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

+ W.P.(C) 3771/2017

RAJAT KUMAR

..... Petitioner

Through: Mr. Satyavir Singh, Adv.

versus

LAXMAN PUBLIC SCHOOL AND ORS

..... Respondents

Through: Mr. Rohit Oberoi, Adv. for R1 and R2.

Mr. Anuj Aggarwal, ASC with Ms. Deboshree Mukherjee, Adv. for R3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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18.09.2017

1. The present petition has been filed by the petitioner with the following prayers:

“That in view of the afore-stated facts, circumstances and contentions raised by the Petitioner it is humbly prayed that this Hon’ble Court may be graciously pleased to:

- (i) *Quash the order of Suspension dated 17.09.2016 served on the petitioner.*
- (ii) *Set aside the alleged charges against the petitioner.*
- (iii) *Order reinstatement of the petitioner with continuity of service with all back wages with perks and allowances as could have been applicable to him if he was continuously*

in the employment of the Respondent No.1 and;

(iv) Pass any such orders or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances."

2. It is the case of the petitioner that he was appointed in respondent No.1 school on December 1, 1997 and on September 17, 2016 the respondent No.1 issued an order of suspension charging him for 'insubordination' violating the provisions of Rule 123 prescribed under Section 9 of the Delhi School Education Act and Rules 1973. It is his case that he made representations to different authorities of the Directorate of Education.

3. Mr. Satyavir Singh, learned counsel for the petitioner would submit that the respondent No.1 has not taken prior approval for the suspension of the petitioner from the Director of Education as contemplated as under Section 8(4) of the Delhi School Education Act and Rules 1973. In fact it is his case that the management committee consisting of all the members have not decided the suspension of the petitioner. He prays that the suspension needs to be revoked and the petitioner be reinstated.

4. Insofar as prayer at (ii) is concerned he would submit that the charges as framed against the petitioner are unsustainable as the petitioner has not committed any misconduct as alleged in the charge sheet.

5. On the other hand, Mr. Rohit Oberoi, learned counsel appearing for the Respondent Nos.1 and 2 submits that the petitioner having been suspended on September 17, 2016, the respondent Nos.1 and 2 had sought approval of the Director of Education for suspending the petitioner vide letter dated September 26, 2016. The respondent Nos. 1 and 2 received a communication dated November 16, 2016 from the office of respondent No.3 seeking certain clarifications but unfortunately despite giving clarifications on November 25, 2016, nothing has been heard from the office of the respondent No.3. He states that in terms of the judgments of this Court and the Supreme Court no prior approval is required to be taken by a private unaided school for suspending any of its employees. He qualifies his submission by stating that the Full Bench judgment of this Court in **Kathuria Public School V. Director of Education & Anr. 2005 (83) DRJ 541 (DB)** wherein the Full Bench referring to Sections 8(2) and 8(4) of the Delhi School Education Act 1973, held, a private unaided school is not required to take prior approval before terminating or suspending its

employees has not been interfered with by the Supreme Court in **Raj Kumar V. Director of Education and Others (2016) 6 SCC 541** to the extent of prior approval for suspension. In other words the Supreme Court has only overruled the judgment of the Full Bench in **Kathuria Public School** (supra) to the extent of section 8(2) and not with regard to Section 8(4) of the Delhi School Education Act, 1973. On the aspect of charge-sheet he would state that this Court would not like to interfere with the same at this stage. In other words the Court shall allow the DAC to proceed with the enquiry and take a final view on the matter based on the report of the enquiry officer.

6. Mr. Anuj Aggarwal learned counsel for the respondent No.3 would submit that the respondent Nos.1 and 2 had not taken the approval of the Director of Education before suspending the petitioner. In this regard he would rely upon the provisions of Section 8(4) of the Delhi School Education Act. He contend when there is a specific provision for seeking approval of the Director for suspending an employee, the said provision need to be followed in terms of the ratio of the judgment of the Supreme Court in **Raj Kumar** (supra).

7. Having heard the learned counsel for the parties, insofar as the

submission of the learned counsel for the petitioner that prior approval of the Director need to be taken for suspending an employee of the private unaided school in terms of section 8(4) of the Delhi School Education Act, 1973 is concerned the same is no more resintegra. The plea of Mr. Oberoi by referring to the judgment of **Kathuria Public School** (supra) and the judgment of the Supreme Court in **Raj Kumar** (supra) that the conclusion of Full Bench that under Section 8(4) of the Delhi School Education Act, the approval of the Director need not be taken for suspending the employee of a private unaided school has been upheld by the Supreme Court is concerned the same is not appealing for the simple reason in **Raj Kumar** (supra) the Supreme Court was concerned with a case of termination and has held in clear terms, Section 8(2) of the Delhi School Education Act 1973, need to be followed. The said provision is paramateria to section 8(4) of the Delhi School Education Act 1973. The Section 8(2) as held by Supreme Court is a procedural safeguard in favour of an employee to ensure that an order of termination or dismissal is not passed without prior approval of the Director of Education to avoid arbitrary and unreasonable termination. The Section 8(4) being a similar provision i.e. procedural safeguard, the ratio of the judgment of the Supreme Court shall apply on all fours. In Paras 50 to 52 of

Raj Kumar (supra) the Supreme Court has held as under:

“50. The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in the case of Kathuria Public School (supra) by placing reliance on the decision of this Court in the case of TMA Pai (supra), as the subject matter in controversy therein was not the security of tenure of the employees of a school, rather, the question was the right of educational institutions to function unfettered. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.

51. The Division Bench of the Delhi High Court, while striking down Section 8(2) of the DSE Act in the case of Kathuria Public School (supra) has not correctly applied the law laid down in the case of Katra Educational Society (supra), wherein a Constitution Bench of this Court, with reference to provision similar to Section 8(2) of the DSE Act and keeping in view the object of Regulation of an aided or unaided recognised school, has held that the Regulation of the service conditions of the employees of private recognized schools is required to be controlled by educational authorities and the state legislature is empowered to legislate such provision in the DSE Act. The Division Bench wrongly relied upon that part of the judgment in the case of Katra Education Society (supra) which dealt with Article 14 of the Constitution and aided and unaided educational institutions, which had no bearing on the fact situation therein. Further, the reliance placed upon the decision of this Court in the case of Frank Anthony Public School Employees Association v. Union of India and Ors. MANU/SC/0076/1986 : (1986) 4 SCC 707 is also misplaced as the institution under consideration in that case was a religious minority institution.

52. The reliance placed by the learned counsel appearing on behalf of the respondents on T.M.A. Pai is also misplaced as the same has no bearing on the facts of the instant case, for the reasons discussed supra. The reliance placed upon the decision of the Delhi High Court in Kathuria Public School is also misplaced as the same has been passed without appreciating the true purport of the Constitution Bench decision in Katra Education Society. Therefore, the decision in Kathuria Public School, striking down Section 8(2) of the DSE Act, is bad in law.”

8. That apart I note that the communication dated 26th September, 2016 of the respondent Nos. 1 and 2 to the Deputy Director of Education was in the nature of an intimation suspending the petitioner, in other words it is not a letter seeking approval of the Director of Education for suspending the petitioner. Accordingly, in absence of any approval from the Director of Education the suspension of the petitioner vide letter dated September 17, 2016 needs to be set aside. Ordered accordingly.

9. Insofar as prayer (ii) above is concerned, I agree with the submission made by Mr. Oberoi that this Court would not like to interfere with the charge-sheet at this stage more specifically when the challenge is on the merit of the charges framed against the petitioner. This prayer of the petitioner is rejected.

10. The suspension order dated September 17, 2016 having been set aside the petitioner shall be entitled to reinstatement in service. During the course

of his submissions the learned counsel for the petitioner has stated that the respondent Nos.1 and 2 have not paid the subsistence allowance w.e.f. from April 2017. If that be so the subsistence allowance if not paid w.e.f. April 2017 or from a later date shall be paid to the petitioner within a period of eight weeks from today. The petition is disposed of in the aforesaid terms. No costs.

V. KAMESWAR RAO, J

SEPTEMBER 18, 2017/akv