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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CNR No. DLHC010137762020***Date of Decision: 13.10.2026***

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W.P.(C) 2157/2020**POOJA JAIN AND ORS.****.....Petitioners****Through: Mr. Ankit Gupta with Mr. Kunal Dave
and Mr. Anmol Gupta, Advocates.****versus****DIRECTORATE OF EDUCATION OLD SECRETARIAT, CIVIL
LINES AND ORS.****.....Respondents****Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti
Tyagi, Advocates for R-1 and 2.
Mr. Anunaya Mehta, Mr. Inderjeet
Saroop, Mr. Raghav Saroop, Mr.
Prabhakar Roy, Ms. Anandita Tayal,
Advocates for R-3.****HON'BLE MR. JUSTICE A. J. BHAMBHANI****J U D G M E N T****A. J. BHAMBHANI, J**

By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioners seek setting-aside of Letters of Termination dated 14.05.2019 issued to each of them by respondent No.3 (Modern International School). The petitioners also seek reinstatement in service at respondent No.3 school along with full back wages and consequential benefits at par with their counterparts in that school.

2. Respondent No. 3 is an unaided private school in Delhi which runs in accordance with the provisions of the Delhi School Education Act, 1973 ('DSE Act') and the Delhi School Education Rules, 1973 ('DSE Rules').

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3. Mr. Ankit Gupta, learned counsel appearing for the petitioners submits that impugned termination letters were issued about a week after the petitioners made complaint dated 06.05.2019 to respondent No.1 (Directorate of Education) ('DoE') alleging various irregularities and illegalities committed by the management of respondent No. 3 school *inter-alia* by paying salary to their teachers in cash, at rates below the minimum pay-scales shown in the school records, and then also demanding pay-back of part of the salary to the school.
4. Notice on the petition was issued on 25.02.2020.
5. Counter-affidavit has been filed on behalf of respondent No.3. Rejoinder to the counter-affidavit also been filed by the petitioners.
6. Mr. Gupta submits that, keeping all other allegations aside, it is the undisputed position borne-out from the record, that the petitioners were serving on 'regular' basis and their services were terminated by respondent No.3 without issuance of any show-cause notice; without conducting any inquiry; and most importantly, without taking the prior approval of the DoE as is mandatory under section 8(2) of the DSE Act.
7. Attention in this behalf is drawn to section 8(2) of the DSE Act, which reads as under :

8(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.

(emphasis supplied)

8. Counsel argues that the petitioners' contention is also substantiated from the contents of affidavit dated 26.07.2021 filed on behalf of respondents Nos.1 and 2 (DoE), and the enquiry report appended to the



said affidavit, which bear-out the allegations against respondent No. 3 school in the following way:

“1. Since the termination of the complainant teachers was done without adopting the due procedure and without the prior approval of the Director of Education, in violation of section 8(2) of DSEAR-1973 [sic]. These four teachers should be reinstated with immediate effect and then enquiry should be conducted in respect of these teachers as per norms involving the principal/officials of another public school regarding the absenteeism of the teachers from their duties and also by giving due consideration to the replies of the complaint [sic] teachers for their absenteeism from 03-05-2019 to 14-05-2019.”

(emphasis supplied)

9. Attention is further drawn by Mr. Gupta to Rule 121 of the DSE Rules to submit that, in view of the evidently illegal termination of their services by the school, the petitioners are entitled to reinstatement *with full back wages*. Rule 121 of the DSE Rules reads as under:

121. Payment of pay and allowances on reinstatement.

(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.

(2) Where the managing committee is of opinion that the employee who had been dismissed, removed or compulsorily retired from service had been fully exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from



service or suspended prior to such dismissal, or compulsory retirement from service, as the case may be:

Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representations and after considering the representation, if any, made by the employee, direct, for reasons to be recorded by it in writing, that the employee shall he [sic., be] paid for the period of such delay only such proportion of the salary and allowances as it may determine.

(3) The payment of allowances shall be subject to all other conditions under which such allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances.

(emphasis supplied)

10. Ms. Jyoti Tyagi, learned counsel appearing for the DoE submits that, as narrated in affidavit dated 26.07.2021 filed in compliance of order dated 25.02.2020, and as has been recorded in the enquiry report appended therewith, respondent No. 3 school has been remiss on several counts; and in particular, the school has terminated the services of the petitioners without compliance with the mandatory provisions of section 8(2) of the DSE Act.
11. Ms. Tyagi submits that, as far as the nature of employment of the petitioners is concerned, the school's own entries on the Unified District Information System for Education portal display the status of the petitioners as 'regular' employees of the school; and that therefore, there is no excuse for respondent No.3 school to not have followed the mandatory provisions of the DSE Act, as referred to above.



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12. On the other hand, Mr. Anunaya Mehta, learned counsel appearing for respondent No.3 objects to the maintainability of the present petition, contending that an equally efficacious, alternative, statutory remedy is available to the petitioners under section 8(3) of the DSE Act, which envisages the filing of an appeal before the Delhi School Tribunal constituted under section 11 of the DSE Act.
13. Apart therefrom, Mr. Mehta argues that no weightage can be accorded to the so-called ‘findings’ contained in the enquiry report appended to affidavit dated 26.07.2021 filed by the DoE, since there is nothing on record to show that the enquiry report has either been accepted by the Director of Education or that the findings therein have been otherwise confirmed in any manner.
14. Insofar as the issue of compliance with section 8(2) of the DSEA is concerned however, Mr. Mehta in his usual fairness submits, that there is nothing on record to suggest that the school has complied with the requirements of that provision.
15. As regards the objection of availability of an alternative, efficacious remedy before the Delhi School Tribunal is concerned, Mr. Mehta, has placed reliance on the decision of the Supreme Court in **Radha Krishan Industries vs. State of Himachal Pradesh & Ors.**¹, where the principles governing the exercise of writ jurisdiction of the High Court have been laid down in the following words :

“27. The principles of law which emerge are that:

“27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

¹ (2021) 6 SCC 771



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“27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.”

“27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

“27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

“27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

“27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

“28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad, (2003) 5 SCC 399] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions.”

(emphasis supplied)

16. In the circumstances, it is Mr. Mehta’s contention that the petitioners have an alternative and efficacious, statutory remedy before the Delhi



School Tribunal; and this court, may therefore not entertain the present petition.

17. Mr. Mehta has also argued that, even if the order of dismissal or removal from service is set-aside, or is rendered void, it is available for a school to place an employee under suspension; and such suspension must be deemed to start from the date of the original termination as is contemplated in Rule 115(4) of the DSE Rules. Learned counsel accordingly submits, that if at all any back wages are directed to be paid, such wages must be calculated by deeming that the petitioners have been under suspension *w.e.f.* 14.05.2019 *i.e.*, the date of the termination letters issued by respondent No.3 to the petitioners. Mr. Mehta has drawn attention to the following provision of the DSE Rules:

“115.

* * * * *

“(4) *Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or rendered void, in consequence of or by, a decision of a court of law or of the Tribunal; and the disciplinary authority on a consideration of the circumstances of the case decides to hold further inquiry against such employee on the same allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, such employee shall be deemed to have been placed under suspension by the managing committee from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.*”

(emphasis supplied)

18. On the other hand, Mr. Gupta has rebutted the argument raised on behalf of respondent No. 3 against maintainability of the present petition, by placing reliance on the decision of the Supreme Court in



Satwati Deswal vs. State of Haryana & Ors.², in particular to the following portions of the said decision:

“4. Admittedly, in this case no show-cause notice was issued to her nor was the order of termination passed by initiating any departmental proceeding after giving opportunity of hearing to the appellant. This order of termination was challenged by the appellant by way of a writ petition before the High Court, which was dismissed by it on the ground that the appellant had an alternative remedy to file an appeal under the rules before the appellate authority against the order of termination.

“5. In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed without issuing any show-cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy is available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the Act were in question.

* * * * *

“7. Such being the position and in view of the admitted fact in this case that before termination of the services of the appellant, no disciplinary proceeding was initiated nor was any opportunity of hearing given to the appellant. It is clear from the record that the order of termination was passed without initiating any disciplinary proceedings and without affording any opportunity of hearing to the appellant. In that view of the matter, we are of the view that the writ petition was maintainable in law and the High Court was in error in holding that in view of availability of alternative remedy to challenge the order of termination, the writ petition was not maintainable in law.”

(emphasis supplied)

² (2010) 1 SCC 126



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19. Mr. Gupta also disputes the interpretation placed by Mr. Mehta on Rule 115(4) of the DSE Rules submitting that “*further inquiry*” as contemplated under Rule 115(4) can be conducted only when an inquiry was *initially* conducted. Mr. Gupta submits that in the present case, no inquiry was ever conducted; and the procedure adopted to terminate the petitioners’ services was entirely illegal and therefore *non-est*.
20. Upon a conspectus of the submissions made by learned counsel appearing for the petitioners and respondent No.3, this court is of the view that while the petitioners might have had a remedy under section 8(3) read with section 11 of the DSE Act before the Delhi School Tribunal, considering the facts and circumstances obtaining in the present case, this court would be guided by the following principles that can be elucidated on a combined reading of *Radha Krishan Industries* and *Satwati Deswal*:
- 20.1. *The bar of alternative remedy is one of self-restraint, not of jurisdiction:* In para 27.4 of *Radha Krishan Industries* the Supreme Court holds that an alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution. The Supreme Court has held that ordinarily a writ petition should not be entertained where an efficacious alternate remedy exists, *but* this is a rule of practice and the constitutional power vested in the High Court under Article 226 is never ousted. Para 27.5 of *Radha Krishan Industries* further confirms



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that the rule of exhaustion is a rule of policy, convenience and discretion.

20.2. *The rule admits of well-recognised exceptions:* Para 27.3 of *Radha Krishan Industries* lists four exceptions to the rule against maintainability of a writ petition in the face of availability of an alternative remedy. These are : (a) enforcement of a fundamental right under Part III of the Constitution; (b) violation of the principles of natural justice; (c) orders or proceedings that are wholly without jurisdiction; and (d) challenge to the vires of legislation. Of these exceptions violation of the principles of natural justice is an independent and sufficient exception. In *Satwati Deswal* the Supreme Court applies this exception in a concrete setting. In that case, the termination order was passed without a show-cause notice, without disciplinary proceedings and without a hearing being given to the affected party. In those circumstances the Supreme Court held that the High Court had fallen into *grave error* in dismissing the writ petition on the ground of availability of alternative remedy. The Supreme Court reiterated that a writ is maintainable *despite an alternative remedy* where there is inherent lack of jurisdiction, where a fundamental right is to be enforced, and in a case of violation of the principles of natural justice, or when the vires of a statutory instrument are in question.

21. Applying the position of law as distilled above, this court is of the view that in the present case, the mere availability of an alternative remedy before the Delhi School Tribunal would not oust the constitutional



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jurisdiction of this court under Article 226 of the Constitution; and this court would step-in and provide relief to the petitioners *inter-alia* since there has been manifest and evident failure of compliance with the statute and with principles of natural justice.

22. In the present case, it is the admitted position that no disciplinary enquiry or any other similar proceedings was conducted before imposing upon the petitioners the drastic penalty of dismissal and removal from regular service.
23. Besides, the present petition was filed and was entertained by this court way back in 2020 and has remained pending before this court ever since. In such circumstances, this court would be loath to take a view that, despite manifest non-compliance with the statute *i.e.* section 8(2) of the DSE Act and with the principles of natural justice on the part of respondent No.3, the petitioners should now be relegated to file for relief afresh before the Delhi School Tribunal, even though the present petition has remained pending before this court for the past 06 years.
24. In view of the above, this court considers it just and fair to decide the matter on merits.
25. Having held in favour of maintainability of the present petition, and steering clear of any disputes questions of fact as regards issuance or non-issuance of show-cause notice, respondent No.3 has not disputed the fact that no approval was taken by them from the DoE as mandatorily required under section 8(2) of the DSE Act before dismissal/removal of the petitioners from regular service. As a matter of fact, respondents Nos.1 and 2 (DoE) have confirmed that no such approval was ever sought by respondent No.3.



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26. Though respondent No. 3 has contended that they had issued to the petitioners certain notices dated 08.05.2019 and 11.05.2019 relating to the alleged absenteeism by the petitioners and other matters, without entering into the controversy whether such notices were at all issued or whether they were in the nature of show-cause notices, it remains undisputed that *no inquiry was conducted* by respondent No.3 against any of the petitioners in relation to any allegations of wrongdoing on their part.
27. As a sequitur to the above, and without delving any further into the controversies in the matter, this court is of the view that the termination of the petitioners' services *vidé* termination letters dated 14.05.2019 is illegal *being in rank violation of section 8(2) of the DSE Act*.
28. Termination letters dated 14.05.2019 are accordingly quashed and set-aside. Respondent No. 3 is directed to reinstate all 04 petitioners in 'regular' service with immediate effect.
29. The next question that arises for consideration is about the petitioners' entitlement to receive wages and allowances upon being reinstated.
30. In this regard, Mr. Gupta has drawn attention to Rule 121 of the DSE Rules, arguing that once the petitioners' termination is set-aside, they are entitled to be paid *full salary and allowances* to which they would have been entitled, had they not been illegally dismissed or removed from service.
31. In the course of a brief hearing on the issue of the quantum of pay and allowances that would be owed to the petitioners, Mr. Mehta has submitted that respondent No.3 school would be willing to consider a mediated settlement with the petitioners on this issue.



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32. Notwithstanding the position taken by the school, this court is persuaded to hold that, since the termination of the petitioners' services has been held to be rank illegal in view of non-compliance with section 8(2) of the DSE Act, there is no reason why this court should hold-back on granting to the petitioners the consequential relief which is clearly made-out.
33. Accordingly, respondent No.3 school is directed to pay to the petitioners the *full salary and allowances* to which they would have been entitled for the period from 14.05.2019 onwards had they not been dismissed or removed from service *vidé* Termination Letters dated 14.05.2019. It is directed that the salary and allowances as above shall be paid by respondent No. 3 to the petitioners within 06 weeks from today.
34. The petition stands disposed-of in the above terms.
35. Pending applications, if any, also stand disposed-of.

A. J. BHAMBHANI, J

OCTOBER 13, 2026

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