DoE



to the effect that teachers cannot be appointed on temporary or *ad hoc* basis and their appointment can only be on regular basis with salaries and emoluments in accordance with Section 10(1) of the 1973 Act;

(E). School informed the Petitioner vide letter dated 29.04.2019 that her appointment was on a temporary basis and not *ad hoc* and the circulars were inapplicable. Vide a separate letter, Petitioner was informed of extension of her service till 28.05.2019. Aggrieved with this, Petitioner again made a representation on 07.05.2019 followed by a reminder on 15.05.2019. Not getting any favourable response, Petitioner filed the present writ petition on 23.05.2019 seeking directions to treat her as a regular appointee with pay scales of a regular teacher;

(F). After the writ petition was filed, a relieving order was issued on 28.05.2019 purportedly in continuation of the earlier letter dated 29.04.2019, relieving the Petitioner forthwith. Writ petition was not amended by the Petitioner to challenge the relieving order and as a result the only direction sought is to consider the Petitioner as a regular teacher entitled to regular pay scales.

4. Contentions of the Petitioner *inter alia* were that: (a) Petitioner was appointed pursuant to an open advertisement against a regular vacancy as there was no mention in the advertisement that applications were invited for appointment as Guest Teacher; (b) Petitioner was placed on probation only because she was a regular appointee and this is evident from the list of probationers sent by the



School to DoE which document Petitioner received under Right to Information Act, 2005 from DoE; (c) all through, the School never questioned the genuineness or authenticity of this document nor was it ever cancelled and it is not open at this stage to take a plea that the list of probationers which includes the name of the Petitioner was issued by mistake; (d) almost a year after the appointment of the Petitioner and as a counterblast to her insistence/complaint to issue a confirmation letter and pay salary at par with the regular teacher, a backdated appointment letter was issued by the School falsely reflecting her appointment as a Guest Teacher; (e) there is no provision in the 1973 Act or Delhi School Education Rules, 1973 which permits appointment of a teacher on contract/temporary basis or as a Guest Teacher and this is clear from the circulars dated 04.10.2017 and 07.12.2018 issued by DoE; (f) the act of appointing the Petitioner as Guest Teacher was a camouflage so that she could be illegally removed from service on the pretext of not extending the appointment tenure; and (g) Petitioner deserves to be regularized after reinstatement and paid salary in consonance with provision of Section 10(1) of the 1973 Act.

5. School, on the other hand, without prejudice to the preliminary objection contended that: (a) Petitioner was not appointed as a regular teacher and her initial appointment was purely on temporary basis as a Guest Teacher on a consolidated salary; (b) since Petitioner was not a regular appointee, the question of her being placed on probation did not arise; (c) appointment was against a temporary post in place of one Mr. Vikram who left the School mid-session; (d) inclusion of Petitioner's name in the list of probationers was a clerical mistake and



an inadvertent error which cannot change the nature of appointment; (e) petition has become infructuous as Petitioner has already been relieved from the post of Guest Teacher on expiry of her contract on 28.05.2019; and (f) as the appointment of the Petitioner was as a Guest Teacher, she cannot claim salary of a regular teacher by invoking Section 10(1) of the 1973 Act.

6. I have heard the counsels for the parties on the preliminary objection which needs to be decided first and foremost.

7. When the writ petition was filed, Petitioner was in service and therefore the relief claimed was to treat her as a regular appointee with a further direction to pay the salary of a regular teacher in consonance with Section 10(1). However, after filing of the writ petition, Petitioner was relieved by an order dated 28.05.2019, which was effective from the same date. There is no challenge to the relieving order in the present petition. The School, in my view, is correct in the submission that the relief sought cannot be granted at this stage unless and until the relieving order which amounts to severing the employer-employee relationship between the Petitioner and the School, is set aside.

8. Insofar as the relieving order is concerned, while it is an order which reads “*In continuation of our office letter dated 29.04.2019, you are hereby physically relieved w.e.f. 28.05.2019 (AN)*”, in fact, amounts to dispensing the services of the Petitioner and there is clearly termination of employment of the Petitioner consequent to the relieving order. It is no longer *res integra* that a narrow construction cannot be given to Section 8(3) so as to restrict the remedy of appeal before DST to teachers terminated by way of dismissal, removal or



reduction in rank as the Supreme Court has held that any other form of termination, except where service comes to an end by efflux of time for which the employee was initially appointed, is amenable to challenge before the DST. In this context, I may refer to the judgment of the Supreme Court in ***Shashi Gaur v. NCT of Delhi and Others, (2001) 10 SCC 445***, relevant paras of which are as under:-

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

6. In support of this contention, the counsel also placed reliance on Rule 117 — explanation which indicates that replacement of a teacher who was not qualified on the date of his appointment by a qualified one will not amount to a penalty within the meaning of the said Rule [see Explanation (c)]. The learned counsel also placed before us the observations made by this Court in the case of *Principal v. Presiding Officer [(1978) 1 SCC 498 : 1978 SCC (L&S) 70]* wherein this Court had observed that for applicability of the provisions of Section 11 two conditions must coexist, namely, (i) that the employee should be an employee of a recognised private school, and (ii) that he should be visited with either of the three major penalties, i.e., dismissal, removal or reduction in rank.

7. This judgment and the interpretation put to the provisions of sub-sections (2) and (3) of Section 8 undoubtedly is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to sub-section (3) of Section 8 thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. The statute has provided for a Tribunal to confer a remedy on the teachers who are often taken out of service by the caprices and whims of the management of the private



institutions. The governmental authorities having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

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

9. A Co-ordinate Bench of this Court in ***G.D. Goenka Public School and Another v. Vinod Handa and Another, 2019 SCC OnLine Del 9540***, relying on the judgment in ***Shashi Gaur (supra)***, held that the expression ‘removed’ is wide and comprehensive in its scope and ambit and in the absence of any restrictive definition, it has to be accorded its widest possible meaning and would include severance of employment for any reason such as resignation, compulsory retirement, etc. Relevant paragraphs are as follows:-

“26. Section 8(3) of the DSE Act enables, any employee, of a recognised private school, who is dismissed, removed or reduced in rank, to appeal, against the order, to the learned Tribunal. The burden of the petitioner's song, before the learned Tribunal as well as before this Court, is that the respondent was not dismissed, or removed, or reduced in rank and that, therefore, his appeal, before the learned Tribunal, was not maintainable.

27. This argument, is, in my view, completely devoid of substance. The expression “removed” is wide and comprehensive in its scope and ambit, and in the absence of any restrictive definition, attributed to the said expression in the DSE Act or the DSE Rules, has to be accorded in its widest possible meaning. One may also be



informed, in doing so, by the principle, well settled in law, that the law is always required to be so interpreted as to confer, rather than exclude, jurisdiction, on a judicial or quasi-judicial authority.

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31. *The above decision was followed, by a learned Single Judge of this Court in Daya Nand Adarsh Vidyalaya v. Deepa Chibber, 2013 SCC OnLine Del 3754, in which the court was specifically confronted with the question of whether a case of severance of employment by reason of resignation, by the teacher concerned, would also be amenable to appeal, to the learned Tribunal, under Section 8(3) of the DSE Act. This Court, first referred to the above extracted passages from the judgment of the Supreme Court in Shashi Gaur (supra), and proceeded, thereafter, to opine thus:*

“4. In view of the aforesaid judgment of the Supreme Court in the case of Shashi Gaur (supra), in my opinion, there can be no doubt that once a teacher/employee of a school takes up a case that she has been illegally removed, this aspect very much falls within the jurisdiction of the Tribunal. The mere fact that in determining this issue the Tribunal has also to consider that whether or not the teacher or employee has resigned or not cannot mean that Tribunal will have no jurisdiction because it is only on arriving at a conclusion that there is no valid resignation, would thereafter the Tribunal arrive at a decision of illegal removal of a teacher/employee of a school.”

(Emphasis supplied)

32. *This Court, therefore, held that the appeal preferred by the respondent before it, in the above judgment, i.e. Deepa Chibber (supra), to the learned Tribunal, was maintainable.*

33. *I express my complete, and respectful, concurrence, with the said decision.*

34. *The objection of the petitioner, to the entertainment of the respondent's appeal, by the learned Tribunal, on the ground that the said appeal was not maintainable, therefore, merits rejection.”*

10. Applying the aforesaid judgments to the facts of the present case, there can be no doubt that the relieving order dated 28.05.2019 has severed the relationship between the School and the Petitioner and is a form of ‘removal’ and is amenable to challenge by way of an appeal before the DST in consonance with the provision of Section 8(3) of the 1973 Act. The reliefs claimed in the present petition i.e.



treating the Petitioner as a regular employee and granting her regular pay scales cannot be decided at this stage since the Petitioner stands relieved and would depend on the outcome of a challenge to the relieving order, if and when laid by the Petitioner.

11. Writ petition is accordingly dismissed granting liberty to the Petitioner to take recourse to appropriate remedies available in law to challenge the relieving order dated 28.05.2019. Since this Court has not gone into the merits of the disputes raised in the present writ petition, it is made clear that Petitioner is at liberty to raise all contentions raised herein at the appropriate stage. I may also note that this writ petition was filed by the Petitioner in 2019 and the factum of pendency of this petition will be taken into account by the appropriate forum while considering limitation in filing the appeal, if and when Petitioner takes resort to the said remedy. Pending applications are accordingly disposed of.

JYOTI SINGH, J

JULY 5, 2023/kks/shivam

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