

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

Date of Decision: May 16, 2014

+ **LPA 508/2013**

HAMDARD EDUCATION SOCIETY & ANR Appellants
Represented by: Mr.A.K.Singla, Sr.Advocate
instructed by Mr.Deepak R.Dahiya,
Advocate

versus

ABDUL REHMAN & ANR Respondents
Represented by: Ms.Indrani Ghosh, Advocate for R-
1/Abdul Rehman
Ms.Megha Bharara, Advocate for
Ms.Ruchi Sindhwani, Advocate for
R-2/Directorate of Education

LPA 945/2013

ABDUL REHMAN Appellant
Represented by: Ms.Indrani Ghosh, Advocate

versus

PRINCIPAL RABEA GIRLS PUBLIC
SCHOOL & ORS Respondents
Represented by: Mr.A.K.Singla, Senior
Advocate instructed by Mr.Deepak
R.Dahiya, Advocate for-1 & R-2
Ms.Nidhi Raman, Advocate for R-
3/Directorate of Education with
Mr.S.C.Meena, DEO

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. At the outset it may be noted that the two appeals as also the two writ petitions, orders passed wherein have given birth to the two appeals were litigated by the parties on the basis that Hamdard Education Society and the institutions established by it are not minority institutions and thus pertaining to the schools established by the Society which have been accorded recognition by the competent authority under the Delhi School Education Act, 1973, the provisions of the said Act and of the Delhi Education Rules, 1973 apply.
2. Hamdard Education Society has established a school named Rabea Girls Public School, which has been accorded recognition by the competent authority under the Delhi School Education Act, 1973 and thus the said Act and the Delhi School Education Rules, 1973 apply to the school. The Society has also established Hamdard Public School which also been accorded recognition by the competent authority.
3. The respondent of LPA No.508/2013 Abdul Rehman, who happens to be the appellant of LPA No.945/2013, was appointed as a Lower Division Clerk in Rabea Girls Public School with effect from September 01, 1992. In the letter offering appointment, vide clause 3 thereof, Abdul Rehman was informed that he would be on probation (period not indicated) and vide clause 4 he was informed that at the discretion of the management of the school the probation may be extended. Vide clause 6 he was informed that if he successful completes the probation he would be confirmed with the approval of the management. Vide clause 7 Abdul Rehman was informed that :

“You may require to teach in any branch of the school or any sister institution in Delhi (present or proposed to be established in future) run by the Hamdard Education Society.”

4. Now, Abdul Rehman being appointed as a Lower Division Clerk, would obviously be unfit to teach any subject in any school and thus it is ex-facie clear that clause 7 of the letter offering appointment issued to Abdul Rehman is the result of a mindless cut, copy and paste resorted to by picking a format of a letter offering appointment to a school teacher. What would be its effect shall be discussed by us at the appropriate stage of our opinion.
5. Rendering satisfactory service, Abdul Rehman was confirmed on successful completion of the probation period. He continued to work as a Lower Division Clerk in Rabea Girls Public School till when on June 20, 2013 an office order was issued directing him to report to the Director, (Administration & Academics) and join Hamdard Public School (Hostel), another school established by the Hamdard Education Society having separate and independent recognition from the competent authority under the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973.
6. He challenged the said order by filing a WP(C) 4095/2013, and succeeded when vide order dated July 12, 2013, following the opinion rendered by the learned Single Judge on May 01, 2013 in WP(C) No.8060/2007 Satbir Singh & Anr. vs. Delhi Sikh Gurudwara Managing Committee & Ors., the writ petition was allowed. The said order passed by the learned Single Judge has been challenged by the Hamdard Education Society as well as by Rabea Girls Public School in LPA No.508/2013.
7. The Principal of Rabea Girls Public School issued an order on November 27, 2013 directing Abdul Rehman to report for duty at HES Hostel, which we are given to understand is a hostel established by Hamdard Education Society and is directly managed by the Society and has no concern with the school.

8. Abdul Rehman challenged said order by and under W.P.(C) No.7629/2013 which has been dismissed by the learned Single Judge vide impugned order dated December 03, 2013.
9. Abdul Rehman has challenged the said order passed by the learned Single Judge under LPA No.945/2013.
10. We note that the order dated July 12, 2013 challenged in LPA No.508/2013 has been passed by the same learned Judge who has authored the order dated December 03, 2013 which has been challenged in LPA No.945/2013.
11. As regards the order dated July 12, 2013, as noted above the learned Single Judge has adopted his reasoning in an earlier decision dated May 01, 2013 in W.P.(C) No.8060/2007 to quash the office order dated June 20, 2013 on the reasoning that Abdul Rehman is an employee of Rabea Girls Public School and he could not be transferred to Hamdard Public School. The reasoning of the learned Single Judge in the order dated December 03, 2013 is that the order dated November 27, 2013 would require it to be held that Abdul Rehman continues to be an employee of Rabea Girls Public School and thus he could be made to work in a sister institution in view of clause 7 of the letter offering appointment issued to Abdul Rehman, contents whereof we have noted in paragraph 3 above.
12. Whereas Hamdard Education Society and Rabea Girls Public School challenged the order dated July 12, 2013 passed by the learned Single Judge and seek to sustain the order dated June 20, 2013 by urging that different schools established by Hamdard Education Society would be sister institutions and the employees thereof would in effect be employees of the society. Clause 7 in the letter offering appointment made it so known to Abdul Rehman : that his services could be availed of by any sister

institution. Per contra, Abdul Rehman asserts that various schools established by Hamdard Education Society having obtained recognition from the competent authority under the Delhi School Education Act, 1973 and the rules framed thereunder are independent juristic entities not only inter-se each school but even qua the society; that the employer-employee relationship is between the Managing Committee of the school and him. He explains clause 7 in the letter offering him appointment as not only illegal being contrary to law, in that, an employer cannot send an employee to work with a different employer and additionally on the reasoning that as per said clause, if at all, he can be sent to another school to teach. Abdul Rehman asserts that said clause has been mechanically lifted from a letter offering appointment to a teacher, and he being a Lower Division Clerk, the clause would obviously be not applicable to him.

13. Section 2(h) of the Delhi School Education Act, 1973 reads as under:-

*“2(h) **“employee”** means a teacher and includes every other employee working in a recognised school.”*

14. Section 2(t) of the Delhi School Education Act, 1973 reads as under:-

*“2(t) **“recognised school”** means a school recognised by the appropriate authority”*

15. Section 5 of the Delhi School Education Act, 1973 reads as under:-

“5. Scheme of management-

(1) Notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any such law, the managing committee of every recognised school shall make, in accordance with the rules made under this Act and with the previous approval of the appropriate authority, a scheme of management for such school:

Provided that in the case of a recognised private school which does not " receive any aid, the scheme of management shall

apply with such variations and modifications as may be prescribed:

Provided further that so much of this sub-section as relates to the previous approval of the appropriate authority, shall not apply to a scheme of management for an unaided minority school.

(2) a scheme may be made, in like manner, to add, to vary or modify any scheme made under sub-section (1). ”

16. Rule 50 of the Delhi School Education Rules, 1973 reads as under:-

“50. Conditions for recognition-

No private school shall be recognised, or continue to be recognised, by the appropriate authority unless the school fulfils the following conditions, namely:—

(i) the school is run by a society registered under the Societies Registration Act, 1860 (21 of 1860), or a public trust constituted under any law for the time being in force and is managed in accordance with a scheme of management made under these rules;

(ii) subject to the provisions of clause (1) of article 30 of the Constitution of India, the school serves a real need of the locality and is not likely to effect adversely the enrolment in a nearby school which has already been recognised by the appropriate authority;

(iii) the school follows approved courses of instructions as provided elsewhere in these rules;

(iv) the school is not run for profit to any individual, group of association of individuals or any other persons;

(v) admission to the school is open to all without any discrimination based on religion, caste, race, place of birth or any of them;

(vi) the managing committee observes the provisions of the

Act and the rules made there under;

(vii) the building or other structure in which the school is carried on, its surroundings, furniture and equipment are adequate and suitable for an educational institution and, where there is any business premises in any part of the building in which such school is run, the portion in which the school is run adequately separated from such business premises;

(viii) the arrangements in the building or other structure and in the furnishings thereof meet adequately the requirements of health and hygiene;

(ix) the school buildings or other structures or the grounds are not used during the day or night for commercial or residential purposes (except for the purpose of residence of any employee of the school) or for communal, political or non-educational activity of any kind whatsoever;

(x) the accommodation is sufficient for the classes under instruction in the school;

(xi) there is no thoroughfare or public passage through any part of the school premises;

(xii) sanitary arrangements at the school are adequate and are kept in good order and a certificate from the Health Officer of the local authority having jurisdiction over the area in which the school is located as to the health and sanitary conditions of the school and its surroundings has been furnished, and will also be furnished as and when required by the appropriate authority;

(xiii) arrangements are made for the supply of good drinking water to the students and suitable facilities are provided to enable them to take refreshments, lunch or the like;

(xiv) the school is so conducted as to promote discipline and orderly behaviour and to maintain a high moral tone;

(xv) no teacher or student of the school is compelled to attend

a class in which religious instruction is given or take part in any religious activity, no teacher or student absenting himself from religious instruction or religious activity is made to suffer any disability on that account and student is refused admission to the school because exemption from attendance at religious exercises or religious instruction has been claimed by him or his parent or guardian;

(xvi) facilities are provided for teaching of languages in accordance with the three language formula, adopted by the Central Government;

(xvii) the school is open to inspection by any of the following officers, namely :—

(a) any officer authorised by the appropriate authority or the Director;

(b) Director of Medical Services or Health Officer of the local authority concerned;

(c) Civil Surgeon, Assistant Civil Surgeon or Head Officer authorised by the appropriate authority or the Director to examine the health of students or the sanitary conditions of the school and surroundings;

(xviii) the school furnishes such reports and information as may be required by the Director from time to time and complies with such instructions of the appropriate authority or the Director as may be issued to secure the continued fulfilment of the condition of recognition or the removal of deficiencies in the working of the school;

(xix) all records of the school are open to inspection by any officer authorised by the Director or the appropriate authority at any time, and the school furnishes such information as may be necessary to enable the Central Government or the Administrator to discharge its or his obligations to Parliament or to the Metropolitan Council of Delhi, as the case may be. ”

17. Rule 59 of the Delhi School Education Rules, 1973 reads as under:-

“59. Scheme of management of recognised schools-

(1) The scheme of management in relation to a recognised school shall provide that:—

(a) The managing committee of a recognised aided school shall consist of not more than fifteen members; and the managing committee of a recognised unaided school shall consist of not more than twenty-one members;

(b) Subject to the total number of members specified in clause (a), every managing committee shall include the following, namely:-

(i) the head of the school;

(ii) one parent, who is a member of the Parent-Teachers' Associations of the school constituted in accordance with such instructions as may be issued by the Administrator, and is elected by that Association;

(iii) two teachers of that school, to be elected by the teachers of that school from amongst themselves;

(iv) two other persons (of whom one shall be woman), who are, or have been, teachers of any other school or of any college, to be nominated by the Advisory Board;

(v) two members, to be nominated by the Director, of whom one shall be an educationist and the other an officer of the Directorate of Education, Delhi, not below the rank of the Principal of a higher secondary school;

(vi) the remaining members to be nominated or elected, as the case may be, in accordance with the rules and regulations of the society or trust by which the school is run:

Provided that in the case of [a minority school], such members of the managing committee, as are required by this rule to be elected, may, instead of being elected, be nominated by the society or trust by which such unaided minority school is run:

Provided further that in the case of [a minority school], the educationist to be nominated by the Director shall be a non-official who shall belong to the minority by which the school is established and run.

Provided also that in the case of a minority school, the managing committee shall co-opt two senior most teachers out of a panel of ten senior-most teachers of the school by rotation and in case the school works in two shifts, then, one senior most teacher shall be co-opted from a panel of five senior most teachers in each shift by rotation;

Provided also that nothing in sub-clause (iv) shall apply to a minority school.

Provided also that the members nominated under clause (v) shall not be entitled to take part in the management of the minority school and shall function as advisers and observers to put forward the views of the Government in the meeting,

(2) The scheme of management shall also provide for the following, namely:—

(a) the term of office of the members of the managing committee and the manner of its reconstitution or filling of any vacancy occurring therein;

(b) the manner of elections to the managing committee;

(c) that for the purpose of elections to the managing committee, the head of the school shall be the returning officer and shall conduct, and be in charge of, the elections;

(d) that any change in the composition of the managing committee of the members referred to in sub-clauses (ii) and (iii) of clause (b) of sub-rule (1) shall be communication to the Director within seven days from the date when such change takes place;

(e) the duties, powers and responsibilities of the managing committee, which shall include control over appointments, disciplinary action, and control on staff, and shall also provide that no financial irregularity is committed or any irregular procedure is followed;

(f) that the managing committee shall ensure that the school gets the full complement of the staff.

(g) that the managing committee shall ensure that the school gets furniture, science equipment, library books and other teaching aids, and requisite sports materials;

(h) the duties, powers and responsibilities of the head of the school, which shall provide that he shall :—

(i) function as the head of office of the school under his charge and carry out all administrative duties required of a head of office;

(ii) be the drawing and disbursing officer for the employees of the school except that, in the case of an unaided school, he may perform only such functions as drawing and disbursing officer as may be specified in the instructions issued by the Director;

(iii) be responsible for the proper maintenance of accounts of the school, school records, service books of teachers, and such other registers, returns and statistics as may be specified by the Director from time to time;

(iv) handle official correspondence relating to the school and furnish, within the specified dates, the returns and information's required by the Director;

(v) makes, in the case of unaided schools, all payments (including salaries and allowances of teachers and other non-teaching staff) in time and according to the instructions governing such payment:

Provided that where he is so authorised by the Administrator, make, in the case of an aided school, all such payments

according to the instructions governing such payments;

(vi) ensure that the tuition fees, where levied, are realised and appropriately accounted for and duly appropriated for the purpose for which they were levied;

(vii) make purchases of stores and other materials required for the school in accordance with the rules governing such purchases and enter all such stores in the stock register and shall scrutinize the bills and make payments;

(viii) conduct physical verification of school property and stocks at least once a year and ensure the maintenance of stock registers neatly and accurately;

(ix) be responsible for proper utilisation of the Pupils' Fund;

(x) make satisfactory arrangements for the supply of goods, drinking water and provide other facilities for the pupils and ensure that the school building, its fixtures and furniture, office equipment, lavatories, play grounds, school garden and other properties are properly and carefully maintained;

(xi) supervise, guide and control the work of the teaching and non-teaching staff of the school;

(xii) be in charge of admissions in the school, preparation of school timetable, allocation of duties and teaching load to the teachers, and shall provide necessary facilities to the teachers in the discharge of their duties and conduct of school examinations in accordance with the instructions issued by the Director from time to time; and he shall discharge these duties in consultation with his colleagues;

(xiii) plan the year's academic work in advance in consultation with his colleagues and hold staff meeting at least one a month, review the work done during the month and assess the progress of the pupils;

(xiv) help and guide the teachers and promote their professional growth and towards the end, actively encourage

their participation in courses designed for in-service education;

(xv) promote the initiative of the teachers for self-improvement and encourage them to undertake experiments which are educationally sound;

(xvii) arrange for special remedial teaching of the children belonging to the weaker sections of the community as also of other children who need such remedial teaching;

(xviii) arrange for informal and non-class room teaching;

(xix) plan and specify a regular time-table for the scrutiny of pupils written work and home assignment and ensure that the assessment and corrections are carried out timely and effectively;

(xx) make necessary arrangements for organising special instructions for the pupils according to their needs;

(xxi) organise and co-ordinate various co-curricular activities through the house system or in such other effective way as he may think fit;

(xxii) develop and organise the library resources and reading facilities in the school and ensure that the pupils and teachers have access to and use of books and journals of established value and usefulness;

(xxiii) send regularly the progress reports of the students to their parents or guardians;

(xxiv) promote the physical well-being of the pupils, secure high standards of cleanliness and health habits, and arrange periodical medical examinations of the students and send medical reports to parents or guardians;

(xxv) devote at least twelve periods in a week to teaching of the pupils;

(i) the educational and other qualifications of the manager and

his duties and responsibilities; the position of the manager viz-a-viz the managing committee;

(j) no employee of an aided school (other than the head of school) shall be appointed as the manager, the head of school may be appointed the manager of a school, whether aided or unaided;

(k) appointment of the manager; the terms and conditions of his appointment; removal of the manager; filling up of casual vacancy in the office of the manager, duties and responsibilities of the manager;

(l) bills (including bills relating to the salaries and allowances of the teachers and non-teaching staff) shall be jointly signed by the manager and the head of the school; but where the head of the school is also the manager, such bills shall be signed jointly by the head of the school and another member of the managing committee specially authorized by that committee in this behalf.

(m) that the administration and academic work of the school shall be attended to by the head of school, and except where the head of school is the manager, the manager shall not interfere with the day-to-day administration and academic work of the school;

(n) members of the managing committee of an aided schools shall not be entitled to any remuneration, honorarium or allowance but may be permitted to draw allowances for attending meetings of the managing committee at a rate not exceeding the rate of daily allowance or travelling allowance admissible to the non-official members of the committees, boards and the like in accordance with the orders issued by the Government of India from time to time:

Provided that if the head of school or a teacher happens to be a member of the managing committee, he shall draw his remuneration in his capacity as the head of school or teacher, as the case may be:

Provided further that the allowances paid to the members of the managing committee for attending meetings thereof shall not be a charge on the school fund;

(o) no members of the managing committee shall be entitled to participate in any meeting at which his personal conduct is under discussion;

(p) in the case of an unaided minority school, the form of the contract referred to in sub-section (1) of section 15 and the manner in which every contract of service shall be preserved.

(q) the managing committee shall be subject to the control and supervision of the trust or society by which such school is run.

(r) manager shall not be at the same time the manager of any other school and a person shall not be at the same time the chairman of the managing committee and the manager.

(3) The managing committee of an existing school shall make the draft of scheme of management after the commencement of these rules and shall, within 90 days from such commencement, submit such draft to the appropriate authority for its approval

Provided that the appropriate authority may, after giving to the managing committee a reasonable opportunity of being heard, make such alterations or modifications in the draft scheme of management as the circumstance of the case may require.

Provided further that the provisions of this sub-rule relating to the approval and alterations or modifications in the sphere of management by the appropriate authority shall not apply to a minority school in which case such approval and alterations or modifications shall be advisory and the draft scheme of management shall be valid.

(4) The managing committee of an existing school shall bring, within ninety days from the date of approval of the scheme of management by the appropriate authority the composition thereof in conformity with the scheme of management as

approved by the appropriate authority.”

18. Rule 98 of the Delhi School Education Rules, 1973 reads as under:-

“98. Appointing authority-

(i) The appointment of every employee of a school shall be made by its managing committee.

(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:—

Provided further that the provision of this sub-rule shall not apply to a minority aided school.

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.

(5) Where any appointment made by the managing committee of an aided school is not approved by the Director, such appointment may (pending the regular appointment to the post) be continued on an adhoc basis for a period not exceeding three months and the salary and allowances of the person so

continued on an adhoc basis shall qualify for the computation of the aid to be given to such school.

19. From a perusal of the provisions of the Delhi School Education Act, 1973 noted above it is apparent that the expression 'employee' would mean a teacher and a non-teaching person working in a school recognized by the appropriate authority. A school which is a recognized school has to be managed by a Managing Committee as per an approved scheme of management. From a perusal of the Rules (refer Rule 59) it is apparent that a recognized school has to have a Managing Committee which is distinct from the Managing Committee or the governing body, whatever be the expression used, of a parent society which has established a school. The Managing Committee of a school must be constituted by including the Head of the School, a parent who is a member of the Parent-Teacher Association, two teachers of the school elected by the teachers, two other persons nominated by the Advisory Board, two members to be nominated by the Director of Education and the remaining to be nominated by the Rules and Regulations of the Society or the Trust which has established the school. The maximum number has to be fifteen. If a school, as per the approved scheme of management has to consist of fifteen members, the parent society can nominate only seven for the reason eight members have to be as above noted. Rule 59(2)(e) makes it expressly clear that the power of appointment, disciplinary action and control on the staff of a recognized school vests in the Managing Committee thereof. Rule 98 makes it further clear that the appointment of every employee of a recognized school shall be made by its Managing Committee.

20. Thus, it is clear that the employer-employee relationship in a recognized school is between the Managing Committee of the recognized

school and the employee concerned. The society establishing the school is not the employer. Each and every school established by a parent society is an independent juristic entity having its own scheme of management and Managing Committee. The employees appointed by the Managing Committee of a school are not the employees of other schools.

21. What is a difference between an employee and a serf?

22. Rendering service to an employer on the agreed terms and conditions which the person in employment can enforce would mean that the person concerned is an employee. But rendering service as a labourer bound by a feudal system on the Lord's estate would mean that the person concerned is a serf. Whereas an employee is not the property of the employer, a serf (because of the feudal system) is treated as the property of the master (and we have no concept of an employer); The Lord can trade the serf and make him work against his wish under another master.

23. The employees of recognized schools are not serfs and thus their services cannot be transferred to another school.

24. We had asked learned counsel for the society and the school that if employees are transferrable from one school to another what happens to their seniority and entitled to be considered for promotion? We had posed the question in view of the fact that in schools the teaching cadre comprises Primary/Assistant Teacher → Trained Graduate Teacher (TGT) → Post Graduate Teacher (PGT). 20% posts of PGT are in the selection scale. Promotion is from the lower rung in the teaching cadre to the higher. If a society has established say for example three schools and it treats the employees as transferrable from one to the other it would mean a combined seniority list would have to be maintained. Concededly the schools established by the society are not doing so. If this be so, if a teacher is

transferred from one school to another, the seniority list of teachers drawn up in a school would be rendered meaningless. This would be an additional reason to hold that employees of one recognized school cannot be transferred to another recognized school merely because the two schools have been established by the same parent society.

25. The decision passed by the learned Single Judge on July 12, 2013 allowing W.P.(C) No.4095/2013 is thus correct and we affirm the same.

26. The view taken by the learned Single Judge in the order dated December 03, 2013 is premised on the reasoning that retaining his lien and continuing to be the employee of Rabea Girls Public School, in view of clause 7 of the letter offering appointment to Abdul Rehman he could be deputed to work with HES (Hostel).

27. Clause 7 of the letter offering appointment puts a term of employment which is contrary to law because we have already held that employees of a recognized school bear employer-employee relationship with their Managing Committee and no employee can be transferred by an employer to work under another employer. We have already drawn the distinction between an employee and a serf. Further, even if clause 7 were to apply and it has to be treated that Abdul Rehman gave a consent to serve under a sister institution, the consent would be to serve under another employer to teach. This is the language of the clause. The Managing Committee of Rabea Girls Public School is the author of the document and any absurdity therein has to be resolved in favour of the employee and against the employer for the reason *contra proferentem* rule would so require.

28. LPA No.508/2013 is accordingly dismissed.

29. LPA No.945/2013 is allowed. Impugned order dated December 03, 2013 is set aside. W.P.(C) No.7629/2013 is allowed. Transfer order dated

November 27, 2013 is quashed.

30. Abdul Rehman would be entitled to one set cost which we assess at ₹22,000/- (Rupees Twenty Two Thousand only) to be paid by Rabea Girls Public School and the cost would be tendered to him along with the salary payable for the month of June, 2014.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MAY 16, 2014
skb/mamta