

\* **HIGH COURT OF DELHI : NEW DELHI**

**WP (C) No. 354 of 2010**

% Decided on: August 31, 2010

GURPREET KAUR .....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.  
....Respondents

and

**WP (C) No. 355 of 2010**

SHEELA DEVI .....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.  
....Respondents

and

**WP (C) No. 357 of 2010**

HARSIMRAN KAUR .....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.  
....Respondents

and

**WP (C) No. 361 of 2010**

AMRIT KAUR .....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.  
....Respondents

and

**WP (C) No. 362 of 2010**

TAJINDER KAUR

.....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.

....Respondents

and

**WP (C) No. 375 of 2010**

GURMEET KAUR

.....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.

....Respondents

and

**WP (C) No. 377 of 2010**

RAMANJEET KAUR

.....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.

....Respondents

and

**WP (C) No. 379 of 2010**

LAKHWINDER SINGH

.....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.

....Respondents

and

**WP (C) No. 380 of 2010**

HARJIT KAUR

.....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.

....Respondents

and

**WP (C) No. 391 of 2010**

MANJIT SINGH

.....Petitioner

Versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ORS.

....Respondents

and

**WP (C) No. 2551 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ANR.

.....Petitioners

Versus

MS. SHEELA DEVI & ANR.

....Respondents

and

**WP (C) No. 2552 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE & ANR.

.....Petitioners

Versus

MS. HARJEET KAUR & ANR.

....Respondents

and

**WP (C) No. 2553 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ANR.  
.....Petitioners

Versus

MS. AMRIT KAUR & ANR. ....Respondents  
and

**WP (C) No. 2561 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ANR.  
.....Petitioners

Versus

MS. GURPREET KAUR & ANR. ....Respondents  
and

**WP (C) No. 2563 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ANR.  
.....Petitioners

Versus

MS. GURMEET KAUR & ANR. ....Respondents  
and

**WP (C) No. 2565 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ANR.  
.....Petitioners

Versus

MS. HARSIMRAN KAUR & ANR. ....Respondents

and

**WP (C) No. 2726 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ANR.  
.....Petitioners

Versus

MS. RAMANJEET KAUR & ANR. ....Respondents

and

**WP (C) No. 2727 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ANR.  
.....Petitioners

Versus

MR. MANJEET SINGH & ANR. ....Respondents

and

**WP (C) No. 2728 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ANR.  
.....Petitioners

Versus

MS. TAJINDER KAUR & ANR. ....Respondents

and

**WP (C) No. 2738 of 2010**

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ANR.  
.....Petitioners

Versus

MR. LAKHWINDER SIGH & ANR. ....Respondents

**Appearance:**

Dr. Sarbjit Sharma, Adv. with Mr. Sumit Sharma, Adv. and Ms. Seema Aggarwal, Adv. for Mrs. Tajinder Bhatia, Mrs. Sheela Devi, Mrs. Gurmeet Kaur, Mrs. Harsimran, Ms. Amrit, Ms. Ramanjeet Kaur, Mr. Lakhvinder Singh & Mr. Manjit Singh.

Mr. I.S. Bakshi, Adv. for respondents Delhi Sikh Gurudwara Management Committee and Guru Harkrishan Public School.

Mr. Sushil D. Salwan, Adv. with Mr. Aditya Gar, Adv. for R-DoE in Writ Petitions (C) No.362/2010, 379/2010 & 380/2010.

Mr. Nawal Kihore Jha, Adv. for DoE in W.P.(C) No.354/2010.  
Ms. Megha Bharara, proxy counsel for Ms. Ruchi Sindhwani, Adv. for R-3 in W.P.(C) No.357/2010.

Coram:

**HON'BLE MR. JUSTICE MANMOHAN SINGH**

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|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?  | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**MANMOHAN SINGH, J.**

1. By this order I shall dispose of twenty writ petitions i.e. one set of 10 writ petitions filed by Ms. Tajinder Kaur Bhatia, Ms. Sheela Devi, Ms. Gurmeet Kaur, Ms. Gurpreet Kaur, Ms. Harsimran Kaur, Ms. Amrit Kaur, Ms. Ramanjeet Kaur, Ms. Harjeet Kaur, Mr. Lakhvinder Singh & Mr. Manjit Singh (hereinafter called petitioners) against three respondents i.e. Delhi Sikh Gurudwara Management Committee, Guru Harkrishan Public School and Directorate of Education respectively.

2. The second set of 10 writ petitions WP (C) No. 2551/2010, WP (C) No. 2552/2010, WP (C) No. 2553/2010, WP (C) No. 2561/2010, WP (C) No. 2563/2010, WP (C) No. 2565/2010, WP

(C) No. 2726/2010, WP (C) No. 2727/2010, WP (C) No. 2728/2010 and WP (C) No. 2738/2010 filed by the Delhi Sikh Gurudwara Management Committee and Guru Harkrishan Public School (hereinafter called respondents) against the ten petitioners individually details of which are mentioned in the in first set of 10 writ petitions and Directorate of Education being respondent No.2 for setting aside the impugned judgment dated 30.11.2009 passed by Delhi School Tribunal in appeals filed by the petitioners. All the writ petitions have been taken up together as similar facts and law points are involved in both sets of writ petitions.

3. The common grounds of the petitioners are that the termination orders passed by the respondents are illegal, arbitrary, malafide and those were issued in violation of established principles of natural justice as no show cause notices were issued by the respondents. The petitioners after termination of their services preferred appeals before the Delhi School Tribunal. The Tribunal vide judgment dated 30.11.2009 in appeals No.38/2009 to 47/2009 set aside the orders of termination of services of the petitioners. Despite the said judgment and reminders issued by the petitioners for compliance they were not reinstated by the respondents. Therefore, the present writ petitions have been filed by the petitioners, for the purpose of implementation of the judgment.

4. The detail of petitioners of the first set of 10 writ petitions is given as under:

| Sl. No. | Name | Post Held | Date appointment/ joining | Date of termination | Reasons given in the impugned order |
|---------|------|-----------|---------------------------|---------------------|-------------------------------------|
|         |      |           |                           |                     |                                     |

|    |   |                     |                           |                         |   |
|----|---|---------------------|---------------------------|-------------------------|---|
| 1. | Ms. Tajinder Kaur Bhatia in W.P.(C) No.362/2010 | Teacher             | 02.04.2007                | 4.7.2009/<br>15.7.2009  | Appointed without following any procedure for appointment. Terminated under Clause 19 of Contract of Service. |
| 2. | Ms. Sheela Devi in W.P.(C) No.355/2010          | Ayah                | 02.04.2007                | 15.7.09                 | Appointed on temporary basis  |
| 3. | Ms. Gurmeet Kaur in W.P.(C) No.375/2010         | Attendant           | 02.08.2007/<br>31.08.2007 | 4.7.2009/<br>15.7.2009  | Appointed without following any procedure for appointment. Terminated under Clause 19 of Contract of Service. |
| 4. | Ms. Harsimran Kaur in W.P.(C) No.357/2010       | Teacher             | 01.08.2007                | 4.7.2009/<br>15.7.2009  | Appointed without following any procedure for appointment. Terminated under Clause 19 of Contract of Service. |
| 5. | Ms. Amrit Kaur in W.P.(C) No.361/2010           | Teacher             | 02.08.2007                | 4.7.2009/<br>15.7.2009  | Appointed without following any procedure for appointment. Terminated under Clause 19 of Contract of Service. |
| 6. | Ms. Ramanjeet Kaur in W.P.(C) No.377/2010       | Teacher             | 03.09.2007                | 4.7.2009/<br>15.7.2009  | Appointed without following any procedure for appointment. Terminated under Clause 19 of Contract of Service. |
| 7. | Ms. Harjeet Kaur in W.P.(C) No.380/2010         | Office Attendant    | 01.11.2007                | 4.7.2009/<br>15.7.2009  | Appointed without following any procedure for appointment. Terminated under Clause 19 of Contract of Service. |
| 8. | Mr. Lakhwinder Singh in W.P.(C) No.379/2010     | Driver              | 21.07.2008                | 13.7.2009/<br>15.7.2009 | Appointed on temporary basis.   |
| 9. | Ms. Gurpreet Kaur In W.P.(C) No.354/2010        | Teacher             | 01.10.2008                | 4.7.2009/<br>15.7.2009  | Appointed without following any procedure for appointment. Terminated under Clause 19 of Contract of Service. |
| 10 | Mr. Manjeet Singh in W.P.(C) No.391/2010        | Activity Instructor | 12.01.2009                | 15.7.09                 | Appointed on temporary basis.   |

5. The first contention of the petitioners is that the respondents have a trend of passing similar orders of termination against the employees appointed by a previous committee during its tenure when it is taken over by the subsequent committee. The



appointments are terminated in respect of employees of various schools run by the respondent No.1 and on several occasions in the past employees filed various writ petitions before this Court and the said orders were withdrawn from time to time after issuance of directions by the Court. It is contended that the President of respondent No.1 i.e. Delhi Sikh Gurudwara Management Committee decided to terminate the services of various employees from the service and therefore, a resolution was passed for terminating the petitioners without affording them an opportunity of being heard. The termination letters issued by the respondent No.1 are contrary to the law. The said letter no.3751/2-5 resolution dated 15.5.2009 reads as under:

“During the Executive Board Meeting held on 9.5.2009, it has been decided that the confirmations granted to the employees of DSGMC and Schools, Institutes, Hospitals, Dispensaries run under Delhi Sikh Gurudwara Management Committee prior to completion of one year of service between 01.03.2007 to 9.5.2009 be cancelled.

Hence, any such confirmations are being cancelled.”

6. In view thereof, vide office order No.5468/11-13 dated 19.6.2009, the President, Delhi Sikh Gurudwara Prabandhak Committee, issued directions for enquiry into all appointments, promotions, including new posts and ranks, special scale, increments made during 9<sup>th</sup> February 2007 to 9<sup>th</sup> May 2009 in all Guru Harkrishan Public Schools, and all other educational institutions under the management of respondent No.1.

7. In W.P. (C) No.380/2010 filed by Harjeet Kaur one of the petitioners who has filed an additional affidavit wherein it has been stated that the services of the various teachers were terminated by the respondents No.1 and 2 because of surplus staff and that at the

same time fresh appointments were advertised. It is also stated in the affidavit that one of the teachers namely Ms. Roma whose services were also terminated along with the petitioner has been reinstated in service and fresh appointments were made of Ms. Maninder Kaur, Ms. Amandeep Kaur, Ms. Vaishali and Ms. Harmit Kaur who are overage.

7.1 It is in the affidavit that the respondents are relaxing the age as well as qualification. When the inspection was conducted by a team of Central Board of Secondary Education a number of employees were found to be overage or under qualified. The details of the same is filed along with the affidavit as Annexure P-10.

7.2 The few examples are given by the petitioner that Mrs. Malvinder Kaur was appointed in July 2004 before the respondent No.2 School, Hemkunt Colony, New Delhi, as TGT at the age of 44 years. Further, one Mr. Beerjit Singh was appointed by the School as TGT Music on 29.9.2004. When an objection was raised during inspection by CBSE in the year 2004 as he was not qualified, his services were terminated and subsequently he was appointed as a caretaker in the school. After he qualified the diploma from Prayag Sangeet Samiti, Allahabad, he was again appointed as TGT (Music) and shifted from the post of caretaker to TGT (Music) by the Principal on 10.11.2005.

7.3 Similarly, Ms. P.K. Sandhu was appointed by the school as Computer Instructor on 15.9.2003 at the recommendation of President of respondent No.1 and on inspection it was found that she was not qualified and was overage. Later on she was put on the post of LDC.

7.4 The petitioner has given many examples of similar nature about the appointments of the employees by the respondents No.1 and 2 in paras 9 to 23 of her affidavit in order to show that most of the employees were not qualified, overage and were appointed as per choice of respondents No.1 and 2.

8. Learned counsel for the petitioners has also filed various documents/letters which indicate the details of the appointments on probation/confirmation of the employees of the respondents in order to show irregularity on the part of the respondents during the course of the hearing. It appears from the said documents that various appointments/relieving orders were passed by the schools under the signature of Principals or on behalf of General Secretary/Chief Administrator of respondent No.1.

8.1 Few of the letters issued by the respondent No.1 to the Principals/Chairmen of all Guru Harkrishan Public Schools under the Management of respondent No.1 dated 21.6.2006 and 30.6.2007 read as under:

(a) Letter dated 21.6.2006 issued by the respondent No.1:

"To

The Principals/Chairmen

All Guru Harkrishan Public Schools

Under the management of

Delhi Sikh Gurdwara Management Committee

It has been observed that many schools are making appointments/confirmations/promotions of staff at their own level. Henceforth, no appointment/promotion/confirmation should be made without obtaining the prior approval of the President/General Secretary-DSGMC.

(b) Letter dated 30.6.2007 issued by the respondent No.1:

"To

The Principal

All Guru Harkrishan Public Schools,

Under the management of

Delhi Sikh Gurdwara Management Committee.

Dear Sir/Madam

In view of the problem of surplus staff being faced in our schools resulting in abnormal financial crises and prolong legal battle. It has been decided that no new recruitment of staff in your school be made until it is conformed that the required staff is not available in any other branch that can be adjusted against that required post.

No new appointment would be made without the prior permission of the President and General Secretary, Delhi Sikh Gurdwara Management Committee. Any action in violation will attract recovery of the salary of the new appointment from the account of the Principals/Incharge concerned."

9. It is argued by the counsel for the petitioner that the employment of the petitioners, whether confirmed or on probation, cannot be terminated by passing a resolution without being given a show cause notice and affording any opportunity of being heard is in violation of principles of natural justice. He has referred to **Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd. & Others**, AIR 2003 SC 2120 and **State of HP Vs. Gujrat Ambuja Cement Ltd.**, AIR 2005 SC 3936. In **Harbanslal Sahnia & Anr. (supra)** it was laid down:

"in an appropriate case, inspite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is a failure of the principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged".

In **State of HP (supra)** it was held:

"when the impugned order has been made in violation of the principles of the natural justice, and where the proceeding itself are an abuse of the process of law, the High Court in an appropriate case can entertain a writ petition."

10. The contention of the petitioners is that the orders of

termination of service of the petitioners are illegal, malafide, arbitrary and without any jurisdiction. Hence, prior to filing these writ petitions, they filed the appeals against the said orders of termination under Section 8(3) of Delhi School Education Act, 1973 before the Delhi School Tribunal being Appeals No.38 to 47/2009.

11. After hearing the parties, Delhi School Tribunal allowed the appeals of the present petitioners by passing judgment on 30.11.2009 against the respondents. The operative part of the findings are given in para 36 which reads as under:

“36. There is no doubt that a duly constituted Managing Committee has every right to manage and run the affairs of the Respondent No.1 as per applicable provisions of law. It is also not in doubt that a duly constituted Managing Committee has a right to take action against the teachers/employees who are either not qualified or on any other legal and valid ground as per law. There was no duly constituted Managing Committee of Respondent No.1 School on the date of passing of the impugned orders and as a result thereof, impugned orders against the Appellants were not passed by a duly constituted Managing Committee. Hence, the said orders cannot be sustained in the eyes of law.”

12. The prayer sought by the petitioners in the first set of writ petitions is as respondents No.1 and 2 are not implementing the judgment passed by the Delhi School Tribunal by not reinstating the petitioners, hence, this Court may pass the appropriate orders for reinstating the petitioners in service and also quash the letter No.3751/2-5 dated 15.5.2009 issued by the Chief Administrator, Delhi Sikh Gurudwara Management Committee and Office Order No.5468/11-13 dated 19.6.2009 issued by the President, Delhi Sikh Gurudwara Management Committee as the said act of the respondents is illegal, malafide, arbitrary and the orders passed against the petitioners on different dates i.e. dated 04.07.2009, 13.07.2009 and 15.07.2009 be quashed.

13. The case of the respondents is that the respondent No.1 is a Statutory Authority/Committee, known as Delhi Sikh Gurudwara Management Committee, constituted under Delhi Sikh Gurudwara Management Act, 1971 and is governed by the said Act and the Delhi Sikh Gurudwara Management Committee Rules.

14. The respondent No.1 committee is looking after the management, administration and control of various Gurudwaras in Delhi including Bangla Sahib Gurudwara, Gurudwara Sis Ganj Sahib, Shri Rakab Ganj Sahib, Gurudwara Mata Sundri and various other Gurudwaras situated in Delhi.

15. The respondent No.1 is also running various hospitals, dispensaries, schools and other educational institutions. The hospitals include Guru Harkrishan Hospital, Bala Sahib, Guru Har Krishan Hospital, Bangla Sahib, and various others. The educational institutions include SGTB Khalsa College, Mata Sundri College, Guru Gobind Singh College of Commerce, affiliated to the University of Delhi. There are various other institutions, polytechnics, institutes of electronics, engineering college etc., which are being run by the respondent No.1.

16. On merit following are the contentions of the respondents No.1 and 2:

- (i) That the respondent No.2 school is a minority institution managed by respondent No.1 under the provisions of Delhi Sikh Gurudwaras Act, 1971. Article 30(1) of Constitution of India provides for right of minorities to establish and administrate educational institutions of their choice. Thus, the Tribunal had no jurisdiction to entertain the appeals filed by the petitioners.

- (ii) The petitioners were on contractual appointment as per Regulation III (1) (iii) of the Regulations who were later on confirmed to the permanent posts without any authority. Even otherwise, the services of the petitioners can be terminated by giving three months notice or pay as per contract without assigning any reason.
- (iii) As petitioners were appointed without authority of law, the respondent No.1 within its right vide Resolution dated 19.6.2009 resolved that all the promotions/ confirmations/appointments made through the period from 9.2.2007 to 9.5.2009 were illegal as they were appropriated wrongly.
- (iv) Delhi School Education Act, 1973 is not applicable to the schools operated and managed by respondent No.1. In the Contract of Service of the petitioners there is an arbitration clause for settlement of disputes. Thus, the Tribunal had no jurisdiction to entertain the appeals filed by the petitioners.
- (v) Further contention is that the petitioners were illegally appointed as the said posts were never advertised nor any approval was sought from the Management Committee which has the exclusive right of making the appointments. In case the Delhi School Education Act, 1973 would be made applicable to the School Management, then provisions of Delhi Sikh Gurudwaras Act, 1971 would become redundant.
- (vi) As regards the respondent No.2 school is concerned, it was contended that since a Resolution dated 19.6.2009

was passed by the respondent No.1, the respondent No.2 is bound by the orders passed by the respondent No.1. As the appointments of the petitioners were not made in accordance with the Rules and Regulations, the termination orders were rightly passed against the petitioners.

17. It is also contended that the petitioners had joined the service with the respondent school on clear understanding that their services are purely temporary and can be terminated without any notice before the expiry of course of their employment. As their services are no further required in the fresh session, the same were terminated.

18. Learned counsel for the respondents No.1 and 2 has referred to Section 15 of Delhi School Education Act and Rules, 1973, which deals with the Contract of Service.

19. The submission of the respondents, that even if conditions prescribed under Section 15(2) of Delhi School Education Act, 1973 for registering the contract of service is not complied with, the service conditions shall be governed by the Contract of Service, has no force as Chapter XI of Delhi School Education Rules, 1973 deals with recruitment, minimum qualifications, power to relax the qualification and executing Contract of Service and its registration.

20. The following are the main grounds for challenging the judgment dated 30.11.2009 by the respondents No.1 and 2 are:

- (a) That the Tribunal has acted in excess of its jurisdiction and has committed grave and material irregularity while passing the judgment.



- (b) There was no ground on the part of the petitioners to challenge the recognition of the school in their appeals filed under Section 8(3) read with Section 11 of Delhi School Education Rules-1973.
- (c) It is submitted that the Tribunal has failed to appreciate that the main grievance of the petitioners before the Tribunal was about the termination of service. However, the Tribunal has given the judgment on imaginary grounds which were not agitated or raised by the petitioners in their appeals.
- (d) The petitioners could not even otherwise challenge the procedural irregularity in the constitution of Management Committee of the School in their appeals as the same could be corrected at any time.
- (e) The finding of the Tribunal is erroneous when it is held that the contract of service, if any, between the petitioner and respondent No.1 is to be registered as per Rule 130 of the Delhi School Education Rules, 1973. There is no illegality in the Management Committee of the respondent No.1 and the observations made by the Tribunal is without any basis and contrary to the Rule 59(3) of Delhi School Education Rules, 1973.

21. It is not disputed by the respondents that the contract of service with the petitioners and respondent No.2 was not registered as provided in Section 15(2) of Delhi School Education Act, 1973

read with Rule 130 of Contract of Service. The justification given by the counsel for the respondents is that the respondent No.2 school is a minority institution. Since the provisions of Delhi Sikh Gurudwaras Act, 1971 would apply, they have the rights to establish and administrate education institutions as per their choice under the Act. Therefore, the appeals filed by the petitioners before the Tribunal were not maintainable.

22. No doubt, the schools run by the respondent No.1 is a minority school, but there is no force in the submission of the respondents in view of the judgment of the Apex Court in the case of **Frank Anthony Public School Employees' Association Vs. Union of India and Others**, AIR 1987 SC 311, wherein in paras 13, 16 and 18 it has been held:

“13... The right guaranteed to religious and linguistic minorities by Art. 30(1) is two fold, to establish and to administer educational institutions of their choice. The key to the Article lies in the words “of their own choice”. These words indicate that the extent of the right is to be determined, not with reference to any concept of State necessity and general societal interest but with reference to the educational institutions themselves, that is, with reference to the goal of making the institutions “effective vehicles of education for the minority community or other persons who resort to them”. It follows that regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments for imparting education cannot be considered to impinge upon the right guaranteed by Article 30(1) of the Constitution. The question in each case is whether the particular measure is, in the goal, without of course nullifying any part of the right of management in substantial measure....

16. ....The management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Art. 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction

imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Art.30(1) which is to make the institution an effective vehicle of education.

18. ....Keeping in mind the views of the several learned Judges, it becomes clear that Section 8(2) must be held to be objectionable. Section 8(3) provides for an appeal to the Tribunal constituted under Section 11, that is, a Tribunal consisting of a person who has held office as a District Judge or any equivalent judicial office. The appeal is not to any departmental official but to a Tribunal manned by a person who has held office as a District Judge and who is required to exercise his powers not arbitrarily but in the same manner as a Court of appeal under the Code of Civil Procedure. The right of appeal itself is confined to a limited class of cases, namely, those of dismissal, removal or reduction in rank and not to every dispute between an employee and the management. The limited right of appeal, the character of the authority constituted to hear the appeal and the manner in which the appellate power is required to be exercised make the provision for an appeal perfectly reasonable, in our view....”

23. The similar view was taken by the Apex Court in the case of **Management Committee of Montfort Senior Secondary School and Others Vs. Sh. Vijay Kumar and Others**; AIR 2005 SC 3549 while holding that benefit of Section 8(3) has been extended to the employees of recognized unaided minority schools and they have been put at par with their counterparts in private schools and once employees have chosen one remedy by approaching the Tribunal, it is not permissible to file the other one.

24. Thus, arbitration clause does not come in the way of petitioners while approaching the Tribunal and the appeals filed by the petitioners were maintainable.

25. In the present case, admittedly no contracts of service of

the petitioners were sent to the Administrator for registration under the Delhi School Education Rules, 1973. Rule 183 of Chapter XV of Delhi School Education Rules, 1973 provides that every Management Committee shall comply with the provisions of the Act and Rules. Thus, the respondents are not entitled to take the benefit of said plea and submissions made by them.

26. The schools regulated by the Government of NCT of Delhi, are governed by Delhi School Education Act, and Delhi School Education Rules, 1973. The said rules are applicable to all the recognized schools in Delhi.

27. The Rule 130 of Delhi School Education Act and Rules, 1973 provides the procedure to be adopted for executing and registering of Contract of Service. The said rule reads as under:

“130. Contract of Service :

(1) Every contract of servicer, referred to in sub-section (1) of section 15 shall be entered into in the form specified in the scheme of management before the employee is called upon to join his duties.

(2) A copy of the contract of service, referred to in sub-section (1) of section 15, shall be forwarded to the Administrator by the managing committee of the concerned unaided minority school either by registered post, acknowledgement due, or by a messenger within thirty days from the date on which the contract is entered into.

(3) On receipt of a copy of the contract of service, the Administrator shall cause the particulars of such contract to be entered in a register to be maintained for the purpose, to be known as the “Register of Contracts”.

(4) The Administrator shall also cause the copies of contracts received by him to be preserved in such manner as he may specify.

(5) If on a scrutiny of the copies of contract received by him, the Administrator is of opinion that the contract does not comply with the provisions of sub-section (3) of section 15, he may draw the

attention of the school concerned so as to bring it in conformity with the provisions of sub-section (3) of section 15, and thereupon the school shall take urgent steps for the rectification of the contract.

(6) When a contract has been rectified under sub-rule (5), a copy of the contract, as so rectified shall be forwarded to the Administrator for registration and on receipt of the copy of such contract the Administrator shall cause the contract to be registered in the manner specified in sub-rule (3).

28. The termination orders of the petitioners were passed by letters dated 4.7.2009, 13.7.2009 and 15.7.2009 which were signed by the Chairman of Guru Harkrishan Public School as well as by the Principal of the School.

29. It is not disputed by the respondents that the application for recognition of the school was processed in 1993 which was approved by the Department of Education. The scheme of the Management shows that the Guru Harkrishan Public School Society, New Delhi, is the Managing Committee authorized to run affairs of the school in accordance with the Delhi School Education Act and Rules, 1973 as applicable to unaided minority schools.

30. It is not disputed by the parties that at the time of hearing of appeals filed by the petitioners, the Tribunal summoned the file from the office of the Registrar of the Societies and from the said file information was gathered about the list of the members of the said society. The respondent No.2 school filed on record a copy of Memorandum of Association and Rules and Regulations of Governing Body of Guru Harkrishan Public School, Society, New Delhi, wherein the main object as per Memorandum of Association was to establish and carry on the administration and management of Guru Harkrishan Public School and had power to open branches of the School in Union Territory of Delhi.

31. In Rule 27 of Rules of the Society, it was mentioned that all the contracts relating to the management and administration of said society shall be executed on behalf of the society by the Chairman, Honorary Secretary and Principal of the school. The recognition was granted to Governing Body of Guru Harkrishan Public School Society, New Delhi, by the Government of NCT of Delhi.

32. The Tribunal while hearing of the appeals examined the Memorandum of Association and Rules and Regulations of "Governing Body of Guru Harkrishan Public School, Society, New Delhi". The details gathered from record produced by the respondent No.2, which is referred in judgment of the Tribunal, read as under :

The main object of the Society was to establish and carry on the administration and Management of Guru Harkrishan Public School, India Gate, New Delhi and it had power to open branches of the School in Union Territory of Delhi as and when considered necessary by the Society. All affairs of the Society were to be carried out by Governing Body which was to be nominated by Gurudwara Prabhandak Committee (now Delhi Sikh Gurudwara Management Committee). Total membership of Society was not to be more than 19 members out of whom at least 9 Members were to be appointed from the sitting members of Gurudwara Prabhandak Committee, Delhi. Principal Guru Harkrishan Public School was to be an ex-officio Member of the Society and normal tenure of the Member of the Society was fixed for 3 years except the ex-officio Member. It has been mentioned in the Memorandum that the income and property as well as management and control of the Society shall be vested in the Governing Body of the Society which shall be called the Executive Board of the Society. This Board shall have power of management of all affairs and funds of the Society and this Board shall meet once in every 3 months to transact the business of Management of the Society. In Rule 27 of Rules of Society, it has been mentioned that all contracts relating to the management and administration of this Society, shall be expressed to be made by the Society and shall be executed on behalf of the Society by the

Chairman, Honorary Secretary and Principal of the School.

33. The Tribunal after examination of various files and documents found many irregularities in the functioning of running the schools by the respondent No.1, the reasons are referred in the judgment in paras 13, 14, 15, 16, 27 to 30 of the judgment which read as under :

“13. The Ld. Counsel for Respondent School did not offer any explanation as to how and at what stage “Governing Body of Guru Harkrishan Public School Society, New Delhi” having registration no.4834 of 1970-71 was either wound-up or dissolved and the affairs of the School were directly taken over by Delhi Sikh Gurudawara Management Committee by-passing the said Society as well as the Managing Committee of the School which was formed as per Scheme of Management duly approved by the Competent Authority.

14. The Scheme of Management clearly states that the Managing Committee has to run affairs of the School in accordance with Delhi School Education Rules as applicable to unaided minority schools. The stand of Respondent No.2 Department is that recognition and up-gradation of the School was granted by the Directorate with a condition that School would abide by the provisions of Delhi School Education Act & Rules-1973 and the School is accordingly governed under the said Education Act & Rules. In view of this, contention of the Respondent No.2 and 3 that teachers and employees of Respondent No.3 School are governed by Employees Service Regulations-1992 framed under Delhi Sikh Gurudwaras Act, 1971 is not tenable.

15. The recognition was granted to Respondent No.1 School being run by “Governing Body of Guru Harkrishan Public School Society, New Delhi” at Nanak Piao, Delhi and there is no correspondence on the file of Directorate of Education to show any change in the Management. Even if Respondent No.3 has the power to appoint Members of the said Society, this by itself will not empower Respondent No.3 to supersede and bypass the said Society and directly control the affairs of respondent No.1 School. Time and again adjournments were taken by the Ld. Counsel appearing for Respondent No.1, 3 and 4 to search for the documents to support their stand that the School was got recognized and was allowed to be managed by Respondent No.3 but they failed to file any such document on record except a copy of Delhi Sikh Gurudawaras Act-1971 and Employees Service

Regulations-1992.

16. The said Employees Service Regulations-1992 have been claimed to be framed under Section 40 of Delhi Sikh Gurudawaras Act-1971. Sub-Section 3 of Section 40 of Delhi Sikh Gurudawaras Act-1971 provides that every regulation made under this section shall be laid before each House of Parliament for a period of 30 days for making any modification or to agree that regulation should not be made. The regulation thereafter would be effected only in such modified form or be of no effect as the case may be. Ld. Counsel appearing for Respondent No.1, 3 and 4 have been unable to submit as to whether the Employees Service Regulations-1992 were laid on the Table of each House of Parliament till date or not as mandated under Sub-Section 3 of Section 40 of Delhi Sikh Gurudawaras Act-1971.

27. Sub-Rule (2) of Rule 59 provides for the manner in which the Scheme of Management is to be prepared. Proviso (2) of Sub-Rule (3) of Rule 59 provides that any alternation or modification in the Scheme of Management of a minority School need not be approved by the Appropriate Authority but the said Authority has right to give its advice. As per the file of the department, no such modification was ever intimated to the department for seeking its advice to make changes in the Scheme of Management on the record of the department, which was approved at the time of grant of recognition and up-gradation.

28. Chapter XI of Delhi School Education Rules-1973 deals with recruitment, minimum qualifications, power to relax the qualification and executing Contract of Service and its registration. As mentioned earlier, no Contract of Service was forwarded to the Administrator for registration. Rule 183 contained in Chapter XV of Delhi School Education Rules-1973 provides that every Managing Committee shall comply with the provisions of the Act and the Rules. But in this case there no legally constituted Managing Committee, so there is no question of complying with the provisions of Delhi School Education Act & Rules-1973.

29. In view of the above, the major question is that who has the right to terminate the employees of the School; whether a duly constituted Managing Committee as per the Scheme of Management filed with the Department of Education or as directed by the President of Delhi Sikh Gurudawara Management Committee or the said Committee itself? On the basis of the above discussion, it is quite clear that the Respondent No.1 School is to be run as per the Scheme of Management filed with the Department of Education and any office bearer of the Delhi Sikh Gurudawara Management Committee of his



own, or the said Gurudwara Committee as a whole, has no right to terminate employees of Respondent No.1 School.

30. The Managing Committee of the School is to be constituted as provided in Scheme of Management in view of Rule 50 and 59 of Delhi School Education Rules-1973. The recognition of the Respondent No.1 School was applied for it and was granted to "Governing Body of Guru Harkrishan Public School Society, New Delhi" and this Society has to run the School and only it has the right to nominate members of the Managing Committee as provided in proviso to Rule 59(1) of Delhi School Education Rules-1973.

34. In para 33 of the judgment passed by the Tribunal, certain directions were issued to Directorate of Education to take necessary steps to ensure that Contracts of Service of all the employees in recognized unaided minority schools in Delhi are filed and registered with Administrator as provided in Rule 15 of Delhi School Education Act – 1973 read with Section 130 of Delhi School Education Rules – 1973 within a period of 3 months from the date of the order. It was further ordered by the Tribunal that report be submitted in this regard within four months.

35. Mr. Sushil Dutt Salwan, who is appearing on behalf of Directorate of Education in Writ Petitions (C) No.362/2010, 379/2010 & 380/2010, has referred to affidavit of Sh. Ram Avtar Haritash, Deputy Director of Education wherein it is submitted that in pursuance to the judgment dated 30.11.2009 passed by the Delhi School Tribunal, Directorate of Education had written a letter on 21.12.2009 to the respondent No.2 along with the representation of the petitioner to comply with the directions passed by the Tribunal. No action was taken by the respondents No.1 and 2.

36. Thereafter, show cause notice dated 8.1.2010 was issued

to the respondents No.1 and 2 as to why the recognition be not withdrawn for the non-compliance of the directions given by the Tribunal. Reply dated 22.1.2010 to the show cause notice was received by it and in the reply it was stated that the judgment dated 30.11.2009 was being challenged by the respondents No.1 and 2 in the High Court.

37. Therefore, a request was made by the respondents that no action be taken against them. It was further contended by the learned counsel that the withdrawal of the recognition of the respondents is under consideration and the petitioners in the present cases are at liberty to take legal remedy of filing an application under Section 27 of Delhi School Education Act for non-compliance of order.

38. There is no force in the submission of the learned counsel for the respondents that the Tribunal has acted in excess of its jurisdiction and the judgment passed by the Tribunal was on imaginary grounds which were not raised by the petitioners. It is a matter of fact that the petitioners in their appeals filed under Section 8(3) read with Section 11 of Delhi School Education Rules, 1973 have agitated the jurisdiction of the respondents No.1 and 2 for passing the orders of termination of their services.

39. The other aspect of the matter is consent order dated 11.5.2010 passed by this Court in batch of about forty writ petitions wherein the Court has stayed the termination orders of the petitioners in those cases. The operative portion of the order reads as under:

**“W.P.(C) 1948/2010**

Issue show cause notice to the respondent as to why rule nisi be not issued. Mr. Bhagwant Singh, Adv.

accepts notice on behalf of the respondent No.1. Copy of the paper book has been handed over to the counsel for the respondent No.1. He seeks four weeks time to file the counter affidavit. Let the counter affidavit be filed within four weeks. Rejoinder be filed within four weeks thereafter.

Learned counsel for both the sides are agreeable that during the pendency of the writ petitions, the inquiry may be conducted by the respondents as per the applicable rules against the respective petitioner in view of the allegation raised and the same may be completed within the period of six months. As agreed, till that time the writ petitions filed by various petitioners may be kept pending. Both parties have also agreed with the following terms:-

a. The respondent DSGMC/GHPS shall pay salaries to all the petitioners if unpaid for the previous period within two weeks from today and shall continue to pay till further order of this Court.

b. The process of inquiry would start after payment of unpaid salary to the concerned petitioners.

c. In order to conduct the inquiry, the respondents are at liberty to issue show cause notices to the concerned petitioners within three weeks from today.

d. The petitioners shall be entitled to give reply to the show cause notices within four weeks thereafter.

e. An opportunity of personal hearing would be granted to the petitioners to put up their case before the inquiry officer/authority.

f. If any extension is needed for the said purpose, the parties are at liberty to move an application in this regard.

**CM No.3889/2010 (direction)**

Till the next date of hearing, there shall be stay of the impugned orders dated 10.7.2009 and 17.7.2009 passed by the respondent No.2.

List on 13<sup>th</sup> December, 2010.

Copy of the order be given dasti under the signature of the Court Master."

It is admitted by the parties that in said consent order passed in batch of writ petitions, there are few cases where the employees were on probation and their services were terminated and the respondents had agreed to revoke termination orders by a mutual consent till the time enquiry proceedings are complete. The details of three such employees are given as under:

"(i) In Gurmeet Kaur Vs. DSGMC & Ors., W.P.(C) No.1948/2010, the petitioner was appointed on probation as a teacher on 18.04.2008 and her services

were terminated vide letter dated 17.07.2009, during the period of probation. This Court vide order dated 11.5.2010 stayed the operation of the impugned order of termination and the petitioner's service was reinstated and she is in employment.

(ii) In Bhupinder Kumar Vs. DSGMC & Ors., W.P.(C) No.13016/2009, the petitioner was appointed as TGT Physical Education on probation vide letter dated 01.05.2009 and his services were terminated vide letter dated 15.5.2009, during the period of probation. This Court stayed the operation of the impugned order of termination and the petitioner's service was reinstated and he is in employment.

(iii) In Satpal Vs. DSGMC & Ors., W.P.(C) No.10566/2009, the petitioner was appointed as a sweeper on ad-hoc basis vide letter dated 02.04.2007. He was appointed on consolidated pay of Rs.5000/- on ad-hoc basis vide letter dated 22.05.2007, vide letter dated 07.02.2008 he was appointed on probation for a period of one year. His confirmation was never made and vide letter dated 20.07.2009 his services were terminated during the period of probation. This Court vide order dated 10.9.2009, stayed the operation of the impugned order of termination and the petitioner's service was reinstated and he is in employment.

40. In the case of Ms. Gurmeet Kaur, one of the petitioners in the present batch, (W.P.(C) No.375/2010), learned counsel for the respondents has no objection if the termination against her be revoked on the ground that she was confirmed employee of the school and no notice was issued before termination orders are passed.

41. Having considered the rival submissions of the parties and facts in the matter, this Court is of the view that the order passed by the Tribunal needs no interference. The findings are legally correct. In the present matters, the order of termination of the service of the petitioners passed by the respondents are contrary to law and in violation of the principles of natural justice and the same were also passed without jurisdiction. In the case of **V.P. Ahuja Vs. State of Punjab & Ors;** AIR 2000 SC 1080, wherein the Supreme Court held:

“A probationer, or a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of a natural justice. ”

This Court no doubt agrees with the suggestion of the Tribunal that constituted Managing Committee has a right to take action against teachers/employees as per law.

42. Under these circumstances, writ petitions filed by the petitioners being WP (C) Nos. 354/2010, 355/2010, 357/2010, 361/2010, 362/2010, 375/2010, 377/2010, 379/2010, 380/2010 and 391/2010 are allowed.

43. During the course of the hearing of the matter, it has been informed that the petitioners have not been paid the due wages till the stage of termination. Consequently, the orders issued on 15.07.2009, 04.07.2010 and 13.07.2010 are also quashed.

44. Therefore, all the writ petitions are disposed of with the following directions :-

- a) WP (C) Nos. 354/2010, 355/2010, 357/2010, 361/2010, 362/2010, 375/2010, 377/2010, 379/2010, 380/2010 and 391/2010 filed by the petitioners are allowed. The impugned termination orders are quashed. Pending applications also stand disposed of.
- b) WP (C) Nos. 2551/2010, 2552/2010, 2553/2010, 2561/2010, 2563/2010, 2565/2010, 2726/2010, 2727/2010, 2728/2010 and 2738/2010 filed by respondent Nos. 1 and 2 are dismissed being without any merit. Pending applications also stand disposed of.
- c) I direct the respondents No.1 and 2 to permit the

petitioners to continue their services in the school with immediate effect.

- d) The respondents No.1 and 2 are directed to pay the due wages to the petitioners till the date of termination within two weeks from today.

45. No costs.

**AUGUST 31, 2010**  
jk

**MANMOHAN SINGH, J.**