

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

+ **W.P.(C) Nos.8748/2010 and 511/2011**

% **February 13, 2013**

1. **W.P.(C) No.8748/2010**

MEENU THAKUR

..... Petitioner

Through: Mr. Manav Kumar, Advocate.

versus

SOMERVILLE SCHOOL AND ORS.

..... Respondents

Through: Mr. Varun Mudgal, proxy counsel for
respondent Nos.1 and 2.

Mr. Pankaj Batra, Advocate for
respondent No.3.

2. **W.P.(C) No.511/2011**

MR. S. SANKALP

..... Petitioner

Through: Mr. Manav Kumar, Advocate.

versus

SOMERVILLE SCHOOL AND ORS.

..... Respondents

Through: Mr. Varun Mudgal, proxy counsel for
respondent Nos.1 and 2.

Ms. Anjana Gossain, Advocate for
respondent No.3.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.8748/2010

1. By this writ petition, the petitioner/teacher who worked as a Dance Teacher in the respondent No.1-school from 1.4.2003 till her resignation on 31.7.2007 seeks payment of the arrears of salary in terms of the report of the Sixth Pay Commission. I may note that the Director of Education vide order dated 11.2.2009 in exercise of powers conferred 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, directed implementation of the recommendations of the Sixth Pay Commission to the schools in Delhi. The arrears were to be cleared in terms of the instalments schedule which have been specified in paras 7 and 8 of the aforesaid order dated 11.2.2009.

2. A reading of the counter affidavit shows that it is not disputed that the arrears in term of Sixth Pay Commission report and the order of Director of Education dated 11.2.2009 have not been paid to the petitioner.

On behalf of the school/respondent No.1, it is contended that respondent No.1-school is unaided minority school and therefore the provision of the conditions of services of teachers of a government school cannot apply to the respondent No.1.

3. I am unable to agree with the arguments urged on behalf of respondent No.1-school inasmuch as this issue is no longer *res integra* and has been decided in various judgments, the last two of the same being ***G. Vallikumari Vs. Andhra Education Society and Ors. (2010) 2 SCC 497*** and ***Sindhi Education Society Vs. Chief Secretary, Government of NCT of Delhi and Ors. (2010) 8 SCC 49***. It has been held in these judgments that except the provision of Section 8(2) being not applicable to unaided minority schools, the rest of the sub-sections of Section 8, and which include the issue of terms and conditions of services of the teacher and employees of the schools, are binding on the schools as per the directions issued by the Director of Education from time to time. Paras 14 and 17 of the judgment in the case of ***G. Vallikumari (supra)*** 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.”

4. In paras 93 and 94 of *Sindhi Education Society’s* case (*supra*),

it is held 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).” (underlining added)

5. I may also refer to letter of the respondent No.1-school dated 10.3.2010 filed as Annexure-D with the writ petition, and by this letter the respondent No.1-school informed the Education Officer/Director of Education that the only reason for non-payment of the arrears in terms of Sixth Pay Commission recommendations was on account of financial condition of the school and on improving of the financial condition, appropriate decision will be taken with respect to payment of arrears to the employees who had left the school between 1.1.2006 and 31.8.2008.

6. In the present case admittedly the petitioner resigned from her services on 31.7.2007 i.e between 1.1.2006 and 31.8.2008.

7. In view of the above, the writ petition is allowed. The respondent No.1 is directed to release all the arrears as payable to the petitioner in terms of order dated 11.2.2009 of the Director of Education within a period of three months from today. Petitioner will be entitled to interest on all arrears payable @ 6 % per annum simple during the pendency

of the writ petition and for a further period of three months from today. In case, petitioner is not paid the arrears within a period of three months from today, then, the petitioner will be entitled to interest @ 9% per annum for the period thereafter.

8. Writ petition is allowed and disposed of with the aforesaid observations, leaving the parties to bear their own costs.

+W.P.(C) No.511/2011

9. Except the slightly different facts, the issue in the present case is the same as the issue in W.P.(C) No.8748/2010. The petitioner so far as this writ petition is concerned resigned from school on 31.8.2008 i.e between 1.1.2006 and 31.8.2008.

10. Accordingly, the writ petition is allowed. The respondent No.1 is directed to release all the arrears as payable to the petitioner in terms of order dated 11.2.2009 of the Director of Education within a period of three months from today. Petitioner will be entitled to interest @ 6 % per annum simple during the pendency of the writ petition and for further time of three months from today. In case, petitioner is not paid the arrears within a period of three months from today, then, the petitioner will be entitled to interest @ 9% per annum for the period thereafter.

11. Writ petition is allowed and disposed of with the aforesaid observations, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

FEBRUARY 13, 2013

Ne