

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

+ W.P.(C) No.606/2000

% 10th December, 2013

SMT. MEENA BHATT AND ORS. Petitioners
Through: Mr. Sanjay Bhatt, Advocate.

Versus

SHRI BHARAT BHUSHAN AND ORS. ... Respondents
Through: Mr. Avinash Mishra, Advocate for
respondent No.4.

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, petitioners impugn the order dated 25.6.1998 of the Delhi School Tribunal whereby the Tribunal reviewed its judgment dated 15.7.1997 by deleting that line of the judgment of the appellant being entitled to consequential monetary benefits on re-instatement in services. This was done in view of Rule 121 of the Delhi School Education Rules, 1973 (hereinafter referred to as 'the Rules') which states that what is the amount to be paid to an employee, who is reinstated, has to be decided by the school.

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2. Since there were two views of two different Benches of this Court, I in the case of respondent no.3/school itself had referred the matter to a larger Bench of this Court vide judgment in the case titled as ***Guru Harkishan Public School through its Managing Committee Vs. Director of Education and Anr.*** in W.P.(C) No.8058/2011 decided on 6.8.2013.

3. The Full Bench of this Court as per its order dated 23.9.2013 has observed that what would bind this Court would be the judgment of learned Single Judge in the case of ***The Manager, Arya Samaj, Girls Higher Secondary School & Anr. Vs. Sunrita Thakur Etc. & Anr., 43(1991) DLT 139*** and not the Division Bench judgment dated 16.12.2002 in LPA No.439/2002 in the case of ***M/s Apeejay School Vs. P.O.Delhi School Tribunal and Anr.*** inasmuch as Division Bench has only made cursory observations with respect to Rule 121 and which therefore cannot be a binding precedent. The Full Bench order dated 23.9.2013 reads as under:-

“1. The Full Bench is constituted pursuant to a reference made by a learned Single Judge vide order dated August 06, 2013 concerning the interpretation of Rule 121 of the Delhi School Education Rules, 1973 (hereinafter referred as “Rules”).

2. We note that while making the reference, the learned Single

Judge has noted two judgments, one by a learned Single Judge reported as 43 (1991) DLT 139 The Manager, Arya Samaj Girls, Higher Secondary School and Anr. vs. Sunrita Thakur Etc. and the other by a Division Bench decided on December 16, 2002 in LPA 493/2002 M/s A.P.J School vs. P.O Delhi School Tribunal and Anr.

3. The decision by the learned Single Judge in Sunrita Thakur case (supra) has interpreted Rule 121 of the Rules to hold that upon reinstatement it is the Management Committee of the school which alone has the authority to decide the issue of back wages to be paid for the period intervening date of dismissal or removal from service till date of reinstatement. The Division Bench in M/s A.P.J School case (supra) has neither discussed nor interpreted Rule 121 of the Rules while awarding back wages; holding that in the peculiar facts of that case, since the litigation had lingered on for several years, it was inclined to grant back wages.

4. The aforesaid aspect has been noted by the learned Single Judge in para Nos.4 and 5 of the reference order.

5. The law regarding precedent is well settled. In the opinion reported as 2008 (9) SCC 284 Dr.Rajbir Singh Dalal vs. Chaudhary Devi Lal University Sirsa and Anr. the Supreme Court has in para No.34 held as under:

“The decision of a Court is a precedent if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons does not amount to a precedent.”

6. We find that since the Division Bench in M/s A.P.J School case (supra) did not discuss and interpret Rule 121 of the Rules, the same will not have any precedential value, as such not binding upon the learned Single Judge. The learned Single Judge would be within his right to either follow the earlier judgment of the learned Single Judge of this Court in Sunrita Thakur case (supra) on the

interpretation of Rules 121 of the Rules or if he disagrees, with the interpretation given by the learned Single Judge in Sunrita Thakur case (supra), refer the matter to Division Bench for adjudication, in terms of the judgment of the Supreme Court reported as 2005(2) SCC 676 Central Board of Dawoodi Bohra Community and Anr. State of Maharashtra and Anr., wherein after examining the law the Supreme Court summed up the legal position in the following terms:

“(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the

previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh and Hansoli Devi*.”

7. The reference to the Full Bench was not required and hence the reference is returned accordingly.”

4. Accordingly, and in view of the judgment in the case of *Sunrita Thakur (supra)* it is the school which will pass appropriate orders with respect to back wages under Rule 121 of the Rules and the Tribunal was accordingly justified in deleting the directions for payment of back wages/monetary emoluments pursuant to reinstatement.

5. Writ petition is therefore dismissed, however, petitioners are entitled to make representations to the respondent no.3/school in terms of Rule 121 of the Delhi School Education Rules, 1973 and the respondent no.3/school will after considering the representations, documents of the petitioners and giving them personal hearing either through self or through representative will pass appropriate orders under Rule 121 of the Rules.

6. Writ petition is accordingly dismissed reserving liberty to the petitioners to file appropriate representations under Rule 121 of the Rules. Parties are left to bear their own costs.

7. At this stage, after the judgment was dictated, counsel appears
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for the petitioners and states that petitioners will act in accordance with the judgment by making the necessary representations to the school.

DECEMBER 10, 2013
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VALMIKI J. MEHTA, J.