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

\+ **W.P.(C) 1439/2013, W.P.(C) 2176/2013, W.P.(C) 2535/2013**

% **30th August, 2013**

1. **W.P.(C) No.1439/2013**

ARMY PUBLIC SCHOOL & ANR. ..... Petitioners
Through: Ms. Asha Jain Madan, Advocate.

versus

NARENDRA SINGH NAIN AND ANR. ..... Respondents
Through: Mr. M. A. Niyazi, Mr. Manish Kumar, Advocates for respondent No.1.
Mr. Kushal Yadav, Advocate for Ms. Sonia Arora, Advocate & Ms. Jahnavi Upadhyay, Advocate for Mr. Dhamesh Relan, Advocate for respondent No.2/Directorsyr of Education.

2. **W.P.(C) No.2176 /2013**

ARMY PUBLIC SCHOOL & ANR. ..... Petitioners
Through: Ms. Asha Jain Madan, Advocate.

versus

AYODHYA PRASAD SEMWAL AND ANR. ..... Respondents
Through: Mr. M. A. Niyazi, Mr. Manish Kumar, Advocates for respondent No.1.
Mr. Kushal Yadav, Advocate for Ms. Sonia Arora, Advocate for respondent No.2/Director of Education.

3. **W.P.(C) No.2535/2013**

ARMY PUBLIC SCHOOL & ANR. ..... Petitioners
Through: Ms. Asha Jain Madan, Advocate.

versus

SH. ANUSUYA PRASAD & ANR. ..... Respondents
Through: Mr. M. A. Niyazi, Mr. Manish Kumar, Advocates for respondent No.1.
Mr. Kushal Yadav, Advocate for Ms. Sonia Arora, Advocate for respondent No.2/Director of Education.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.1439/2013 & C.M. No.12147/2013

1. By this writ petition, the petitioner-school impugns the order of the Delhi School Tribunal (DST) dated 18.9.2012. By the impugned order two appeals filed by the respondent No.1 herein were disposed of. First appeal was filed impugning the termination of the probationary services by the letter dated 21.3.2010. The second appeal had challenged the action of the petitioner-school in passing the termination order dated 10.6.2010 terminating the contractual appointment of the respondent No.1 given in

terms of letter of the petitioner-school dated 8.4.2010. DST by the impugned order allowed the appeal which challenged the termination of services of the respondent no.1 as a probationer and he was directed to be reinstated with full back wages. Accordingly, the second appeal of the respondent No.1 challenging the termination of contractual appointment by the petitioner-school's subsequent letter dated 10.6.2010 was held to be infructuous.

2. The facts of the case are that respondent No.1 was firstly appointed as Lower Division Clerk (LDC) on contractual basis by the petitioner-school for a period of one year in terms of letter dated 3.12.2007. After the contractual period came to an end, respondent No.1 was immediately re-appointed as LDC, however on probation, in terms of the appointment letter dated 30.5.2008. The period of probation was one year from 1.4.2008. As per the appointment letter the respondent No.1 was to continue in probation till the services were confirmed in writing by the Managing Committee of the petitioner-school. The period of probation of the petitioner was extended by the petitioner-school for one more year from 1.4.2009 (i.e till 31.3.2010) by the letter dated 31.3.2009. Respondent No.1's services were terminated by a letter dated 21.3.2010 observing that as per the performance

reports and advisories given during the extended period of probation, the respondent No.1's services were to stand terminated w.e.f 29.3.2010. Respondent No.1 was however immediately again appointed on 8.4.2010 as a part-time Admission Clerk for one year w.e.f 3.4.2010. Respondent No.1 had however in the meanwhile challenged the order of the petitioner-school terminating his services vide letter dated 21.3.2010 before DST, and consequently when the notice of the appeal filed before the DST reached the petitioner-school, it is contended by the respondent No.1 that immediately thereafter on 10.6.2010, the petitioner-school terminated the contractual appointment given by the letter dated 8.4.2010 by simply stating that the petitioner school no longer requires the services of the respondent No.1.

3. On the basis of the admitted facts: in the form of various appointment letters and the termination letters which have been issued by the petitioner-school as detailed above; the provision of Rule 105 of the Delhi School Education Act & Rules, 1973; the judgment delivered by me in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** in W.P.(C) No.8652/2011 decided on 25.7.2013 interpreting Rule 105; and, the judgment of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors., (2005)***

7 SCC 472 read with Division Bench judgment of this Court in the case of ***Social Jurist, a Civil Rights Group Vs. GNCT & Ors. 147 (2008) DLT 729,*** the issues which arise, and on which counsel for the parties have been heard, are first as to whether the respondent No.1 at all can be said to only be a contractual employee in terms of the first contractual appointment letter dated 3.12.2007 or whether the employment of respondent No.1 since inception in the peculiar facts of this case would have a statutory favour in view of the provisions of the Delhi School Education Act and Rules, 1973, and secondly as to whether the actions of the petitioner-school amount to over-reach the provision of Rule 105 and is, therefore, against the ratio not only of the categorical language of Rule 105 but also the ratio of the judgment passed by me in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** (supra). The following issues are, therefore, crystallized for decision by this Court:

(i) Should the respondent No.1's services in the facts of this case be not taken as having statutory protection in terms of the Delhi School Education Act and Rules, 1973 since the original date of the contractual appointment in terms of letter dated 3.12.2007. Related with this issue would be whether the respondent No.1 is estopped from challenging the

nature of appointment as contractual inasmuch as respondent No.1 thereafter accepted services first as a probationer and thereafter again on contractual basis.

(ii) Whether all the appointment letters, whether giving contractual appointment or as appointment on probation, have to be read in their substance and not in form whereby actually the respondent No.1 should be treated as on probation either from 28.11.2007 or in any case from 1.4.2008 and since there is no mention of termination on account of unsatisfactory services in the termination letter dated 10.6.2010, and none exist as stated in the letter dated 21.3.2010, therefore, respondent No.1 would have confirmation of employment on account of language of Rule 105 and the judgment in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** (supra).

4. So far as the first issue is concerned, as to whether the respondent No.1's services originally w.e.f 28.11.2007 are contractual in nature or statutory in character, it would be necessary at this stage to refer to the relevant para 10 of the Supreme Court judgment in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra), but, before I do so I must hasten to add that the observations

which are being made by me in this judgment as regards the first issue is because of the facts of this case whereby I am not treating the first appointment as contractual in nature in spite of the letter dated 3.12.2007 so specifying because I hold this letter, and also subsequent probationary/contractual appointment letters, to be a sham and given only for denying regular employment to respondent No.1 as LDC. The repeated appointments and terminations, have persuaded me to hold that the petitioner's-school's actions are a fraud upon the requirement to normally not to appoint an employee on contract basis. Accordingly, in a case where on account of genuine exigencies a contractual appointment is required (like when a regular employee suddenly leaves etc.) then such employment will be treated as adhoc/temporary/contractual and not a statutory one having protection of the Act & Rules. With this preface let us reproduce para 10 of ***Montfort Senior Secondary School's case (supra)*** and which reads as under:-

> "10. In St. Xaviers' case (supra) the following observation was made, which was noted in Frank Anthony's case (supra):
>
> "A regulation which is designed to prevent mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational

institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30 is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajbjai Sabhai (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it."

The effect of the decision in Frank Anthony's case (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in Frank Anthony's case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV. The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights....."

5. A reference to aforesaid para shows that the Supreme Court in ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) has laid down the ratio that the very nature of

employment of the employees of a school are that they are no longer contractual in nature but statutory. This observation was made by the Supreme Court in spite of the fact that the minority schools had entitlement under the provisions of Section 15 and Rule 130 of the Delhi School Education Act and Rules, 1973 to have a contract of services for its employees. It be noted that so far as the non-minority schools are concerned there is no provision in the Delhi School Education Act and Rules, 1973 to have a contractual appointment. Therefore, once if minority schools' employees cannot have contractual employment and they have to be treated as statutory employees, then a *fortiorily* non-minority schools whose employees cannot be engaged in employment on contractual basis, such employees in non-minority school would surely have statutory protection of their services. In ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) the Hon'ble Supreme Court has made it clear in the aforesaid paragraph 10 that the qualifications, leaves, salaries, age of retirement etc, removal and other conditions of services are to be governed "**exclusively"** under the statutory regime provided under the Delhi School Education Act and Rules, 1973. Once that is so, then, as per Rules 118 to 120 of the Delhi School Education Rules,

1973 the services of an employee can only be terminated on account of misconduct and that too after following the requirement of holding of a detailed enquiry and passing of the order by the Disciplinary Authority. Therefore, in view of the categorical ratio of the judgment of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) and in view of the facts of this case the respondent No. 1's services from the inception cannot be taken as only contractual in nature and would be statutory in nature. Once the services are statutory in nature, and admittedly the respondent No. 1 has not been removed by following the provisions of conducting an enquiry and passing of an order by the Disciplinary Authority as required under the Rules 118 to 120 of the Delhi School Education Rules, 1973, the respondent No. 1's services cannot be said to have been legally terminated. Respondent No. 1, therefore, continues to be in services.

6. To distinguish the applicability of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra), learned counsel for the petitioner has urged the following two arguments:

(i) Respondent No.1 is estopped from questioning his first appointment

as contractual, thereafter appointment on probation and his termination during the probation period and thereafter again a fresh contractual appointment and finally his termination as per the last contract dated 8.4.2010. It is argued that respondent No.1 having acted upon the aforesaid sequence of events comprised in different appointments cannot now contend that the ratio of the judgment in ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)*** should come to his aid.

(ii) It is argued that the judgment in ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)*** was intended only to apply to minority schools and ratio of the said judgment cannot be read to apply to non-minority schools.

7. So far as the second arguments urged on behalf of the petitioner-school to distinguish the applicability of the ratio in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra),*** I have already dealt with this aspect above by holding, and the same is reiterated herein, that, if for minority schools, there cannot be contractual appointments, and which in fact was so envisaged under the relevant provisions of the Delhi School Education Act

and Rules, 1973, then, surely and indubitably, so far as non-minority schools are concerned, and who do not have provisions even in terms of Delhi School Education Act and Rules, 1973 for making contractual appointments, the ratio of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)*** would squarely apply and the employees of the non-minority schools will be treated not as contractual employees of the schools but statutory employees having statutory protection in terms of the relevant provisions of the Delhi School Education Act and Rules, 1973.

8. So far as the first argument of estoppel is concerned, that argument is attractive only at the first blush, however, this argument overlooks the elementary principle that there is no estoppel against law. Of course, there may be estoppel against law where the provisions of law are only for private individual interest and not meant to be in public interest, however, considering that statutory protection is given to the employees of a school and which results in stability to the education system, the same therefore cannot be held to be as not in public interest, more so after amending of the Constitution by introduction of Article 21A by which right to education has been made as a fundamental right for children from the ages of 6 to 14

years. Also one cannot ignore the fact that right to education otherwise also is an important part of Directive Principles of State Policy vide Article 41 and Article 45 of the Constitution, and thus subject of education itself has been treated by the Supreme Court as a public function and consequently, writ petitions lie against even private educational institutions. Reference need in this regard be only made to the Constitution Bench judgment of the Supreme Court in the case of ***Unni Krishnan J.P. & Ors. etc. etc. Vs. State of A.P. & Ors. etc. etc. 1993(1) SCC 645*** and which clearly holds that the subject of education is a public function, and hence writ petitions are maintainable even against private educational institutions.

9. That takes us to the second issue to be decided as to whether respondent no.1 should be taken to have successfully completed the probation period and more so because the termination orders dated 10.6.2010 and 21.3.2010 fall foul of the mandate of Rule 105 which requires that termination can only be for unsatisfactory services of a probationer. Therefore, at this stage, it would be necessary to reproduce the second termination of services letter dated 10.6.2010, and which reads as under:-

"Tele: 261535589 Army Public School
Shankar Vihar
Delhi Cantt-10

1105/APS SV

10 Jun 2010

Mr. Narendra Singh Nain
Admission Clerk

TERIMINATION OF CONTRACTUAL APPOINTMENT

Dear Mr. Nain,

1. Please refer to your appointment letter dt 08 Apr 2010 for the post of a part time admission clerk on contractual basis.

2. The school managing committee has decided to terminate your services in the school wef 11 Jun 2010 as the school no longer requires your services.

Yours faithfully,
(S Suresh Kumar)
Brig
Chairman
APS Shankar Vihar"

10(i) A reading of the termination letter shows that nowhere in the same it is mentioned that the termination of services are on account of unsatisfactory nature of services of the respondent no.1. I have already held that the services of the respondent no.1 were statutory in nature and character from inception and not contractual, however, even if the respondent no.1 is treated as on probation w.e.f 1.4.2008 and also further so far as the extended period of probation for one year w.e.f 1.4.2009, even then, the first termination letter dated 21.3.2010 terminating the probationary services on the ground of alleged performance reports and advisories given to the respondent no.1, is illegal because it flies in the face

of the fact of the requirement of non-satisfactory services which is mandatory for terminating the services of the probationer and which factor is missing in the present case. This I say so because when counsel for the petitioner was asked as to what are the performance reports and advisories given to the respondent no.1, and which is so written in the termination letter dated 21.3.2010, and which query was put because the respondent no.1 has disputed the existence of the alleged performance reports and advisories as stated in the letter of the petitioner-school dated 21.3.2010, learned counsel for the petitioner could not point out any of the alleged performance reports and advisories given to the respondent no.1 showing that his services during the period of probation and the extended period of probation were not found to be satisfactory. In the impugned order of the DST also, this aspect has been mentioned in para 22.

Thus both the termination of services letters are illegal being in violation of Rule 105.

(ii) I have already stated that once the ratio of the judgment in the case of ***Hamdard Public School Vs. Directorate of Education and Anr. (supra)*** applies, then, Courts have to very carefully examine the termination of the services order when an employee continues in the employment of a

school around a period of three years. To determine the period of three years, it is not the form of appointment letters which matter, but what matter is the substance thereof. Unless the substance and not form is taken, the intent and purpose of Rule 105 as required by the legislature would stand frustrated. It was not the object of Rule 105 that an employee gets appointment under different heads either of contractual employment or probationary employment or part-time employment at the convenience of the school which can then take up a defence that the employee is not in effect in continuous employment of the school although in reality the employment is continuous but merely in different forms simply to suit the convenience of the school. I have, therefore, no hesitation in holding that I have to take the employment of the respondent no.1 as continuous either from 28.11.2007, or at least from 1.4.2008, and when so taken, it is quite clear that different designations of employment have been used to deny permanency of employment to the respondent no.1, so that, at the whims and fancies of the school services can be terminated and an employee of a school who is rightly entitled to the mandatory emoluments and protection of services in terms of Delhi School Education Act and Rules, 1973 is denied such benefits. I cannot give imprimatur of the Court to such sham actions of

a school which are intended to frustrate the intention of the legislature and give uncertainty in employment to the employees of a school. Let me at this stage reproduce the relevant para of the judgment delivered by me in the case of ***Hamdard Public School Vs. Directorate of Education and Anr. (supra)*** and this para 11 reads as under:

> "11. Now that takes us to the most vexed question as to what should be a reasonable period. We will have to keep in mind Article 21A of the Constitution for this purpose. To understand the issue of what should be a reasonable period qua Rule 105 as regards a teacher, let us start with two extreme examples. One extreme example is that probation period cannot be extended at all for the third year and the other extreme example is that the probation period can be kept on extending by the management even till the age of superannuation. Obviously, both these extreme situations cannot decide what is a reasonable period. In many statutory rules and rules of many organizations , there is provided a three year period of probation like in the case of ***Lawrence School (supra)***. Therefore, probation period undoubtedly can be of 3 years under Rule 105 because as already stated there is no outer limit of probation period provided. The question is that for how long beyond the third year can a period of probation continue. In my opinion, reasonable period will have to be dependent on the facts of each case including as to what is the post or nature of employment in question, what are the terms and conditions agreed to at the time of original appointment and subject of course to the same being in accordance with Delhi School Education Act and Rules, 1973. The nature of job or duties to be performed by the teacher will also have to be kept in mind. It will also have to be kept in mind whether the teacher will be overage for similar employment if he/she is not confirmed. Keeping in mind all the relevant facts, probation period, except in exceptional cases, so far as a teacher is concerned, should not continue beyond a period of 5 years

> from the first date of appointment. Even a period of 4/5 years has to be really in a very grave and exceptional case depending on the facts of that case. However, I do not express myself finally with respect to what should be a reasonable period between 3 to 5 years because Courts will necessarily examine that aspect in the facts and circumstances of each individual case. I am making these specific observations with respect to the maximum period of probation being ordinarily only of 5 years because in the absence of fixing an outer limit by the statute viz Rule 105, the entire purpose of a probation period and a probationary teacher being confirmed would be defeated by the machinations of the management of the schools in certain cases thus affecting education and bringing in of Article 21A in the Constitution. Therefore, I hold that the Rule 105 must be so interpreted that the reasonable period therein should ordinarily be around three years, should not extend beyond five years in most of the cases, and, in the rarest or rare cases, one more year upto 6 years may be considered. However again at the cost of repetition it is stated that six years period is being observed only as a most grave and rarest of rare circumstance in a case, and ordinarily, a probation period qua a teacher should not extend beyond/around three years which is a reasonable period, and as per the facts and circumstances of certain case, and which issues/decisions are of course justiciable before Courts the probation period can go up to 5/6 years as stated above."

11. Therefore, I hold that even if the respondent no.1 was not a statutory employee from the first date of the employment in terms of the ratio of the Supreme Court judgment in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** *(supra)***,** even then, the respondent no.1's services as a probationer were illegally terminated by the letter dated 21.3.2010 as there is nothing in the

form of unsatisfactory services of the respondent no.1 inasmuch as the convenient language used in the letter dated 21.3.2010 is wholly unsubstantiated. Also on applying the ratio of ***Hamdard Public School Vs. Directorate of Education and Anr. (supra)*** ordinarily a period of three years should be the maximum period of probation and when we take the total period of employment of the respondent no.1 with the petitioner-school i.e from 28.11.2007 to 10.6.2010 this period of probation comes to around three years and, therefore, I hold that there is nothing before me to hold that the period of probation should not ordinarily be taken to have been already completed when the termination letter dated 10.6.2010 was issued by the petitioner-school and which does not refer to any unsatisfactory services of the respondent no.1.

12(i) On behalf of the petitioner-school it was also sought to be argued that the DST erred in holding the circular issued by the society of the petitioner-school for terminating services of a large number of employees as sham because if the petitioner-school intended to act upon the circular dated 30.3.2009, then, petitioner-school would not have extended the period of probation of the respondent No. 1 by one year w.e.f 1.4.2009 (and which was so done by the letter of the petitioner-school dated 31.3.2009) i.e just

two days after issuance of the circular dated 30.3.2009. Even this argument urged on behalf of the petitioner-school does not merit acceptance because it is quite clear that the letter dated 30.3.2009 shows the real intention of the petitioner-school to treat its employees by employing the hire and fire rule and which action is categorically prohibited by the provisions of the Delhi School Education Act and Rules, 1973 read with the ratio laid down by the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra). AT this stage therefore let me reproduce the said letter dated 30.3.2009 and which reads as under :

> "Telephone: 26151564 Army Welfare Education Society (AWES)
> Adjutant General's Branch
> Integrated HQ of MoD (Army),
> Building No.202, Shankar Vihar,
> Delhi Cantt.-10.
>
> B/45902/Gen/AWES 30 Mar 2009
>
> List A, B and F
>
> 1. It has been observed that inspite of directions given vide our letter no.B/45710/R/AWES dated 24 Mar 2004, some of the Schools have employed administrative staff on pay scales instead of consolidated pay on term basis. This was further clarified in Article 123 (b) of AWES Rules and Regulations Vol.-I for Army Schools/Army Public Schools (Apr 2008 Edition) that the <u>administrative staff would be employed only on term basis on consolidated pay.</u>
>
> <u>2. All schools will ensure that administrative staff will be employed only on term basis and also on a consolidated pay.</u>
>
> 3. The following will be ensured:
>
> a. No administrative staff is employed on pay scales.

Administrative staff will only be employed on term basis on consolidated pay.

b. The administrative staff employed on pay scales between 24 Mar 2004 and 29.04.2008 would serve only up to the period of engagement. After that they may be employed afresh on term basis on consolidated pay, if required.

c. The services of Group D staff would be outsourced to the extent feasible. Where this is not feasible due to remoteness of the area, Group D staff would only be employed on terms basis on consolidated pay.

s/d-
(Amar Narwat)
Col (Retd.)
Director S, L & F,
For Managing Director"
(underlining added)

(ii) I put a specific query to the counsel for the petitioner as to whether petitioner-school in this writ petition or even before the DST had stated in its pleadings that petitioner-school had already received the society circular dated 30.3.2009 when the extension letter dated 31.3.2009 was issued to the respondent No. 1 by the petitioner-school, however, counsel for the petitioner could not point out to me any such pleadings that the petitioner-school had received the circular of the Army Welfare Education Society dated 30.3.2009 when the letter dated 31.3.2009 was issued for extending the probationary period of the respondent No. 1 by one year w.e.f 1.4.2009. Therefore, I reject the argument that the letter dated 30.3.2009 issued by the Army Welfare Education Society which runs the petitioner's school does not show the mala fides of the petitioner-school and it is quite clear that this

letter dated 30.3.2009 shows that both the petitioner-school and the society which manages it, have scant regard for the provisions of the Delhi School Education Act and Rules, 1973.

13. The counsel for the petitioner-school also sought to argue before me that since the petitioner-school only got recognition on 26.2.2010, and therefore prior to this date, the provisions of Delhi School Education Act and Rules, 1973 would not apply to the petitioner-school. This argument urged on behalf of the petitioner is without any substance and has already been decided against the school by a Division Bench of this Court in the judgment reported as ***Social Jurist, a Civil Rights Group Vs. GNCT & Ors.*** (supra) which holds that the provisions of the Delhi School Education Act and Rules, 1973 apply not only to recognized school but also to every un-recognized school which is functioning in Delhi. This argument urged by the petitioner is also therefore rejected.

14. In view of the above, impugned order of the DST is sustained not only for the reasons stated therein but for the additional reasoning which is given by me above. The impugned termination letter of the petitioner-school dated 10.6.2010 and 21.3.2010 are hence quashed, and respondent No. 1 will be held in continuous service of the petitioner-school as if the letters dated

21.3.2010 and 10.6.2010 do not stand implemented.

15. Now, the only issue which remains is as to what should be the salary and consequential benefits of service including monetary benefits which should be granted to respondent No. 1. Counsel for the respondent No. 1 agrees that this be decided by the school and the respondent No. 1 will make representation to the petitioner-school in terms of Rule 121 of the Delhi School Education Rules, 1973 within a period of two weeks from today for seeking of appropriate benefits. On such representation being made, petitioner –school will decide the same by a speaking order within a period of one month thereafter after giving the respondent No. 1 or his representative a personal hearing in the matter. At the hearing, the respondent No. 1 or his representative will be entitled to show the law as to the entitlement to back wages.

16. Since the impugned order of the DST was stayed subject to deposit of the back wages in this Court, and which amount has been deposited in this Court as stated by the counsel for the petitioner-school, this amount so deposited, will continue to remain deposited in this Court and will abide by the final order which would be passed under Rule 121 including any challenge thereto, if so required.

17. In view of the above observations, the writ petition is dismissed, subject to the requirement of the school to comply with the Rule 121 of the Delhi School Education Act and Rules, 1973. Parties are left to bear their own costs.

CM 12147/2013

18. Though this case is heard as a writ petition really the original proceedings before the DST are challenged in these proceedings. Therefore, this application is dismissed inasmuch as at the second stage, no fresh pleadings can be introduced as it will cause the parties to be sent back to a point of time many years earlier and which will cause grave prejudice to the respondent No. 1. I may also state that the additional grounds which are urged are admittedly not the ground on the basis of which the termination orders passed by the petitioner-school were sought to be sustained by the petitioner-school before the DST. Factual issues at this stage which will once again require a *de novo* adjudication cannot be permitted and therefore, this application is dismissed.

W.P.(C) 2176/2013

19. In view of the reasoning and the ratio given while deciding W.P.(C) 1439/2013, this writ petition is also dismissed. In fact, the facts in this case

are more strongly in favour of the respondent No. 1 inasmuch as the appointment of the respondent No. 1 with the petitioner-school since inception has already crossed a period of three years.

20. This writ petition is accordingly dismissed, leaving the parties to bear their own costs and subject to compliance of Rule 121, as stated above.

W.P.(C) 2535/2013

21. This writ petition will also stand dismissed in view of the reasoning and ration of W.P.(C) 1439/2013, however, I note that some of the facts of this case are different because the respondent No. 1 did not take up a third term contractual appointment. In any case, this would not, in any manner, cause any difference to the other aspects which have been held against the petitioner-school given in W.P. (C) 1439/2013.

22. The writ petition is accordingly dismissed, leaving the parties to bear their own costs, and subject to compliance by the petitioner-school of the provision of Rule 121, as stated above.

VALMIKI J. MEHTA, J

AUGUST 30, 2013
godara