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

Date of Decision: January 08, 2016

+ **LPA 9/2016**

SERAZ ALI Appellant
Represented by: Ms.Indrani Ghosh, Advocate

versus

DIRECTOR OF EDUCATION & ANR Respondents
Represented by: Mr.Sanjoy Ghosh, Advocate

+ **LPA 10/2016**

MAHENDER Appellant
Represented by: Ms.Indrani Ghosh, Advocate

versus

DIRECTOR OF EDUCATION & ANR Respondents
Represented by: Mr.Sanjoy Ghosh, Advocate

+ **LPA 11/2016**

SANSAR CHAND Appellant
Represented by: Ms.Indrani Ghosh, Advocate

versus

DIRECTOR OF EDUCATION & ANR Respondents
Represented by: Mr.Sanjoy Ghosh, Advocate

+ **LPA 12/2016**

BALRAM Appellant
Represented by: Ms.Indrani Ghosh, Advocate

versus

DIRECTOR OF EDUCATION & ANR

..... Respondents

Represented by: Mr.Sanjay Ghosh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (ORAL)

CM No.583/2016 in LPA No.9/2016

CM No.585/2016 in LPA No.10/2016

CM No.587/2016 in LPA No.11/2016

CM No.589/2016 in LPA No.12/2016

Allowed subject to just exceptions.

LPA No.9/2016, LPA No.10/2016, LPA No.11/2016, LPA No.12/2016

1. The appellants in the above captioned appeals are employees of the respondent No.2 school, which is an unaided private recognized school under the provisions of the Delhi School Education Act, 1973 and the Rules framed thereunder. Citing instances of employees working as a driver, conductor or other class-IV category posts, appellants filed writ petitions pleading that since the Delhi School Education Act, 1973 or the Rules framed thereunder do not provide for termination of service by way of retrenchment, declaration be granted that the respondent No.2 school is bound to follow the procedure established by the Delhi School Education Act, 1973 and the Rules framed thereunder in connection with the service of the appellants. In other words what the appellants claim is that on the justification that the post(s) held by them has been abolished on account of

non-availability of work, their services cannot be dispensed with.

2. The writ petitions filed by the appellants have been dismissed by the learned Single Judge vide impugned common order dated December 21, 2015 on the reasoning that the petitions are premature.

3. Having heard learned counsel for the parties, we are of the opinion that if the jurisprudence of remedies was correctly understood and applied by the appellants they would not be litigating at all at this stage.

4. From the pleadings in the writ petition(s) filed by the appellants it is apparent that the appellants would be workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. Concededly, if the school were to resort to retrenchment on account of non-availability of work or for any other reason; and retrenchment being as defined by Section 2(oo) of the Industrial Disputes Act, 1947, should appellants raised an issue, they would be entitled to raise an industrial dispute.

5. Merely because retrenchment as a concept is not statutorily enacted under the Delhi School Education Act, 1973 or the Rules framed thereunder would not mean that if there is no work is available the school cannot abolish the post(s) held by the appellants, and in such circumstance the appellants would have to leave employment.

6. The confusion in the mind of the appellants appears to be the result of misunderstanding by the counsel of the law declared by the Supreme Court in the decision reported as (2001) 10 SCC 445 Shashi Gaur vs. NCT of Delhi & Ors. The said decision concerns Section 8(3) of the Delhi School Education Act, 1973 which reads as under:-

“8.Terms and conditions of service of employees of recognized private schools-

(1) x x x x

(2) x x x x

(3) *Any employee of a recognized private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under Section 11."*

7. Right of the employee to file an appeal before the Tribunal constituted under Section 11 of the Act is restricted by the language of the statute, to orders of dismissal, removal or reduction in rank. The fact before the Supreme Court was visited with service being terminated on the ground that she did not possess the requisite qualification. The termination was not as a measure of penalty. The Supreme Court held that every kind of termination would be akin to a dismissal and therefore the Tribunal constituted under the Delhi School Education Act, 1973 would have jurisdiction to try the lis.

8. The ratio of law declared in the said judgment cannot be extended to mean that an employee of a recognized unaided private school, on being declared surplus, cannot be retrenched from service.

9. It would be a case where a workman would have two remedies. One to approach the Tribunal under the Delhi School Education Act, 1973 to question the termination of service by way of retrenchment. The second would be to seek an industrial dispute.

10. The appeals are accordingly dismissed in limine but without any order as to costs.

CM No.582/2016 in LPA No.9/2016

CM No.584/2016 in LPA No.10/2016

CM No.586/2016 in LPA No.11/2016
CM No.588/2016 in LPA No.12.2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 08, 2016
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