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

+ LPA 453/2017

GYAN MANDIR PUBLIC SCHOOL & ANR Appellants
Through: Mr. Arvind Sah, Advocate.

versus

GOVT OF NCT OF DELHI & ORS Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
% **11.07.2017**

Caveat No. 618/2017

No one has appeared on behalf of the caveator.

The caveat stands discharged.

C.M. No.23788/2017 (exemption)

The appellant is permitted to file additional documents.

The application stands disposed of.

C.M. No.23787/2017 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

LPA 453/2017 & C.M. No. 23786/2017 (stay)

1. The present Letters Patent Appeal has been filed to assail the judgment dated 1.5.2017 passed in W.P.(C) No. 7998/2014 preferred by the

respondent No.3 Virender Kumar Goel which has been allowed by the learned Single Judge.

2. Respondent No.3 Virender Kumar Goel who had been removed from service by the appellant school vide order dated 18.04.2012 has assailed his removal order before the learned Single Judge. It may be noted that based on a departmental enquiry respondent No.3, had been removed from service. It is admitted case of the parties that the appellant had sought approval of the Directorate of Education under Section 8(2) of the Delhi School Education Act (hereinafter referred to as “the Act”) and the same had been rejected but still the appellant did not take back the respondent No.3 in service. Consequently, the respondent preferred the aforesaid writ petition.
3. The submission of the appellant before the learned Single Judge was that Section 8(2) of the aforesaid Act was not attracted, in view of the judgment of a Division Bench of this Court in **Kathuria Public School v. Directorate of Education & Anr.: 113(2004) DLT 703 (DB)**.
4. The submission was that the application made by the appellant school under Section 8(2) to the Directorate of Education was superfluous, and merely making the same did not tantamount to appellant being obliged to take the approval of the Directorate.
5. Learned Single Judge placed reliance on the subsequent decision of the Supreme Court in **Rajkumar v. Directorate of Education & Ors. : III 2016 SLT 236**, wherein the Supreme Court held that termination of appointment in school for non compliance of mandatory provision of Section 25F of the ID Act, and Section 8(2) of the Delhi School Education Act is bad in law.
6. Applying the aforesaid decision in *Raj Kumar’s case (supra)*, the learned Single judge held the termination of the respondent No.3/employee to be

bad in law and directed his reinstatement as Lab Assistant with arrears of salary with effect from 19.4.2012. He was also granted interest at the rate of 9% per annum on the arrears of subsistence allowance/salary.

7. The submission of Mr. Sah, learned counsel for the appellant is that the judgment of the Supreme Court in *Raj Kumar's case (supra)* came only in the year 2016, whereas the present case pertains to the year 2005-06, when *Kathuria Public School (supra)* held sway. This submission of Mr. Sah cannot be accepted, as it is misconceived. When the Supreme Court rendered its decision in *Raj Kumar's case (supra)*, it merely declared the law, as it always was at all material times. Since the case of the respondent was still live and was not closed on the basis of *Kathuria Public School's case (supra)*, the learned Single Judge was bound to, and correctly relied upon *Raj Kumar's case (supra)*.
8. In view of the aforesaid position, we find no merit in the present Appeal and the same stands dismissed.
9. The appellant is, however, granted one month's time from today to implement the directions issued by the learned Single Judge in the impugned judgment.

VIPIN SANGHI, J

REKHA PALLI, J

JULY 11, 2017

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