



2024:DHC:6313



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

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Date of Decision: 21<sup>st</sup> August, 2024

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W.P.(C) 11563/2017 & CM APPL. Nos. 47125/2017, 41547/2024  
and 41548/2024

SMT. SATYA CHHIKARA

.....Petitioner

Through: Mr. Ankit Virmani and Ms. Ruchika  
Agarwala, Advocates.

versus

THE MANAGING COMMITTEE, ARMY PUBLIC SCHOOL AND  
ANR. ....RespondentsThrough: Mr. Bhagbati Prasad Padhy, Advocate  
for R1.Mrs. Avnish Ahlawat, Standing Counsel, Services  
with Mr. N.K. Singh, Ms. Palak Rohmetra, Ms.  
Laavanya Kaushik and Ms. Aliza, Advocates for  
R2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition was filed in the year 2017 on behalf of the Petitioner under Article 226 of the Constitution of India, seeking the following reliefs:

*“(a) issue a writ of certiorari or any other appropriate writ, order or direction quashing the Impugned Orders dated NIL, 21.10.2015, 12.02.2016 and 12.10.2016 passed by Respondent No. 1 (Annexures - A, B, C & D respectively);*

*(b) pass an order holding and declaring the Petitioner's date of appointment to be 02.04.2007 and the date of confirmation of service to be 01.04.2008;*

*(c) pass an order holding and declaring that the Petitioner is entitled to full backwages including salary, allowances, arrears pursuant to*

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*recommendations of 6<sup>th</sup> Pay Commission, and all other benefits (including but not limited to benefit under MACPS), as a regular employee in continuous service since 02.04.2007, at par with a teacher of corresponding status employed at a school run by Respondent No.2 as per Section 10 (1) of the Delhi School Education Act, 1973;*

*(d) issue a writ of mandamus or any other writ, direction or order directing the Respondent No. 1 to pay to the Petitioner the entire back-wages, including salary, allowances, arrears pursuant to recommendations of 6<sup>th</sup> Pay Commission, and all other benefits, as per entitlement at prayer clause (b) above, along with interest @ 18% per annum. This aggregates to a sum of Rs. 47,83,651/- as on 30.11.2017 (as calculated in Annexure- FFF to the Petition), and the same be directed to be paid along with pendente lite and future interest @ 18% per annum till date of payment of the entire aforesaid amount to the Petitioner.”*

2. This case has a chequered history and therefore, for the sake of brevity, I am only referring to facts which are necessary and relevant for adjudicating the claim of the Petitioner with respect to back wages and her date of confirmation in service, the reliefs sought in the amended writ petition. A background to the amendment made in the writ petition is also necessary. The termination order dated 05.02.2009, whereby Petitioner was terminated was quashed by this Court in W.P.(C.) 11484/2009 and the order was upheld by the Division Bench in L.P.A. No. 750/2013. By order dated 06.03.2020 in the present petition, Court had directed the Petitioner to furnish an undertaking in response to a communication dated 12.02.2016 calling upon the Petitioner to furnish an affidavit of non-employment in order to assess the back wages payable to her. However, instead of assessing the quantum of back wages, Respondent No.1/Army Public School, Shankar Vihar (hereinafter referred to as the “School”) passed an order dated 02.07.2020, rejecting the claim of back wages. Amendment was sought by the Petitioner to challenge the said order.
3. Reading of the impugned order dated 02.07.2020 reflects that five factors were taken into account by the School in rejecting the claim of back



wages of the Petitioner and for ease of reference, paragraphs 5 and 7 of the impugned order indicating the reasons are extracted hereunder:

*“5. The crucial facts germane for an assessment of back wages are:*

*i. Length of employment : Prior to termination Ms Satya Chhikara had only worked (1)one year and (10) ten months approximately. After re-instatment on 25.9.2015, she has resigned on 06 April 2020 due to personal reasons.*

*ii. Nature of employment: temporary and contractual prior to termination due afflux of time. She was not a permanent teacher before termination.*

*iii. Eligibility (Age): She was over age at the time of initial appointment. As it was a new school and in order to accommodate the spouses of defence personnel, temporary appointment was given and age relaxation was sought from the government.*

*iv. Efforts for alternative employment: As mentioned above there was no satisfactory explanation for her attempt to seek alternative employment after termination. Even she refused to come for interview for empanelment of teachers against leave vacancy.*

*v. Financial burden: The APS is an un-aided, welfare school, catering to the needs of the wards of the Army Personnel serving in difficult terrains and excess payment towards back wages shall be at cost of the students and development of the school.*

*x x x x x x x x x*

*7. Taking into account of the aforesaid crucial facts, the APS has decided the last drawn salary i.e Rs. 10,100/- before termination as a basis for assessing back wages which in the opinion of the Managing Committee is more than reasonable. The assessment of the total back wages for the period 01 April 2009 to Aug 2015 comes to Rs. 7,77,700/- which has already been deposited in court. You have already withdrawn an amount of Rs 5,95,000/- along with accrued interest.”*

4. In order to test the legality of these grounds, which have weighed with the School as crucial facts germane for assessing the back wages, it would be necessary to look into the earlier litigation between the parties and the orders passed by this Court.

5. The saga of the Petitioner started on 16.10.2006 when an advertisement was issued by the School in Hindustan Times inviting



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applications to fill up vacant posts of Primary Teachers, TGTs and PGTs. Petitioner applied for being appointed as a Teacher and being successful in the written examination held on 14.01.2007 and interview held on 09.02.2007 respectively, Petitioner was appointed as a Primary Teacher on contract basis for one year commencing from 02.04.2007 and ending on 31.03.2008. Basic Pay of the Petitioner was fixed at Rs.4,500/- per month and she was also entitled to allowances such as Dearness Allowance, Dearness Pay, House Rent Allowance and Medical Allowance.

6. Services of the Petitioner were continued till 25.03.2009 on which date a letter terminating her services was issued by the School. Case of the Petitioner was that *albeit* she was not assured that her services would be regularized but she was informed that her appointment would continue as a Primary Guest Teacher. School sought age relaxation *qua* the Petitioner and other teachers from the Directorate of Education (DoE) on 13.08.2008 and was informed on 31.01.2009 by the DoE that it was actively considering the grant of age relaxation concerning appointments of Primary Teachers.

7. Petitioner challenged the termination order before this Court in W.P.(C.) 11484/2009, which was finally decided having been admitted on 30.11.2010. Learned Single Judge by a detailed judgment allowed the writ petition quashing the termination order on the ground that the only disqualification for appointment against the Petitioner was her overage and DoE vide its letter dated 30.06.2009 had granted age relaxation, *albeit*, the letter was issued after the termination order was passed. Court observed that the termination letter itself showed the *mala fides* of the School and that termination was on account of autocratic attitude adopted by the School. The question of salary for the period from the date of termination till the date of



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judgment was left to the Petitioner to be agitated by making representation to the School in terms of Rule 121 of the Delhi School Education Act and Rules, 1973 ('DSEAR').

8. School challenged the judgment before the Division Bench in LPA 750/2013, which was dismissed vide judgment dated 25.08.2015 with costs of Rs.25,000/-, upholding the order of learned Single Judge with an observation that the School was playing ducks and drakes not only with the DoE but even with the Petitioner. Division Bench further observed that while seeking recognition, parent Society of the School and the School had written to DoE that they had appointed qualified staff, all of whom were on probation and requested DoE to grant age relaxation to the teachers who were overage, in which list the Petitioner was also included, clearly to show that the School was meeting all norms of recognition and was not appointing teachers on contract basis, whereas contrary to the stand in fact, Petitioner was offered contractual appointment. Division Bench observed that *estoppel* would bind the party which wants to change its tracks and directed that the sum of Rs.5,95,000/-, deposited by the School, pursuant to order dated 09.10.2013, when conditional stay of the judgment of the learned Single Judge was granted, be released to the Petitioner along with accrued interest, with liberty to the School to adjust the amount with the wages payable when the issues raised in the appeal were finally decided.

9. During the pendency of the appeal, Division Bench on 12.02.2014 recorded the submission of the counsel for the Petitioner that Petitioner will make representation to the School in respect of wages in terms of paragraph 10 of the judgment of the learned Single Judge. Counsel for the School had stated that upon the representation being made, a decision shall be taken by



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the School within two weeks thereafter and communicated to the Court. Representation was made on 17.02.2014 along with an affidavit certifying that Petitioner was unemployed from the date of termination. On 28.04.2014 Division Bench noted that School had deposited Rs.5 Lacs in Court and was also depositing Rs.10,100/- per month and directed that out of the said amount a sum of Rs.2.5 Lacs be released to the Petitioner, without prejudice to the rights and contentions of the parties. This amount was released to the Petitioner on 05.08.2014.

10. On 25.08.2015, Division Bench allowed the appeal upholding the order of the learned Single Judge with costs and serious observations on the bias and the conduct of the School Authorities. After several reminders by the Petitioner to comply with the orders of the Court, finally, on 21.09.2015 Petitioner was reinstated on pay scale of a PRT as per 6<sup>th</sup> CPC recommendations. By communication dated 21.10.2015, the School informed the Petitioner that the back wages for the period 01.04.2009 till August, 2015 amounted to Rs.19,23,897/-. The basis of the calculation was refuted by the Petitioner and correspondence was exchanged *qua* the calculations. On 21.01.2016, Petitioner received Rs.4,20,179/- pursuant to the judgment of the Division Bench, whereby the amount of Rs.5,95,000/- was deposited by the School in the Court. After prolonged correspondence with respect to back wages, School passed the impugned order dated 12.10.2016 completely denying back wages to the Petitioner, which was challenged in the original petition filed in 2017.

11. During the pendency of the petition, School passed another order dated 02.07.2020 declining back wages and reiterating its stand and the Petitioner amended the writ petition to lay a challenge to the said order as



also seeking a declaration to treat Petitioner's date of appointment as 02.04.2007 and date of confirmation as 01.04.2008. Petitioner also sought full back wages with benefit of the pay revision under 6<sup>th</sup> CPC and consequential benefits such as financial upgradation under MACP Scheme at par with teachers of corresponding status employed at Schools run by DoE as per the mandate of Section 10(1) of DSEAR amongst other reliefs. The reliefs sought in the amended writ petition are as follows:-

*“(a) issue a writ of certiorari or any other appropriate writ, order or direction quashing the Impugned Orders dated NIL, 21.10.2015, 12.02.2016, 12.10.2016 and 02.07.2020 passed by Respondent No. 1 (Annexures -A, B, C, D & LLL respectively);*

*(b) pass an order holding and declaring the Petitioner's date of appointment to be 02.04.2007 and the date of confirmation of service to be 01.04.2008;*

*(c) pass an order holding and declaring that the Petitioner is entitled to full backwages including salary, allowances, arrears pursuant to recommendations of 6<sup>th</sup> Pay Commission, and all other benefits (including but not limited to benefit under MACPS), as a regular employee in continuous service since 02.04.2007, at par with a teacher of corresponding status employed at a school run by Respondent No.2 as per Section 10 (1) of the Delhi School Education Act, 1973;*

*(d) issue a writ of mandamus or any other writ, direction or order directing the Respondent No. 1 to pay to the Petitioner the entire backwages, including salary, allowances, arrears pursuant to recommendations of 6<sup>th</sup> Pay Commission, and all other benefits, as per entitlement at prayer clause (b) above, along with interest @ 18% per annum. This aggregates to a sum of Rs. 47,85,252/- as on 30.11.2017 ( as calculated in Annexure- FFF to the Petition), and the same be directed to be paid along with pendente lite and future interest @ 18% per annum till date of payment of the entire aforesaid amount to the Petitioner;*

*(dd) pass an order,*

*(i) holding and declaring that the Petitioner is entitled to gratuity as an employee of Respondent No. 1 in continuous service since 02.04.2007;*

*(ii) directing Respondent No. 1 to calculate the gratuity payable to the Petitioner as a regular employee in continuous service since 02.04.2007.....”*



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12. The issue arising for consideration of this Court is in a narrow compass and revolves around testing the validity and legality of the order dated 02.07.2020, wherein the School has based its decision to deny back wages to the Petitioner on five factors, which according to the School were germane for determining the entitlement of the Petitioner to back wages.

13. Learned counsel for the Petitioner urges that once the learned Single Judge set aside the termination order holding the same to be a sham action and Division Bench upheld the judgment reiterating that termination of the Petitioner was an act of fraud by the School, Petitioner is entitled to full back wages with financial upgradations and all other statutory benefits w.e.f. 02.04.2007, payable to a regular employee of a School. However, despite the two judgments, School continued with its illegal actions and victimization of the Petitioner and refused to pay the monetary benefits. *Malafide* of the School Authorities is apparent from the fact that School had initially passed an order dated 'Nil' under Rule 121 of DSEAR holding, *inter alia*, that Petitioner was not entitled to any back wages. This was followed by order dated 21.10.2015, wherein back wages payable to the Petitioner were calculated at Rs.19,23,897/-. Therefore, going by the stand of the School and adjusting a sum of Rs.7,77,700/- deposited in the Court, balance amount due to the Petitioner was Rs.11,46,197/-. This order is a tacit admission by the School that back wages were payable. Petitioner objected to the calculation as the same was based on incorrect computation, however, instead of rectifying the mistake, School passed another order dated 12.10.2016 refusing to pay any back wages and this was followed by order dated 02.07.2020, passed during the pendency of this writ petition, reiterating that no back wages were payable. This clearly shows that the



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School has no regard for the orders of this Court and the intent is only to harass the Petitioner and deprive her of her legitimate dues.

14. It is further urged that none of the five grounds taken by the School to deny back wages are sustainable in law. The argument is that the School has gravely erred in persisting with the stand that Petitioner was a temporary employee and over age at the time of appointment contrary to the two judgements of this Court, wherein the termination was quashed on this very ground holding that the Petitioner was a regular employee from 02.04.2007 and entitled to statutory protection under DSEAR. School overlooked that issue of over age was set at rest when DoE granted relaxation vide letter dated 24.04.2009 and the learned Single Judge as well as the Division Bench have taken judicial notice of this fact. Insofar as the length of employment of 1 year and 10 months prior to termination is concerned, Petitioner was in continuous service as PRT in the School from 02.04.2007 till her resignation on 06.04.2020. In any case, this finding cannot sustain after the judgments of this Court granting regular status to the Petitioner and setting aside the termination order. Insofar as the objection that Petitioner made no attempt to seek alternative employment is concerned, Petitioner was over age and hence ineligible for any other employment and this cannot be held against the Petitioner since the School had itself sought age relaxation from DoE. Petitioner had filed an affidavit of non-employment during the entire period stating categorically that she had not worked from the date of her termination on the asking of the School during the pendency of the earlier litigation. It is not open to the School to take a defence that on account of financial crunch, it is unable to pay the legitimate dues of the Petitioner, considering that she has been litigating since 2009 compelled by the illegal

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actions of the School in terminating her services and the stand of the Petitioner having been vindicated by two judgments of this Court, all consequential benefits must be paid to her.

15. Learned counsel for the School, on the other hand, supports the impugned order and submits that there is no infirmity in declining the back wages to the Petitioner. It is argued that back wages is not a natural consequence of reinstatement and under Rule 121 DSEAR, it is the domain and prerogative of the School to decide whether back wages are payable and if so, the quantum. Petitioner worked with the School only for 1 year and 10 months prior to her termination and even after reinstatement on 25.09.2015, she resigned on 06.04.2020. The period of employment is thus too short to pay her back wages. Moreover, her nature of employment was temporary and contractual prior to termination and Petitioner cannot place herself at par with a regular teacher, seeking benefit of Section 10(1) DSEAR. Over age has also been taken as a criteria for denying back wages as it is a germane factor which makes the initial appointment itself void. Only because the School had recently started, appointment was given to the Petitioner as a gesture to accommodate spouses of Defence personnel. Petitioner made no effort to seek alternative employment after termination and cannot place the burden of back wages in this period on the School which in any case is under a financial crunch being an unaided welfare school, catering to the needs of wards of Army personnel.

16. Ms. Avnish Ahlawat appearing on behalf of DoE supports the case of the Petitioner and submits that after the judgment of the Writ Court upheld by the Division Bench with serious observations against the School, the impugned order denying back-wages is unsustainable in law. Once the age



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relaxation was sought by the School and granted by the DoE, termination on ground of over age of the Petitioner was *per se* illegal and the impugned order denying back-wages taking this as one of the grounds deserves to be set-aside.

17. Heard learned counsels for the parties and examined their rival submissions.

18. The above narrative shows that Petitioner was initially appointed on a contract basis pursuant to an open advertisement issued by the School on 16.10.2006 as a Primary Teacher. Appointment was after a due selection process involving a written examination and an interview, both of which were successfully cleared by the Petitioner. The initial appointment was for the period 02.04.2007 to 31.03.2008. Services of the Petitioner were terminated on 25.03.2009. Before termination, School had itself sought age relaxation for the Petitioner and other teachers from DoE and was informed on 31.01.2009 that the matter was being actively considered.

19. As a matter of record, Petitioner challenged her termination in W.P.(C) 11484/2009, which was allowed and the termination order was set aside. The Division Bench upheld the judgment and dismissed the appeal of the School in LPA No.750/2013. At this stage, it would be useful to refer to the observations in the two judgments as the same have a bearing on the impugned order denying back wages. In W.P.(C) 11484/2009, learned Single Judge observed as follows:

*“6. In my opinion, the language of the letter of termination dated 5.2.2009 itself shows the categorical malafides of respondent no.1-school, cases of many of whose employees are coming up for hearing before this Court, and the impugned actions show that respondent no. I-Army Public School seems to be acting in a world of its own wherein the Army Public School feels that it is beyond the purview of the provisions of the Delhi School Education Act and Rules, 1973. I have already commented upon the*



general letter dated 30.3.2009 which was issued by the respondent no.1 school in WPC 1439/2009, and when we read the letter dated 5.2.2009 issued to the petitioner in the present case, one is left in no manner of doubt as to the autocratic attitude adopted by the respondent no.1-school because appointment of the petitioner is only of a primary teacher and therefore I fail to understand that how it can be said that petitioner was appointed because experienced teachers in respective subjects were not available, inasmuch as surely for a primary teacher, I do not think that there are respective subjects in which specialization is required. In any case, I really find it too farfetched argument that normally primary teachers would not have been available for employment for as many as 3 years, and for which period the petitioner was given the chain of appointments and cancellations. Therefore, I do not find that the present case in any manner be distinguished for not applying the ratio in the case of Army Public School (supra) in WPC 1439/2013.

7. Learned counsel for respondent no.1 sought to argue that petitioner's services cannot be regularized in terms of the prayers made in this writ petition, and more so because petitioner is not qualified for appointment inasmuch the petitioner is over aged. Reliance in support of this argument is placed upon the judgment of the Supreme Court in the case of A. Umarani Vs. Registrar, Cooperative Societies & Ors. (2004) 7 SCC 112 which holds that once essential qualifications are lacking, there cannot be regularization of employees. In my opinion, the argument which is raised and the judgment cited on behalf of respondent no.1 cannot have application to the facts of the present case because the only issue with respect to dis-qualification of the petitioner is the petitioner being over-aged and the Director of Education vide its letter dated 30.6.2009 has already granted age relaxation to the petitioner. No doubt, this letter dated 30.6.2009 was issued after termination of services of the petitioner, the same cannot make any difference because once the petitioner is treated to have been illegally removed from services, petitioner will naturally get the benefit of the letter of the Director of Education dated 30.6.2009 relaxing the age requirement so far as the petitioner is concerned."

20. Relevant observations of the Division Bench are as follows:

"7. It all happened like this. The Director of the Army Welfare Education Society submitted an application on June 07, 2006 to the Directorate of Education proposing to establish a new school in Zone-20, District South west i.e. the Army Public School, Shanker Vihar, Delhi Cantonment - the appellants. Pending grant of approval to establish the school the Army Welfare Education Society issued an advertisement on October 16, 2006 inviting applications from eligible candidates to be appointed as Primary Teachers or Post Graduate Teachers. For females the upper age limit notified was 39 years. Minimum qualifications notified were as per



requirement of CBSE. Respondent No.1 submitted her application to the Society in terms of the public notice and she cleared the written test held by the Society. On February 09, 2007 respondent No.1 was called for an interview but was informed that currently there was no vacancy, but should she be successful at the interview her name would be kept in a reserve panel. On April 02, 2007, respondent No.1 was offered appointment as a Primary Teacher on contract basis for the period April 02, 2007 till March 31, 2008. The appellant school started functioning with effect from April 09, 2007, and we note that as of said date the Directorate of Education had yet to accord the necessary approval sought by the Army Welfare Education Society to establish the appellant school. On December 10, 2007, the appellant school informed the Directorate of Education that it had been functioning since April, 2007 and sent a reminder of the request made for the school to be granted recognition. On December 24, 2007 the Directorate of Education intimated that the appellant school had been recognized. The Army Welfare Education Society thereupon submitted a scheme for the management of the appellant school, a requirement of Rule 59 of the Delhi School Education Rules, 1973, seeking approval from the Directorate of Education to the scheme of the management. On January 18, 2008, the Directorate of Education constituted a committee to inspect the appellant school and in particular its record. The appellant school was directed to file an affidavit that it would appoint staff in accordance with the recruitment rules applicable to the post as per the Delhi School Education Act, 1973 and the rules framed under. The appellant school complied with the same when on February 06, 2008 its Manager : Brig.B.B.Verma furnished the necessary affidavit. On February 12, 2008 the Managing Committee of the appellant school met for the first time and passed various resolutions. On February 26, 2008 the Directorate of Education accorded approval to the Managing Committee as also the scheme of the management of the appellant school.

8. Since on March 31, 2008 the appointment of the respondent No.1 on contract basis had come to an end, as per the appellant, with effect from April 08, 2008 till May 17, 2008 she was appointed as a guest primary teacher. After the summer vacations the appellant was again given appointment, as noted above, as a contractual teacher from July 01, 2008 till May 20, 2009, which period was curtailed vide letter dated February 05, 2009 to March 28, 2009.

9. But, what was conveyed to the Directorate of Education by the appellant school was that the respondent No.1, as also all other teachers of the school were appointed on probation. As we have noted hereinabove in paragraph 4, to the Directorate of Education the appellant school had, while forwarding the list of its teachers, showing the name of respondent No.1 at serial No.29, made a request that such teachers who were over age on the date of their appointment should be allowed to be made permanent and for which the Director of Education was requested to



*accord necessary relaxation. As noted hereinabove in para 4, on April 28, 2009 the Directorate of Education accorded approval granting age relaxation to all such teachers appointed by the appellant school who were over age as on the date of their appointment. But as regards respondent No.1, what the appellant school did was that on February 05, 2009 the appointment of the respondent No.1 was curtailed till March 28, 2009 as against May 20, 2009, as informed to respondent No.1 vide letter dated July 07, 2008.*

*10. From the facts noted hereinabove, which regrettably were not straightened and placed before the learned Single Judge nor before us, but have been culled out by us from the stray pleadings and documents filed by the parties, the picture which emerges is that after the Army Welfare Education Society established the appellant school on June 07, 2006, it sought recognition of the appellant school from the Directorate of Education and pending that it issued an advertisement on October 16, 2006 inviting applications from the eligible candidates to be appointed as Primary Teachers or Post Graduate Teachers informing that the upper age for female candidates would be 39 years. Educational qualifications were notified. Respondent No.1 submitted the application to the Society. She took the written test conducted by the Society. She cleared the same. She was called for an interview. She cleared the interview. She was offered appointment on contract basis from April 02, 2007 till March 31, 2008, but to the Director of Education it was told that the respondent No.1 was on probation, and so were others. Conscious of the fact that many teachers appointed were over age when they were appointed, the appellant school sought age relaxation from the Directorate of Education and name of respondent No.1 was included in the list for whom age relaxation was prayed for. It was repeatedly conveyed to the Directorate of Education that all these over aged teachers, including the respondent No.1, were appointed through a process of selection against available posts and were on probation. The Directorate of Education conveyed to the appellant school on April 28, 2008 that it had accorded approval to grant age relaxation to all the teachers whose names were forwarded to the Directorate of Education for being accorded age relaxation. The date on which the appellant school sent the request to the Directorate of Education to accord age relaxation benefit to 64 teachers on probation in which name of respondent No.1 was at serial No.29 has not emanated from the pleadings of the parties, but we find that the list of said 64 teachers has been annexed as Annexure R-1 with the counter affidavit filed by the Directorate of Education to the writ petition filed by respondent No.1, and the document is not denied by the appellant. We have therefore no hesitation in holding that the appellant school was playing ducks and drakes with not only the Directorate of Education but even respondent No.1. While seeking recognition, the parent society which established the appellant school and even the appellant school, wrote to the Directorate of Education that they had appointed qualified staff, all of whom was on*



*probation and requested the Directorate of Education to grant age relaxation benefit to those teachers who were over aged and in the said list, name of respondent No.1 was included, clearly to show to the Directorate of Education that the school was acting as per law by not appointing any teacher on contract, but to the respondent No.1 letters offering appointment for different duration were being issued sometimes informing her that she was on contract and sometimes informing her that she was a guest teacher.*

*11. In our opinion the appellant would be bound by the representations made by it to the Directorate of Education while seeking recognition, for the reason acting on those representations the appellant school got a benefit i.e. recognition. Had the Directorate of Education been informed that the appellant was appointing teachers on contract basis, the appellant would not have been accorded recognition. It is trite that where a party takes a position and makes a representation based whereupon it receives a benefit the party concerned cannot be permitted to take a stand to the contrary. Estoppel would bind the party which wants to change its tracks.*

*12. The cunningness of the appellant is further evidenced from the fact that knowing fully well that the Directorate of Education was in the process of according approval to its request that benefit of age relaxation would be granted to such teachers who were shown as having been appointed against regular vacancy but on probation, it curtailed the tenure appointment of the respondent No.1 which was up till May 20, 2009 to March 28, 2009. The decision of granting age relaxation was conveyed to the appellant on April 28, 2009. It is apparent that the appellant had learnt somewhere in February, 2009 that the necessary approval would be granted and thus on February 05, 2009 it wrote to respondent No.1 that her contract tenure which was up till May 29, 2009 was being curtailed till March 28, 2009.*

*13. These are our reasons to hold against the appellant and concur with the final view taken by the learned Single Judge that terminating the services of the respondent No. 1 was an act of fraud, requiring the termination to be declared illegal and reinstatement of respondent No.1 as directed by the learned Single Judge.*

*14. Therefore, we do not deal with the decisions cited by learned counsel for the appellant to bring home the point that where a person is appointed on a contract, when the tenure of contract comes to an end the service terminates by efflux of time and such a tenure appointment cannot confer any benefit on the employee. The said proposition of law is without any exception, but the facts of the instant case show that the appellant's school and the society had invited applications for permanent posts. A written examination followed by an interview was conducted. To some of the appointed teachers, which included the respondent No.1 letter of appointment termed the appointed firstly on contract and when said period*



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*expired as a guest teacher for a tenure and when said tenure came to an end once again as a contract teacher, but to the Directorate of Education it was informed that all the teachers, including respondent No.1 were appointed against regular vacancies and were on probation. Those who were over aged, a request was made that benefit of age relaxation be granted. On said representations made the appellant school got the benefit of recognition. The Directorate of Education granted age relaxation benefit to all over aged teachers including the respondent No.1”*

21. Petitioner’s services were terminated on 05.02.2009 on the sole ground that her appointment was contractual only to meet the temporary need of the School. Learned Single Judge set aside the termination and the judgement was upheld by the Division Bench. A conjoint reading of the two judgments, referred to above, establishes that: (a) termination of the Petitioner’s services was *malafide* and a sham action as also in violation of provision of DSEAR; (b) the appointment as Primary Teacher was valid and regular after following due process of selection through open advertisement; (c) School had sought and was granted age relaxation *qua* the Petitioner *albeit* the same was communicated by DoE post her termination; (d) School was playing ducks and drakes not only with DoE but even the Petitioner representing to the DoE on the one hand that it had appointed teachers on regular basis to seek recognition and on the other hand appointing Petitioner on contract basis; and (e) cunningness of the School Authorities was evident from the fact that knowing fully well that DoE was in the process of according approval to its request for age relaxation, it curtailed the tenure of the Petitioner.

22. With these observations in the backdrop, the grounds taken in the impugned order dated 02.07.2020 that Petitioner was over age and her employment was temporary and contractual have no legs to stand and in my view, the very action of taking these factors into consideration is



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contemptuous, to say the least. Length of employment was wholly irrelevant in view of the observations of the Division Bench that without awaiting for the outcome of the proposal for age relaxation, the School cunningly truncated the tenure of the Petitioner and thus she cannot be blamed for the length of employment. Petitioner wasted no time in approaching the Court and has been litigating for over a decade till she was reinstated pursuant to judicial intervention. The ground that Petitioner made no effort to seek alternative employment is equally flawed. Petitioner had filed a writ petition challenging her termination and had an order of reinstatement in her favour on 03.09.2013, which the School chose to challenge. Petitioner clearly states that when she had applied to the School she was over age and therefore, rightly as the time progressed she was ineligible for any other employment, courtesy the impugned actions of the School.

23. Insofar as the last ground of alleged financial crunch of the School is concerned, it is a settled law that financial capacity cannot be taken as a shield by an employer to deny legitimate dues of an employee particularly when the employee has been successful in vindicating his/her stand and was illegally terminated. Moreover, there is no material on record except for a bald statement in the impugned order substantiating the financial crunch. At this stage, it is also pertinent to mention that in one of the earlier orders passed on 21.10.2015, School had itself calculated the back wages payable to the Petitioner at Rs.19,23,897/-. Today, learned counsel for the Petitioner, on instructions, submits that in order to put a quietus and an end to the prolonged litigation, Petitioner is willing to settle at Rs. 10 Lacs towards back wages in addition to other consequential benefits of statutory dues and financial upgradations under the Modified Assured Career Progression



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Scheme (MACP). Therefore, this issue of financial crunch cannot be accepted as a ground to deny back wages.

24. For all the aforesaid reasons, impugned orders dated 12.10.2016 and 02.07.2020 are set aside. Petitioner is held entitled to back wages of Rs.10 lacs, as accepted by her during the course of hearing along with other consequential benefits such as pay revision as per 6<sup>th</sup> CPC, terminal dues payable on resignation and financial upgradations under the MACP Scheme, as per law.

25. The case of the Petitioner will be considered for the grant of aforesaid benefits within a period of 8 weeks from today, in accordance with law, taking the date of appointment of the Petitioner as 02.04.2007 and date of confirmation in service as 01.04.2008.

26. It is a common ground between the parties that the School has deposited a sum of Rs.5,95,000/- in this Court, on which interest has accrued till date. Petitioner has admittedly withdrawn part of this amount while the balance is lying deposited. Since the School is liable to pay a total amount of Rs.10 lacs, it shall pay the shortfall to the Petitioner after deducting the principal amount deposited in the Court, within a period of 6 weeks from today. The amount lying deposited shall be released to the Petitioner along with the interest accrued thereon till today.

27. Writ petition is allowed and disposed of in the above terms along with pending applications.

**JYOTI SINGH, J**

**AUGUST 21, 2024/jg**