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

\+ *Reserved on: 01.11.2018*
Pronounced on:16.11.2018

LPA 222/2017 and CM No. 13007/2017 (Stay)

THE PRINCIPAL ST MARY'S SCHOOL & ANR ..... Appellants

Through: Mr. Romy Chacko and Mr. Ajay Singh, Advocates.

versus

RAJENDRA PRATAP SINGH & ORS .... Respondents

Through: Mr. Amit Kumar, Advocate for R-1.
Mr. Anuj Aggarwal with Mr. Himanshu Sharma, Advocates for R-2 and R-3.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J

1. This appeal under Clause X of the Letters Patent Appeal read with Delhi High Court Act and Rules framed there under, impugns Judgment dated 28th November, 2016 passed in W.P (c) No. 6780/2015, whereby the learned Single Judge has upheld the order of Delhi School Tribunal (hereinafter referred to as 'DST'), quashing the order of termination of services of Respondent and consequently reinstating him.

Background

2. The brief facts relevant for disposal of the present appeal are that on 1st April, 2009, the Appellant school appointed Respondent No. 1 to the post of P.G.T (Mathematics), on probation for a period of one year. On 1st March 2013, Appellant issued a letter to Respondent No.1 giving him three months notice for discontinuance of his services. This was followed by letter dated 5th April, 2013 whereby Respondent no.1 was informed that his services were no longer required.

3. Aggrieved with the termination of his services, Respondent No. 1 preferred an appeal under Section 8 (3) of the Delhi School Education Act and Rules, 1973 (hereinafter referred to as 'the Act') before the DST.

4. The DST after examining the facts of the case and taking note of several decisions of this Court as also of the Supreme Court, observed that the removal of an employee of a school can only be in terms of the statutory regime provided under the Delhi School Education Act, 1973 and the Rules framed there under. The Tribunal relied upon the decision of this court in the case of ***Tejveer Singh v. Directorate of Education***, dated 18th December, 2013 passed in ***W.P. (c) 5964/2010*** and held that the termination of services of Respondent No.1 was illegal and accordingly, the letter/order dated 5th April, 2013 was set aside.

5. The final order dated 12th May, 2015 passed by the Tribunal was challenged by the Appellant by way of W.P (C) No. 6780/2015. The Learned Single Judge decided the writ petition in favour of Respondent No.1 by way of the judgment impugned in the present appeal. The learned Single Judge has held that the services of Respondent No. 1 were deemed to be confirmed w.e.f. 1st April, 2012. The contention of learned counsel for the Appellant that Respondent no.1 was continuing on probation even after three years on account of his non-satisfactory services was rejected. The learned Single Judge held that accepting such a submission would violate the spirit of the ratio of the Judgment rendered in the case of ***Hamdard Public School v. Directorate of Education*** reported in, ***(2013) 202 DLT 111***.

Additional facts brought on record

6. During the course of hearing, Respondent No. 1 filed an application being **C.M. No. 16944/2018** for bringing on record the information/ documents received by him pursuant to a query raised under Right to Information Act, 2005. The said application was allowed vide order dated 4th October, 2018 subject to all just objections.

7. These documents are germane to the real controversy between the parties and are thus being noted and discussed for the purpose of adjudication of the present appeal. In response to the RTI application of Respondent No.1, the office of Deputy Director of Education (District South), Government of NCT of Delhi has provided a copy of

staff statement available with the Department for the year 2012-2013. This staff statement provided by the Deputy Director of Education is in-fact a copy of the statement so furnished by the Appellant school to the office of the Deputy Director. The relevant portion of the said statement is reproduced hereunder for ready reference:

S.no	Name	Designation	Qualification	Date of Appointment	Date of Confirmation	Subject Specialization
12.	R.P. Singh	PGT	M.Sc, B.Ed	01.04.2009	01.04.2011	MATHS

8. The name of Respondent No. 1 appears at Serial No. 12 and '**Date of Confirmation**', against his name is shown as 1st April, 2011.

Submission of the parties

9. Mr. Romy Chacko, learned Counsel for the Appellant has argued that Respondent No.1 was appointed on probation. His performance was not satisfactory. However, the management allowed Respondent No. 1 to continue in service with a hope that he will improve his performance. Several warnings were issued to Respondent No. 1, yet he failed to discharge his duties to the satisfaction of the management. To buttress this argument, the Appellant relied upon self-appraisal form and the reports given by the supervisors and submitted that the aforesaid documents note/record that the performance of Respondent No.1 was not satisfactory. Mr. Chacko further argued that, since Respondent No.1 failed to improve his performance, the school is justified in its action for not issuing the letter of confirmation. Appellant ultimately issued a letter to Respondent No.1 giving him

three month's notice for discontinuance w.e.f. 1st March, 2013, followed by termination letter dated 5th April, 2013. The Appellant, thus contends that the services of Respondent No. 1 were dispensed with in accordance with the service contract.

10. Mr. Chacko, referring to the service rules of St. Mary's Education Society, further argued that as per the service rules, an employee has to be expressly confirmed on his satisfactory completion of the period of probation. The confirmation has to be in writing with the approval of the management committee. The letter of confirmation has to be signed by the Administrator. Relying on the aforesaid rules, it is urged that there cannot be any concept of deemed confirmation of any of the probationers. Since no confirmation letter was issued by the Appellant school, Respondent No. 1 continued to be on probation. To emphasize this point he relies on the decision of the Apex Court in the case of ***High Court of M.P. through its Registrar & Ors vs. Satya Narain Jhavar,*** reported in ***(2001) 7 SCC 161.***

11. Lastly the learned counsel, contends that learned Single Judge erred in placing reliance on the case of ***Hamdard Public School*** (*supra*), in as much as it does not apply to minority institutions.

12. Mr. Amit Kumar, learned Counsel for Respondent No.1, on the other hand, submits that the teachers and employees of all schools in Delhi including the Appellant school have statutory protection with respect to their services.

13. Learned Counsel for Respondent no.1 further urged that Respondent No. 1 should be taken to have been confirmed in his services, even though he was appointed on probation vide the letter of appointment dated 3rd March, 2009, in as much as the Appellant school is unable to produce on record any material with respect to the unsatisfactory services of Respondent No. 1 during the probation period.

14. Learned Counsel for Respondent no.1, relied upon the ratio of ***Hamdard Public School*** (*supra*) to submit that the period of three years probation had come to an end on 31st March, 2012 and therefore he was deemed to have been confirmed in services w.e.f. 1st April, 2012. He further submitted that the first letter of intimation w.r.t. discontinuation of services of Respondent No. 1 and also the subsequent termination letter dated 5th April, 2013, make several allegations that are stigmatic. Respondent no. 1 is entitled under law to controvert such allegations and therefore the Appellant school could not have terminated his service without following the due process of law and the principles of natural justice.

15. Learned counsel for Respondent No.1 further submits that, in view of the information that his client has now obtained under the RTI Act, 2005, Appellant cannot raise the plea of non-confirmation. Relying upon the staff statement obtained from the Director of Education, he contends that Appellant's stand is contrary to the

record.

Analysis and findings

16. The controversy in the present appeal is centered around the question as to whether the services of Respondent No. 1 can be said to be deemed to have been confirmed on completion of the three year period of probation. To appreciate the concept of probation, it is necessary to read Rule 105 of the Delhi School Education Rules, 1973 which states as under:-

> "*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."*

17. The learned Single Judge primarily relied upon the ratio of the judgment authored by him in the case of ***Hamdard Public School***

(*supra*), wherein it has held that the employee of a school is deemed to be confirmed in services **ordinarily** after the period of three years of service. The period beyond three years and upto six years can be extended only if there are grave and exceptional circumstances to extend the period of probation beyond three years. The learned Single Judge has held that rule 105 must be so interpreted that the reasonable period of probation should ordinarily be around three years. The relevant portion of the said judgment, is reproduced herein below:-

> *" 11. ..... 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."*
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> *(Emphasis supplied)*

18. The interpretation given to Rule 105 is unexceptionable. In case the statute doesn't provide for any outer limit for probation, a meaningful interpretation ought to be given to the provisions. Reasonable period, no doubt would have to be appreciated on the facts of each case, taking into consideration the nature of employment.

19. The next contention that merits consideration of this court is that, whether the ratio of the judgment of ***Hamdard Public School*** (*supra*), would be applicable to the Appellant school. Learned counsel for Appellant contends that the said judgment does not deal with unaided minority school. According to him, the learned Single Judge has wrongly proceeded on the assumption that Rule 105 will apply to unaided minority school. This argument stems from a reading of Rule 96 (1) of the Delhi School Education Rules, which provides that provisions of Chapter VIII of the Act do not apply to an unaided minority school. The relevant portion of the aforesaid rule is reproduced for a ready reference:

> *"**96. Recruitment-** (1) Nothing contained in this Chapter shall apply to an unaided minority school.*

20. At this juncture it is pertinent to refer to relevant case laws on the issue.

21. Validity of Section 12 of the Act which provides that, *"nothing contained in this chapter shall apply to an unaided minority schools"*, fell for consideration in ***Frank Anthony Public School Employee'***

Association v. Union Of India., reported in, ***(1986) 4 SCC 707.*** The Supreme court held that Section 12 of the Act that makes the provision in Chapter IV of the act inapplicable to unaided minority institutions is discriminatory and void except to the extent it makes Section 8 (2) of the Act, inapplicable to unaided minority institutions. Accordingly a declaration was granted to that effect. The relevant portion of the same is reproduced as under:

> *"21. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government."*
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> *"22. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV (except Section 8(2)) in the manner provided in the Chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff."*
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> *(Emphasis supplied)*

22. In ***CBSE v. Mount Carmel School Society.*** reported in ***227 (2016) DLT 373***., the question with respect to the applicability of Rule 110 (2) the Delhi School Education Rules, in respect of unaided minority schools, was decided by a coordinate Bench of this Court. The bench relying upon the ratio laid down in the case of ***Frank Anthony Public School*** (*supra*), held that Rule 110 of the Act was applicable to Respondent school therein. The relevant portion of the decision of the coordinate bench of this court is extracted as under:-

> *"32. We are, therefore, of the opinion that the decision in Frank Anthony Public School(Supra) cannot be distinguished on the ground that while rendering the said judgment there was no occasion for the Supreme Court to consider the position with respect to the key post of the Principal in an unaided minority school and whether the provisions of Chapter IV of the DSE Act would continue to apply to such post and consequently whether Chapter VIII of the DSE Rules would apply. Such interpretation, according to us, would virtually nullify the ratio laid down by the Supreme Court."*
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> *"33. Consequent to the law declared in Frank Anthony Public School (supra), the provisions of DSE Rules, 1973 corresponding to Section 8(1), 8(3), 8(4), 8(5), Section 9, 10 and 11 shall also be applicable to the unaided minority institutions. Chapter VIII of the DSE Rules consisting of Rule 96 to Rule 121 deals with 'Recruitment and Terms and Conditions of Service of Employees of the Private Schools other than Unaided Minority Schools'. We have observed that Rule 96 to Rule 114A provide for recruitment, appointing authority, minimum qualifications for appointment, age limit, probation, seniority, retirement age, leave of absence, whereas Rule 115 onwards deal with penalties and disciplinary proceedings. Therefore, Rule 110 providing for retirement age which corresponds to Section 8(1) of DSE Act is applicable to unaided minority institutions in terms of the law laid down in Frank Anthony Public School (supra)."*
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> *"34. It is no doubt true that in Sindhi Education Society & Anr. vs. Chief Secretary, Govt. of NCT of Delhi & Ors. (2010) 8 SCC 49, the Supreme Court was dealing with the provisions of the DSE Act, 1973, however, the issue raised therein is entirely different from the issue which was considered and decided in Frank Anthony Public School (supra). The*

question raised in Sindhi Education Society (supra) was whether Rule 64(1) (b) of the Delhi School Education Rules, 1973 and the orders/instructions issued there under would, if made applicable to an aided minority educational institution, violate the fundamental rights guaranteed under Article 30(1) of the Constitution and whether Respondents therein are entitled to a declaration and consequential directions to that effect. The question as to applicability of Chapter IV of DSE Act and Chapter VIII of DSE Rules, 1973 neither fell for consideration nor decided in Sindhi Education Society (supra). Thus, the ratio laid down in Frank Anthony Public School (supra) stands good."

"35. For the aforesaid reasons, we are of the view that the decision in Frank Anthony Public School (supra) is binding and that it is not open to this court to go beyond the law so declared on any ground whatsoever."

36. Therefore, following the ratio laid down in Frank Anthony Public School (supra), we hold that the retirement age prescribed under Rule 110 of the DSE Rules, 1973 is applicable to Respondent No. 1 institution. Consequently, the action of Respondent No. 1 in granting extension to Respondent No. 2 is illegal being contrary to Rule 110 of the DSE Rules, 1973."

(Emphasis supplied.)

23. It is noted that the aforesaid judgment has been challenged before the Supreme Court, wherein an interim status quo order has been passed.

24. It is relevant to note that prior to the decision rendered in ***Mount Carmel*** (*supra*), a Full Bench of this court had decided a reference made to it by a learned Single Judge noting a conflict between opinions expressed by two learned Single Judges of this Court (this decision was not noticed in ***Mount Carmel*** (*supra*)). The said reference was decided by judgment dated 14.05.2015, in the case of ***Guru Harkishan Public School v. Director of Education.,*** reported in ***221 (2015) DLT 448.*** While answering the reference the Full

Bench also dealt with the 'ancillary issue' of applicability of the Act and Rules to unaided schools established by minority communities. The relevant portion recording the decision on the ancillary issue is reproduced as under:-

> *"2. At the outset we note that the two conflicting decisions concern schools recognized by the Appropriate Authority under the Delhi School Education Act, 1973 and both schools were governed by the provisions of the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973. The issue of applicability of the Act and the Rules to unaided schools established by minority communities was not an issue in the two decisions. The writ petitioner is a recognized unaided minority school and thus, though not a part of the reference made by the learned Single Judge, since the issue arising out of the two conflicting views by two learned Single Judges of this Court enwombs an unaided minority school, the learned counsel for the parties addressed arguments on said ancillary issue which is tied with an umbilical cord to the main issue. Thus while answering the reference we express our opinion on the said ancillary issue as well."*
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> *(Emphasis supplied.)*

25. The Full Bench again relying upon the decision of the Apex Court in ***Frank Anthony's*** (*supra*), decided the question regarding the applicability of the rules of chapter VIII as under:-

> "*41. Since Section 12 of the Delhi School Education Act, 1973 has already been struck down by the Supreme Court in Frank Anthony's case (supra) its corollary would be that sub-Rule 1 of Rule 96 also has to be struck down."*
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> *"42. Since no arguments were advanced regarding the various Rules in Chapter VIII of the Rules regarding their constitutionality, we would only observe that such Rules or part thereof which impinge upon the right of the minority institutions to manage schools established in Delhi would be treated as not applicable to the minority unaided schools, but such provisions which do not impact the right of the minorities to manage their schools would have to be treated as applicable to minority schools which are unaided."*
>
> *(Emphasis supplied)*

26. It noted that since section 12 of the Act had already been struck down in ***Frank Anthony's*** case (*supra*), its corollary will be that sub-rule 96(1) has also been struck down.

27. The logical conclusion that can be inferred on perusal of the above mentioned decisions of the Apex Court as well as the full bench and coordinate bench of this court, is that Rule 105 is applicable to unaided minority schools, in as much as these provisions do not encroach or interfere with the rights of the minorities to administer their educational institutions. Therefore the ratio of the Judgment of the learned Single Judge in ***Hamdard Public School*** (*supra*), would also be applicable to the Appellant School. In view of the above, argument of the Appellant that rule 105 is not applicable to an unaided minority institution, fails.

28. The next question that falls for consideration is whether Respondent No.1 could be deemed to be confirmed in absence of a confirmation letter.

29. We feel that this question in fact does not survive in view of the document (staff statement) now brought on record by Respondent No.1.

30. When the Appellant was confronted with the aforesaid admitted document, the only explanation given to us was that the information

given in the said document was erroneous. On specific query put by us to the learned counsel for the Appellant as to whether any steps were taken by the Appellant school to correct the error, the response was in the negative.

31. Further, on a query by the Bench, learned counsel for the Appellant could not show any material on record to indicate that after the completion of the first year of probation, whether the question regarding the extension/continuation of the probation of Respondent No. 1 was ever taken up by the Management. In view of the aforesaid, it clearly emerges that in the present case, the Appellant school has not been able to justify its stand regarding the plea of Respondent No.1 continuing on probation. On the contrary the Staff Statement clearly evinces that Respondent No.1 was a confirmed employee.

32. Even otherwise, if there were grave and exceptional circumstances for continuation of the probation of Respondent No. 1, the Appellant ought to have produced the same on record. Reliance on certain memos issued in 2010 and February 2011 does not advance the case of the Appellant.

33. The Appellant school did not initiate any action on account of the alleged non-satisfactory services. In fact the termination letter is not preceded with any show cause notice or any opportunity to Respondent No.1 to meet the allegations of non-satisfactory service. Moreover the staff statement clearly belies the stand of the Appellant.

The Appellant school therefore cannot be permitted to take a plea that they continued to treat Respondent No.1 on probation beyond 01.04.2012. In view of the foregoing discussion, we have no hesitation in holding that Appellant school has not been able to justify its action of treating Respondent No. 1 as a probationer.

34. The order of termination of services dated 5th April, 2013 is therefore illegal and has been rightly quashed. There is no infirmity in the impugned judgment. The appeal is accordingly dismissed with no order as to costs. The application is also dismissed.

SANJEEV NARULA, J

S. MURALIDHAR, J

NOVEMBER 16, 2018
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