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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 8412/2011 & conn.

10th April, 2013

1. W.P.(C) No. 8412/2011

JATINDER KAUR SAINI

..... Petitioner

Through: Mr. Raj Kumar Sherawat, Advocate

VERSUS

SCHOOL MANAGEMENT OF G.H.P.S., FATEH NAGAR & ORS.

..... Respondents

Through: Ms. Manpreet Kaur Bhasin, Adv. for R-1 &
R-2.

Mr. Anuj Tyagi, Adv. for Mr. Sachin
Chopra, Adv. for R-3.

Mr. J.D.Bhardwaj, DEO, Zone-14, Director
of Education.

2. W.P.(C) No. 8413/2011

GURMEET KAUR

..... Petitioner

Through: Mr. Raj Kumar Sherawat, Advocate

VERSUS

SCHOOL MANAGEMENT OF G.H.P.S., FATEH NAGAR & ORS.

..... Respondents

Through: Ms. Manpreet Kaur Bhasin, Adv. for R-1 &
R-2.

Mr. Anuj Tyagi, Adv. for Mr. Sachin
Chopra, Adv. for R-3.

Mr. J.D.Bhardwaj, DEO, Zone-14, Director
of Education.

3. **W.P.(C) No. 8421/2011**

SWARANJIT KAUR

..... Petitioner

Through: Mr. Raj Kumar Sherawat, Advocate

VERSUS

SCHOOL MANAGEMENT OF G.H.P.S., FATEH NAGAR & ORS.

..... Respondents

Through: Ms. Manpreet Kaur Bhasin, Adv. for R-1 &
R-2.

Mr. Anuj Tyagi, Adv. for Mr. Sachin
Chopra, Adv. for R-3.

Mr. J.D.Bhardwaj, DEO, Zone-14, Director
of Education.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. Counsel for the petitioner presses for two reliefs in this writ petition which is filed by the petitioner/teacher. The first relief is for quashing of the suspension order dated 7.10.2011, and which suspended the petitioner because the petitioner had given a B.Ed Degree from a fake university at the time of employment. The second relief claimed is for quashing of the show cause notice dated 1.9.2011

whereby the petitioner has been called to give explanation with respect to the aspects as stated in the show cause notice of the appointment of the petitioner of not being against a vacancy and being made in violation of the Delhi School Education Act, 1973 and its Rules.

3. So far as the second relief is concerned, the learned counsel for the respondent no.1-school states that the show cause notice in question will in fact be followed by a chargesheet which will be issued by the Disciplinary Authority, which will be in terms of the Delhi School Education Act, 1973 and its Rules and the petitioner will have complete liberty in the Departmental Proceedings to put her case.

In view of the aforesaid, statement of the counsel for the respondent no.1 that the disciplinary proceedings will be conducted in accordance with the provision of the Delhi School Education Act and Rules, 1973 counsel for the petitioner, very fairly does not press the relief of stay of the show cause notice.

4. On the aspect of the challenge to the suspension order dated 7.10.2011, counsel for the petitioner relies upon the provision of Section 8(4) of the Delhi School Education Act, 1973 and the judgment of the Supreme Court in the case of *G.Vallikumari Vs. Andhra Education Society & Ors. (2010) 2 SCC 497*. On the basis of the said provision and the Supreme Court judgment, it is

argued that since the respondent no.1 has neither taken prior or *ex post facto* approval of suspension, suspension order is not valid. Section 8(4) provides that prior approval is required for suspension.

5. The issue as to whether a private unaided school requires or does not require the approval of the Director of Education for suspending of an employee is no longer *res integra* and has been decided upon by a Division Bench of this Court in the case of ***Kathuria Public School Vs. Director of Education, 123 (2005) DLT 89(DB)***. In ***Kathuria Public School (supra)***, the Division Bench of this Court has held that for a private unaided school, no prior or *ex post facto* approval is required for suspension of a teacher/employee of a school. In fact, in another very recent Division Bench judgment this court in ***Delhi Public School & Anr. Vs. Shalu Mahendroo & Ors.(2013) 196 DLT 147(DB)*** has similarly held that no prior approval of the Director of Education is required before suspending of an employee and nor is an *ex post facto* approval is necessary.

6. In my opinion, the judgment in the case of ***G.Vallikumari (supra)*** relied upon by the petitioner has no application because the issue in that case was not regarding any prior or *ex post facto* approval required of the Director of Education for suspension of an employee. The issue in that case was whether in unaided minority schools for dismissal or removal etc of an employee there was or

was not required any permission of the Director of Education and it was held that with respect to minority unaided institutions, for dismissal of an employee or removal of an employee, no prior permission is required of the Director of Education as Section 8(2) of the Delhi School Education Act, 1973 (which required prior permission for dismissal etc) did not apply to minority unaided schools.

7. Though counsel for the petitioner contends that the issue decided in the case of *G.Vallikumari (supra)* is much larger of application of Section 12 of the Delhi School Education Act, 1973, however, ultimately, the judgment in the case of *G.Vallikumari (supra)* basically reiterates the ratio of the Supreme Court in the case of *Frank Anthony Public School Employees' Assn. Vs. Union of India, (1986) 4 SCC 707*, which struck down the constitutional validity of Section 8(2) of the Delhi School Education Act, 1973 so far as the minority unaided educational institutions are concerned. I note that the Division Bench of this Court in the case of *Kathuria Public School (supra)* has considered the judgment of the Supreme Court in the case of *Frank Anthony Public School (supra)*, however, by reference to the larger Bench judgment of the Supreme Court in the case of *T.M.A.Pai Foundation & Ors. Vs. State of Karnataka & Ors. (2002) 8 SCC 481*, the Division Bench came to the conclusion that no prior permission or *ex post facto* permission is required for suspending of an employee of a private unaided school.

The relevant observation of the Division Bench in the case of *Kathuria*

Public School (supra) in this regard read as under:-

“33. In our considered view, the judgment in *T.M.A.Pai Foundation’s* case (supra) clearly and unambiguously sets out the legal position insofar as private unaided non-minority educational institutions are concerned. It must be borne in mind while considering the other prior judgments of the Supreme Court that *T.M.A.Pai Foundation’s case* (supra) is a Constitutional Bench judgment of eleven Judges, which has gone into the general principles which are required to be followed. Thus, even if certain findings in respect of specific statutory provisions have been reached earlier by certain Benches of the Apex Court, it is the findings of *T.M.A.Pai Foundation’s case* (supra), which would hold the fort. It cannot be countenanced that the observations made in *T.M.A.Pai Foundation’s case* (supra) are in the nature of passing reference. The judgment of the Apex Court is fully binding on us. There are specific paragraphs dealing with different nature of institutions and private unaided non-minority educational institutions have been specifically dealt with. There cannot be any doubt that those paragraphs dealing with the subject matter have to be read as a whole and not by picking and choosing portions of the same. We are, however, in no doubt of the legal principle laid down in *T.M.A.Pai Foundation’s case* (supra). Para 61 of the said judgment clearly states that in respect of such schools ‘maximum autonomy’ has to be granted including in respect of rights of appointment and disciplinary powers. If the observations had rested at that, it may have been possible to contend that the provisions requiring prior or ex post facto permission for certain nature of disciplinary proceedings do not infringe ‘maximum autonomy’ since the concept of ‘maximum autonomy’ has not been defined and it is at least not ‘total autonomy’. This is, however, not so. The grievance of the management has been considered in para 63 of the judgment dealing with the requirement in certain cases of prior permission by formulating dealing with the requirements in certain cases of prior permission by formulating such rules. The conclusions have been set forth in para 64 and 65. It has been emphasised that in case of a private institution, the relationship between the management and employees is contractual in nature. The action has to take place in pursuance to a fair disciplinary inquiry. The question, however, remains as to who would judge as to whether the inquiry is fair or not. For this purpose, it has been observed that the State Government shall determine in consultation with the High Court, the judicial Forum, in which the aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service. Thus, to facilitate the redressal of grievances of teachers and

employees, a special forum is required to be provided not leaving such a person to the recourse of normal civil proceedings. In the enactment in question, such a Tribunal is already provided though the power is restricted as aforesaid only to dismissal, removal or reduction in rank. However, it is in these cases only that Sub-section (2) of Section 8 provides for prior approval of the Director. This is, of course, apart from the issue of suspension where also such prior approval or *ex post facto* approval within the stipulated time is required. Thus, the remedy has been provided through a intervening confirming authority. In fact, the Supreme Court has gone as far as to state that where there are no such Tribunals in existence, the judicial forum shall be provided and till such a specialised Tribunal is set up, the right of filing the appeal would lie before the District Judge or the Additional District Judge as notified by the Government. Thus, the judgment itself ensures the creation of a judicial forum.

34. It has also been observed in *T.M.A.Pai Foundation's case* (supra) in para 64 that there was no reason why the management of a private unaided non-minority educational institution should seek the consent or approval of any Government authority before taking such action. Not only this, it has been further observed that it will not be necessary for the institution to get prior permission or *ex post facto* approval of a Government authority while taking disciplinary action against the teacher or any other employee. The matter is no longer open to debate in view of such a categorical pronouncement by the Supreme Court.

35. In our considered view, there can be no manner of doubt that in view of the pronouncement in *T.M.A.Pai Foundation's case* (supra), any such restriction requiring pre or post approval for disciplinary proceedings would not be permissible. This is the pronouncement of law by the Supreme Court under Article 142 of the Constitution.

38. **There can be no doubt in view of the aforesaid that insofar as the unaided schools are concerned, the requirement of compliance of prior approval of the Director under Sub-section (4) of Section 8 insofar as the suspension is concerned, is not permissible.** We are conscious of the pronouncements in *Frank Anthony Public School Employees' Association's case* (supra) dealing with the aspect of Sub-section (4) of Section 8. However, the discussion in the said judgment was in the context of the applicability to a minority institution and where such a provision would violate the mandate of Article 30(1) of the Constitution providing for special protection to minority institutions. In view of the pronouncement in *T.M.A.Pai Foundation's case* (supra) in respect of disciplinary action as a whole, it cannot be said that the

said provisions can be made applicable to unaided non-minority schools. It may be added at this stage that the Supreme Court as far back as in ***Katra Education Society, Allahabad v. State of Uttar Pradesh & Ors.***, AIR 1966 SC 1307 had held the classification between privately managed institution and those maintained by the Government as justifiable and non-violative of Article 14 of the Constitution in respect of U.P. Intermediate Education Act. It is, thus, not necessary that what is good and applicable to institutions maintained by the Government should also apply to private unaided institutions.

44. The result of the aforesaid is that the provisions of Sections 8(2) and 8(4) of the said Act, Rules 115(2) and (5) and 120(1)(d)(iii) and (iv) and 120(2) of the said Rules requiring prior and *ex post facto* approval for disciplinary proceedings would have no application to private unaided schools. As a sequator to that, Sub-section (5) of Section 8 would also really have no application to such private unaided schools. Needless to say that these directions are in respect only of unaided non-minority institutions since the relevant provisions have been held as inapplicable only to such institutions and that was the question raised before this Hon'ble Court. We draw strength for taking such a view even for the observations of the Supreme Court in ***Sunil Batra v. Delhi Administration & Ors., etc.*** AIR 1978 SC 1675, where Justice V.R. Krishna Iyer, J. had observed that the interpretation of statutes which preserves and sustains the validity of the provision should be adopted and the Courts with functional flexibility should explore the meaning or meanings to adopt that construction which humanely constitutionalizes the statute in question. Thus, these provisions may have application to other institutions, but in view of the observations of the Supreme Court in *T.M.A. Pai Foundation's case* (supra) in respect of unaided non-minority institutions, these provisions would have no application to such institutions and such an interpretation based really on a reading down of the statutory provision would be the acceptable mode of interpretation of the statute.” (emphasis added)

8. I may note that the Division Bench judgment in the case of ***Kathuria Public School (supra)*** has been overruled on one point by a Full Bench of this Court so far as the requirement of going to the Delhi School Tribunal for any relief qua the suspension of employee is concerned, however that issue does not affect

this case because I am entertaining the writ petition and not directing the petitioner to approach the Delhi School Tribunal to challenge his suspension.

9. In view of the above, the writ petition is dismissed so far as the challenge to the suspension order dated 7.10.2011 is concerned holding that there is neither prior nor *ex post facto* approval required for suspension of an employee of the respondent no.2-school, which is an unaided private school. So far as the aspect of challenge to the show cause notice is concerned, the writ petition is dismissed as withdrawn with the aforesaid observations. The disciplinary proceedings which will be conducted by the respondent no.2 against the petitioner will be in accordance with the provision of the Delhi School Education Act and Rules, 1973 including Rules 118 to 120 thereof.

10. Though there is no final relief claimed in the writ petition for suspension allowance, counsel appearing for the respondent no.1 states that the suspension allowance will be paid to the petitioner in accordance with the relevant Rule 116 of the Delhi School Education Rules, 1973.

11. The writ petition is accordingly disposed of, leaving the parties to bear their own costs.

W.P.(C) No. 8413/2011

In view of the judgment passed in W.P.(C) 8412/2011, the relief of challenge to the suspension order is dismissed, and relief with respect to the challenge to the chargesheet is disposed of with the observation that it is agreed between the parties that the Departmental Proceedings which will be conducted against the petitioner, will be in accordance with the Delhi School Education Act and Rules, 1973 and Rules 118 to 120 thereof.

W.P.(C) No. 8421/2011

In view of the judgment passed in W.P.(C) 8412/2011, the relief of challenge to the suspension order is dismissed, and relief with respect to the challenge to the chargesheet is disposed of with the observation that it is agreed between the parties that the Departmental Proceedings which will be conducted against the petitioner, will be in accordance with the Delhi School Education Act and Rules, 1973 including Rules 118 to 120 thereof.

APRIL 10, 2013

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VALMIKI J. MEHTA, J.