

\$~04

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

LPA 229/2016

Date of decision: 8th July, 2016

SHARDA DEVI SANSKRIT VIDYAPEETH Appellant
Through Mr. Sunny Choudhary, Advocate.

versus

DIRECTOR OF EDUCATION & ANR Respondent
Through Mr. D. Rajeshwar Rao and Mr.
Charanjeet Singh, Advocates for R-1.
Mr. Amarjeet Rai, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL)

C.M.No.12719/2016

Exemption allowed, subject to all just exceptions.

C.M.No.12718/2016

Learned counsel for the non-applicants do not oppose the application for condonation of 596 days' delay as review/modification application was pending before the learned single Judge.

The application for condonation of delay is accordingly allowed

for the reasons stated therein.

LPA 229/2016

By the present Letters Patent Appeal, Sharda Devi Sanskrit Vidyapeeth impugns judgment and order dated 11th July, 2014 and 19th February, 2016, respectively.

2. Judgment dated 11th July, 2014 allows the writ petition filed by Ganesh Ram Bhatt with the direction that the appellant-school would pay the unpaid salary and allowances as admissible to him for the period to be reckoned from 15th May, 2011 onwards.
3. Order dated 19th February, 2016 dismisses C.M.No.18672/2014 filed by the appellant-school for review/modification of the judgment dated 11th July, 2014 for absence of any error apparent on the face of the record or cogent material and reason for modifying or reviewing the same.
4. We have heard the learned counsel for the parties and with their consent have taken up the appeal for hearing and final disposal.
5. Ganesh Ram Bhatt, Principal of the appellant school was placed under suspension vide order dated 28th April, 2011 with effect from 30th April, 2011. A written request for approval under the first proviso to

sub- section (4) to Section 8 of the Delhi School Education Act, 1973 (Act, for short) was sent by the appellant-school to the Directorate of Education on 29th April, 2011. By letter dated 13th January, 2012, the Directorate of Education conveyed their approval for suspension of Ganesh Ram Bhatt with retrospective effect from 30th April, 2011 under Rule 115 of the Delhi School Education Rules, 1973. The appellant-school was also directed to complete the disciplinary proceedings within the stipulated time as per the aforesaid Rules.

6. In the disciplinary proceedings, by order dated 18th April, 2013, Ganesh Ram Bhatt was removed from service. The Directorate of Education vide their order dated 10th October, 2013 has accorded approval for the said punishment. This order of removal is under challenge in separate proceedings.

7. In the meanwhile, Ganesh Ram Bhatt had filed the aforestated writ petition asserting that his continued suspension after 15th May, 2011 was illegal and contrary to law, for the Directorate of Education had failed to approve the suspension order within 15 days.

8. In order to decide the controversy, we would like to refer to sub-section (4) of Section 8 of the Act, which for the sake of

convenience is reproduced below:-

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

(4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director:

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct within the meaning of the Code of Conduct prescribed under section 9 of the employee:

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.”

Under sub-section (4) to Section 8 of the Act, Managing Committee of a recognised private school can suspend an employee, albeit such suspension requires prior approval of the Director. The first proviso stipulates that a Managing Committee can suspend any employee with immediate effect without prior approval of the Director, if it is satisfied that immediate suspension is necessary for reason of gross misconduct within the meaning of the Code of Conduct prescribed under Section 9 of the Act. The second proviso states that no such order of immediate suspension shall remain in force for more than a

period of 15 days from the date of order of suspension, unless the same has been communicated to the Director and approval is granted by the Director before expiry of the said period.

9. In the present case, the managing committee of the appellant-school had acted under the first proviso when they had issued order dated 28th April, 2011 suspending Ganesh Ram Bhatt with effect from 30th April, 2011 and had sought approval of the Director of Education. To this extent, the first proviso to Section 8(4) of the Act was followed and adhered to. As noticed above, the Director of Education had granted the said approval vide intimation dated 13th January, 2012. Thus, the Director did not grant approval within a period of 15 days and, therefore, the second proviso to sub-section (4) to Section 8 of the Act became applicable. The effect thereof was that the order of suspension dated 28th April, 2011 with effect from 30th April, 2011 ceased to be legally operative and enforceable after 15 days. Suspension effective from 15th May, 2011 became contrary to law.

10. The learned single Judge in the impugned judgment has held that the order of suspension dated 28th April, 2011 had lapsed on 15th

May, 2011 as approval was not granted by the Director of Education. After 15th May, 2011, continued suspension was invalid and a nullity, notwithstanding the subsequent approval granted on 13th January, 2012. It has been accordingly directed that the entire period with effect from 15th May, 2011 till the order of removal was passed on 18th April, 2013 would be treated as period spent by Ganesh Ram Bhatt on duty and he would be paid the entire salary and allowances for the period.

12. In *Gurudevdatla VKSSS Maryadit and Ors. v. State of Maharashtra and Ors.* (2001) 4 SCC 534, it was observed that the cardinal principle of interpretation of statutes is that words of a statute must be understood in the natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. Efforts must be made to give meaning to each and every word used by the legislature and the words and language used in the statute should not be brushed aside if they have proper application in circumstances conceivable within the contemplation of the statute.

The object behind sub-section 4 to Section 8 is to protect the employees, who should not be suspended without approval from the Director of Education. In emergent situations an employee can be suspended but the suspension is unenforceable where approval is not granted by the Director within 15 days. In the present case, the Director of Education had granted consent/approval to the order of suspension belatedly on 13th January, 2012, but not within 15 days. The provision does not bar or prohibit the Director of Education from passing an order granting approval. The provision does not state that the request for approval would be deemed as rejected, if not accepted or decided within 15 days. The approval may not have retrospective effect, but would be effective from the date it is granted. Thus with effect from 13th January, 2012, Ganesh Ram Bhatt's suspension had approval of the Director. In such circumstances, the condition of approval of the Director postulated under sub-section (4) to Section 8 would be satisfied.

13. It could be urged that sub-section 4 to section 8 refers to prior approval before an order of suspension is passed, and in the present case Ganesh Ram Bhatt had throughout remained under suspension

post 30th April, 2011 and a formal order of suspension after the approval of the Director dated 13th January, 2012, was never passed. We would not like to read Section 8 (4) of the Act in a narrow and technical manner and would rather refer and rely on the intent behind the provision. Issuing a new or confirmatory letter of suspension on or after 13th January, 2012 would have been a ministerial act and a redundant formality. It is not that Ganesh Ram Bhatt was not suspended and had not remained under suspension post 13th January, 2012. He had not worked. We are examining whether the continued suspension of Ganesh Ram Bhatt would be legal and valid. The appellant-school had always treated and considered Ganesh Ram Bhatt as suspended. Once the approval was granted it can be held that there was compliance with Section 8(4) of the Act and henceforth the suspension was as per the law and valid. The suspension thereafter would be as per the mandate and requirement of the section 8(4) for the approval of the Director exists and is on record. When approval/sanction is granted after more than 15 days, the approval/sanction is not non est and a nullity. The Full Bench of the Delhi High Court in the *Delhi Public School* (supra) had observed

that the Managing Committee in the event of non grant of approval by the Director may find it expedient not to take work, but would have to pay the entire salary. Thus Ganesh Ram Bhatt though under suspension, would be entitled to full salary and allowances for the period when the suspension was unapproved. Post the approval, Ganesh Ram Bhatt would be paid the suspension or subsistence allowance.

14. Therefore, on or after 13th January, 2012 Ganesh Ram Bhatt would be entitled to subsistence allowance and not full salary and allowances. To this extent, we find that the impugned order dated 11th July, 2014 is not in accordance with the mandate of Section 8(4) of the Act. The direction to the appellant-school to pay salary and allowances on or after 13th January, 2012, therefore, is contrary to law and cannot be sustained.

15. However, we do not find any infirmity in the direction for payment of salary and allowances for the period from 15th May, 2011 to 12th January, 2012. Learned counsel for the appellant-school has submitted that the school was not at fault, for there was delay and lapse on the part of the Director of Education in disposing of the

request made by the school vide their letter dated 28th April, 2011.

Thus, the appellant school should not be burdened and compelled to pay salary and allowances. This aspect and question was examined

by the Full Bench of Delhi High Court in the case of *Delhi Public*

School (supra) and it was held as under:-

“30. In fairness to Mr. V.P. Singh, we may state that the main ground on which he wanted reading down of the provisions of Section 8 of the Act was his apprehension to the effect that even in a case where the alleged misconduct committed by an employee of the school is serious warranting immediate suspension and further even when the circumstances of the case justify the approval by the Director of Education, the Director of Education and/or his subordinate functionaries may defeat the objective by intentionally delaying the matter and thereby ensuring that no decision is taken within 15 days from the date of communication of the order of suspension. We have already stated that the petitioner has not challenged the virus of Section 8 of the Act. That apart, in such a situation the Managing Committee of the School would not be remediless. Illegal and/or arbitrary exercise of jurisdiction by the Director of Education in a given case can always be subject matter of judicial review and in such a case it would always be open to the Managing Committee of the school to challenge the inaction and/or wrong decision of the Director of Education. We may observe here that it is the statutory duty cast upon the Director to take appropriate decision within 15 days as to whether approval is to be given or not. He cannot, by delaying the matter beyond 15 days, make it a fait accompli. No doubt, if no decision is taken within 15 days from the date of communication of the order of

suspension, the necessary consequence thereof is that the suspension order lapses. However, that does not mean that if no decision is taken at all or the matter is unnecessarily delayed, it would not be permissible for the Managing Committee of the school to insist the Director of Education to take a decision even after 15 days of the communication of the order of suspension. If such a decision is taken, though belatedly, the fresh order of suspension can always be passed. Further, if the Director of Education takes a decision and refuses to accord his approval to the order of suspension and if the Managing Committee in such a case feels aggrieved by the decision, it is always open for the Managing Committee to challenge the decision of the Director of Education by appropriate proceedings on well-established grounds of judicial review that would be available to the Managing Committee in a given case.

31. What we are called upon to decide in this case is the effect on the suspension order passed by the Managing Committee under first proviso to Sub-section (4) of Section 8 of the Act and the effect of non-grant of approval in such a case within a period of 15 days from the date of suspension as contemplated in the second proviso thereof. To that, our answer is that such an order of suspension lapses after a period of 15 days as is clearly contemplated by the second proviso.

32. It is for the Director of School Education, therefore, to consider as to whether such immediacy was required in the facts and circumstances of the case.”

The reasoning given in the aforesaid judgment would squarely apply and negate the contention of the appellant-school. The appellant-

school did not take the required steps highlighted in the aforesaid quotation after communicating their request for approval to the Director of Education. The effect of sub-section (4) to Section 8 is clear and categorical. After the prescribed period of 15 days, the suspension order could not have been enforced and was illegal, till the approval was granted.

16. Learned counsel for the appellant has submitted that the decision in the case of *Delhi Public School* (supra) would not be applicable, for the said case relates to an unaided private school, whereas the appellant herein was/is a fully added school. We do not think that the aforesaid distinction would make the observations and ratio of the Full Bench decision in *Delhi Public School* (supra) inappropriate and inapt. Whether the appellant-school is an aided/unaided school would not matter and is not a relevant consideration. The question whether the Directorate of Education is liable to pay is a secondary issue, and not the primary concern of Ganesh Ram Bhatt. The question pertains to the lis or dispute between the appellant-school and the Directorate of Education, who were co-respondents in the writ petition. It is a matter pertaining to

the source of funds of the school. This aspect or matter was not examined and decided in the judgment dated 11th July, 2014, disposing of W.P. (C) No.7255/2011.

17. Learned counsel for the appellant-school has drawn our attention to the impugned order dated 19th February, 2016 passed in C.M.No.18672/2014. He accepts that this was an application under Section 115 read with Order 47 of the Code of Civil Procedure, 1908. The application was primarily predicated on the submission that the appellant-school was/is an aided school and, therefore, 95% of the amount payable as salary and allowances to Ganesh Ram Bhatt should be paid by the Directorate of Education. We do not think that this question and issue could have been decided in an application for review or modification of the order dated 11th July, 2014. It is open to the appellant-school to raise the said contention with the Directorate of Education and in case of an adverse decision or refusal, resort to appropriate proceedings in accordance with law. We also clarify that the observations made in the order dated 19th February, 2016 would not come in the way of the appellant-school.

18. Learned counsel for the appellant-school has submitted that

after making the first request for approval of suspension to the Director of Education vide letter dated 29th April, 2011, they had written letter dated 7th May, 2011 in response to the letter dated 3rd May, 2011 written by the Education Officer. They had also written letters dated 25th May, 2011, 27th May, 2011, 3rd June, 2011, 20th June, 2011, 20th July, 2011 etc. The Director of Education had asked for documents, particulars and clarifications. The entire correspondence is not on record. As noticed, this question was not raised and examined in the judgment dated 11th July, 2014, which was dictated in open Court. Apparently, this issue was not urged and argued. This aspect was made the subject matter of the application seeking review/modification. For the reasons stated above, we have left this issue open, to be raised by the appellant-school in accordance with law.

19. With the aforesaid observations and reasoning the appeal is disposed of. The appellant-school will make payment of the salary and allowances for the period between 15th May, 2011 to 12th January, 2012 within a period of two weeks from the date a copy of this order is made available to them. This payment will not negate and affect

the appellant-school's claim for payment or reimbursement from the Directorate of Education. We do not pronounce and decide the said question.

Dasti.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

JULY 08, 2016
NA