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

Date of decision: 28th JULY, 2025

IN THE MATTER OF:

+ **LPA 463/2025 & CM APPLs.43555-58/2025**

VEDA VYASA DAV PUBLIC SCHOOL

.....Appellant

Through: Mr. Anurag Lakhotia and Mr. Udit Dwivedi, Advocates.

versus

DEVENDER KUMAR ARYA & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT (ORAL)

1. The Appellant seeks to challenge the Judgment dated 12.12.2024 passed by the Ld. Single Judge in W.P.(C) 5551/2018.
2. Short of unnecessary details, facts leading to the filing of the present appeal are that Respondent No.1 herein was appointed as an Assistant Teacher in the Appellant/School w.e.f. 10.07.1996 and subsequently as TGT vide Letter dated 28.05.2001. It is stated that Respondent No.1 tendered his resignation on 28.11.2016, which he later sought to withdraw *vide* letter dated 12.01.2017. In response the Appellant sent the reply to the Respondent No.1 on 15.02.2017 stating that the acceptance of resignation has already been made and later, the Respondent No.1 was relieved by the Appellant *vide* Order dated 28.02.2017. Respondent No.1 challenged the said



Relieving Order dated 28.02.2017 before the Delhi School Tribunal (DST), Timarpur, (*hereinafter referred to as "Tribunal"*) by filing an appeal being Appeal No.90/2017. The Tribunal *vide* Order dated 09.03.2018 set aside the Relieving Order dated 28.02.2017, on the sole ground that the Relieving Order had been passed by the Appellant without the approval of the Director of Education, which is in violation of Rule 114(A) of the Delhi School Education Rules, 1973 ('DSER, 1973'), which was inserted by DSE(A)R. 1990. With respect to back wages, the Tribunal had directed the Respondent No.1 to make a representation before the Appellant, which the Appellant was directed to decide by passing a Speaking Order. The said Order dated 09.03.2018 passed by the Tribunal was challenged by the Appellant before this Court by filing the Writ Petition being W.P.(C) 5551/2018 and the Ld. Single Judge *vide* the Impugned Judgment dated 12.12.2024 has upheld the Order dated 09.03.2018 passed by the Tribunal.

3. The Appellant, has now filed the present appeal challenging the Impugned Judgment dated 12.12.2024 passed by the Ld. Single Judge.

4. Learned Counsel appearing for the Appellant contends that the Respondent No.1 had tendered his resignation on 28.11.2016. He states that the said resignation was tendered by Respondent No.1 on two accounts, firstly, because of complaints against Respondent No.1 and secondly, because the resignation was an alternative of not being dismissed from service, especially in the wake of an Inquiry Report dated 20.03.2017 wherein there are serious complaints against Respondent No.1, stating that his behaviour with the children is immoral and unbecoming of a teacher. Several such instances have also been given in the Inquiry Report against Respondent No.1.



5. Learned Counsel for the Appellant further states that the Principal had informed the Director of Education regarding the resignation of Respondent No.1. In support of this, he drew the attention of this Court to a Letter dated 30.11.2016 sent by the Principal to the Director of Education, wherein information regarding the resignation of Respondent No.1 has been communicated to the Director of Education. He, therefore, states that the essence of Rule 114(A) of DSER, 1973 stands satisfied.

6. Be that as it may, the short question for consideration before this Court is whether the Relieving Order of Respondent No.1 is in violation of Rule 114(A) of DSER, 1973 or not. For considering the same, this Court is not going into the issue regarding resignation of Respondent No.1, withdrawal of resignation by Respondent No.1, the acceptance of resignation by the Appellant etc. for the reason that the decision of the Tribunal and the Ld. Single Judge is primarily based on the non-compliance of Rule 114(A) of DSER, 1973, which reads as under:

“114A. Resignation

The resignation submitted by an employee of a recognised private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director:

Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expire of the said period.”

7. A perusal of Rule 114(A) of DSER, 1973 indicates that once an employee submits his resignation, it can be accepted by the Managing Committee of a recognised school within 30 days from the date of the



receipt of the resignation with the approval of the Director of Education. The said Rule 114(A) of DSER, 1973 mandates that the approval of the Director of Education is required within a period of 30 days. The proviso to Rule 114(A) of DSER, 1973 indicates that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period.

8. The facts of the present case reveal that the Appellant had only intimated the fact of resignation of Respondent No.1 to the Director of Education and had not sought any approval of the Director of Education in terms of Rule 114(A) of DSER, 1973. In this regard, it is also apposite to refer to Section 8(2) of the Delhi School Education Act, 1973 (DSEA, 1973), 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.”

9. A perusal of the said Section 8(2) of DSEA, 1973 indicates that no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated without the prior approval of the Director of Education. In fact, a combined reading of Section 8(2) of DSEA, 1973 and Rule 114(A) of DSER, 1973 shows that the approval of the Director of Education is mandatory and not directory.

10. It is well settled that if there is a power, coupled with duty, mandating that an act has to be done in a particular way, it has to be done only in that way and all other modes are forbidden. The said principle has been laid down in Taylor v. Taylor, (1876) 1 Ch.D 426, where it was observed that



where a statutory power is conferred and the mode of exercising is laid down, it means that no other mode has to be adopted. This judgment has been followed by the Privy Council in another celebrated judgment: Nazir Ahmad v. King Emperor, AIR 1936 PC 253, wherein it has been observed as under:-

“11.where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

11. The aforesaid principle has been consistently followed by the Apex Court in a catena of judgments (Refer: State of Rajasthan v. Mohinuddin Jamal Alvi & ANR., (2016) 12 SCC 608; State v. Sanjeev Nanda, (2012) 8 SCC 450; Nika Ram v. State of H.P., (1972) 2 SCC 80; Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354) making it mainstream in the India Legal Jurisprudence.

12. In the present proceedings, both Tribunal and the Ld. Single Judge have placed reliance upon a judgment passed by the Apex Court in Raj Kumar v. Director of Education, (2016) 6 SCC 541 wherein it has been held that Section 8(2) of DSEA, 1973 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. The purpose of this is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.

13. Section 8(2) of DSEA, 1973 and Rule 114(A) of DSER, 1973 are, therefore, completely mandatory and necessary to be followed by a recognised school.



2025:DHC:6214-DB



14. Viewed in this light, this Court does not find any reason to interfere with the judgment passed by the Ld. Single Judge.

15. Resultantly, the appeal is dismissed, along with pending application(s), if any.

16. All the observations made in this judgment are confined only to the fact as to whether Respondent No.1 could be relieved by the Appellant without following the mandatory approval of the Director of Education and not on other factual issues which have been raised by the Appellant regarding the conduct of Respondent No.1.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

JULY 28, 2025

S. Zakir