

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

+ **W.P.(C) No.12132/2009 & conn.**

% **14th February, 2013**

+ **W.P.(C) 12132/2009**

T.P.SINGH Petitioner

Through: **Mr. Raj Kumar Sherawat, Advocate.**

versus

GURU HARKRISHAN PUBLIC SCHOOL AND ORS. Respondents

Through: **Mr. Raj Kamal and Mr. A.Faraz Khan, Adv.
for R-1 & 2.**

Ms. Latika Dutta, Advocate for R-3.

+ **W.P.(C) 8778/2011**

G.S.VIRK AND ORS Petitioner

Through: **Mr. Raj Kumar Sherawat, Advocate**

versus

**SCHOOL MANAGEMENT OF GURU HARKRISHAN PUBLIC SCHOOL AND
ORS** Respondent

Through: **Mr. Raj Kamal and Mr. A. Faraz Khan,
Advocates for R-1.**

Mr. Shariq Mohd., Adv. for R-2.

AND

+ W.P.(C) 8188/2011

ANITA RANI

..... Petitioner

Through: Mr. Raj Kumar Sherawat, Advocate.

versus

DELHI SIKH GURUDWARA MANAGEMENT COMMITTEE AND ORS

..... Respondents

Through: Ms. Manpreet Kaur, Advocate for R-1,2 and 3.

Mr. V.C.Jha and Ms. Sonia Sharma,
Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The present writ petition being W.P.(C) No. 12132/2009 has been filed by the petitioner who is a teacher in the respondent no.1-school. By the writ petition, the petitioner prays for directions against the school-respondent no.1 (and society-respondent no. 2) to implement the recommendation of Sixth Pay Commission in terms of the order dated 11.2.2009 issued by the respondent no.3/Director of Education.

2. It is not disputed that the Director of Education-respondent no.3 has in fact vide order dated 11.2.2009 in exercise of the powers under Sections 17(3), 24(3), 18(4) and (5) of the Delhi School Education Act, 1973 and Rules 50,51,177 and 180 of the Delhi School Education Rules, 1973 and all other enabling powers vide order dated 11.2.2009 directed all the schools in Delhi to implement the Sixth Pay Commission Report with respect to the salaries payable to the teachers. Vide paras 7 and 8 of the said order dated 11.2.2009, it has been directed that arrears be cleared as per the installments given in the said paras.

3. The issue as to whether the provision of Section 8(1) which deals with service conditions of teachers (and therefore the aspect of the salaries/pay/allowances/monetary benefits) is binding upon unaided minority institutions or not, has been the subject matter of a series of decisions of the Supreme Court, and the last two of which are *G. Vallikumari Vs. Andhra Education Society & Ors. (2010) 2 SCC 497* and *Sindhi Education Society Vs. Chief Secretary, Govt.-NCT of Delhi (2010) 8 SCC 49*.

4. The relevant paras of the judgment in the case of *G.Vallikumari (supra)* are paras 14 and 17, which read as under:-

“14. In **Frank Anthony Public School Employees' Association's** case the petitioner challenged the vires of Section 12 of the Act on the ground that the same is violative of Article [14](#) of the Constitution. The

two-Judge Bench noticed the scheme of the Act, referred to Article [30\(1\)](#) and (2) and various judgments of this Court including **Very Rev. Mother Provincial's case, Ahmedabad St. Xavier's College Society's case** and observed:

“18. Section 8(1) merely empowers the Administrator to make rules regulating the minimum qualifications for recruitment, and the conditions of service of recognised private schools. Section 8(1) is innocuous and in fact Section 13 which applies to unaided minority schools is almost on the same lines as Section 8(1). The objection of the respondents is really to Section 8(2), 8(3), 8(4) and 8(5) whose effect is (1) to require the prior approval of the Director for the dismissal, removal, reduction in rank or other termination of service of an employee of a recognised private school, (2) to give a right of appeal to a Tribunal consisting of a single member who shall be a District Judge or who has held an equivalent judicial office, (3) to require prior approval of the Director if it is proposed to suspend an employee unless immediate suspension is necessary by reason of the gross misconduct of the employee in which case the suspension shall remain in force for not more than 15 days unless approval of the Director is obtained in the meanwhile. In the Nine-Judge Bench case Ray, C.J. and Palekar, J. took the view that Section 51A of the Gujarat Act which provided that no member of the staff of an affiliated college shall be dismissed, removed or reduced in rank except with the approval of the Vice-Chancellor was violative of Article [30\(1\)](#) as it conferred arbitrary power on the Vice-Chancellor to take away rights of the minority institutions. Similarly, Section 52A which contemplated reference of any dispute connected with conditions of service, between the governing body and any member of the staff to an Arbitration Tribunal consisting of one member nominated by the governing body, one member nominated by the member of the staff and an Umpire appointed by the Vice-Chancellor was also held to be violative of Article [30\(1\)](#). It was said that this provision would introduce an area of litigious controversy in educational institutions and displace the domestic jurisdiction of the management. Jaganmohan Reddy, J. and Alagiriswami, J., agreed with the conclusions of Ray, C.J. Khanna, J. thought that the

blanket power given by Section 51A to the Vice-Chancellor to veto the disciplinary action and the power given by Section 52A to the Vice-Chancellor to nominate an Umpire were both objectionable, though he observed that there was nothing objectionable in selecting the method of arbitration for settling major disputes. Mathew, J., also objected to the blanket power given to the Vice-Chancellor by Section 51A. He also thought that Section 52A was too wide and permitted needless interference in day-to-day affairs of the institution by providing for arbitration in petty disputes also. 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. The objection to the reference to an Arbitration Tribunal in the Nine-Judge Bench case was to the wide power given to the Tribunal to entertain any manner of dispute and the provision for the appointment of Umpire by the Vice-Chancellor. Those defects have been cured in the provisions before us. Similarly, the provision for an appeal to the Syndicate was considered objectionable in *State of Kerala V. Very Rev. Mother Provincial* as it conferred the right on the University.

19. Section 8(4) would be inapplicable to minority institutions if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in

order to prevent an abuse of power by the management a safeguard is provided to the employee that approval should be obtained within 15 days. The Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension. The provision appears to be eminently reasonable and sound and the answer to the question in regard to this provision is directly covered by the decision in All Saints High School where Chandrachud, C.J. and Kailasam, J. upheld Section 3(3)(a) of the Act impugned therein. We may also mention that in that case the right of appeal conferred by Section 4 of the Act was also upheld. How necessary it is to afford some measure of protection to employees, without interfering with the management's right to take disciplinary action, is illustrated by the action taken by the management in this very case against some of the teachers. These teachers took part along with others in a "silent march", first on April 9, 1986 and again on April 10, 1986, despite warning by the principal. The march was during the break when there were no classes. There were no speeches, no chanting or shouting of slogans, no violence and no disruption of studies. The behaviour of the teachers appears to have been orderly and exemplary. One would have thought that the teachers were, by their silent and dignified protest, setting an example and the soundest of precedents to follow to all agitators everywhere. But instead of sympathy and appreciation they were served with orders of immediate suspension, something which would have never happened if all the provisions of Section 8 were applicable to the institution.

20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1),

8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article [30\(1\)](#) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article [30\(1\)](#) is the price which the aided minority institutions have to pay to obtain aid from the Government.

21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.”

17. The prepositions which can be culled out from the above noted two judgments are:

(i) Section 8(1), (3), (4) and (5) of the Act do not violate the right of the minorities to establish and administer their educational institutions. However, Section 8(2) interferes with the said right of the minorities and is, therefore, inapplicable to private recognized aided/unaided minority educational institutions.

(ii) Section 12 of the Act, which makes the provisions of Chapter IV of the Act inapplicable to unaided private recognized minority educational institutions is discriminatory except to extent of Section 8(2). In other words, Chapter IV of the Act except Section 8(2) is applicable to private recognized aided as well as unaided minority educational institutions and the concerned authorities of the education department are bound to enforce the same against all such institutions.” (underlining added).

5. The relevant paras of the judgment in the case of *Sindhi Education Society (supra)* are paras 93 and 94, which read as under:-

“93. A minority institution may have its own procedure and method of admission as well as the selection of students but it has to be a fair and transparent method. The State has the power to frame regulations which are reasonable and do not impinge upon the basic character of the minority institutions. This Court, in some of the decisions, has taken the view that the width of the rights and limitations thereof of unaided institutions, whether run by a majority or by a minority, must conform to the maintenance of excellence and with a view to achieve the said goal indisputably, the regulations can be made by the State.

94. It is also equally true that the right to administer does not amount to the right to mal- administer and the right is not free from regulations. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions. The right of the State is to be exercised primarily to prevent mal- administration and such regulations are permissible regulations. These regulations could relate to guidelines for the efficiency and excellence of educational standards, ensuring the security of the services of the teachers or other employees, framing rules and regulations governing the conditions of service of teachers and employees **and their pay and allowances** and prescribing course of study or syllabi of the nature of books etc. Some of the impermissible regulations are refusal to affiliation without sufficient reasons, such conditions as would completely destroy the autonomous status of the educational institution, by introduction of outside authority either directly or through its nominees in the Governing Body or the Managing Committee of minority institution to conduct its affairs etc. These have been illustrated by this Court in the Case of State of Kerala v.

Very Rev. Mother Provincial, All Saints High School v. Govt. of A.P. and T.M.A. Pai's case (supra).”

6. Whatever doubt as to the entitlement of the respondent no.3/Director of Education to frame Rules and Regulations to govern the conditions of service of teachers including their pay and allowances etc is removed on a reference to para 94 reproduced above which states that with respect to even unaided minority institutions, the government has a right to provide for certain regulations pertaining to pay and allowances etc.

7. Learned counsel for respondent nos.1 and 2 has sought to place reliance upon the judgment of the Supreme Court in the case of ***Satimbla Sharma Vs. St. Paul's Senior Secondary School***, a judgment of Division Bench of two Judges in Civil Appeal No. 2676/2010 decided on 11.8.2011 and para 9 of which reads as under:-

“9. In our considered opinion, the Division Bench the High Court has rightly held in the impugned judgment that the teachers of private unaided minority schools had no right to claim salary equal to that of their counter-parts working in Government schools and Government aided schools. The teachers of Government schools are paid out of the Government funds and the teachers of Government aided schools are paid mostly out of the Government funds, whereas the teachers of private unaided minority schools are paid out of the fees and other resources of the private schools. Moreover, unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not State

within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority schools. Similarly, such unaided private schools are not State within the meaning of Article 36 read with Article 12 of the Constitution and as the obligation to ensure equal pay for equal work in Article 39(d) is on the State, a private unaided minority school is not under any duty to ensure equal pay for equal work.”

8. Though the aforesaid para 9 does seem to support the argument urged on behalf of the respondent no.1, however, the said judgment would have no application to the facts of the present case because that was a judgment dealing with schools in the State of Himachal Pradesh which were not governed by statutory provision like Section 8(1), whereas, with respect to statute in question viz Delhi School Education Act, 1973, there are various judgments including the judgments in the cases of *G.Vallikumari (supra)* and *Sindhi Education Society (supra)*. In fact, in my opinion learned counsel for the petitioner is justified in referring to para 13 of *Satimbla Sharma (supra)* which states that in the absence of statutory provisions court cannot issue a mandamus. The said para 13 reads as under:-

“13. We cannot also issue a mandamus to respondent nos.1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in clause (5) (b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory

provisions or executive instructions, which are enforceable in law. Similarly, we cannot issue a mandamus to give effect to the recommendations of the report of Education Commission 1964-66 that the scales of pay of school teachers belonging to the same category but working under different managements such as government, local bodies or private managements should be the same, unless the recommendations are incorporated in an executive instruction or a statutory provision. We, therefore, affirm the impugned judgment of the Division Bench of the High Court.”

9. Assuming for the sake of argument as to which judgment should apply i.e of *G.Vallikumari (supra)* and *Sindhi Education Society (supra)* or *Satimbla Sharma's (supra)* judgment, it is settled law that a judgment of a Division Bench of the same strength of judges of the Supreme Court is binding on a later judgment of the Division Bench of the same strength of Judges, reference in this behalf is invited to in the case of *Union of India Vs. S.K. Kapoor 2011 4 SCC 589* and para 9 of which reads as under:-

“9. It may be noted that the decision in S.N.Narula's case (supra) was prior to the decision in T.V.Patel's case(supra). It is well settled that if a subsequent co- ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the decision in S.N.Narula's case (supra) was not noticed in T.V.Patel's case(supra), the latter decision is a judgment per incuriam. The decision in S.N.Narula's case (supra) was binding on the subsequent bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.” (underlining added)

10. A reference to the aforesaid para 9 of the judgment in the case of **S.K. Kapoor (supra)** makes it clear that even if while passing the later judgment, an earlier judgment is not noticed, the same will not in any way affect the finality and bindingness of the earlier judgment of equal strength/number of judges.

11. I may also state that issue against the present school of applicability of the directions of the respondent no.3 contained in the order dated 11.2.2009 has been held against the respondent no.1-school in LPA No. 273/2012 titled as **School Management of GHPS Hari Nagar Vs. Gurvinder Singh Saini** decided on 12.9.2012 and I have only passed this detailed judgment in view of the reliance by the respondent no.1-school to the recent judgment of the Supreme Court in the case of **Satimbla Sharma (supra)**. The judgment in LPA No. 273/2012 is said to be pending in the Supreme Court, however, there is no stay of operation of the judgment of a Division Bench in the said LPA, and in fact counsel for the petitioner states that even notice has yet not been issued in the SLP pending in the Supreme Court.

12. In view of the above, the writ petition is allowed, the respondent no.1-school is directed to implement the Sixth Pay Commission Report with respect to the petitioner in terms of the order dated 11.2.2009 of the respondent no.3/Director of Education. Petitioner will also be entitled to interest on all the

arrears payable at 6% per annum simple, provided the arrears are cleared within three months from today, failing which, the rate of interest thereafter would become 9% per annum simple.

13. The writ petition is accordingly allowed and disposed of.

W.P.(C) No. 8778/2011

In view of the reasoning given above, while disposing of W.P.(C) 12132/2009, this writ petition is also allowed, and the respondent nos. 1 and 2 are directed to implement the Sixth Pay Commission Report with respect to the petitioner in terms of the order dated 11.2.2009 of the respondent no.3/Director of Education. Petitioner will also be entitled to interest on all the arrears payable at 6% per annum simple, provided the arrears are cleared within three months from today, failing which, the rate of interest thereafter would become 9% per annum simple.

The writ petition is allowed and disposed of accordingly.

W.P.(C) No. 8188/2011

It is not disputed that the husband of the petitioner was in service of the respondent no.2-school when the order dated 11.2.2009 of the Director of Education came into force.

In view of the above discussion, this petition is also allowed and the respondent nos. 1 to 3 are directed to implement the Sixth Pay Commission Report with respect to the petitioner in terms of the order dated 11.2.2009 of the respondent no.3/Director of Education. Petitioner will also be entitled to interest on all the arrears payable at 6% per annum simple, provided the arrears are cleared within three months from today, failing which, the rate of interest thereafter would become 9% per annum simple.

Counsel for the respondent no.1/school states that all arrears and gratuity have been paid to the petitioner, and thus it is clarified that if there are any arrears still payable towards gratuity to the petitioner, the same shall also be cleared by making payment to the petitioner in terms of today's judgment.

Petition is allowed and disposed of accordingly.

FEBRUARY 14, 2013
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VALMIKI J. MEHTA, J.