

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

+ **W.P. (C) No. 193/2011**

% **14th March, 2017**

SHAHEED UDHAM SINGH SMARAK SHIKSHA SAMITI AND ORS.

..... Petitioners

Through: Ms. Padma Priya, Advocate.

versus

SANTOSH VERMA & ANR.

..... Respondents

Through: Mr. Ashok Aggarwal and Ms.
Aarushi Agrawal, Advs. for R-1.
Mr. Sanjoy Ghose, Adv. for R-
2/GNCTD.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition was dismissed by a judgment dated 9.9.2013. The writ petition had impugned the judgment of the Delhi School Tribunal dated 25.11.2010. By the impugned judgment the Tribunal had held that the appellant before the Tribunal, and who is the respondent no.1 in this case, was wrongly terminated from services of the petitioner no.3/school because there was no departmental enquiry conducted before removing the respondent no.1 from the services of the petitioner no.3/school.

2. The judgment passed by this Court dated 9.9.2013 was carried in challenge by the petitioner before a Division Bench of this Court and the Division Bench vide its judgment dated 12.8.2015 set aside the judgment dated 9.9.2013 by holding that the Delhi School Education Act and Rules, 1973 did not apply to unrecognized schools such as the petitioner no.3/school. Petitioner no.3/school is a primary school in which teaching takes place from classes 1 to 5.

3. I may note that in the judgment dated 9.9.2013, this Court had extensively referred to various paragraphs of the Division Bench judgment of this Court in the case of ***Social Jurist, a Civil Rights Group Vs. GNCT & Ors. 147 (2008) DLT 729*** and which laid down the ratio that the Delhi School Education Act and Rules apply even to unrecognized schools.

4. The Division Bench judgment dated 12.8.2015 which was passed by a Division Bench of this Court in the present case in LPA No. 825/2013 has been referred to by a subsequent and another Division Bench of this Court in its judgment in LPA No. 857/2015 titled as ***M/s Samarth Shiksha Samiti (Regd.) and Anr. Vs. Shakuntala Maggo & Ors.*** decided on 15.02.2016. The Division Bench of this Court which decided the case of ***M/s Samarth Shiksha Samiti (supra)*** referred to the judgment passed by a Division Bench of this Court in this case in LPA No. 825/2013 dated

12.8.2015 and the Division Bench in *M/s Samarth Shiksha Samiti's* case (*supra*) has held the judgment dated 12.8.2015 passed by the earlier Division Bench, in this case in LPA No. 825/2013, to be *per incuriam*.

5. I have considered both the judgments passed by the two Division Benches of this Court, firstly in this case in appeal against the judgment dated 9.9.2013 in LPA No. 825/2013, and secondly the subsequent judgment dated 15.2.2016 of the Division Bench in the case of *M/s Samarth Shiksha Samiti (supra)* in LPA No. 857/2015, in the judgment dated 12.7.2016 deciding two connected writ petitions with lead case being W.P.(C) No. 7596/2014 titled as *Smt. Praveen Bhatnagar Vs. Sanjivayya Memorial Trust, New Delhi (Regd.) & Ors.* In the judgment in the case of *Smt. Praveen Bhatnagar (supra)*, I have held that the ratios in the cases of *M/s Samarth Shiksha Samiti (supra)* and *Social Jurist (supra)* which will prevail and not of the Division Bench in the judgment dated 12.8.2015 in LPA No. 825/2013. The judgment in *Smt. Praveen Bhatnagar (supra)* is a small judgment of 11 paragraphs, and the same read as under:-

“WP(C) No. 7596/2014

1. This writ petition is filed impugning the order of the Delhi School Tribunal dated 24.7.2014, by which the Delhi School Tribunal has dismissed the appeal filed by the present writ petitioner before the Tribunal under Section 8(3) of the Delhi School Education Act, 1973 on the ground that the petitioner was an employee of an unrecognized school/respondent no.2 and the provisions of the Delhi School Education Act do not apply to unrecognized schools. The issue therefore is whether the provisions of the Delhi School Education Act apply or do not apply to unrecognized schools.

2. This issue is no longer *res integra* as it is held by a Division Bench of this Court, speaking through Hon'ble Mr. Justice T.S.Thakur (as he then was), in the case of ***Social Jurist, a Civil Rights Group Vs. GNCT and Ors., 147 (2008) DLT 729*** that the Delhi School Education Act applies to all schools in Delhi whether they be recognized or unrecognized.

3. Sitting as a Single Judge I followed this Division Bench judgment in the case of ***Social Jurist (supra)*** in the case titled as ***Shaheed Udham Singh Smarak Shiksha Samiti (Regd.) and Ors. Vs. Suman Lata and Ors.*** W.P.(C) Nos. 3723/2012 and 193/2011 decided on 9.9.2013.

4. The Judgment in the case of ***Shaheed Udham Singh Smarak Shiksha Samiti (supra)*** decided by this Court as a Single Bench judgment was taken up in appeal and a Division Bench of this Court in LPA No.825/2013 with connected cases decided on 12.8.2015 set aside the Judgment dated 9.9.2013 holding that the Delhi School Education Act does not apply to unrecognized schools. It is this judgment which is strongly relied upon on behalf of respondent nos. 1 and 2, besides also the judgment of the Supreme Court referred to in para 13 of the judgment of the Delhi School Tribunal being ***Principal and Others Vs. Presiding Officer and Others (1978) 1 SCC 498; AIR 1978 SC 344.***

5. Issue of applicability of the ratio of the Division Bench judgment in the case of ***Shaheed Udham Singh Smarak Shiksha Samiti & Ors. Vs. Smt. Santosh Verma & Anr.*** in LPA No. 825/2013 came up before a later Division Bench in ***M/s. Samarth Shiksha Samiti (Regd.) & Anr. Vs. Shakuntala Maggo & Ors.*** in LPA No.857/2015 and LPA No.1/2016. A Division Bench of this Court by its Judgment dated 15.2.2016 in these LPA Nos. 857/2015 & 1/2016 has observed that the Division Bench of this Court which decided the judgment in the case of ***Shaheed Udham Singh Smarak Shiksha Samiti (supra)*** is not a binding precedent because the said Division Bench could not have taken a contrary view than the earlier binding Division Bench judgment in the case of ***Social Jurist (supra)***. Paras 10 to 14 of the said Judgment dated 15.2.2016 in the case of ***M/s. Samarth Shiksha Samiti (supra)*** in LPA No.857/2015 and LPA No.1/2016 are relevant and the same read as under:-

“10. High Courts, and indeed all Courts, are tethered to precedent which is essential to ensure consistency and stability in the administration of law. The alternative, i.e. each Court being left free to pursue its views regardless of previous judgments of Courts of co-ordinate composition, or Benches of greater numbers, in a hierarchal system, would result in chaos and uncertainty about the law. Here, one recollects the caution administered in *Broom v. Casse II & Co.*, [1972] 1 AER 801 that:

“it will never be necessary to say so again, that in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including, the Court of Appeal, to accept loyally the decisions of the higher tiers”.

11. The rule was again explained in *Davis v. Johnson*, (1978) 2 WLR 152 in the following words:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the LPA 857/2015 & LPA 1/2016 Page 9 conduct of their affairs, as well as a basis for orderly development of legal rules."

12. The Supreme Court, speaking through Krishna Iyer, J. in *Ambika Prasad Misra v. State of U.P.* (1980) 3 SCC 719 : AIR 1980 SC 1762 explained that even though a decision might be based on faulty reasoning or might be unsatisfactorily argued, if it is of a higher Court and consequently binding, it has to be necessarily followed. The following observations in Salmond's '*Jurisprudence*', page 215 (11th edition) was referred to:

"A decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned."

13. This Court is of the opinion that *Shaheed Udham Singh Smarak Shiksha Samiti (supra)* cannot be regarded as a binding authority for more reasons than one. First, it did not examine, closely - at least a reading of the judgment does not establish so- the *reasoning* which led the previous Division Bench in *Social Jurist (supra)* to hold that unrecognized schools too were regulated by the Act. Apart from the definition of "schools", Section 3, Section 52, Rule 44 and Rule 50, that judgment also noted that the power of taking over management, applied widely to all schools, regardless of recognition. This was a clear pointer to the overarching State interest in ensuring that schools secured recognition. Even the provision in Section 3 (6) brings home this concern: "(6) *Every existing school shall be deemed to have been recognised under this section and shall be subject to the provisions of this Act and the rules made thereunder*".

14. Apart from the binding nature of *Social Jurist (supra)*, the declaration in which has attained finality, it seems abhorrent to this Court, that when the State has assured every child education, which is guaranteed as a fundamental right no less, and the fruition of which has led to the enactment of an elaborate mechanism under a special Parliamentary legislation (Right to Education Act), it can nevertheless be considered perfectly reasonable to say that some institutions which *choose to not be regulated, can be held to be so*. Compliance with the law is the norm, and violation is deemed deviant, inviting penal sanction. However, allowing such "outlaws" is to undermine those that abide by the law. In the vital area of education, it is not possible to countenance the submission of such outlaws that they stand outside the pale of regulation and are to be "let alone" to do what they please, by way of imparting what they deem to be education, in whatever terms they choose and through personnel holding such qualifications that *they (and not the law)* deem appropriate."

6. It is trite that a decision of one Bench is binding on another coordinate Bench of the same number of judge or judges. It was therefore held by the Division Bench in the case of *M/s. Samarth Shiksha Samiti (supra)* that the Division Bench in the case of *Shaheed Udham Singh Smarak Shiksha Samiti (supra)* could not have overlooked the ratio of the Division Bench judgment in

the earlier case of *Social Jurist (supra)*, more so without referring to the relevant paras of the judgment of the Division Bench in the case of *Social Jurist (supra)*.

7. In view of the above, it is the Division Bench judgments of this Court in the cases of *Social Jurist (supra)* and *M/s. Samarth Shiksha Samiti (supra)* which will guide this Court and not the ratio of the judgment of the Division Bench in the case of *Shaheed Udham Singh Smarak Shiksha Samiti (supra)*.

8. The reliance placed by the respondents no.1 and 2 upon the judgment of the Supreme Court in the case of *Principal and Others (supra)* is misconceived for the reason that this judgment was also relied upon by the unrecognized school in the case decided by me in the case of *Shaheed Udham Singh Smarak Shiksha Samiti (supra)*, and I have held that the said judgment of the Supreme Court would stand explained by the Division Bench of this Court in the case of *Social Jurist (supra)*. The relevant paras of the Judgment dated 9.9.2013 decided as a Single Bench Judgment in the case of *Shaheed Udham Singh Smarak Shiksha Samiti (supra)* dealing with this aspect are as under:-

“3. Before me, counsel for the petitioners argues that the provisions of DSEAR will not apply to the petitioner No.3-school which is an unrecognized school. What is argued is that provisions of DSEAR pertaining to filing of an appeal under Section 8(3) by a teacher/employee whose services are terminated does not apply to an unrecognized school, and which the petitioner No.3 is. In support of this argument, reliance is placed upon the judgment of the Supreme Court in the case of *The Principal and Ors. Vs. The Presiding Officer and Ors. 1978 (1) SCC 498*. Paras 4,5 and 8 of the said judgment are relied upon which read as under:-

“4. Three points viz. (1) whether the School was a recognized private school on the relevant date; (2) whether the service of respondent No. 2 could not be terminated without the prior approval of the Director of Education and (3) whether the impugned order of termination of service of respondent No. 2 was appealable to the Tribunal arise for determination in this case. We shall deal with these points seriatim.

5. Re. Point No. 1 : For determination of this point, which is crucial it is necessary to refer to Section 2(t) of the Act which defines a "recognized school" as a school recognized by the appropriate authority. The expression "appropriate authority" is defined in Section 2(e) of the Act as under :-

2. (e) 'appropriate authority' means-

(i) in the case of a school recognized or to be recognized by an authority designated or sponsored by the Central Government, that authority;

(ii) in the case of a school recognized or to be recognized by the Delhi Administration, the Administrator or any other officer authorized by him in this behalf;

(iii) in the case of a school recognized or to be recognized by the Municipal Corporation of Delhi, that Corporation;

(iv) in the case of any other school, the Administrator or any other officer authorized by him in this behalf.

8. Re. Point No. 3 : Under Sub-section (3) of Section 8 of the Act it is only an employee of a recognized private school against whom an order of dismissal,

removal or reduction in rank is passed who is entitled to file an appeal against such order to the Tribunal constituted under Section 11 of the Act within three months from the date of communication to him of the order. For the applicability of this provision of the Act, two conditions must co-exist. These are (1) that the employee should be an employee of a recognized private school and (2) that he should be visited with either of the three major penalties of dismissal, removal or reduction in rank. As the School was, neither a recognized private school on the relevant date nor was the impugned order one of dismissal, removal or reduction in rank but was an order simpliciter of termination of service, the aforesaid appeal filed by respondent No. 2 to the Tribunal constituted under Section 11 of the Act was manifestly incompetent and the order passed therein by the Tribunal was clearly without jurisdiction.”

4. A reference to the aforesaid paras of the judgment of the Supreme Court in the case of *The Presiding Officer (supra)* shows that the Supreme Court has held that the provision of Section 8(3) which provides for filing of an appeal by an employee/teacher whose services are terminated cannot apply to an appeal filed by the teacher/employee of an unrecognized school. I may note that it is not disputed that the appeal of an employee whose services are terminated by a recognized school does lie before the DST. The issue therefore to be decided by this Court is whether the provision of Section 8(3) of the Delhi School Education Act 1973, and which entitles the employee/teacher of a school to challenge the termination of services by means of filing an appeal before the DST, will or will not entitle the employee/teacher of an unrecognized school to file an appeal in the DST.

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9. Let us now examine the issue as to whether the ratio of the judgment of the Supreme Court in the case of *The Presiding Officer (supra)* holding that the teachers of unrecognized schools cannot file an appeal before the DST by taking aid of the provision of Section 8(3) now applies after the judgment of the Division Bench in *Social Jurist's* case. Much water has been flown under the bridge since the Supreme Court delivered the judgment in the year 1978 in the case of *The Presiding Officer (supra)*. The observations which were made by the Supreme Court in the case of *The Presiding Officer (supra)* were in the plain language of the Delhi School Education Act, 1973, and which plain language as per its literal interpretation only provided for appeals to be filed by the employees/teachers of recognized schools, and which was because it was thought that DSEAR do not apply at all to unrecognized schools. Surely, the provision of Section 8(3) is not an independent statute in itself and the said provision is very much a part and parcel of the DSEAR, and therefore if the Act as a whole applies to unrecognized schools and so held by the Division Bench of this Court in the case of *Social Jurist (supra)*, I cannot agree to the argument urged on behalf of the petitioners that the ratio of the judgment of the Supreme Court in the present case should be interpreted to hold that whereas teachers/employees of recognized schools can file appeals before the DST under Section 8(3), however teachers/employees of unrecognized schools

cannot file appeals before the DST against the orders of the schools terminating their services.

10. At this stage, it will be relevant to mention that the Supreme Court in the judgment in the case of *Shashi Gaur Vs. NCT of Delhi and Ors (2001) 10 SCC 445* has held that appeal against every type of termination of services of a teacher/employee of a school has necessarily to be filed before the DST. The ratio in the case of *Shashi Gaur (supra)* when read with the ratio of the Division Bench in the case of *Social Jurist (supra)* persuades me to hold that appeals filed even by employees of unrecognized schools will be maintainable before the DST under Section 8(3) of the Delhi School Education Act, 1973. It would be an incongruity in terms to hold that merely on the ground of recognition of school or non-recognition thereof, different remedies lie for challenging orders of termination passed by schools with respect to termination of services of its employees/teachers. Once the Act applies, surely, all the provisions thereof including Section 8(3) apply to unrecognized schools and the observations of the Supreme Court which were made in the year 1978 in the case of *The Presiding Officer (supra)* were as per the plain language of the provision of Section 8(3), however, a Division Bench of this Court subsequently in the case of *Social Jurist (supra)* has explained the scope of applicability of the Act to even unrecognized schools which are functioning in Delhi. I may state that the Supreme Court in the case of *The Presiding Officer (supra)* was not concerned with the situation if all the provisions of DSEAR apply to unrecognized schools and if they do, yet, Section 8(3) will not apply to a school merely on the ground that school is not recognized.

11. Counsel for the petitioners also sought to cite before me judgments of various learned Single Judges of this Court to argue that the provision of Section 8(3) will not apply to appeals being filed by the employees/teachers of unrecognized schools, however, I need not refer to them in view of ratio of the Division Bench judgment in the case of *Social Jurist (supra)* which holds that provisions of DSEAR apply also to unrecognized schools. I must also observe that it is not as if the Division Bench in the case of *Social Jurist (supra)* while holding that all the provisions of DSEAR apply to both recognized and unrecognized schools intended to exclude the applicability of Section 8(3) to the unrecognized schools.”

9. In view of the above, it is clear that the provisions of the Delhi School Education Act, including of filing an appeal under Section 8(3) of the Act, will apply to employees even of unrecognized schools.

10. In view of the Division Bench judgment in the case of *Social Jurist (supra)* holding that the Delhi School Education Act applies to unrecognized schools also, and the Division Bench judgment in the case of *M/s. Samarth Shiksha Samiti (supra)* holding that the ratio of the Division Bench judgment in the case of *Shaheed Udham Singh Smarak Shiksha Samiti (supra)* is not a binding precedent, I cannot agree with the counsel for the respondent nos. 1 and 2 to refer the matter to a Larger Bench.

11. In view of the above, the writ petition is allowed. The impugned order of the Delhi School Tribunal dated 24.7.2014 is set aside and the matter is remanded back to the Delhi School Tribunal to decide the matter on merits. Parties to appear before the Delhi School Tribunal on 23.8.2016.”

6. Learned counsel for respondent no.1 argues that in view of the Division Bench judgment of this Court in the case of *M/s Samarth Shiksha Samiti (supra)* which holds the judgment in LPA No. 825/2013 dated 12.8.2015 (rendered in appeal in this case) as *per incuriam*, this Court should act as per the ratios in the cases of *M/s Samarth Shiksha Samiti (supra)* and *Social Jurist (supra)* and not as per the ratio in the case of *Shaheed Udham Singh Smarak Shiksha Samiti (Regd.) and Ors. Vs. Smt. Santosh Verma & Anr.* Counsel for the petitioner however argues that the judgment dated 12.8.2015 in LPA No. 825/2013 has become final between the parties as this judgment dated 12.8.2015 has not been challenged by the respondent no.1 herein before the Supreme Court.

7. I have thought long and hard on the issue. The issue really is not with respect to whether it is the judgment dated 12.8.2015 in LPA No. 825/2013 passed in appeal against the judgment in this case which is binding or whether the judgment of the Division Bench in *M/s Samarth Shiksha Samiti (supra)* in LPA No. 857/2015 dated 15.02.2016 is binding, but the issue is that what binds this Court is the ratio of the earliest judgment of the Division Bench of this Court on the issue being at hand, and which

issue is decided by the judgment in the case of *Social Jurist (supra)*. The Division Bench in the judgment in the case of *M/s Samarth Shiksha Samiti (supra)* has also held that the judgment in the case of *Social Jurist (supra)* being prior in point of time to the judgment in the case of *Shaheed Udham Singh Smarak Shiksha Samiti (Regd.)(supra)* will prevail, and also so observed by this Court in the judgment dated 12.7.2016 in *Smt. Praveen Bhatnagar's* case (*supra*). It is also an undisputed position that the judgment delivered by a Division Bench of this Court in the case of *Social Jurist (supra)* was challenged before the Supreme Court and the challenge before the Supreme Court failed, and thereby there is finality to the ratio of *Social Jurist's* case (*supra*), and which ratio holds that the Delhi School Education Act and Rules will apply even to unrecognized schools in Delhi such as the present petitioner no.3/school.

8. In view of the aforesaid discussion, and since ultimately this petition has to be decided on the ground that whether the Delhi School Tribunal had or did not have the jurisdiction to pass the impugned judgment dated 25.11.2010, and which jurisdiction petitioner no.3/school argued the Delhi School Tribunal did not have because petitioner no.3/school was an unrecognized school, and since in terms of the aforesaid discussion and the ratio in the case of *Social Jurist (supra)* will prevail and not the ratio of the

judgment in LPA No. 825/2013, accordingly this Court is legally bound to hold that the Delhi School Tribunal had the jurisdiction to pass the impugned order because the Delhi School Tribunal can decide appeals filed by the employees of unrecognized schools against orders terminating their services.

9. It is no longer *res integra* that services of employees in schools have statutory character and employees of such schools cannot be terminated without following the procedure for termination of services under the Delhi School Education Act and Rules. The procedure for termination of services under the Delhi School Education Rules with respect to employees of schools is provided under Rules 118 and 120 and which rules provide that without conducting of departmental inquiry an employee cannot be terminated from services with the school. Supreme Court has also held accordingly in the judgment in the case of ***Management Committee of Montfort Senior Secondary School Vs. Vijay Kumar and Others, (2005) 7 SCC 472*** that the statutory regime of Rules 118 and 120 apply not only to non-minority schools but also to minority schools, and the relevant para of which judgment reads as under:-

“10. In *St. Xavier's* case the following observation was made, which was noted in *Frank Anthony's* case:

"92. A regulation which is designed to prevent mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making

regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30 (1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of *Rev. Sidhajibhai Sabhai*, regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it."

The effect of the decision in *Frank Anthony's* case is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in *Frank Anthony's* case the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV. The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights....." (underlining added)

10. Since in the present case, the admitted position is that the respondent no.1 was an employee of the petitioner no.3/school, services of the respondent no.1 have been terminated without conducting any departmental inquiry, therefore, the termination of the services of the respondent no.1 by the petitioner no.3/school is illegal being violative of the provisions of Rules 118 and 120 of the Delhi School Education Rules read with the ratio of the judgment of the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School (supra)*,

hence the termination of services of the respondent no.1 by the petitioner no.3/school is totally illegal and so rightly held by the tribunal in its impugned judgment.

11. In view of the aforesaid discussion, the present writ petition has no merits, and the same is therefore dismissed.

MARCH 14, 2017

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VALMIKI J. MEHTA, J

