

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment Reserved on : August 07, 2015
% *Judgment Delivered on: August 12, 2015*

+ **LPA 825/2013**

SHAHEED UDHAM SINGH SMARAK
SHIKSHA SAMITI & ORS

..... Appellants

Represented by: Mr.Brij Bhushan Gupta,
Advocate with Ms.Padma Priya,
Advocate

versus

SMT SANTOSH VERMA & ANR

..... Respondents

Represented by: Mr.Ashok Agarwal, Adv for R-1
Mr.Santosh Kumar Tripathi,
Advocate for R-2

LPA 826/2013

SHAHEED UDHAM SINGH SMARAK
SHIKSHA SAMITI & ORS

..... Appellants

Represented by: Mr.Brij Bhushan Gupta,
Advocate with Ms.Padma Priya,
Advocate

versus

MRS USHA TYAGI & ORS

..... Respondents

Represented by: Mr.Ashok Agarwal, Adv for R-1
Mr.Naushad Ahmed Khan, Advocate
for R-2

LPA 827/2013

SHAHEED UDHAM SINGH SMARAK
SHIKSHA SAMITI & ORS

..... Appellants

Represented by: Mr.Brij Bhushan Gupta,
Advocate with Ms.Padma Priya,
Advocate

versus

MR SUMAN LATA & ORS

..... Respondents

Represented by: Mr.Ashok Agarwal, Advocate for R-1
Mr.Santosh Kumar Tripathi,
Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The respondent of LPA No.825/2013, the respondents of LPA No.826/2013 and the respondents of LPA No.827/2013 filed appeals under Section 8 of the Delhi School Education Act, 1973 before the Delhi School Education Tribunal. They challenged their services being terminated as employees of Shaheed Udham Singh Smarak Co-Education Secondary School.

2. The case of the appellants pleaded in defence was that Shaheed Udham Singh Smarak Shiksha Samiti (Regd.) had established the Shaheed Udham Singh Smarak Co-Education Secondary School, which was a recognized aided school receiving grant in aid by the Directorate of Education. It had also established the Shaheed Udham Singh Smarak Primary Public School, which was an unrecognized and an unaided school and that the respondents of the three captioned appeals were the employees of the said unrecognized unaided school. On this factual defence legal stand taken was that the Delhi School Tribunal did not have any jurisdiction to entertain the appeals filed by the respondents.

3. Vide order dated November 25, 2010, Santosh Verma the respondent of LPA No.825/2013 succeeded in the appeal filed by her. Vide order dated November 07, 2012 the respondents of LPA No.826/2013 succeeded in the

appeals filed by them and vide order dated May 17, 2012 the respondents of LPA No.827/2013 succeeded in the appeals filed by them.

4. In view of the material placed before the Delhi School Tribunal it was held that the so called primary school was an integral part of the Secondary School and thus the Tribunal held that it had jurisdiction to entertain the appeals. On merits it was held that the termination of the services of the respondents was illegal. Reinstatement with 50% back wages was ordered.

5. The appellants challenged the orders dated November 25, 2010, November 07, 2012 and May 17, 2012 by filing three writ petitions, all of which have been dismissed by the learned Single Judge, who has relied upon a decision passed by a Division Bench of this Court reported as 2008 (IV) AD (Delhi) 108 *Social Jurist Vs. GNCT & Ors.* The learned Single Judge has interpreted the decision to mean that teachers of unrecognized private schools which were unaided could also approach the Delhi School Tribunal if they had a grievance pertaining to they being removed from service.

6. We note that the appellants had challenged the orders passed against them by the Delhi School Tribunal holding that the respondents in the three captioned appeals were the employees of the recognized aided school i.e. the Secondary School. The respondents pleaded before the learned Single Judge that the finding returned in their favour of being employees of the recognized aided school was based on good and cogent evidence and there was no perversity therein.

7. We need to highlight that it was nobody's case before the learned Single Judge that employees of unrecognized schools could approach the Delhi School Tribunal if they had a grievance related to their service being terminated.

8. To provide for a better organization and development of school education in the Union Territory of Delhi and for matters connected therewith and incidental thereto, the Delhi School Education Act, 1973 was promulgated on April 09, 1973. Vide Section 3 thereof the Administrator of the Union Territory of Delhi i.e. the Lt.Governor of Delhi, was empowered to regulate education in all the schools in Delhi in accordance with the provisions of the Act and the rules framed thereunder. Section 4 laid down the conditions for a private individual to obtain recognition of a school established by it. Section 6 contemplated aid to be provided to individuals establishing private schools which were recognized. Section 8 empowered the Administrator to make regulations regarding service conditions of employees of recognized private schools and sub-Section 3 thereof gave a right to employees of private recognized schools to approach the Delhi School Tribunal, constituted vide Section 11 of the Act, to challenge orders of dismissal, removal or reduction in rank.

9. A bare perusal of the provisions of the Delhi School Education Act, 1973 shows that it empowers the Administrator of the Union Territory of Delhi to regulate school education in Delhi and lays down conditions of granting recognition to private individuals who desire to establish schools in Delhi and confers certain statutory rights on the teachers of these recognized private schools; one such right being to challenge orders dismissing or removing them from service before the Delhi School Tribunal.

10. Does the decision in *Social Jurist's* case (supra), extend the rights conferred by the Delhi School Education Act, 1973 to the teachers of unrecognized and unaided schools in Delhi?

11. Vide impugned order dated September 09, 2013, which has been

challenged in LPA No.825/2013 and LPA No.827/2013, which order has been followed by the learned Single Judge vide impugned order dated September 11, 2013 which is challenged in LPA No.826/2013, the learned Single Judge has held that the decision extends the right conferred by the Delhi School Education Act, 1973 on the teachers of recognized and unaided schools in Delhi to those of unrecognized schools as well. The learned Single Judge has reproduced paras 12 to 15, 17 to 25, 29 and 33 of the decision of the Division Bench in *Social Jurist*'s case to hold against the appellant.

12. A litigation in public interest was initiated by Social Jurist which pleaded that unrecognized schools in Delhi were playing havoc with the education in Delhi. Run from unsafe buildings, the schools were ill-equipped; had no playground; no libraries or laboratories. Teachers employed to impart education were not qualified. Exorbitant fees were being charged. The prayer made was to issue appropriate direction to regulate education in Delhi, meaning thereby to regulate these schools.

13. The Division Bench noted that as per Section 3 of the Delhi School Education Act, the Administrator of the Union Territory of Delhi was empowered to regulate education in all schools in the Union Territory of Delhi. The Division Bench held that the statute did not contemplate two categories of schools : one recognized and the other unrecognized.

14. Recognizing that the right to establish educational institutions is a fundamental right guaranteed by Article 19(1)(g) of the Constitution of India, the Division Bench noted that the right was subject to reasonable restrictions which could be put in terms of clause 6 of Article 19 of the Constitution. The Division Bench therefore held that the right to establish

an educational institution could be regulated by law and with respect to the Delhi School Educating Act, 1973 held that the Administrator could in exercise of his regulatory power regulate school education in Delhi without any limitations. The Division Bench held that establishing a new school would also be a matter of regulation and therefore concluded that keeping in view the importance of education nobody could impart education in schools in Delhi without obtaining a recognition from the Administrator of the Union Territory of Delhi. The writ petition filed by Social Jurist was disposed of on aforesaid reasoning issuing 7 directions as under:-

“(i) The Directorate of Education shall undertake a survey and identify the unauthorized and unrecognized educational institutions running in Delhi.

(ii) It shall call upon such unauthorized and unrecognized educational institutions to apply for post facto permission of the administrator in terms of Section 3(2) of the Delhi School Education Act, 1973 to establish and maintain such institutions.

(iii) Upon receipt of the application from the institutions, it shall have the institutions inspected by a team of officers to evaluate the infrastructural and other facilities available in the same keeping in view the requirements of Section 4 of the Delhi School Education Act, 1973 read with Rules 50 and 51 of the Rules framed thereunder.

(iv) It shall, depending upon the facilities required under the provisions mentioned above, place the matter before the appropriate authority in terms of Section 2(e) of the Act for grant of recognition to such institutions, who shall then take a decision whether such institutions deserve to be recognized having regard to the requirement of the Act and the Rules and the other standards, if any, prescribed for recognition.

(v) The prescribed authority may, in its discretion and upon

an application made to it in that behalf by the institution concerned, exempt provisionally any private educational institution from one or more of the provisions of Rules 50 or 51 or for both for such period as it may consider necessary provided it is satisfied that the school will be in a position to fulfil in the near future the requirements from which it is provisionally exempted.

(vi) The cases of such of the unauthorized and unrecognized private educational institutions as do not respond to the notices sent by the Directorate of Education for post facto permission or as do not satisfy the requirements of recognition and/or exemption shall be referred by the Directorate of Education and the appropriate authorities concerned to the MCD, NDMC and DDA as the case may be for taking appropriate action under the relevant statute for closure of the institutions under the relevant provisions of law applicable to such authority having regard inter alia to the misuse of the premises from which the institution is operating in the light of the Master Plan.

(vii) The Directorate of Education, MCD, NDMC and DDA as also the prescribed authorities in terms of Section 2(e) of the Act shall all submit an action taken report in the matter within a period of six months from today which shall then be put up for perusal and orders in chambers.”

15. From a perusal of the decision of the Division Bench it becomes clear that the law declared by the Division Bench was that no school could impart education in Delhi which was not recognized and all such schools which were imparting education without obtaining recognition were liable to be closed. To set right the wrong, the Division Bench permitted existing institutions which were imparting education in schools but sans a recognition to apply to the Directorate of Education for grant of recognition, which authority was required to evaluate the infrastructure and facilities

available and thereafter decide whether the school in question deserved to be granted a recognition.

16. The decision nowhere declares that teachers of unrecognized private schools in Delhi or employees thereof have a right to file an appeal before the Delhi School Tribunal constituted under Section 11 of the Delhi School Education Act, 1973.

17. The appeals are accordingly allowed.

18. Impugned orders dated September 09, 2013 and September 11, 2013 challenged in the above captioned appeals are set aside, but since the main issue which arose for consideration before the learned Single Judge : whether the finding returned by the Delhi School Tribunal that the respondents in the writ petitions before the learned Single Judge were the employees or not of the Shaheed Udham Singh Smarak Co-Education Secondary School, which was a recognized school, has not been decided by the learned Single Judge we restore W.P.(C) No.5781/2013, W.P.(C) No.3723/2012 and W.P.(C) No.193/2011 filed by the appellants for adjudication afresh by the learned Single Judge. Thus all three writ petitions would be listed for directions before the Roster Bench on September 07, 2015.

19. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 12, 2015

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