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

% ***Date of decision: 24th January, 2022***

\+ W.P.(C) 6257/2011 & CM Appl. Nos.12599/2011, 36872/2019 & 1238/2020

CHAIRMAN, ARYA GIRLS SENIOR SECONDARY SCHOOL ..... Petitioner

Through: Ms. Latika Choudhury, Advocate.

versus

DIRECTOR AND ORS ..... Respondents

Through: Mr. Sudarshan Rajan, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Present writ petition preferred by Chairman, Arya Girls Senior Secondary School (hereinafter referred to as '**School**'), lays siege to the order dated 13.05.2011, passed by the Delhi School Tribunal (hereinafter referred to as '**Tribunal**'), whereby Tribunal has quashed the dismissal order dated 14.02.1995 and granted relief of reinstatement to Respondent No.2. With regard to back-wages, in view of Rule 121(1) of the Delhi School Education Rules, 1973 (hereinafter referred to as '**DSE Rules**'), Tribunal directed the School to constitute its Managing Committee, in accordance with the provisions of Rule 59 and take a decision thereon, within 3 months and communicate the same to Respondent No.2. School was a Respondent before the Tribunal and Respondent No.2 herein was

the Appellant. Parties are referred to hereinafter as per their litigating status before this Court.

2. At the outset, it is relevant to note that the present writ petition was filed by the School, however, during the pendency of the writ petition, School was taken over by the Directorate of Education, being an aided School. An application dated 26.07.2019, being CM No.36871/2019, was filed on behalf of Respondent No.1/Directorate of Education, stating therein that after the takeover of the School, there was no Management to defend the case and, therefore, to prevent any adverse order being passed, Directorate of Education be permitted to defend the case as a Petitioner. Vide order dated 19.08.2019, aforesaid application was allowed by the Court and Directorate of Education was allowed to prosecute the writ petition.

3. Factual narrative of the case, as set out by the School, is as under:-

(a) School was an aided private school, run by a duly constituted Managing Committee.

(b) School issued an Advertisement for filling up the post of Upper Division Clerk (UDC), pursuant to which Respondent No.2 applied. Respondent No.2 submitted his school certificates as well as a graduation degree in support of his educational qualifications and after being selected through the process of interview, was appointed on probation for a period of one year, extendable, at the discretion of the Appointing Authority. Offer of appointment was issued on 31.07.1993 and Respondent No.2,

after joining on 03.08.1993, continued to work up to 12.01.1995.

(c) School directed Respondent No.2 to furnish the originals of 10th and 12th Class certificates and the graduation degree, however, despite several opportunities, the originals were not submitted. Instead of complying with the repeated directions to furnish the documents, Respondent No.2 started absenting himself from School w.e.f. 12.01.1995, without permission, constraining the School to issue Memos dated 16.01.1995 and 01.02.1995, calling upon Respondent No.2 to join and furnish the original certificates and the degree. A telegram dated 24.01.1995 was also sent to Respondent No.2, asking him to join duty, latest by 27.01.1995.

(d) School received complaints of cheating against Respondent No.2, which led to the School sending a letter dated 02.02.1995, through Registered A.D. to Respondent No.2, requiring him to report for duty, failing which disciplinary action was liable to be taken. When Respondent No.2 failed to respond and/or provide the documents sought, keeping in view the serious allegations of cheating, the Managing Committee of the School, in its meeting held on 12.01.1995, decided to extend his probation by one year.

(e) On account of the complaints received, the authenticity of the documents furnished by Respondent No.2, pertaining to his educational qualifications, came under a shadow of doubt. To

clear the cloud of suspicion, School wrote to Chaudhary Charan Singh University, Meerut to verify the genuineness of the graduation degree. A letter was also written to the Principal, Behari Lal Inter College, Dankaur, District Bulandshahr, to verify the school certificates.

(f) Principal, Behari Lal Inter College, *vide* letter dated 31.01.1995, informed the School that the certificates and mark sheets of Respondent No.2 seemed doubtful and requested to send the originals, for verification. Deputy Registrar, Chaudhary Charan Singh University, *vide* letter dated 03.02.1995 confirmed that the B.Sc. Degree (Part-I, II and III), sent to the University by the School was forged, after verifying from the Confidential Section record and chart of the University.

(g) On receiving the said information, School issued show-cause notice dated 04.02.1995, directing Respondent No.2 to submit the originals of all the documents as well as give his written defence, if any, failing which it was to be presumed that he had no defence. No response came forth from Respondent No.2 and finally, the Managing Committee of the School, in its meeting held on 14.02.1995, after verification of the record and deliberating on the conduct of Respondent No.2, decided to dismiss Respondent No.2, from the services of the School. Dismissal order was issued on the same day and communicated to Respondent No.2, by Registered A.D. post.

(h) Additionally, a complaint was lodged against Respondent No.2 by the School on 14.02.1995 and FIR No.47/1995 was registered at Police Station Karol Bagh under Sections 420/467/468/471 IPC, for committing cheating and forgery and relying on forged documents with intent to mislead the School Authorities. Respondent No.2 was arrested on 17.02.1995, but was later released on Bail.

(i) Respondent No.2 preferred an Appeal before the Tribunal, being Appeal No.39/2003, against the order of dismissal dated 14.02.1995. Vid*e* order dated 27.02.2009, Tribunal dismissed the Appeal as time barred. The order was challenged by Respondent No.2 in a writ petition before this Court, being W.P.(C) 12023/2009 and vid*e* order dated 28.01.2010, Court set aside the order of the Tribunal and remanded the matter back to the Tribunal to decide the Appeal, after giving opportunity of hearing to the parties, as per law.

(j) Tribunal, vide the order impugned herein, set aside the dismissal order and directed reinstatement of Respondent No.2. Decision with respect to back-wages was left to the Managing Committee, to be taken within 3 months, in accordance with the DSE Rules.

CONTENTIONS RAISED ON BEHALF OF THE PETITIONER/ SCHOOL

4. Learned Tribunal has acted in excess of its jurisdiction, in entertaining an appeal of a person who had been dismissed for securing

employment on the basis of forged and fabricated school certificates and graduation degree. Under provisions of Section 8(3) of the Delhi School Education Act, 1973 (hereinafter referred to as '**DSE Act**'), appeal to the Tribunal lies only against dismissal, removal or reduction in rank and no appeal is tenable against an order of cancellation of appointment which is *void ab initio*, obtained by playing fraud upon the Management *albeit* the result may be dismissal.

5. Learned Tribunal has committed a material illegality in holding that in the absence of a departmental inquiry, the dismissal order stood vitiated, overlooking the fact that repeated opportunities were granted to Respondent No.2 to file his reply to several Memos as well as show-cause notice, which he failed to avail. Respondent No.2 not only failed to respond to the Memos and Notice, but also failed to furnish the originals of the certificates and the degree, in his defence. A person who fails to avail the opportunities given, cannot be allowed to complain later, that he has been deprived of an oppurtunity of hearing. Since Respondent No.2 was neither coming to the School nor responding to the Memos, it would have been a futile exercise to initiate a departmental inquiry. It was apparent that Respondent No.2 had no defence and was not willing to cooperate in the verification process. In this backdrop, the Tribunal has erred in holding that there was violation of Rules 118 and 120 of the DSE Rules and in the absence of a departmental inquiry, the dismissal order was bad in law.

6. In any event, the Managing Committee of the School had taken adequate measures before taking a final decision, by making necessary enquiries from the concerned university and the school, whose degree and

certificates, respectively, were furnished by Respondent No.2. Only after response was received from the Principal, Behari Lal Inter College, raising doubts on the genuineness of the school certificates as well as from Chaudhary Charan Singh University that the degree was forged and fabricated, a considered decision was taken by the Managing Committee, after due deliberations, to dismiss Respondent No.2.

7. Reliance was placed upon the judgment of the Supreme Court in ***R. Vishwanatha Pillai v. State of Kerala and Others, (2004) 2 SCC 105***, for the proposition that where a person procures appointment on the basis of false and forged certificates, the appointment is no appointment in the eyes of law, and in these circumstances, there is no requirement of giving an opportunity of hearing or holding a domestic inquiry. A person whose appointment is based on falsehood and cheating cannot raise a plea of violation of principles of natural justice and invoke the doctrine of *audi alteram partem*.

8. Reliance was also placed on the judgment in ***Vice Chairman, Kendriya Vidyalaya Sangathan and Another v. Girdharilal Yadav, (2004) 6 SCC 325,*** for the same proposition as well as on the judgment in ***Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and Others, (2008) 13 SCC 170,*** wherein the Supreme Court reiterated the said principle and added that equity, sympathy and generosity have no place in a situation where the appointment is obtained on the basis of a false caste certificate. Learned counsel also drew the attention of the Court to a judgment of the Supreme Court in ***Mohd. Sartaj and Another v. State of U.P. and Others, (2006) 2 SCC 315***, wherein the Supreme Court held that in view of the lack of requisite

qualifications, the Appellants therein did not hold any right over the post and, therefore, no hearing was required to be given by the employer, before cancelling the appointments. In such cases, challenge to cancellation of appointment, on the ground of violation of principles of natural justice, is unsustainable in law. For the same proposition, reliance was placed on the judgment of this Court in ***Guardsman Nanar Ram v. Chief of Army Staff and Another, 2000 V AD (Delhi) 272***. Citing these judgments, it was articulated that it was not open to the Tribunal to set aside the order of dismissal and direct reinstatement of Respondent No.2.

9. Without prejudice to the aforesaid contentions, it was urged that in any case, reinstatement is not an automatic consequence of setting aside the dismissal order and each case turns on its own facts. This principle would apply with a greater vigour, where the appointment itself has been obtained by playing fraud on the Management. In the present case, Respondent No.2 had worked for less than 2 years and at this stage, after passage of over 25 years from the date of dismissal, relief of reinstatement should not be granted to him.

CONTENTIONS ON BEHALF OF RESPONDENT NO.2

10. It was contended that there is no error or illegality in the impugned judgment, passed by the Tribunal. Respondent No.2 joined the service of the School on 03.08.1993 as a UDC, after the documents submitted by him, in support of his educational qualifications, were duly verified. Respondent No.2 never furnished forged/fabricated certificates and degree, as alleged, and the stand of the School that appointment was obtained by playing fraud or cheating, is totally false. The whole edifice

of the case set up by the School against Respondent No.2 is hedged on the allegation that the Classes 10th and 12th certificates of Behari Lal Inter College and graduation degree from Chaudhary Charan Singh University, Meerut, submitted by Respondent No.2, at the time of seeking employment, were forged. Respondent No.2 has taken a consistent stand that these documents were never submitted by him, but were fabricated and forged by the School, at the instance of Mr. Chandolia and Mr. Hoshiyar Singh, to falsely implicate Respondent No.2. Genesis of the case against Respondent No.2 is that he fell in love with the niece of Mr. Chandolia, Chairman of the Managing Committee of the School and married her, which marriage subsists till date. As the parties were from different castes, marriage was against the wishes of the parents of the girl and Mr. Chandolia and in order to settle scores with Respondent No.2, a conspiracy was hatched by the School, whereby the documents relied upon were fabricated and a case of cheating and fraud in procuring appointment was made. Respondent No.2 was thereafter dismissed and FIR No.47/1995 was also registered, on account of which Respondent No.2 had to suffer incarceration. Respondent No.2 is innocent and has suffered for nearly three decades, due to personal animosity and vendetta of the Chairman of the School.

11. Dismissal order was never communicated to Respondent No.2 and he learnt of his dismissal from the information received by his wife, in response to the query raised on 25.07.2003. School neither responded to his representations nor released his salary. He was not allowed to enter the school premises and in the absence of an inquiry, no opportunity was given to explain his position. Perusal of the dismissal order shows that

Respondent No.2 was dismissed on the allegations of cheating. On the face of it, it is a stigmatic order and could not have been passed without holding an inquiry, even assuming that Respondent No.2 was on extended probation at the relevant time. It is a settled law that if the order dismissing a probationer is stigmatic and based on misconduct or serious allegations, an inquiry is mandatory. In this context, reliance was placed on the judgments of the Supreme Court in ***V.P. Ahuja v. State of Punjab & Ors, (2000) 3 SCC 239; Chander Prakash Sahi v. State of U.P., (2000) 5 SCC 152*** and ***Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, (1999) 3 SCC 983***.

12. School is bound by the mandate of Rule 120 of the DSE Rules. Rule 120(1) of the DSE Rules provides that no order imposing on an employee any major penalty shall be made except after an inquiry in the manner prescribed in the Rule. Reliance was placed on the judgment of a Co-ordinate Bench of this Court in ***Dr. Swami Ram Pal Singh Mission School v. Harvinderpal Singh Bindra, 2017 SCC OnLine Del 6928*** wherein the Court, after relying on earlier judgments of this Court in ***Hamdard Public School v. Directorate of Education and Anr., (2013) 202 DLT 111*** and ***Army Public School v. Narendra Singh Nain, 2013 SCC OnLine Del 3351***, held that an employee appointed to a school has statutory protection by virtue of provisions of DSE Act and DSE Rules and cannot be terminated, except by following due process of law under Rules 118 and 120 thereof. Reliance was placed on the judgment of this Court in ***Mangal Sain Jain v. Principal, Balvantray Mehta Vidya Bhawan and Ors., 2020 VI AD (Delhi) 14***, for the same proposition.

13. Respondent No.2 was appointed on probation for a period of one year extendable by the Appointing Authority, as is evident from the letter of offer of appointment dated 31.07.1993. Rule 105(1) of the DSE Rules provides that 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. School has alleged that the initial probation of Respondent No.2 was extended on 12.01.1995. However, no communication was received by Respondent No.2 in this regard. Even assuming in favour of the School that probation was extended, there is not even an averment in the writ petition that it was with the prior approval of the Director of Education. The extension, if any, was thus contrary to Rule 105(1) of the DSE Rules and hence, illegal. The consequences would thus be that Respondent No.2 shall be considered as a confirmed employee on completion of initial probation period of one year, since the ACR of Respondent No.2, to his knowledge was 'Good' or 'Very Good', during the said period.

14. Assuming for the sake of argument that Respondent No.2 continued to be on probation, beyond the initial period of one year, second Proviso to Rule 105(1) of the DSE Rules stipulates 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 prior approval of the Director. In the present case, the order of dismissal was passed on 14.02.1995 and the School, admittedly, wrote to the Director of Education on 16.03.1995 seeking *ex-post facto* approval, which was granted in 2003. Therefore, there was no approval of the Director, prior to termination of Respondent No.2 and the order of dismissal vitiates on this

ground alone, being in the teeth of second Proviso to Rule 105(1) of the DSE Rules.

15. School failed to conduct an inquiry and this has caused grave prejudice to Respondent No.2 as he was unable to put forth his stand, furnish documents and lead evidence and demolish the stand of the School. Assuming Memos were issued, they cannot be a substitute for a full-fledged inquiry, as per the procedure provided in law. Respondent No.2 had the necessary qualifications, having graduated from Magadh University in B.Sc., in the year 1991 and passed 10th and 12th Classes from Board of High School and Intermediate Education, U.P. While applying for the job, Respondent No.2 had submitted photocopies of the mark sheets and certificates and degree from these Institutions, respectively. Subsequently, originals were also furnished, which were duly verified by the School and only thereafter, Respondent No.2 was permitted to join. The originals are presently also in custody of the School. After the criminal case was filed by the School, Respondent No.2 obtained duplicate copies of the mark sheets and certificates and degree from these Institutions, which have been duly annexed as Annexure R-2, along with the counter affidavit. The documents, alleged to be fabricated, were never submitted by Respondent No.2 and have been forged by the School Authorities. Had the School initiated an inquiry, Respondent No.2 would have had the opportunity to place all these documents and put forth his defence, to prove that he was innocent.

16. A significant development has taken place during the pendency of the present writ petition. The Trial Court in FIR 47/1995, after a full-fledged trial, wherein witnesses from the School were also examined,

has acquitted Respondent No.2 of the alleged offences under Sections 420/468/471 IPC, vide judgment dated 19.09.2017, a copy of which has been filed in this Court. The Trial Court has observed that the fact that the originals pertaining to the alleged fabricated documents were not recovered from the possession of the accused and the attesting witness of the said documents deposed that it was the employee of the School, who had got the said documents attested, gives rise to an inference that possibility of false implication of Respondent No.2 cannot be ruled out.

17. Tribunal has correctly held that it is not the case of the School that services of the Appellant were terminated for non-completion of the probation period, satisfactorily, but the termination is on account of the alleged act of cheating and thus, the School fell in grave error in not holding an inquiry into the alleged act of misconduct. Tribunal also correctly held that not obtaining prior permission of the Director of Education while imposing major penalty of dismissal was against the whole Scheme of the DSE Act and DSE Rules, which contain no provision for obtaining *ex-post facto* approval. On both the counts, the findings of the Tribunal are in consonance with the provisions of DSE Act and DSE Rules and the order quashing the dismissal order and granting reinstatement, requires no interference.

18. Distinguishing the judgments cited by learned counsel for the Petitioner, it was urged that in the judgments in case of ***R. Vishwanatha Pillai (supra)***, ***Vice Chairman, Kendriya Vidyalaya Sangathan and Another (supra)*** and ***Regional Manager, Central Bank of India (supra)*** and ***Mohd. Sartaj and Another (supra)***, the question before the Supreme Court was pertaining to furnishing of false caste certificates for obtaining

a public appointment and in each of these cases, a Caste Scrutiny Committee had, in fact, scrutinized the caste certificates and had come to a conclusion that they were forged/fake. In the present case, there was no occasion where the certificates sought to be relied upon by the School were subjected to scrutiny by any Committee or examination by a Forensic Laboratory and in the absence of an inquiry, even Respondent No.2 had no opportunity to establish that the documents relied upon, were not submitted by him. In fact, the case of Respondent No.2 stands on a far better footing, since in his case, the Trial Court has acquitted him and also observed that the possibility of fabrication by the School cannot be ruled out.

19. The judgments in ***Guardsman Nanar Ram (supra)***, ***Harpal v. Presiding Officer, Labour Court-VI, 2007 SCC OnLine Del 1967*** and ***Mohd. Sartaj and Anr. (supra)*** are distinguishable, as in these cases, the concerned employees did not have the requisite educational or other qualifications, which is not the case here. The case of ***Guardsman Nanar Ram (supra)*** is also distinguishable as it pertains to a case of the Armed Forces, where the Army Act, 1950 itself provides for 'administrative dismissal', i.e., without holding a departmental inquiry.

20. I have heard the learned counsels for the parties and examined their rival contentions.

ANALYSIS AND FINDINGS

21. From the above factual exposition, it emerges that Respondent No.2 was appointed as UDC in the School on 31.07.1993, on probation of one year, extendable by the Appointing Authority. On 14.02.1995, School

passed a dismissal order and on the same day, FIR No.47/1995 was registered. While the case of Respondent No.2 is that on account of his 'Good'/'Very Good' ACR, at the end of first year of probation period, in the absence of extension or extension without approval of the Director of Education, he stood confirmed, stand of the School is that the probation period was extended by another one year and there is no deemed confirmation in law.

22. Respondent No.2 also contended that his services were terminated without holding any inquiry and in violation of principles of natural justice, including the lack of prior approval from the Directorate, as mandated under the provisions of the DSE Act and DSE Rules. It is a categorical stand of Respondent No.2 that the documents pertaining to his educational qualifications, relied upon by the School and alleged to be fake, were fabricated and forged by the School, as he had never submitted those documents. Respondent No.2 had submitted originals of genuine documents including his certificates and mark sheets from the school and degree from the University, where he had actually studied. *Per contra*, the stand of the Petitioner is that Respondent No.2 had submitted fabricated and forged documents pertaining to his educational qualifications, for seeking appointment and the appointment was *void ab initio*, requiring no inquiry by the employer. Since the very appointment was *non est* in law, School was not required to seek prior approval of the Director of Education under Rule 105(1) of the DSE Rules and thus, on both counts, the Tribunal has erred in quashing the dismissal order and granting reinstatement to Respondent No.2. The order of the Tribunal, according to the Petitioner, deserves to be set aside.

23. From a perusal of the impugned order, passed by the Tribunal, it is evincible that Tribunal has quashed the order of dismissal, passed by the School on two grounds, viz. (a) order of dismissal was based on an alleged act of cheating and thus, penalty of dismissal could not be imposed without holding an inquiry; and (b) School did not obtain prior permission of the Director of Education, while imposing the major penalty of dismissal from service. According to the Tribunal, the Scheme of the DSE Act and DSE Rules does not provide for obtaining *ex-post facto* approval, which the School sought to do and the order of dismissal was thus illegal. Relevant it would be to note that Tribunal granted liberty to the School to proceed against Respondent No.2 for the alleged misconduct, in accordance with law, if so advised. Relevant part of the order of the Tribunal is extracted hereunder, for ready reference:-

> *"8. It is not the case of the Respondent School that it terminated the services of the Appellant for non-completion of probation period satisfactorily. The Respondent School categorically terminated the services of the Appellant for the alleged act of cheating. As discussed the penalty of dismissal from service could not be imposed without holding a departmental inquiry. The Respondent School fell in grave error on both the counts. Firstly, it did not hold any departmental inquiry into the alleged act of misconduct of filing false certificates. Secondly, the Respondent School did not obtain a prior permission of the Director of Education while imposing the major penalty of dismissal from service. The whole scheme of Delhi School Education Act & Rules-1973 does not provide for obtaining ex-post facto approval in imposing major penalty. The Respondent School has thus passed an order which is totally illegal and against the statutory provisions of law. It is not sustainable in the eyes of law. The impugned orders dated 14.02.1995 are hereby set aside. The Respondent School is directed to reinstate the Appellant in service.*

9. Now coming to the aspect of payment of back-wages, the relevant provisions are contained in Rule 121 of the Rules. Sub-Rule 1 of Rule 121 which is relevant in the present context, is reproduced below:

> *"Sub-rule 1 of rule 121 (1) When an employee who has been dismissed, removed or compulsorily retired from service is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, as the case may be, the Managing Committee shall consider and make a specified order:-*
>
> > *(a) with regard to the salary and allowances to be paid to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and*
> >
> > *(b) whether or not the said period shall be treated as the period spent on duty."*

10. In view of the position explained above, the Respondent School is directed to constitute its Managing Committee in accordance with the provisions contained in Rule 59 of the Rules. It is reiterated here that the two Members of the Managing Committee nominated by the Director of Education shall also be associated. The Managing Committee shall decide the issue of payment of back-wages to the Appellant within a period of 03 months and convey its decision to the Appellant. Respondent School is however, at liberty to proceed against the Appellant for the alleged misconduct in accordance with law, if so advised. The appeal is accordingly disposed of."

24. It is an undisputed position between the parties that Respondent No.2 was appointed and placed on probation for a period of one year. Learned counsel for Respondent No.2 had sought to contend that there was no extension of probation by the School and in view of the ACR(s)

of Respondent No.2, coupled with lack of approval, as required under Rule 105(2) of the DSE Rules, he is a confirmed employee. This contention of Respondent No.2 cannot be accepted. Rule 105 of the DSE Rules is as follows:-

> ***"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."*
>
> *(emphasis supplied)*

25. Rule 105 of the DSE Rules provides that on initial appointment, every employee will be on probation for a period of one year, which may be extended by the Appointing Authority, with prior approval of the Director. In the present case, as the chronology of dates and events goes, Respondent No.2 was appointed on 31.07.1993 and was dismissed from service on 14.02.1995. While there is a dispute on whether the probation was extended on 12.01.1995, nonetheless it is nobody's case that an order of confirmation was passed. The law on confirmation of probation is explicitly clear and well settled and I may only refer to a judgment of a Three Judge Bench of the Supreme Court in ***High Court of Madhya Pradesh thru. Registrar and Ors. v. Satya Narayan Jhavar, (2001) 7 SCC 161*** where it was held as follows:

> *"11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last line of cases is where, though under the Rules*

maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

26. Thus, there is no concept of deemed confirmation of probation and as a general rule, save as expressly provided by a particular Rule to the contrary, only an order of confirmation, passed by the employer shall give to the employee the status of a confirmed employee. Neither Rule 105 of DSE Rules nor the appointment letter provides a maximum period of probation and thus, in the absence of a specific order of confirmation, it is not open to Respondent No.2 to contend that he was automatically/ deemed confirmed, merely on expiry of one year probation period, only because his ACR was 'Good'/'Very Good'. Thus, it is held that Respondent No.2 was a probationer and not a confirmed employee, when he was dismissed by the School.

27. Nevertheless, the question that still remains to be answered is, as to what are the rights and safeguards/protections available to a probationer, if any, under the scheme of DSE Act and DSE Rules. Respondent No.2 had contended that he was dismissed from service in violation of Rule 105(1) of the DSE Rules, a safeguarding provision, against unfair treatment at the hands of the school Authorities. This Court finds merit in the said contention. Respondent No.2 was on probation, when his services were dispensed with and thus Rule 105 of the DSE Rules would govern the field. Second Proviso to Rule 105(1) of the DSE Rules

stipulates that no termination from service of an employee on probation, shall be made by a school, except with the 'prior' approval of the Director of Education. In the present case, it cannot be disputed that no 'prior' approval of the Director was sought by the School, while passing the dismissal order. The dismissal order, as a matter of record, was passed on 14.02.1995, whereas the School wrote to the Directorate only on 16.03.1995, seeking *ex-post facto* approval, which was, for unexplained reasons, granted only on 30.12.2003 by the Director, i.e. after more than 8 years. The Tribunal is therefore right in holding that the approval was of no consequence, as there is no provision under the DSE Act or DSE Rules for *ex-post facto* approval. There can be no debate that provisions of Rule 105 of the DSE Rules are mandatory and binding on the School. It has been elucidated in plethora of judgments, which shall be adverted to hereinafter, that the appointment of an employee in a school, being governed by a statutory regime, provided under the DSE Act and DSE Rules, is a statutory appointment and this *ipso facto* entitles the employee to procedural safeguards and protections envisaged therein. In this regard, reference is made to a passage from the judgment of the Co-ordinate Bench in ***Army Public School and Anr. (supra)***, which is as follows:-

> *"5. A reference to aforesaid para shows that the Supreme Court in Management Committee of Montfort Senior Secondary School v. Sh. Vijay Kumar (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 v. Sh. Vijay Kumar (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 v. Sh. Vijay Kumar (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."*

28. In the case of ***Laxman Public School Society v. Richa Arora, 2018 SCC OnLine Del 12097***, Respondent/teacher was appointed on probation for a period of one year, but her services were terminated prior to the expiry of the probation period. This prompted her to approach the

Tribunal, which held that it was incumbent on the school to obtain approval of the Director of Education under Section 8(2) of the DSE Act read with Rule 105 of the DSE Rules, prior to terminating the service of the Respondent. The order of the Tribunal was challenged by the school in a writ petition in this Court. Contention of the school before the Court was that rigours of Section 8(2) and Rule 105 would not apply where services of a probationer are terminated. Relying on the judgment of the Supreme Court in ***Raj Kumar vs. Director of Education and Ors., (2016) 6 SCC 541***, the Court held that there was nothing in the judgment of the Supreme Court which limited its applicability so as not to extend to termination of a probationer and in fact Rule 105(1) of the DSE Rules itself provides for a prior approval in case of termination of service of a probationer. It was thus held by the Co-ordinate Bench that Section 8(2) of the DSE Act and Rule 105 of the DSE Rules, especially the Second Proviso, would apply with equal force, to employees on probation, as it would apply to other employees and the order of the Tribunal was upheld. Relevant paras from the judgment in ***Laxman Public School (supra)*** are as follow:-

> *"12. There is nothing, in the judgment of the Supreme Court in Raj Kumar (supra), which limits its applicability to the case of a regular employee, and does not extend the scope thereof to the termination of a probationer. Rather, Rule 105 of the Delhi School Education Rules, itself states that, "every employee shall, on initial appointment, be on probation for a period of one year……". This itself indicates that, even during the period of probation, the employee continues to remain an employee. The second proviso to Rule 105 mandates that, except in the case of a minority school, no termination from service, of an employee on probation, shall be made by school, except with the previous*

approval of the Director of Education. There is no dispute about the fact that, prior to terminating the services of the petitioner, no approval of the Director of Education was taken.

13. One may also refer to the definition of "employee", as set out by the Supreme Court in the judgment Union Public Service Commission v. Dr. Jamuna Kurup, (2008) 11 SCC 10, of which para 14 is reproduced as under:

> *"14. The term "employee" is not defined in the Delhi Municipal Corporation Act, 1957, nor is it defined in the advertisement of UPSC. The ordinary meaning of "employee" is any person employed on salary or wage by an employer. When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word "employee" would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD, whether permanent or contractual will be "employees of MCD."*
>
> *(Emphasis Supplied)*

14. Clearly, therefore, the mandate of Section 8(2) of the Delhi School Education Act, 1973 and Rule 105 of the Delhi School Education Rules, 1973, especially the second proviso thereto, would apply, with equal force, to employees on probation, as it applies to other employees."

29. Therefore, insofar as the mandate of requiring prior approval of the Director of Education, for terminating the services of a Probationer under Rule 105(1) of the DSE Rules is concerned, in my view, it does not pose any challenge and requires no exposition or comprehensive analysis, being explicitly clear from a plain reading of Rule 105(1) of DSE Rule as also the aforementioned judgments. It is clearly a safeguarding mechanism, which enables the Director of Education to regulate the

actions of the school authorities and protects a probationer from unfair termination.

30. Learned counsel for Respondent No.2, during the course of arguments, had relied on the judgment of the Supreme Court in the case of ***Raj Kumar (supra)***, to highlight that while dealing with provisions of Section 8(2) of the DSE Act, which provides for prior approval of the Director, the Supreme Court held that termination of services of the Appellant therein, without obtaining prior approval of the Director, was bad in law. *Albeit* the judgment is in the context of Section 8(2) of the DSE Act, yet as rightly contended by the learned counsel, it is relevant to the present case, where the controversy revolves around a specific provision relating to a probationer, i.e., second proviso to Rule 105(1) of DSE Rules. The Supreme Court in ***Raj Kumar (supra),*** made significant observations, highlighting the objective and intent of a provision in the statute, requiring 'prior' approval of the Director and emphasised in no uncertain terms that violation of the mandate of Section 8(2) of DSE Act, shall vitiate the penalty order. Section 8(2) of the DSE Act is extracted hereunder, only with a view to make a comparative with the provision of second proviso to Rule 105(1) :-

> *"**8. Terms and conditions of service of employees of recognised private schools —***
>
> *(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director."*

31. In case of ***Raj Kumar (supra),*** the Supreme Court enunciated that provisions of Section 8(2) of the DSE Act are a precautionary safeguard

which must be followed in order to ensure that employees of the Educational Institutions do not suffer unfair treatment at the hands of the Management. Supreme Court set aside the order of termination of the Appellant therein on the ground that the Managing Committee of the school concerned, had not obtained 'prior' approval from the Director of Education, which was a mandate under Section 8(2) of the DSE Act. Elucidating the provisions of Section 8(2) of the DSE Act, the Supreme Court, keeping in view the intent of the Legislature in enacting Section 8(2) of the DSE Act, observed that while functioning of the aided and unaided Educational Institutions must be free from unnecessary Government interference, the same needs to be reconciled with the conditions of employment of the employees working in these Institutions and providing adequate precautions and safeguards would help in preventing unfair treatment. The Supreme Court applied the law laid down in ***Katra Education Society vs. State of U.P., AIR 1966 SC 1307***, wherein the Constitution Bench of the Supreme Court, while dealing with a provision similar to Section 8(2) of the DSE Act held that the power of the State Legislature to legislate under the head 'education including universities' in Schedule VII List-II Entry 11, would *prima facie* include the power to impose restrictions on the Management of Educational Institutions, in matters relating to education. Relevant paras from the judgment of the Supreme Court in ***Raj Kumar (supra)*** are as under:-

> *"**45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent School. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that an order of termination or dismissal is not passed without the prior approval of the***

Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.

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47. A number of legislations across the country have been enacted which deal with the regulation of educational institutions, which contain provisions similar to the one provided for under Section 8(2) of the DSE Act. One such provision came for consideration before a Constitution Bench of this Court in Katra Education Society v. State of U.P. [Katra Education Society v. State of U.P., AIR 1966 SC 1307] The impugned provisions therein were certain sections of the amended Intermediate Education Act (U.P. Act 2 of 1921). Section 16-G of the Intermediate Education (Amendment) Act, 1958 provided that the Committee of Management could not remove or dismiss from service any Principal, Headmaster or teacher of a college or school without prior approval in writing of the Inspector. The Amendment Act also contained other provisions providing for governmental control over certain other aspects of the educational institutions. Adjudicating upon the competence of the State Legislature to enact the amending Act, this Court held as under: (AIR pp. 1310-11, paras 8 & 10)

> *"8. Power of the State Legislature to legislate under the head 'education including universities' in Schedule VII List II Entry 11 would prima facie include the power to impose restrictions on the management of educational institutions in matters relating to education. The pith and substance of the impugned legislation being in regard to the field of education within the competence of the State Legislature, authority to legislate in respect of the maintenance of control over educational institutions imparting higher secondary education and for that purpose to make provisions for proper administration of the educational institutions was not denied. But it was said that the impugned Act is inoperative to the extent to which it seeks to impose controls upon the management of an educational*

institution registered under the Societies Registration Act and managed through trustees, and thereby directly trenches upon legislative power conferred by List I Entry 44 and List III Entries 10 and 28. This argument has no substance. This Court has in Ayurvedic and Unani Tibia College v. State of Delhi [Ayurvedic and Unani Tibia College v. State of Delhi, AIR 1962 SC 458] held that legislation which deprives the Board of Management of a Society registered under the Societies Registration Act of the power of management and creates a new Board does not fall within List I Entry 44, but falls under List II Entry 32, for by registration under the Societies Registration Act the Society does not acquire a corporate status. It cannot also be said that the pith and substance of the Act relates to charities or charitable institutions, or to trusts or trustees. If the true nature and character of the Act falls within the express legislative power conferred by List II Entry 11, merely because it incidentally trenches upon or affects a charitable institution, or the powers of trustees of the institution, it will not on that account be beyond the legislative authority of the State. The impact of the Act upon the rights of the trustees or the management of a charitable institution is purely incidental, the true object of the legislation being to provide for control over educational institutions. The amending Act was therefore within the competence of the State Legislature and the fact that it incidentally affected the powers of the trustees or the management in respect of educational institutions which may be regarded as charitable, could not distract from the validity of the exercise of that power.

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10. ... If the management fails to comply with the directions made by the Director, that Officer may after considering the explanation or representation, if any, given or made by the management, refer the case to the Board for withdrawal of recognition or recommend to the State Government to proceed against the institution under sub-section (4) and the

powers which the State Government may exercise after being satisfied that the affairs of the institution are being mismanaged or that the management has wilfully or persistently failed in the performance of its duties, include the power to appoint an Authorised Controller to manage the affairs of the institution for such period as may be specified by the Government. The provision is disciplinary and enacted for securing the best interests of the students. The State in a democratic set up is vitally interested in securing a healthy system of imparting education for its coming generation of citizens, and if the management is recalcitrant and declines to afford facilities for enforcement of the provisions enacted in the interests of the students, a provision authorising the State Government to enter upon the management through its Authorised Controller cannot be regarded as unreasonable."

(emphasis supplied)

From a perusal of the above judgment [Katra Education Society v. State of U.P., AIR 1966 SC 1307] of the Constitution Bench, it becomes clear that the State Legislature is empowered in law to enact provisions similar to Section 8(2) of the DSE Act.

48. At this stage, it would also be useful to refer to the Statement of Objects and Reasons of the DSE Act, 1973. It reads as under:

"In recent years the unsatisfactory working and management of privately managed educational institutions in the Union Territory of Delhi has been subjected to a good deal of adverse criticism. In the absence of any legal power, it has not been possible for the Government to improve their working. An urgent need is, therefore, felt for taking effective legislative measures providing for better organisation and development of educational institutions in the Union Territory of Delhi, for ensuring security of service of teachers, regulating the terms and conditions of their employment. ... The Bill seeks to achieve these objectives."

A perusal of the Statement of Objects and Reasons of the DSE Act would clearly show that the intent of the legislature while enacting the same was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment.

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55. ***The respondent Managing Committee in the instant case did not obtain prior approval of the order of termination passed against the appellant from the Director of Education, Govt. of NCT of Delhi as required under Section 8(2) of the DSE Act. The order of termination passed against the appellant is thus, bad in law.***"

(emphasis supplied)

32. The law laid down by the Supreme Court has been followed in a number of judgments by this Court and I may only refer to a recent judgment of a Co-ordinate Bench of this Court in ***Meena Oberoi v. Cambridge Foundation School and Ors. 265 (2019) DLT 401***, wherein the Court has quashed an order of termination of an employee in a private recognized school on the ground of lack of prior approval of the Director, relying upon the binding dicta of the Supreme Court in ***Raj Kumar (supra)***.

33. The Statement of Objects and Reasons of DSE Act, which is extracted above in para 48 of the judgment of the Supreme Court in ***Raj Kumar (supra)***, is a reflection of the Legislature's intent behind enacting Section 8(2) of the DSE Act, which is to grant security of tenure to the employees of Educational Institutions and to provide a regulatory mechanism of the conditions of their service and ensure that in case the Management does not treat the employees fairly, the Director of

Education will be in a position to set right the wrongful act of the Management, by declining to grant approval for the proposed penalty, if the circumstances so warrant. The intent and objective behind framing Rule 105(1) of DSE Rules is no different as it provides a mechanism where the Director can refuse to grant approval for termination of a probationer, if the action of the school is wrongful.

34. Applying the dicta and ratio of the judgment of the Supreme Court in ***Raj Kumar (supra)*** and following the judgments by the Co-ordinate Benches of this Court, the inescapable conclusion is that a dismissal order passed in violation of provision of second proviso to Rule 105(1) of DSE Rules, framed with the avowed purpose and objective of safeguarding the rights of probationers, cannot be upheld, as the salutary purpose behind the said safeguarding provision, can hardly be underscored. The impugned dismissal order dated 14.02.1995, having been passed, admittedly, without 'prior approval' of the Director of Education, is therefore untenable in law and cannot be sustained.

35. The second and the only other ground, on which the Tribunal had set aside the dismissal order was that the said order, was predicated on an alleged act of cheating and yet the penalty of dismissal was imposed without holding an inquiry. In order to examine the legality of the order of the Tribunal, from this perspective, it is pertinent to examine the order of dismissal dated 14.02.1995, which is as follows:-

> *"MEMORANDUM*
>
> *Sh. Kritendra Sharma was appointed as a U.D.C. in the pay scale of Rs.1,260-1,040 vide this office letter No.AGSSS/M/93/34 to 38 dated 31.07.1995. His documents/ certificate were referred to the concerned college/ university for verification. Shri*

Kritendra Sharma had claimed to be B.Sc. (Graduate) at the time of his appointment. The certificates/ documents have been found fake/forged by the concerned college/University. Shri Kritendra Sharma was also issued a show cause notice dated 04.02.1995 in this regard but no reply has been received from him so far. The show cause notice was delivered at his last available address. Shri Kritendra Sharma is also absconding from the school after locking school almirah which was in his custody.

Since Sh. Kritendra Sharma has cheated the school authorities as well as Government, his service are hereby dismissed under prevailing rules of Delhi School Education Act, 1973 with immediate effect.

He is directed to hand over the charge of almirah within three days from the date of issue of this letter."

36. A bare perusal of the aforementioned order shows that Respondent No.2 was dismissed on account of an alleged act of cheating the School Authorities as well as the Government, by invoking prevalent Rules under the DSE Act. It is evidently not a case of termination of service of a probationer on account of unsatisfactory performance. The order, in my view, is indeed a stigmatic order, as held by the Tribunal and rightly contended by learned counsel appearing on behalf of Respondent No.2. The law on termination of services of a probationer, other than on account of unsatisfactory performance, is no longer *res integra*. In ***Dipti Prakash Banerjee (supra)***, the issue before the Supreme Court was an order of termination of a probationer and one of the questions under consideration was, under what circumstances an order of termination of a probationer can be said to be punitive, i.e., founded on misconduct. The Supreme Court also delved into when an order can be termed as stigmatic and held that where the order is based on a misconduct and is 'founded'

on allegations, it cannot be termed as an order of termination simpliciter and a stigmatic order passed without conducting an inquiry, will be vitiated. Relevant para of the judgment is as under:-

> *"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."*

37. The said principle was reaffirmed and reiterated by the Supreme Court in ***Chander Prakash Sahi (supra)***, and it was held that termination motivated by an employee's general unsuitability is valid, however, if there are allegations of serious misconduct then the action to terminate has to be taken as founded on misconduct and treated as punitive. It was observed that in regard to termination of a probationer, it has to be seen whether the inquiry is for the purpose of determining his 'suitability' for retention in service/confirmation or finding out truth in the 'allegations' against him. While the former would be a case of termination simplicitor, latter would be punitive termination founded on misconduct entailing an inquiry before terminating the services of a probationer. At this stage, it would be useful to allude to an earlier judgment of the Supreme Court in

Anoop Jaiswal v. Govt. of India, (1984) 2 SCC 369, relevant paras of which are as follow:-

> *"12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.*
>
> *13. In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the gymnasium and acting as one of the ringleaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ringleaders were not seriously taken note of. Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.*
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> *XXX XXX XXX*

15. A narration of the facts of the case leaves no doubt that the alleged act of misconduct on June 22, 1981 was the real foundation for the action taken against the appellant and that the other instances stated in the course of the counter-affidavit are mere allegations which are put forward only for purposes of strengthening the defence which is otherwise very weak. The case is one which attracted Article 311(2) of the Constitution as the impugned order amounts to a termination of service by way of punishment and an enquiry should have been held in accordance with the said constitutional provision. That admittedly having not been done, the impugned order is liable to be struck down. We accordingly set aside the judgment of the High Court and the impugned order dated November 9, 1981 discharging the appellant from service. The appellant should now be reinstated in service with the same rank and seniority he was entitled to before the impugned order was passed as if it had not been passed at all. He is also entitled to all consequential benefits including the appropriate year of allotment and the arrears of salary and allowances upto the date of his reinstatement. The appeal is accordingly allowed."

38. In the present case, dismissal order is based on the alleged act of cheating, i.e., the order is founded on misconduct and applying the time-honoured principles enunciated by the Supreme Court in the aforementioned judgments, the inevitable conclusion is that the dismissal order is punitive and stigmatic and therefore, the School was bound to conduct an inquiry, giving opportunity to Respondent No.2 to plead his defence and lead evidence to establish his claim of being innocent. The mandate of holding an inquiry can be examined from another prism. If the School would have taken recourse to holding an inquiry, it would have necessitated leading evidence, both oral and documentary and proving that the documents alleged to be given by Respondent No.2 were actually given by him and that they were forged. By adopting a short-cut

and bypassing the said procedure, the School authorities have succeeded in dismissing an employee by simply passing an order, without having to discharge the onerous burden of proving the allegations, which cannot be permitted.

39. The DSE Act and DSE Rules are a self-contained Code and provide a comprehensive mechanism for holding an inquiry against the delinquent employee. It has been held by the Co-ordinate Bench of this Court in the cases of ***Army Public School (supra)*** and ***Hamdard Public School (supra)*** that an employee of a school has a statutory protection and his services cannot be terminated except by following due process of law. In service jurisprudence, it is well settled that no employee can be terminated on allegations of misconduct, without giving him or her, an opportunity of hearing and proving his innocence. *Audi alteram partem* is a well-known Latin phrase, which means 'listen to the other side'. This is based on a fundamental principle that no person should be judged or condemned without a fair hearing in which each party is given the opportunity to respond. Three main requirements of principles of natural justice must be met in every case, viz. adequate notice, fair hearing and no bias. It would not be an exaggeration to state that the principle of *audi alteram partem* is one of the twin pillars of natural justice, primarily aimed at giving an individual the opportunity to present his point of view, before he is confronted with an order of penalty, leading to loss of livelihood or property etc. It needs no reiteration that a decision becomes void if it violates the right of hearing. In the field of administrative action, the omnipotence inherent in the said doctrine is that no one should be condemned unheard and is applied to ensure fair play and justice to the

affected party. In the present case, the doctrine has been completely ignored and despite serious allegations of cheating, no inquiry was held, before imposing the extreme penalty of dismissal, depriving Respondent No.2 of his right to livelihood.

40. In view of the above, the argument of the School that memos and show-cause notices were issued to Respondent No.2, to which there was no response and thus, holding an inquiry would have been a futile exercise, though ingenious, cannot be accepted. It has been repeatedly held in several judgments that rule of law does not permit any person to be proceeded against, save and except in a manner known to law and procedure prescribed in law. DSE Act and Rules prescribe a mechanism and procedure to hold an inquiry and memos and show cause notice can be no substitute. Where law prescribes a manner in which a thing has to be done, that thing must be done in that manner or not done at all, is an age old aphorism, deeply engrained in legal lore. Insofar as the judgments in ***R. Vishwanatha Pillai (supra)***, ***Vice Chairman, Kendriya Vidyalaya Sangathan and Another (supra)*** and ***Regional Manager, Central Bank of India (supra)*** relied upon by the School are concerned, the same are distinguishable on facts, as in those cases, the caste scrutiny committee had examined the caste certificates in question, whereas in the present case, there was no examination/scrutiny of the documents allegedly forged and furnished by Respondent No.2, by a competent or expert body. Stand of Respondent No.2, that he had furnished documents different from the ones relied upon by the School was also not examined. In ***Mohd. Sartaj and Anr. (supra)***, the concerned employees did not have the requisite educational or other qualifications, which is not the case here

and in ***Guardsman Nanar Ram (supra),*** Army Act, 1950 itself provides for 'administrative dismissal', i.e., without holding a departmental inquiry and thus, these judgments will not inure to the advantage of the School.

41. There is yet another dimension to the present case, which cannot be overlooked. While as aforesaid, holding an inquiry into the allegations leveled is a facet of the doctrine of *audi alteram partem* and is a *sine qua non* before imposing a penalty, more so, in the Scheme of the DSE Act and DSE Rules, in the present context, it assumes greater significance, for the reasons that follow hereinafter. Respondent No.2 has taken a categorical stand in paras 6 and 7 of the counter affidavit, filed in response to the writ petition, that the plea of the School that Respondent No.2 sought employment in the School in 1993 on the basis of certain documents, which were found to be fake and forged in 1995, is completely false, inasmuch as the mark sheets and the certificates and the University degree, relied upon by the School were never submitted by Respondent No.2 and were fabricated by the School Authorities. It is further averred that the said documents were mischievously fabricated and forged, at the behest of Mr. Chandolia and Mr. Hoshiyar Singh, to falsely implicate Respondent No.2 and settle scores with him. Respondent No.2's marriage with Mr. Chandolia's niece, triggered the dismissal order and the FIR. Respondent No.2 has also averred that he had submitted originals of the mark sheets and certificates of the school and degree of the University, where he had studied. Relevant paras of the counter affidavit are as follow:-

> *"6. That deponent has joined the service of the petitioner school on 03.08.1993 in the capacity of Upper Divn. Clerk in the*

*pay scale of Rs. 1200-2040. A copy of the appointment letter dated 31.7.93 as issued and marked as **Annexure R-1**. The entire case alleged against the respondent by the School Authorities is based on certain documents which according to the petitioner school were submitted by the respondent at the time of seeking employment in the school in 1993 and the same were found to be fake and forged at later stage i.e. in 1995. The above plea of the petitioner school is false to their own knowledge inasmuch as the mark-sheet and certificates which have been relied upon by the petitioner School were never submitted by the respondent to the school nor such documents were ever received by the respondent from any of the school or University, As a matter of fact, these alleged fake mark sheets were mischievously arranged and procured by the then Chairman and Manager of the School namely Mr. Chandolia and Mr. Hoshiar Singh to make a false case against the respondent because of his marriage with a girl who belonged to the community of the aforesaid school officials and the respondent's marriage was strongly opposed by the above school officials and family of the respondent's wife. Marriage of the respondent took place on 15.1.95. Not only this, the above named School Officials by filing false complaint on the -basis of such illegal documents got the respondent arrested in February, 1995 and during his detention in police custody the respondent was forced by the police at the instance of the above named Chairman and the Manager of school to sign certain papers including a covering letter purportedly written on 07.05.2003 giving the impression as if the respondent had submitted the aforesaid alleged fake and forged documents to the school authorities along with the said letter. The respondent reserves his right to point out self-contradiction, inconsistencies and deficiency in the documents relied upon by the petitioner school to support their illegal and mischievous decision.*

7. That the respondent had submitted the original mark sheets and certificates of his school and college education. These were submitted to the appellant School authorities at the time of joining the post of UDC after receiving the appointment letter dated 03.08.1993. The respondent, after filing of the false

complaint by the above named school officials, which led to criminal case against the respondent, procured duplicate copies of the mark sheets from the Institutions where the respondent had actually studied. Duplicates of all such valid mark sheets originals of which were already submitted with the school authorities in August, 1993 are being filed herewith as ***Annexure R-2 (Colly)****. Original of these documents were submitted by the respondent to the school authorities before joining the post of UDC, whereas the documents relied upon by the petitioner school while dismissing respondent are totally different documents some of which even relate to a totally different Institution altogether where the respondent never studied. In this view of the matter, it is submitted that the above named Chairman and Manager of the petitioner school who indulged in illegal acts and unfair practice by falsely implicating the respondent who did not obey the dictates of the then Chairman and Manager of the school and went ahead with the marriage with a girl belonging to their community. The petitioner fell in love with a girl named Miss. Manjula who happen to be niece of one Mr. R.N. Chandolia, Chairman of the Managing Committee of the petitioner school. It was a case of inter-caste marriage. He married the said girl against the wishes of her parents. Thereafter the deponent was implicated in a false case by the Petitioner School to teach him a lesson. The case bearing FIR No. 47/95 is still, pending in the court of Metropolitan Magistrate Delhi. It is the case of the deponent where he had alongwith his application form for the post of UDC furnished the educational qualification certificate which are genuine ones. Respondent also underwent judicial custody for a few days from 17.2.1995 and later on released on bail. After getting released on bail he made an attempt to join the School. He was not allowed to enter the premises. He submitted a number of representation. He was not allowed to enter the school. His salary was not released. No representation of his was replied to. First such representation was allegedly made on 20.04.1995. The last representation is dated 17.7.2003. Finally, his wife Smt. Manjula Sharma sought the information from the Respondent School under Right to Information Act. She was informed that her*

husband Shri Kritendra Sharma was dismissed from service for furnishing the certificate of B.Sc. degree from Meerut University which was later on found fake. Decision to dismiss him from service was taken by the school Management Committee in its meeting held on 14.02.1995. The Appellant filed the appeal on the grounds inter alia that the orders of dismissal as conveyed to his wife vide orders dated 22.08.2003 are illegal. This has not been issued under Rule 120 of Delhi School Education Act and Rules 1973. He was never given an opportunity to explain his position. Principles of natural justice were not followed. Director of Education never accorded his prior approval to the alleged dismissal. The ex-post facto approval referred to in the impugned orders is also illegal for the reason that the dismissal orders could not be issued befroe the receipt of the approval from the Directorate of Education. A copy of the appeal filed by the deponent is annexed herewith and marked as ***ANNEXURE R-3****. It is an admitted case of the petitioners have not taken approval from the respondent No.l. Therefore, during the pendency of the appeal, the respondents tried to take the approval which has been challenged by the deponent before this Hon'ble Court vide* ***Writ Petition (Civil) No.3083/2005****. This Hon'ble Court had set aside the said approval. However, upon an appeal by the petitioner, the Division Bench of this Hon'ble Court directed that the appeal is to be decided by the Delhi Education Tribunal. It is submitted that the respondent was never served with the order dated 14.02.95 either through Regd. Post or otherwise. The respondent came to know about the decision of dismissal of the Managing Committee only through Directorate of Education order dated 22.08.2003 passed by the Deputy Director of Education on the application of the respondent seeking information under the Right to Information Act regarding the approval of the competent authority. This application was submitted by the respondent himself which was followed up by his wife by visiting the office of Directorate of Education. Inadvertently in the appeal it was stated that the said application was submitted by the wife of the respondent. In this regard, a copy of the application and fee receipt deposited by the*

respondent are annexed herewith and marked as ***Annexure R-4 (Colly).”***

42. School filed a detailed rejoinder to the counter affidavit, including response to paras 6 and 7. A perusal of the rejoinder to the said paras shows that the School has denied the allegations relating to Chairman of the School and also stated that enough opportunity was given to Respondent No.2 to present his case, besides referring to the pending criminal case. However, there is no denial to the categorical stand of Respondent No.2 that the documents relied upon by the School were different from the ones furnished by him. Absence of response to this averment, in my view, is a pointer to the fact that stand of Respondent No.2 is correct. In fact, along with the counter affidavit, Respondent No.2 has also placed on record, duplicates of the mark sheets and certificates of the school and the degree of the college, where he studied, to substantiate his stand and there is nothing in the Rejoinder, to clearly controvert this stand or even create a doubt on the authenticity of these documents.

43. Having perused the judgment of the Trial Court in the criminal case, in my view, the stand of Respondent No.2, is further fortified. At the time of filing the writ petition, the trial was pending, however, during the pendency, Respondent No.2 filed written submissions, whereby it was brought to the notice of the Court that Respondent No.2 was acquitted by the Trial Court vide order dated 19.09.2017. Copy of the order has also been placed on record. This position was not disputed on behalf of the School.

44. The judgment rendered by the Trial Court needs a mention for two-fold reasons. Firstly, the allegations in the dismissal order and the

FIR are the same, i.e., cheating. Secondly, before the Criminal Court, the Prosecution witnesses included Honorary Manager of the School as PW-1, Chairman of the School Mr. Chandolia as PW-2 and Vice Principal of the School as PW-3 and each of them deposed and presented the stand of the School and were extensively cross-examined. Despite the version and deposition of these witnesses, learned Trial Court acquitted Respondent No.2 from the alleged offences under Sections 420/468/471 IPC, for cheating, forgery for the purpose of cheating and using as genuine, a forged document for the purpose of obtaining appointment in the School. The Trial Court held that prosecution had failed to establish its case beyond reasonable doubt. It may be highlighted that Respondent No.2 has been consistent in his stand and as pleaded in this Court, it was also the case of Respondent No.2, in his defence before the Trial Court that he was falsely implicated, due to animosity. Defence of fabrication of documents by the School and his having furnished genuine documents in support of educational qualifications was also taken. Learned Trial Court deliberated upon the extensive evidence led before it and concluded that possibility of false implication cannot be ruled out. Therefore, had the School held an inquiry, Respondent would have the opportunity to lead evidence and prove his stand.

45. For all the aforesaid reasons, this Court upholds the view of the Tribunal that the dismissal order is untenable in law and cannot be sustained.

46. Amongst the myriad nuances of this case, the next issue that arises for consideration is the relief that can be granted to Respondent No.2, once this Court has upheld the view of the Tribunal that the dismissal was

wrongful in the eyes of law. Tribunal has granted the relief of reinstatement to Respondent No.2 and learned counsel for Respondent No.2 had strenuously urged that this part of the order be also upheld. Ordinarily, where termination of an employee is held to be wrongful and illegal, relief of reinstatement is granted by the Courts, with back-wages. However, it has been held by the Supreme Court in several judgments that reinstatement without back-wages or with full or part back-wages, is not an absolute rule of thumb and each case would have to be viewed on its own facts and circumstances. In ***Madhya Pradesh Administration vs. Tribhuban, (2007) 9 SCC 748***, the Supreme Court held that reinstatement may not always be an automatic consequence of the Court declaring the termination to be illegal. In ***Mehboob Deepak vs. Nagar Panchayat, Gajraula, (2008) 1 SCC 575***, the same principle was reiterated by the Supreme Court and certain factors were carved out for determining the relief in such cases, which are as follow:-

> *"7. The Factors which are relevant for determining the same, inter alia, are:*
>
> *(i) whether in making the appointment, the statutory rules, if any, had been complied with;*
>
> *(ii) the period he had worked;*
>
> *(iii) whether there existed any vacancy; and*
>
> *(iv) whether he obtained some other employment on the date of termination or passing of the award."*

47. From the aforesaid judgments, it is crystal clear that while an employee should not be penalised for the illegal actions of an employer or even for the delay in the adjudicatory mechanism, however, the Courts must take into account certain factors, both mitigating and aggravating,

such as length of service, existence of vacancy and nature of employment, etc. while determining the relief of reinstatement. Applying the above principles and the exposition of law on the aspect of relief to Respondent No.2, looking at the length of period for which he had worked in the School, passage of over 26 years from the date of dismissal and that he was a probationer, in my considered view, reinstatement will not be an appropriate relief and to this extent, the order of the Tribunal cannot be upheld.

48. At the same time, this Court cannot shut its eyes to the fact that Respondent No.2 has been fighting for his rights for a long period of nearly three decades and that too, not by choice or as a luxury, but on account of the action of the School Authorities in dismissing him, without inquiry and additionally embroiling him in a criminal case. The chronology of dates and events shows that owing to the order of dismissal, which was approved by the Director of Education in 2003, Respondent No.2 filed an appeal before the Tribunal in the year 2003, which was dismissed as barred by time on 27.02.2009. The order was challenged before this Court in W.P.(C) 12023/2009 and the Court remanded the matter back to the Tribunal to hear the appeal, on merits. The Tribunal allowed the appeal on 13.05.2011, which was challenged by the School, by way of the present writ petition. Respondent No.2 has been contesting the writ petition since 2011. Additionally, Respondent No.2 was constrained to defend the criminal case, pursuant to an FIR registered at the behest of the School Authorities, in the year 1995. The Trial Court delivered its judgment on 19.09.2017. It is evident that Respondent No.2 has not only suffered the mental agony and trauma of

dismissal from service for over 26 years, with the attending stigma, but has also undergone a phase of prolonged litigation, both civil and criminal. Relevant would it be to note that the civil litigation, impugning the dismissal order, resulted in an order by the Tribunal, in favour of Respondent No.2, which has been upheld by this Court, in the earlier part of this judgment. Insofar as the criminal case is concerned, as aforementioned, the Trial Court has acquitted Respondent No.2 and it bears repetition to state that the Court has held that the possibility of fabrication by the School Authorities cannot be ruled out. Therefore, the stand of Respondent No.2 that he was innocent and not guilty of forgery, cheating or fabrication, stands vindicated.

49. Ex-consequenti, compensation of Rs.5 Lakhs is granted in favour of Respondent No.2, in lieu of reinstatement and back-wages and the order of the Tribunal is accordingly modified. This Court is of the view that Respondent No.2 has been treated unfairly and has suffered mental agony and trauma, besides the social stigma attached to a dismissal order and incarceration pursuant to the FIR. He was forced into litigation by the wrongful acts of the School and contested the cases, both civil and criminal, for several years, incurring expenses. It would be a travesty of justice, if this Court, in an equity jurisdiction, does not compensate Respondent No.2, as the relief of compensation in lieu of reinstatement and back-wages is wholly inadequate, in the facts of the present case. Accordingly, it is directed that Petitioner shall pay a sum of Rs.10 Lakhs towards compensation to Respondent No.2, on account of mental agony and trauma suffered by him due to the penalty of dismissal, stigma

attached to incarceration and prolonged litigation for over 26 years, both civil and criminal.

50. The compensation awarded by this Court, as aforementioned, shall be paid by the Petitioner to Respondent No.2, within a period of four weeks from today. In case, the amounts are not released by the Petitioner, within the time stipulated by the Court, the amounts shall carry simple interest at the rate of 8% p.a. till the actual payment.

51. Looking at the mental and physical suffering undergone by Respondent No.2 on account of the prolonged litigation, finding of the learned Trial Court in the criminal case, especially the possibility of false implication, it would be unfair to permit the Petitioner to hold an inquiry at this stage and subject Respondent No.2 to another protracted litigation. In this view of the matter, the direction of the Tribunal granting liberty to the School to proceed against Respondent No. 2, is set aside.

52. Writ petition is accordingly dismissed, modifying the impugned order of the Tribunal passed on 13.05.2011, as above. All pending applications are accordingly dismissed.

JYOTI SINGH, J.

JANUARY 24th, 2022
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