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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 19th July, 2018*

+ LPA 295/2017 and CM No. 16104/2017

KULACHI HANSRAJ MODEL SCHOOL & ANR Appellants

Through: Ms Jyoti Singh, Sr. Adv with Tanuj
Khurana and Mr Jaskaran Singh, Advs

versus

KIRTI JAIN & ANR Respondents

Through: Mr Ashok Agarwal, Adv for R-1
Mr K.P. Tevathia, Legal Assistant,
DOE
Ms Jyoti Taneja, Adv for GNCTD

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Aggrieved by the order dated 01.03.2017 passed by a learned Single Judge of this Court in a writ petition filed by Ms Kirti Jain-respondent herein has led to the filing of the present appeal.

2. For the sake of convenience, the appellant shall be referred to as the 'School', the respondent as 'teacher' and the Kulachi Hansvatika shall be referred to as the 'day care centre'.

3. The respondent-teacher had filed a petition under Article 226 of the Constitution of India seeking a relief of being granted mandatory

emoluments in terms of the 6th Pay Commission report which became applicable to schools in Delhi by virtue of an order passed by the Director of Education (DEO) dated 11.02.2009.

4. It is the case of the teacher that she was appointed as a Nursery teacher with the appellant-school in terms of an appointment letter dated 23.06.1997. She was on probation for a period of one year and thereafter she was confirmed in terms of communication dated 16.03.1999.

5. The submission of Ms Jyoti Singh, learned senior counsel, appearing for the appellant is that the respondent-teacher did not possess the requisite qualifications for being appointed to the appellant-school. Hence, she was employed in the Day Care Centre which is evident upon reading the minutes of meeting dated 19.06.1997. She further contended that it is also evident from the fact that her confirmation letter dated 16.03.1999 refers to the respondent having been confirmed at the Nursery Teacher Day Care. She further submits that the respondent has also in her communications, which have been extracted by the learned Single Judge, admitted that she was teaching at "Hansvatika". Including in the first letter which has been extracted at internal page 5 of the impugned judgment, she has also admitted the aforementioned fact in her subsequent letter dated 08.08.2005 and in another letter dated 29.06.2006 as well. Senior counsel contends that respondent had submitted a form for deduction of provident fund, copy whereof has already been filed wherein in the column name of school it is mentioned as Kulachi Hansvatika Day Boarding. It is also contended by learned senior counsel that salary slip of the month of June 2014 also shows that salary was paid to her by Kulachi Hansvatika Day Boarding. In her

communication of 17.04.2003, she had also addressed the communication to the Principal through Head Mistress, Kulachi Hansraj Model School Day Boarding, copy of which has also been placed on record. She also draws the attention of the Court to a communication dated 29.04.2003 again addressed to the Head Mistress, Kulachi Hansraj Model School. Additionally, it is contended that since from the very beginning and as per the tacit understanding of the respondent she worked at the Day Boarding School which is a non-recognised school and accordingly she would not be entitled to the relief so prayed. Learned senior counsel also contends that the Day Care Centre is not recognised under the Delhi School Education Act.

6. Mr Aggarwal, learned counsel appearing for the respondent-teacher, submits that the respondent had sought employment to the appellant-school. The appointment letter which has been extracted by the learned Single Judge dated 23.06.1997, would show that the respondent was granted employment by the appellant school. He submits that as far as the minutes of meeting are concerned, the respondent was neither a party to the same nor aware about the same and, hence, the minutes would not bind the respondent in any manner. Counsel further submits that as far as the respondent is concerned she was employed by the appellant, paid salary by the appellant, leave was granted by the appellant and thus for all practical purposes the appellant was the employer of the respondent. He further submits that any internal arrangement for directing the respondent to the day care centre cannot bind the respondent and even otherwise the school was in a dominating position and thus the teacher could not have refused, who was never in a position to refuse, cannot be taken to the benefit of the appellant. The respondent worked wherever she was called upon to work. He further submits that in

case the respondent lacked the minimum qualifications, either the appellant management would have rejected her application or made a counter offer to her that in the absence of her qualifications, she could only be offered a post in their non-recognised Day Care Centre. He submits that as per the date of appointment letter i.e., 23.06.1997 till dispute occurred between the parties, no such communication was ever addressed to her. It was never pointed out to her that she did not have the basic qualifications for being employed in the recognised school. Mr Agarwal also submits that along with his rejoinder filed before the learned Single Judge, he had submitted a chart along with the supporting documents to show that a number of income tax deductions done at source and Form-16 of TDS were issued by the appellant-school to the respondent to enable her to fill income tax return each year. Five such certificates were stated to have been filed along with the rejoinder. He submits that although a copy of the rejoinder has been placed on the record of this case but the documents have not been filed which ought to have been filed. As an alternate argument Mr Agarwal submits that the appellant can derive no benefit to say that the respondent was employed by an unrecognised school and thus could not be granted benefit of the 6th Pay Commission as it has been held by another Division Bench of this Court that there is no distinction for the applicability of the Delhi School Education Act with respect to a school recognised or unrecognised, for which he relies upon ***Samarth Shiksha Samiti (Regd.) & Anr vs Shakuntala Maggo & Ors.*** 229 (2016) DLT 1 (DB). The relevant paragraphs relied upon by learned counsel are extracted herein below:-

“6. Mr. Satyakam, learned counsel for the Govt. of NCT of Delhi and counsel appearing on behalf of the employees of the school opposed the submissions of the appellant. They urged

that the entire scheme of the Act had been examined in Social Jurist (supra), which had conclusively ruled that the statute applied to both recognized and unrecognized schools. They highlighted that the definition of “school” makes no distinction between recognized ones and unrecognized ones- Section 2(u) defines “school” as follows:

"school" includes a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education".

8. This Court does not propose to extract the provisions of the Act and Rules; they have been dealt with elaborately in the main judgment, in Social Jurist (supra). In that decision, the Court, after extracting and analyzing relevant provisions, held as follows:

"24. A plain reading of the above provisions especially Section 3(1) supra would show that the administrator has the power to regulate education in all the schools in Delhi. The expression ‘all the schools in Delhi’ is significant and leaves no manner of doubt that the Act is not limited in its application only to recognized schools. The term ‘recognized school’ and ‘school’ have been separately defined by the Act in Section 2(t) and 2(u) in the following words : 2(t) “recognized school” means a school recognised by the appropriate authority; (u) “school” includes a pre-primary, primary, middle and higher secondary schools, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education.

25. The language employed in Section 3 and the definition of the term ‘School’ in 2(u) supra would therefore make it manifest that the power of the administrator to regulate education extends to not only recognized but all schools whether the same are recognized or unrecognized. We have therefore no

hesitation in rejecting the contention urged by Mr. Sinha that the Act is confined in its application to only recognized schools.

26. Coming then to the question of establishment of a new school. The provisions of sub-section 3 to Section 3 make it clear that on and from the commencement of the Act, the establishment of any new school or the opening of a higher class in an existing school or the closing down of any existing class in an existing school can be subject to the provisions of the Act and the Rules only. This implies that from the date of commencement of the Act, while the existing schools were deemed to be recognized and hence allowed to continue subject to their fulfilling the requirements of recognition, new schools could be established only in accordance with the Act. The establishment of a new School could in turn take place only with the permission of the administrator. This is evident from Section 3(2) of the Act which authorizes the administrator to permit the establishment of any such school. We may as well refer to Rule 44 of the Rules framed under the Act which makes a provision regarding the opening of new schools....

32. It is evident from a reading of the above provision that the take-over of the Management of the Schools whether recognized or not is also envisaged only in cases where the Managing Committee or the Manager has neglected to perform any of the duties imposed upon it by or under the said Act or the Rules made thereunder. The occasion to take over would also arise only if the School was established with the permission of the administrator. In the instant case, unrecognized schools have been established without the permission of the administrator required under Section 3(2) of the Act. No notice of intention to open

the school in terms of Section 34 has ever been given by these institutions nor have these institutions been subjected to any inspection or evaluation to determine whether they fulfill the bare minimum requirements for running an institution in terms of Rules 50 and 51 of the Delhi School Education Rules, 1973. As a matter of fact, for some inexplicable reason, the Government and the Directorate of Education have been under the impression that neither any permission nor any intimation in terms of the provisions mentioned above is necessary for starting a school and that it is none of their business or responsibility to regulate the setting up of such institutions or their continuance in Delhi. That impression, as already noticed earlier, is against the specific provisions of the Act and the scheme underlying the same. The result is that there is a total breakdown of the machinery which the Act had envisaged for regulating and organizing planned development of school education in Delhi. The situation is not however totally irremediable. While the schools may have, on account of the inaction of the authorities, come up and functioned all these years, there is no reason why the same cannot be brought under the regulatory control of the authorities under the Act. A direct and ruthless approach to that issue may have called for a mandamus to the authorities to shut down such institutions. Keeping however in view the fact that a very large number of students are admitted to such institutions and are likely to get displaced by any such direction, a more realistic and workable solution shall have to be found out by which both the objectives, namely, the establishment of the supremacy of the law as enacted by the Parliament and the protection of the interest of the students at large can be achieved. That can, in our opinion, be done by giving to the institutions established without due and proper authority of the administrator an opportunity to make such applications and seek recognition within a

specified period by fulfilling the requirements stipulated under Section 4 of the Act read with Rules 50 and 51 of the Delhi School Education Rules, 1973. Such of the institutions as satisfy the requirements of the said provisions could then be recognized upon a proper evaluation of their infrastructure as stipulated by the statutory provisions. Such of the others as do not satisfy the requirements of the statute or fail even to seek waiver of compliance with the said provisions in terms of Rule 52 of the Rules could then be identified and their cases referred to the local authority concerned for taking appropriate action by way of closure of the institutions in accordance with the relevant statutory provisions having due regard to the user prescribed for the premises from which they are operating in terms of the Master Plan and the requirements of safety measures stipulated for running an educational institution of a public character.”

9. *Social Jurist (supra)* was a public interest litigation. The operative directions, towards enforcement of the Act, were quoted in the later Division Bench in *Shaheed Udham Singh Smarak Shiksha Samiti (supra)*. However, the substantive declaration quoted above, were not seen or considered. In *Social Jurist (supra)*, the Division Bench, by a later order (dated 07.05.2015), reiterated its declaration of law, based on interpretation of provisions of the Act:

"11. This Court, in judgment dated 8th February, 2008 in this petition, has held, (i) that the School Act empowered the Administrator, Delhi to regulate education in all the schools in Delhi; thus the operation of the School Act is not limited to recognized schools only; (ii) that a new school can be established only with the permission of the Administrator and subject to the fulfilment of the requirements stipulated in the LPA 857/2015 & LPA 1/2016 Page 8 School Act and the Rules framed thereunder; and, (iii) that the GNCTD had however failed to enforce the provisions of the School Act

resulting in there being a larger number of unrecognized and unauthorized schools in Delhi than those that are authorized and recognized.”

The fact remains that the latter portion, i.e existence of unrecognized schools which are "unauthorized" by law, is a reality. The question is does this "reality" blind the Court from its duties to enforce the law as it sees it? Shaheed Udham Singh Smarak Shiksha Samiti (supra) appears to suggest that; we, however, respectfully disagree.

*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. Cassell & 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”.

*12. The Supreme Court, speaking through Krishna Iyer, J. in **Ambika Prasad Misra v. State of U.P.**, 1980 (SLT Soft) 441=(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".

7. We have heard the learned counsel for the parties and given our thoughtful consideration in the matter.

8. Since strong reliance has been placed by Mr Agarwal on the letter of appointment dated 23.06.1997, we deem it appropriate to extract the aforesaid letter.

"Ref. No.11183/97

Dated 23-6-97

To

Ms. Kirti Jain

B-27, Vandana Apartments,

Sec-13, Rohini, Delhi-85

Sub: APPOINTMENT OF TEACHING/NON-TEACHING STAFF (FOR REGULAR APPOINTMENTS)

Dear Sir/Madam,

With reference to your application & consequent interview for the post of Nsy. Teacher in Kulachi Hansraj Model School, Ashok

Vihar, Delhi, you are hereby informed that you have been selected for the post of Nsy. Teacher on basic pay of Rs.1200/- in the pay-scale of Rs.1200-2040 plus admissible allowance in the school under the rules of D.A.V. College Managing Committee, New Delhi.

This appointment is subject to the terms and conditions given below:

1. PERIOD:

You will be on probation initially for a period of one year w.e.f. the date of your joining the post. On completion of your probation you will be considered for confirmation in case your work and conduct are found to be satisfactory.

2. PROBATION:

Your probation period may be extended by one year and your services may be terminated without assigning any reason whatsoever during the probationary period or the extended probationary period. During this period of probation, your services may be terminated by giving one month notice or on payment of one month salary in lieu of the notice period by either the employer or the employee.

3. CONFIRMATION:

After confirming your services may be terminated by giving three months notice or on payment of salary in lieu of notice period by either side.

4. INCREMENT:

Your annual increment will fall due on completion of one year's continuous and satisfactory service.

5. PROVIDENT FUND:

You will be allowed to contribute 10% of your pay plus allowances to P.F. Trust of D.A.V. College Managing Committee and the share of the Managing Committee will be made regularly in accordance with P.F. rules of the said committee.

6. LEAVE:

You will be entitled to such leave only as is applicable to similar employees of the Public Schools under the D.A.V. College Managing Committee in accordance with the Rules framed by the D.A.V. College Managing Committee.

7. SUPERANNUATION:

The age of superannuation shall be sixty years unless changed by the D.A.V. College Managing Committee.

8. APPLICATION FOR OTHER EMPLOYMENT:

- a) During the period of your employment with the D.A.V. College Managing Committee, if you want to apply for a post of elsewhere, you shall have to send your application through the Manager/Regional Director.*
- b) Application for improvement in qualifications: If you wish to appear for any public examination or any other examination for improving qualifications, you shall apply for it through the Principal/Regional Director and will have to abide by the instructions issued by him from time to time.*

9. TRANSFER OF SERVICE:

Your service is liable to be transferred to any D.A.V. Public/Model School in any part of the country which may be existing or may come into existence hereafter at the discretion of the D.A.V. College Managing Committee.

10. GENERAL CONDITIONS OF SERVICE:

- a) In the matter of other general conditions of service you will be governed by the Rules and Regulations of the D.A.V. College Managing Committee which will be read and followed by you.*
- b) You shall execute loyally and faithfully the policies laid down by the Management in-so-far as the school programme and Administration is concerned and that you shall work under the directions and instructions of the Manager/Regional Director and the D.A.V. College Managing Committee.*

- c) *As a whole time employee of the D.A.V. College Managing Committee you shall have to carry out the instructions of the said committee and devote your whole time to the service of the institution where you are employed. You shall not engage yourself in any private trade or undertake publication of books or any other work which is likely to interfere with the discharge of your normal duties without prior permission of the D.A.V. College Managing Committee nor will you be entitled to take up any private coaching or tuitions without prior permission of the Manager/Regional Director.*
- d) *During your service career, you shall not take part in the politics nor indulge in activities prejudicial to the interest of the school or the D.A.V. College Managing Committee or the Government. You shall maintain cordial relations with all members of the school community and also set highest standard of discipline in the school.*

11. ACCEPTANCE:

If you accept the terms and conditions of appointment, please sign the duplicate copy in token of your acceptance and send the same to this office immediately but not later than 10 days of the receipt of this appointment letter, failing which it shall be deemed that you are not interested in the post and it shall be offered to another person. If any information given by you is found in-correct later on at any stage of your service, your services are liable to be terminated.

Sd/-

*For & on behalf of the D.A.V.
College Managing Committee*

I ACCEPT THE TERMS AND CONDITIONS OF SERVICE AS MENTIONED ABOVE AND I AM WILLING TO ACCEPT THE POST.

COUNTERSIGNED

**MANAGER
DATE.**

**FULL NAME AND SIGNATURE WITH
OF APPOINTMENT WITH DATE”**

9. The subject of aforesaid letter would show that the appointment of the respondent was a regular appointment. In the very first paragraph of this

communication, the appellant-school takes note of the application and consequent interview for the post of Nsy. Teacher in the appellant-school and informs the respondent of her being selected for the post in the school by the Management Committee. We may also take note of the fact that the minutes sought to be relied upon by the learned counsel for the appellant relate to a period prior to the appointment letter being dated 19.06.1997. Ms.Jyoti Singh, learned senior counsel, has submitted that after the probation period was over, the respondent was confirmed by confirmation letter of 16.03.1999 which was abundantly clear that she had been confirmed as a nursery teacher in the Day Care. We also deem it appropriate to extract this letter of 16.03.1999.

“Ref. No. 13036/99

DATE: 16-3-99

MS. KIRTI JAIN

NURSERY TEACHER (DAY CARE)

This is to inform you that you have been confirmed in your post w.e.f. 4-7-98 as per approval of D.A.V. College Managing Committee, New Delhi communicated vide their letter no. KHRMS/ASHOK VIHAR/11795 dated 14-12-98.

Sd/-

PRINCIPAL”

10. The parties have placed various letters and documents on record in support of their respective submissions. We deem it appropriate to refer to them in the following manner:-

a. undated letter addressed by the respondent to the appellant but admitting that she is currently teaching in Hansvatika, branch of the appellant.

- b. letter dated 08.08.2005 addressed to the Principal of the appellant admitting that she is a nursery teacher at the Kulachi Day Care, G-Block, Ashok Vihar.
- c. letter dated 29.06.2006 again addressed to the Principal of appellant-Kulachi Hansraj Model School admitting that she is a nursery teacher at Hansvatika Kulachi Day Care, G-Block, Ashok Vihar.
- d. letter dated 17.04.2003 addressed to the Principal through Head Mistress, Kulachi Hansraj Model School (appellant).
- e. letter dated 17.04.2003 addressed to the Principal through Head Mistress, Kulachi Hansraj Model School (Day Boarding).
- f. letter dated 29.04.2003 addressed to the Head Mistress, Kulachi Hansraj Model School Day Boarding.
- g. letter dated 29.06.2006 addressed to the Principal, Kulachi Hansraj Model School.
- h. letter dated 08.08.2005 addressed to the Principal, Kulachi Hansraj Model School.
- i. salary slip for the month of June issued Hansvatika Day Boarding.
- j. salary slips referred to by Mr Agarwal for the months April 2004 and September 2005.

11. The arguments of learned senior counsel for the appellant can be summarised as under:-

i. the respondent did not have the requisite qualifications and was hence employed in the Day Care Centre.

ii. Day Care Centre is not a recognised school and hence could not be covered under Section 10 of the Delhi School Education Act and consequently, the respondent would not be entitled to the benefit of 6th Pay Commission.

iii. the respondent clearly admitted in all her correspondence that she is employed at the Day Care Centre.

iv. confirmation letter was pertaining to the Day Care Centre.

12. The arguments of Mr Agarwal, learned counsel for the respondent, can be summarised as under:-

i. respondent applied with the appellant school.

ii. she was interviewed at the appellant school for employment as a nursery teacher.

iii. appointment letter was issued by the appellant school.

iv. all material letters were addressed by the respondent to the principal of the appellant-school for the purposes of grant of leave, special leave, etc.

v. the salaries were partly issued by the appellant-school. TDS certificates were provided by the appellant-school, copies of which were placed on record by the respondent along with the rejoinder filed before the learned Single Judge.

13. Upon careful examination of all the documents, placed on record, it leaves no room for doubt that the respondent was appointed by the appellant which is evident upon reading the appointment letter which we have extracted in paragraphs foregoing. What emerges upon careful examination of the documents placed on record is that the respondent was asked to work at the Hansvatika which is the Kulachi Day Care Centre which is attached to the appellant institution. But for all practical purposes she addressed all her communications to the Principal of the appellant. To say, that the respondent was not employed by the appellant on account of her lack of qualifications is not borne out from any communication or any document placed by either of the party on record and thus it cannot be accepted. The learned Single Judge has taken into account that it is a privilege of the employer to see where the services of employee can be utilized but that could not derogate the fact that the respondent was in fact appointed by the appellant-school and was an employee of the appellant –school. We find no infirmity with the view so taken by the learned Single Judge. No doubt the form which has been filled up for the purposes of provident fund mentions the name of the school as Kulachi Hansvatika Day Boarding, however, it is for the employer to explain as to why such a form was made to be filled when part of salary was being paid by the appellant. The appellant is unable to explain as to why same salary slips are from the appellant while the others are from Day Boarding. There is reference of the income tax deducted at source certificates, the details of which have been given in the rejoinder, which has been filed, which we extract herein below:-

“That a number of Income Tax deducted at source Certificate Form 16 of TDS have been issued by Kulachi Hansraj Model School, Ashok Vihar, Delhi-110052 to the petitioner for filing

*the income tax returns each year. Copies of five of such certificates are annexed herewith and marked **annexure P-9**.*

The details are given as under:-

<i>S. No.</i>	<i>Annexure No.</i>	<i>Certificate/ Form</i>	<i>Period</i>	<i>Employer shown</i>	<i>Signed by</i>
1.		Form no. 16	1 st April 1998 to 31 st March 1999	Kulachi Hansraj Model School, Ashok Vihar-I, H Block, Delhi - 110052	Head Mistress
2		Form no. 16	1 st April 1999 to 31 st March 2000	Kulachi Hansraj Model School, Ashok Vihar-I, H Block, Delhi - 110052	Mrs. P. Dutta Principal Kulachi Han Raj Model School, Ashok Vihar-III, Delhi-52
3		Income Certificate	2002-2003	Kulachi Hansraj Model School, Ashok Vihar, Delhi - 110052	Head Mistress
4		Income Certificate	2002-2003	Kulachi Hansraj Day Boarding School, G-Block, Ashok Vihar, Phase-I, Delhi - 110052	Head Mistress
5		Form 16	1 st April 2003 to 31 st March, 2004	Kulachi Hansraj Model School, Ashok Vihar-I, H Block, Delhi - 110052	Mrs. P. Dutta Principal Kulachi Han Raj Model School, Ashok Vihar-III, Delhi-52

14. There is no explanation that if according to the appellant the respondent had no connection whatsoever with the appellant, why tax was deducted at source and Form 16 for deduction of TDS was provided to the employee from the appellant-school. It is not necessary for this Court to go into the internal arrangements of the appellant-school. Thus, we find no infirmity in the order passed by the learned Single Judge which requires interference.

15. The LPA, in our view, is without any merit and the same is, accordingly, dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 19, 2018
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