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

+ WP (C) 1363/2013

MEENA OBEROI Petitioner

Through: Mr. Mukesh Anand, Adv.

versus

CAMBRIDGE FOUNDATION SCHOOL AND ORS

..... Respondents

Through: Mr. Pramod Gupta, Adv. with
Ms. Manogya Singh and Ms.
Ankita Khanna, Adv. for R-1
and 2
Ms. Latika Choudhary, Adv. for
R-3 and 4

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T

05.12.2019

1. The petitioner was appointed as Office Assistant, in the Respondent No.1 School (hereinafter referred to as “the School”), on 4th July, 1991, and was confirmed, on the post, in 1993.

2. Consequent on the acceptance, of the recommendations of the 6th Central Pay Commission (hereinafter referred to as “the 6th CPC”) by the Central Government, and the extension, thereof, to teachers, the petitioner represented, on 21st April, 2009, to the School, objecting to the fixation of her pay without extending, to her, the benefit of the said recommendations. This was followed by reminders, dated 5th May, 2009 and 26th May, 2009.

3. On 26th May, 2009, the School wrote to the petitioner, stating that an error had been committed, while fixing her pay, at the time of her initial appointment in 1991, which had been rectified by the School. Chagrined, the petitioner protested, *vide* representation dated 30th June, 2009. This communication, avers the petitioner, elicited no response.

4. On 21st July, 2009, an Office Order was issued by the School, stating that it had been decided to discontinue the earlier existing system of collection of fee and charges, in cash, from parents of students studying in the School, w.e.f. 1st June, 2009. This change, the Order went on to state, rendered the petitioner surplus, and her continuance in the School “un-productive, un-utilized, financial burden on the school”. Citing an Order, dated 11th February, 2009, issued by the Director of Education (hereinafter referred to as “the DoE”), requiring the School to find out ways to minimise passing on of its financial burden onto the parents of the students enrolled with it, the Order dispensed with the services of the petitioner, with immediate effect. Two cheques, for ₹ 55,731/–, and ₹ 11,420/–, representing the petitioner’s pay for the month of July, 2009, were also enclosed with the Order.

5. After representing, unsuccessfully, against the aforesaid Order, dated 21st July, 2009, *vide* communication, dated 4th August, 2009, the petitioner preferred a statutory appeal, under Section 8(3) of the Delhi School Education Act, 1973 (hereinafter referred to as “the DSE

Act”), before the Delhi School Tribunal (hereinafter referred to as “the Tribunal”) thereagainst.

6. Before the Tribunal, the petitioner advanced, principally, five submissions. Firstly, it was contended that her disengagement, by the School, was by way of retaliation to her repeated representations, seeking extension, to her, of the benefit of revised pay fixation, as recommended by the 6th CPC. Secondly, the petitioner contended that the decision, to treat her as surplus, was unjustified on facts as well as in law. Thirdly, the petitioner sought to invoke Rule 46 of the Delhi School Education Rules, 1973 (hereinafter referred to as “the DSE Rules”), which did not entitle the Management of a School, to close down the school or any existing class, therein, without prior approval of the DoE. Fourthly, it was submitted that the impugned decision was issued in violation of Section 8(2) of the DSE Act, which required prior approval, of the DoE, to be obtained by the School before terminating the services of any its employees. Fifthly, the petitioner alleged that her removal, which amounted to “retrenchment” as defined in Section 2 (oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), had been effected in violation of Section 25F thereof.

7. For ready reference, Sections 8(2) of the DSE Act, Section 2(oo) and 25F of the ID Act and Rule 46 of the DSE Rules, may be reproduced thus:

Section 8(2), DSE Act

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

(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his services be otherwise terminated except with the prior approval of the Director.”

Section 2(oo), ID Act

“(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health;”

Section 25F, ID Act

“25F. Conditions precedent to retrenchment of workmen.—
No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

Rule 46, DSE Rules

“46. Closing down of a school or any class in a school. —

No managing committee shall close down a recognised school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the Director, who shall, before giving such an approval, consult the Advisory Board.”

8. The School contended, *per contra*, before the Tribunal, that, in view of the decision, by the School, to discontinue, w.e.f. 1st June, 2009, the system of collection of fee, from the parents, at the fee collection counter, the entire fee collection department had become surplus. This department consisted of Ms. Aruna Sikka, Ms. Sushma Sharma and the petitioner, in that order of seniority. Ms. Aruna Sikka, being due to retire on 30th September, 2009, was retained. The Accounts Department of the School could accommodate only one

person, and Sushma Sharma, being senior to the petitioner, was preferred. The petitioner could not be accommodated in any other capacity in the school, as a result whereof, the School contended, her continuation in its services was unproductive, underutilised and a financial burden. It was for this reason, contended the School, that the petitioner's services were dispensed with, on 21st July, 2009, after paying her notice pay and salary, for the month of July, 2009, by way of two cheques, along with a separate cheque, towards her terminal dues, for ₹ 1,97,007/-. The School relied on Rule 47 of the DSE Rules, to contend that the termination of service of surplus employees was permissible. The decisions of this Court, in *Prabhu Dayal Public School v. Prahlad*¹ and *Prabhu Dayal Public School v. Anirudh Singh*² were relied upon. For ready reference Rule 47 of the DSE Rules is reproduced thus:

“47. Absorption of surplus employee, etc. —

(1) Where as a result of –

(a) the closure of an aided school or any class or classes in any aided school; or

(b) withdrawal of recognition from an aided school; or

(c) withdrawal of aid from an aided school,

any student or employee becomes surplus, such student or employee, as the case may be, may be absorbed as far as practicable, in such Government school or aided school as the Administrator may specify:

Provided that the absorption in Government service of any employee who has become surplus shall be subject

¹ ILR (2008) Supp. 8 Delhi 182

² (2012) 1 LLJ 737

to the availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite qualifications for the post and has not been retrenched by the management of the aided school on any ground other than the ground of closure of the school or any class or classes of the school, or withdrawal of recognition or aid from the school:

Provided further that where any such surplus employee is absorbed in a Government school, he shall be treated as junior to all the persons of the same category employed in the Government schools on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided school, he shall rank as junior to all the persons of the same category employed in that school on the date immediately preceding the date on which he is so absorbed.

(2) Where any surplus employee is absorbed under sub-rule (1) —

(a) the salary and other allowance last drawn by him at the school from which he has become surplus shall be protected;

(b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with the rules and regulations in force in that school in relation to provident fund; and

(c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognised aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits.

(3) Without prejudice to the provisions of sub-rules (1) and (2), where an employee becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such employee may be absorbed

in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify, and if the class or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is re-introduced by such school, or strength of the staff of the former school is increased, such employee shall be reabsorbed in the former school; but if such re-absorption does not take place within a period of five years from the date of absorption of such employee in the Government or aided school, such employee shall be regularly absorbed in such Government or aided school, as the case may be.

(4) Re-absorption of an employee in a former school shall not affect his continuity of service or his seniority in relation to that school or his emoluments, provident fund, gratuity and other retirement benefits.”

9. *Vide* the impugned Order/judgment, dated 4th December, 2012, the Tribunal has dismissed the petitioner’s appeal. Reliance has been placed, by the Tribunal, on the judgments, of this Court, in ***Prabhu Dayal Public School v. Prahlad***¹ and ***Prabhu Dayal Public School v. Anirudh Singh***².

10. It has been held, by the Tribunal, that, as the School closed down its fee Collection Department – similar to the closure of the Transport Department, in the two ***Prabhu Dayal Public School*** judgments *supra* – retrenchment of the workman, rendered surplus as a result, could not be treated as unjustified.

11. ***Prabhu Dayal Public School v. Anirudh Singh***² also relied on the judgment, of a Division Bench of this Court in ***Kathuria Public***

*School v. Director of Education*³, to the effect that unaided recognised schools were not required to seek prior approval of the Directorate of Education in terms of Section 8(2) of the DSE Act, before dismissing or removing an employee from service.

12. As such, the retrenchment of the petitioner, as the junior most employee in the fee collection department, was found to be justified.

13. The Tribunal also found that, though the petitioner had not been paid retrenchment compensation, at the time of her disengagement by the School, on 21st July, 2009, the School had, during the course of proceedings, before the Tribunal, offered ₹ 1,60,000/-, by way of cheque, towards retrenchment compensation. In the opinion of the Tribunal, the ends of justice would be met if the said amount was directed to be paid to the petitioner, with interest @ 18 % per annum, computed quarterly.

14. Aggrieved by the aforesaid order, dated 4th December, 2012, of the Tribunal, the petitioner has moved this Court by means of the present writ petition.

Submissions and Analysis

15. I have heard Mr. Mukesh Anand, learned counsel for the petitioner, Mr. Pramod Gupta, learned counsel for Respondent Nos. 1

³ (2005) 123 DLT 89

and 2 as well as Ms. Latika Choudhary, learned counsel for Respondent No. 3, at length.

16. Learned counsel essentially reiterated their respective submissions, advanced before the learned Tribunal.

17. Having heard learned counsel and perused the material on record, as well as the extant legal position that obtains in law, I am of the opinion that, while the petitioner has no case, on the first three grounds canvassed by her, before the learned Tribunal, on the fourth and fifth grounds, she is bound to succeed.

18. The first contention advanced by the petitioner, before the learned Tribunal, was that her disengagement, by the School, was by way of a counter-blast, to the repeated representations of the petitioner, regarding fixation of her pay. There is no material, on record, to support this allegation.

19. Allegations of bias are not to be easily accepted, and merit consideration only where there is material, overt or covert, reflective of bias. The submission that, merely because she was repeatedly representing, regarding fixation of her pay, the School was biased against her, needless to say, merits rejection outright.

20. Representations, regarding service conditions, are a matter of common occurrence in all establishments, Governmental as well as Non-Governmental, and it is facile to suggest that such representations

result in bias, on the part of the establishment, against the representing employer/employees. It is not as though the petitioner had made personal allegations, in her allegations, against any of the senior functionary of the School. As such, the submission, of the petitioner, that the decision to remove her from service was actuated by bias, is rejected.

21. The petitioner contends, secondly, that there was no justification to treat her as surplus.

22. Whether any particular employee has, or has not, become surplus, is essentially a matter of administrative discretion, of the establishment concerned. If there is no material, whatsoever, to indicate that the employee had actually become surplus, a court may legitimately intervene; however, if cogent reasons, for treating an employee as surplus are adduced, the legitimacy, or sufficiency, or such reasons, cannot be subject matter of judicial scrutiny. If a court reaches the conclusion, on the facts of any particular case, that an employee is being treated as surplus, merely to find a convenient way of easing him out, the decision would undoubtedly merit interference. Else, the court would be transgressing the limits of its jurisdiction, in interfering with the decision of the establishment, regarding any particular employee, or employees, having become surplus.

23. In the present case, the School has adduced cogent and convincing reasons for treating the petitioner as surplus. According to the School, a policy decision was taken, to discontinue the system of

taking of fees, and charges payable by students, at the counter. This, according to the School, resulted in the services of the petitioner becoming surplus, as she was essentially engaged in receipt of fees, over the counter, from parents. There is no cogent material, on the record, to question the correctness of these facts – which have been accepted by the learned Tribunal in the impugned Order/judgment, dated 4th December, 2012 – or, consequently, of the services of the petitioner having, thereby, been rendered surplus. This Court cannot sit in appeal over the said decision.

24. As such, the contention, of the petitioner, that her services were needlessly being treated as surplus, is also rejected.

25. Thirdly, the petitioner relies on Rule 46 of the DSE Rules. This reliance, too, is, in my view, without substance, as Rule 46 of the DSE Rules, dealt with closure of School, or of any class of the School. Neither has the School been closed, nor was any class, in the School, closed. The decision, of the School, to discontinue with the system of collection of fees and charges, from the parents, across the counter, cannot, in my view, be treated as closure of a “class”, by any stretch of imagination.

26. This submission of the petitioner, too, is, therefore, in my view, without merit.

27. The fourth and fifth submissions of the petitioner, which are predicated on Section 8(2) of the DSE Act and on Section 25F of the

ID Act, are, however, entitled to succeed, in view of the said provisions, and the prevalent legal position, relating thereto.

28. The contention of the petitioner, predicated on Section 8(2) of the Act, is that, by reason of the said provision, her service could not have been disengaged by the School without the prior approval of the DoE.

29. Section 8(2) ordains that no employee of a recognised private school shall be dismissed, removed or reduction in rank, nor shall his service be otherwise terminated except with the prior approval of DoE.

30. The expressions “dismissed”, “removed”, “reduced in rank” and “otherwise ... terminated” are comprehensive and all-encompassing in nature and embrace, within themselves, every possible contingency, by which the services of an employee of the school are disengaged. The intention, of the legislature, to cover all forms of disengagement of employees, is manifest by the cautionary use of the word “otherwise”, in the expression “nor shall his service be otherwise terminated”.

31. The wide amplitude of the expression “otherwise” has been noticed, by the Supreme Court, in several decisions.

32. While examining the expression “or otherwise”, as contained in Article 356(1) of the Constitution of India – which empowers the

President of India to proclaim a state of emergency “on receipt of a report from the Governor of a State or “otherwise”, the Supreme Court held, in *S.R. Bommai v. U.O.I*⁴, the expression “otherwise” meant “in a different way” and (was) of a very wide import and (could not) be restricted to material capable of being tested on principles relevant to admissibility of evidence in Court of Law.” In *U.O.I. v. Brahma Dutt Tripathi*⁵, the Supreme Court was concerned with the expression “or otherwise” as it occurred in Section 9 of the National Cadet Corps Act 1948, which reads thus:

“7. The Central Government may provide for the appointment of officers in or for any unit of the Corps either from amongst members of the staff of any university or school *or otherwise* and may prescribe the duties, powers and functions of such officers.”

(Emphasis supplied)

The Supreme Court held that the expression “or otherwise” related to other members of the corps other than the staff of any university or school, including a student, who was a member of the corps. Similarly, in *Lila Vati Bai v. State of Bombay*⁶, it was held that the legislature when it used the words “or otherwise” apparently intended to cover other cases which may not come within the meaning of the preceding clauses. Other decisions, of the Supreme Court, which notice the overarching scope of the expression “or otherwise” are *Nirma Industries Ltd v. Director General of Investigation and Registration*⁷, *Sunil Fulchand Shah v. U.O.I.*⁸ and *Tea Auction Ltd. v. Grace Hill Tea Industry*⁹.

⁴ (1994) 3 SCC 1

⁵ (2006) 6 SCC 220

⁶ AIR 1957 SC 521

⁷ (1997) 5 SCC 279

33. It is also important to note, in this context, that the expression used in Section 8(2), is not merely, “or otherwise”, but is “or otherwise terminated”. The expression “termination” etymologically, refers to the determination of the relationship, between the employer and the employee. Cases which result in the determination of the said relationship would, therefore, amount to “termination” and, in my view, the expression “or otherwise terminated” is expressive of the legislative intent to include all such cases within the provisions.

34. Equally, the expression “remove” has, simply but felicitously, been explained, by the High Court of Mysore in *State of Mysore v. B. Chikkavenkatappa*¹⁰, as meaning “to take off or away from the place occupied”. Every case in which an employee is taken off, or taken away, from the place occupied by him in the establishment would, therefore, amount, etymologically, to “removal from service”. For this reason, the expression “removed from service” has been held, by the Supreme Court, to be synonymous with termination of service¹¹.

35. Clearly, therefore, every type of disengagement, from service, would be covered by the expressions “dismissed”, “removed”, or “otherwise ... terminated”, as employed in Section 8(2) of the DSE Act. Cases of cessation of the employer-employee link at the instance of employee, such as cases of abandonment of service would not,

⁸ (2000) 3 SCC 409

⁹ 2006 12 SCC 104

¹⁰ 1964 SCC OnLine Kar 141

¹¹ R. P. Kapur v. S. Pratap Singh Kairon, AIR 1964 SC 295

therefore, attract the provision. Where, however, by an act of the employer, the employee is removed from the employer's services, the applicability 8(2) of the DSE Act cannot be gainsaid.

36. A case of disengagement from service, on the ground that the post or the employee had become surplus, would, consequently, also be covered thereby.

37. On the issue of whether Section 8(2) of the DSE Act applies to orders of dismissal, removal, reduction in rank, or termination, of employees, *by private unaided schools*, however, the law has, over the period of time, been in a state of flux, though the waters appear, now, to be stilled.

38. In *Kathuria Public School*³, a Division Bench of this Court, speaking through Sanjay Kishan Kaul, J. (as he then was), held, relying on the classic decision of the nine-judge Constitution Bench of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka*¹², that private unaided schools were entitled to maximum autonomy in their affairs and could not, therefore, be subjected, in the conducting thereof, to the requirement of having to seek prior approval from the DoE. It was, therefore, held that Section 8(2) of the DSE Act, which required prior approval of the DoE, before dismissing, removing, reducing in rank, or otherwise terminating an employee, would not apply to private unaided schools.

¹² (2002) 8 SCC 481

39. Adverting, now, to the two *Prabhu Dayal Public School* decisions, in *Prabhu Dayal Public School v. Prahlad*¹ and *Prabhu Dayal Public School v. Anirudh Singh*², a reading thereof reveals that these two judgments had their genesis in a decision, of the *Prabhu Dayal Public School*, to disengage the services of certain welders and helpers, on the ground that the posts of welders and helpers were abolished, resulting in their having been rendered surplus. Prahlad headed one group of workmen and Anirudh Singh headed another group of workmen, who had been thus removed. The workmen initially approached the learned Tribunal. The learned Tribunal, while holding that the concept of retrenchment was alien to the DSE Act, nevertheless held the termination, of the workmen, by the School, to be illegal. Aggrieved thereby, the School approached this Court, in two batches of writ petitions, which were decided by the two *Prabhu Dayal Public School* decisions *supra*, rendered by a learned Single Judge in each case.

40. Before this Court, the workmen, i.e. Prahlad and others in one case and Anirudh Singh and others in the second, invoked Section 8 (2) of the DSE Act, as well as Section 25F of the ID Act.

41. In *Prabhu Dayal Public School v. Prahlad*¹, the learned Single Judge of this Court, while noting the reliance, by the workmen, on the aforesaid two provisions, did not return any findings regarding the applicability of Section 8(2) of the DSE Act, but held that the ID Act, applied to removal of workmen by schools and that, as the workmen

had been paid retrenchment compensation, and were removed as their posts had become surplus, no illegality had been committed.

42. This decision was followed in *Prabhu Dayal Public School v. Anirudh Singh*², which, however, also addressed the reliance, by the workmen, on Section 8(2) of the DSE Act and, relying, for the said purpose, on *Kathuria Public School*³, held that prior approval of the DoE was not required, before removing the workmen.

43. As has been noted hereinabove, the learned Tribunal has, in the present case, relied on the aforesaid two *Prabhu Dayal Public School* decisions.

44. The law enunciated by the Division Bench in *Kathuria Public School*³ was, however, reversed, by the Supreme Court in *Raj Kumar v. Director of Education*¹³. In *Raj Kumar*¹³, the appellant therein, was employed as a driver by the DAV Public School which, consequent to his services having been rendered surplus, terminated his services, *vide* letter dated 25th July, 2003. Raj Kumar approached this Court, assailing his termination, by way of WP (C) 957/2003, which was disposed of, by this Court, *vide* judgment and order dated 25th February, 2004, in which this Court, holding that Section 8(2) of the DSE Act was very wide and encompassed all kinds of termination, relegated Raj Kumar to the remedy of appeal, available to him under the said Act. Raj Kumar, accordingly, moved the learned Tribunal which, *vide* judgment and order dated 22nd February, 2008, dismissed

¹³ (2016) 6 SCC 541

his appeal, holding that the school had the right to retrench surplus drivers, so long as they complied with the requirements of clauses (a) and (b) of Section 25F of the ID Act. Raj Kumar chose to challenge the said decision, of the learned Tribunal, before this Court, which dismissed his writ petition. Aggrieved thereby, Raj Kumar approached the Supreme Court, which reversed the judgment of this Court, holding the decision, to remove Raj Kumar from service to be vitiated for non-compliance with the mandate of Section 25F of the ID Act, as well as of Section 8(2) of the DSE Act, holding, with respect to the latter provision, that the requirement of obtaining prior approval, of the DoE, before terminating the services of Raj Kumar, was non-negotiable.

45. The attention of the Supreme Court was invited, by the School, to the decision of this Court in *Kathuria Public School*³, regarding which the Supreme Court held thus:

“42. On the other hand, the learned counsel appearing on behalf of the respondent School contends that there was no requirement on the part of the respondent Managing Committee to comply with Section 8(2) of the DSE Act. Reliance is placed on the decision of the Delhi High Court in *Kathuria Public School v. Director of Education*³, wherein Section 8(2) of the DSE was struck down. It was held as under:

“21. If the aforesaid observations of the Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka*¹² are taken to its logical conclusion, it would imply that there should be no such requirement of prior permissions or subsequent approval in matter of discipline of the staff. Thus, whether it is for suspension or disciplinary action, the educational institutions would have a free hand. The safeguard

provided is for a judicial tribunal to be set up to examine the cases.”

43. A Constitution Bench of this Court had held in *T.M.A. Pai Foundation v. State of Karnataka*¹² as under: (SCC pp. 546-48, paras 61 & 64)

“61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged.

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. *In the case of a private institution, the relationship between the management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic inquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary*

relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an Educational Tribunal be set up in each district in a State to enable the aggrieved teacher to file an appeal, unless there already exists such an Educational Tribunal in a State—the object being that the teacher should not suffer through the substantial costs that arise because of the location of the Tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialised tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the Government. *It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee.* The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.”

(emphasis supplied)

44. The learned counsel appearing on behalf of the respondent School submits that not obtaining prior approval for the termination of the services of the appellant is thus, justified.

45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent School. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that an order of

termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.

46. The State Legislature is empowered to enact such statutory provisions in relation to educational institutions, from Schedule VII List II Entry 11 of the Constitution of India, which reads as:

“11. *Education including universities....*”
(emphasis supplied)

47. A number of legislations across the country have been enacted which deal with the regulation of educational institutions, which contain provisions similar to the one provided for under Section 8(2) of the DSE Act. One such provision came for consideration before a Constitution Bench of this Court in ***Katra Education Society v. State of U.P.***¹⁴ The impugned provisions therein were certain sections of the amended Intermediate Education Act (U.P. Act 2 of 1921). Section 16-G of the Intermediate Education (Amendment) Act, 1958 provided that the Committee of Management could not remove or dismiss from service any Principal, Headmaster or teacher of a college or school without prior approval in writing of the Inspector. The Amendment Act also contained other provisions providing for governmental control over certain other aspects of the educational institutions. Adjudicating upon the competence of the State Legislature to enact the amending Act, this Court held as under: (AIR pp. 1310-11, paras 8 & 10)

“8. Power of the State Legislature to legislate under the head ‘education including universities’ in Schedule VII List II Entry 11 *would prima facie include the power to impose restrictions on the management of educational institutions in matters relating to education.* The pith and substance of the impugned legislation being in regard to the field of education within the competence of the State Legislature, authority to legislate in respect of the maintenance of control over educational institutions imparting higher

¹⁴ AIR 1966 SC 1307

secondary education and for that purpose to make provisions for proper administration of the educational institutions was not denied. But it was said that the impugned Act is inoperative to the extent to which it seeks to impose controls upon the management of an educational institution registered under the Societies Registration Act and managed through trustees, and thereby directly trenches upon legislative power conferred by List I Entry 44 and List III Entries 10 and 28. This argument has no substance. This Court has in *Ayurvedic and Unani Tibia College v. State of Delhi*¹⁵, held that legislation which deprives the Board of Management of a Society registered under the Societies Registration Act of the power of management and creates a new Board does not fall within List I Entry 44, but falls under List II Entry 32, for by registration under the Societies Registration Act the Society does not acquire a corporate status. It cannot also be said that the pith and substance of the Act relates to charities or charitable institutions, or to trusts or trustees. If the true nature and character of the Act falls within the express legislative power conferred by List II Entry 11, merely because it incidentally trenches upon or affects a charitable institution, or the powers of trustees of the institution, it will not on that account be beyond the legislative authority of the State. The impact of the Act upon the rights of the trustees or the management of a charitable institution is purely incidental, *the true object of the legislation being to provide for control over educational institutions. The amending Act was therefore within the competence of the State Legislature and the fact that it incidentally affected the powers of the trustees or the management in respect of educational institutions which may be regarded as charitable, could not distract from the validity of the exercise of that power.*

10. ... If the management fails to comply with the directions made by the Director, that Officer may after

¹⁵ AIR 1962 SC 458

considering the explanation or representation, if any, given or made by the management, refer the case to the Board for withdrawal of recognition or recommend to the State Government to proceed against the institution under sub-section (4) and the powers which the State Government may exercise after being satisfied that the affairs of the institution are being mismanaged or that the management has wilfully or persistently failed in the performance of its duties, include the power to appoint an Authorised Controller to manage the affairs of the institution for such period as may be specified by the Government. The provision is disciplinary and enacted for securing the best interests of the students. *The State in a democratic set up is vitally interested in securing a healthy system of imparting education for its coming generation of citizens, and if the management is recalcitrant and declines to afford facilities for enforcement of the provisions enacted in the interests of the students, a provision authorising the State Government to enter upon the management through its Authorised Controller cannot be regarded as unreasonable.”*

(emphasis supplied)

From a perusal of the above judgment [*Katra Education Society v. State of U.P.*¹⁴ of the Constitution Bench, it becomes clear that the State Legislature is empowered in law to enact provisions similar to Section 8(2) of the DSE Act.

48. At this stage, it would also be useful to refer to the Statement of Objects and Reasons of the DSE Act, 1973. It reads as under:

“In recent years the unsatisfactory working and management of privately managed educational institutions in the Union Territory of Delhi has been subjected to a good deal of adverse criticism. In the absence of any legal power, it has not been possible for the Government to improve their working. An urgent need is, therefore, felt for taking effective legislative measures providing for better organisation and development of educational institutions in the Union Territory of Delhi, for ensuring security of service of

teachers, regulating the terms and conditions of their employment. ... The Bill seeks to achieve these objectives.”

A perusal of the Statement of Objects and Reasons of the DSE Act would clearly show that the intent of the legislature while enacting the same was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment.

49. In *Principal v. Presiding Officer*¹⁶, a Division Bench of this Court held as under: (SCC p. 503, para 7)

“7. Sub-section (2) of Section 8 of the Act ordains that subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director of Education. From this, it clearly follows that the prior approval of the Director of Education is required only if the service of an employee of a recognised private school is to be terminated.”

50. The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in *Kathuria Public School*³ by placing reliance on the decision of this Court in *T.M.A. Pai*¹², 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.

¹⁶ (1978) 1 SCC 498

51. The Division Bench of the Delhi High Court, while striking down Section 8(2) of the DSE Act in ***Kathuria Public School***³ has not correctly applied the law laid down in ***Katra Education Society***¹⁴, 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 recognised 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 ***Katra Education Society***¹⁴ 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 ***Frank Anthony Public School Employees' Assn. v. Union of India***¹⁷, is also misplaced as the institution under consideration in that case was a religious minority institution.”

46. There can be no mistaking the tone and tenor of the afore-extracted passages, from the decision in ***Raj Kumar***¹³. The Supreme Court has, in no uncertain terms, held that ***Kathuria Public School***³ was wrongly decided. Equally, the Supreme Court has emphasised the need and necessity of ensuring that, even in the case of private unaided schools, prior approval of the DoE is obtained, before taking any of the actions contemplated by Section 8(2) of the DSE Act. Inasmuch as prior approval of the DoE had not been obtained before terminating Raj Kumar from service, the Supreme Court held that, even on that score, the termination of Raj Kumar was unsustainable in law.

¹⁷ (1986) 4 SCC 707 : (1987) 2 ATC 35

47. **Raj Kumar**¹³ has, recently, been followed by the Supreme Court in **Marwari Balika Vidyalaya v. Asha Srivastava**¹⁸. In that case, a show cause notice had been issued to Asha Srivastava, the first respondent before the Supreme Court, alleging breach of discipline on her part. On 20th February, 2001, she was terminated from service, the letter of termination having annexed, with it, two cheques.

48. Asha Srivastava approached the High Court of Calcutta by way of WP 889/2001, which was dismissed by a learned Single Judge, *vide* order dated 20th August, 2001. A writ appeal preferred thereagainst, however, was allowed by the Division Bench of the High Court *vide* judgment dated 30th January, 2009, which set aside the order, dated 20th August, 2001, terminating the services of Asha Srivastava. The School carried the matter to the Supreme Court.

49. Though, undoubtedly, the case before the Supreme Court, in **Marwari Balika Vidyalaya**¹⁸ did not arise under the DSE Act, the Supreme Court, nevertheless, placed considerable reliance on its earlier decision in **Raj Kumar**¹³, whereafter, in para 22 of its judgment, the Supreme Court concluded thus:

“22. Coming to the question of relief of reinstatement and back wages, in view of the factual matrix of the instant case, we have taken note of the fact that *the approval of the concerned authorities was not obtained* and stigmatic order of dismissal was passed in the most arbitrary manner. It is not in dispute that no departmental enquiry was held.”

(Emphasis supplied)

¹⁸ 2019 SCC OnLine SC 408

50. In so holding, the Supreme Court relied, *inter alia*, on its earlier decision in **Raj Kumar**¹³, regarding which, it was held, in paras 13 and 14 of the report, as under:

“13. In **Raj Kumar v. Director of Education**¹³ this Court held that *Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed:*

“45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent School. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.”

14. This Court has laid down in **Raj Kumar v. Director of Education**¹³ that *the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short, ‘the DSE’) was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. 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.*”

(Emphasis and underscoring supplied)

51. **Raj Kumar**¹³ has also been relied upon by this Court, as the basis to set aside orders removing, or terminating, employees from service, in various decisions, including **Dr. Swami Rampal Singh Mission School v. Sh. Harminder Pal Singh Bindra**¹⁹, **Management of Rukmani Devi Public School v. Directorate of Education**²⁰ and **Salwan Public School v. Directorate of Education**²¹.

52. It is required to be noted, here, that a Division Bench of this Court has, in **Red Roses Public School v. Reshmawati**²², opined that **Raj Kumar**¹³ could not be applied to cases in which the employee was removed or was terminated from service, prior to the rendering of the decision in **Raj Kumar**¹³. In other words, the said decision opines that **Raj Kumar**¹³ could only be applied prospectively. Paras 21 to 24 of the decision merit reproduction, thus:

“21. So far as the aspect of non-compliance of Section 8(2) of the Delhi School Education Act is concerned, it is clear that the decision in **Kathuria Public School**³ rendered by a Division Bench of this Court was holding sway right from the year 2005 till 2016, when the said decision was upset by the Supreme Court in **Raj Kumar**¹³. The appellant, therefore, could not be faulted for non-compliance of the said provision. Pertinently, even the Director of Education took the stand before the Appellate Tribunal that there was no necessity of obtaining the prior approval of the Director under Section 8(2) in the light of the decision of this Court in **Kathuria Public School**³.

22. No doubt, the well settled position in law is that the Supreme Court merely declares the law as it has always been

¹⁹ 2017 SCC OnLine Del 618

²⁰ Judgment dated 5th March, 2018 in WP (C) 6156/2016

²¹ 2018 SCC OnLine Del 12556

²² 2019 SCC OnLine Del 10937

when it renders its decision and, therefore, the position of law, as declared by the Supreme Court would be taken to have prevailed in the past as well even since the law was framed, unless the Supreme Court limits the application of the law declared by it only prospectively. But, the Director of Education has himself issued the order dated 20.05.2016, stating that after the decision of Supreme Court in **Raj Kumar¹³**, the prior approval of the Director of Education should be obtained from the date of the judgment in **Raj Kumar¹³**. Thus, in our view, it does not lie in the mouth of the learned counsel for the Director of Education to now contend that in the facts of the present case as well, compliance of Section 8(2) should be treated as mandatory. Therefore, even the Director of Education has sought to apply the decision in **Raj Kumar¹³** prospectively, and not from an anterior date. Moreover, the decision in **Kathuria Public School³** (*supra*) was not upset by the Supreme Court, either because the Director of Education accepted the said decision, or its Special Leave Petition before the Supreme Court was dismissed. Learned counsel for the appellant submits that the appeal preferred from **Kathuria Public School³** was dismissed by a three-Bench Judge *in limine*.

23. A perusal of the relevant extract of **Raj Kumar¹³** also shows that the Supreme Court rejected the reliance placed by the management on **Kathuria Public School³** on the premise that the decision in **Kathuria Public School³** was rendered after the notice of retrenchment was served on the employee.

24. We are also of the view that giving effect to the decision in **Raj Kumar¹³** from an anterior date would lead to re-opening of cases and claims, *which are already settled in terms of Kathuria Public School³*. We, therefore, reject this submission.”

(Emphasis supplied)

53. It is apparent, from a reading of the aforesaid passages, as extracted, from **Red Roses Public School²²**, that the Division Bench of this Court chose to apply the law, enunciated in **Raj Kumar¹³** prospectively, on the ground that giving effect to the decision in **Raj Kumar¹³** from an anterior date would lead to reopening of claims

which stood settled in terms of **Kathuria Public School**³. Inasmuch as the present proceedings are pending, as on date, before this Court, it cannot be said that following **Raj Kumar**¹³ would result in unsettling, or reopening of, any claim of the petitioner, which stands settled. The main consideration on which the Division Bench, in **Red Roses Public School**²², chose not to follow **Raj Kumar**¹³ may not, therefore, apply in the present case.

54. That apart, a reading of the decision in **Red Roses Public School**²² reveals that the attention of this Court was not invited, in the said case, to the judgment rendered by the Supreme Court in **Marwari Balika Vidyalaya**¹⁸. **Marwari Balika Vidyalaya**¹⁸ was also a case in which the services of the respondent Asha Srivastava were terminated on 20th February, 2001, prior to the rendition of decision in **Raj Kumar**¹³. Even so, relying on **Raj Kumar**¹³, the Supreme Court upheld the setting aside, of the termination of the respondent Asha Srivastava, on the ground that requisite approval, of the higher authorities, had not been obtained.

55. That apart, a reading of paras 13 and 14 of the report in **Marwari Balika Vidyalaya**¹⁸, which have been reproduced in para 50 hereinabove, underscore the salutary purpose behind requiring that every order of termination and dismissal of an employee must, prior thereto, obtain approval of the DoE. This, the Supreme Court, has emphasized, is a procedural safeguard “intended to avoid arbitrary and unreasonable termination/dismissal of employee of *even recognized private school*”.

56. In view of this opinion of the law, enunciated in *Marwari Balika Vidyalaya*¹⁸ by the Supreme Court, it would, in my opinion, not be open to this Court to continue applying the law laid down in *Kathuria Public School*³ which defeats the salutary purpose of obtaining of prior approval, as underscored by the Supreme Court in *Marwari Balika Vidyalaya*¹⁸. *Kathuria Public School*³ having been disapproved, in no uncertain terms, not in one, but in two judgments of the Supreme Court, continuing reliance, by this Court, on the principles enunciated in *Kathuria Public School*³, would, in my opinion, do complete disservice to Article 142 of the Constitution of India. Once the Supreme Court has held a decision, laid down by the High Court, to be bad in law, it is highly questionable whether any High Court could, thereafter, apply the said decision at all, irrespective of the practical difficulties which may, or may not, arise if the decision were not to be applied.

57. For all these reasons, I am in agreement with the submission, of Mr. Mukesh Anand, that the order, dated 21st July, 2009, terminating the services of the petitioner, cannot sustain, as it has been issued without requisite prior approval of the DoE as required by Section 8(2) of the DSE Act.

58. The fourth ground urged, by the petitioner, before the learned Tribunal has, therefore, in my view, substance, and ought to have been accepted.

59. The fifth ground of challenge, as urged by the petitioner, before the learned Tribunal, viz., that the impugned order, dated 21st July, 2009, was issued in violation of provisions of Section 25F of the ID Act, too, in my opinion, has merit. The decisions, already cited hereinabove, clearly establish, beyond doubt, that the termination of the petitioner's services amounted to "retrenchment", as defined in the ID Act, and was, therefore, required to comply with the provisions of Section 25F. Indeed, the learned Tribunal has itself acknowledged this fact.

60. Having done so, and having also acknowledged the fact that Section 25F was infringed, as retrenchment compensation was not paid to the petitioner, at the time of her removal from service, the learned Tribunal has somewhat surprisingly, glossed over this lapse, by accepting the amount of ₹ 1,60,000/-, paid during the proceedings before it, as having cured the lapse, merely offering as a consolation prize, as it were, additional payment by way of interest thereon.

61. In my view, this is completely proscribed by law.

62. Section 25F of the ID Act sets out the conditions *precedent* to retrenchment of workman, and postulates, unambiguously, that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer *until, inter alia*, the workman has been paid, *at the time of retrenchment*, compensation, in terms of the said section.

63. There is no compromise on a statutory edict. It stands fossilized, in jurisprudence the world over, from the times of *Taylor v. Taylor*²³ and *Nazir Ahmad v. King Emperor*²⁴, both of which have been followed by the Supreme Court in *State of U.P. v. Singhara Singh*²⁵ that, if the law requires an act to be done in a particular manner, that act has to be done in that manner, or not done at all. Expressed otherwise, if the law prescribes a particular manner, in which a particular act is to be done, all other manners of doing that act, thereby, stand proscribed.

64. Section 25F requires retrenchment compensation to be paid *at the time of retrenchment of the employee, and at no later point of time*. Payment, at a later point of time, irrespective of the amount paid, cannot cure the failure to follow the mandate of Section 25F. If retrenchment compensation is not paid at the time of removal of the employee, the retrenchment of the employee is void *ab initio*.

65. Reference may, in this context, be invited to the decisions in *Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukherji*²⁶, *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh*²⁷, *Anoop Sharma v. Executive Engineer, Public Health Division No.1*

²³ (1875) LR 1 Ch D 426

²⁴ 1936 SCC OnLine PC 41 : (1935-36) 63 IA 372

²⁵ AIR 1964 SC 358

²⁶ (1977) 4 SCC 415

²⁷ (1990) 3 SCC 682

***Panipat (Haryana)*²⁸ and *Sudharshan Rajpoot v. Uttar Pradesh State Road Transport Corporation*²⁹.**

66. The learned Tribunal, therefore, was manifestly in error in treating the payment of ₹ 1,60,000/-, made by the School *during the pendency of the proceedings before it*, as representing retrenchment compensation, and directing interest to be paid thereon.

67. It is undisputed that at the time of removal of the petitioner from service, no retrenchment compensation had been paid to her. The removal of the petitioner from service, therefore, clearly infringed Section 25F of the ID Act, and was, therefore, vitiated on this ground as well.

Conclusion

68. Resultantly, I am of the opinion that the removal of the petitioner from service, being violative of Section 8(2) of the Delhi School Education Act, 1973, as well as of Section 25F of the Industrial Disputes Act, 1947, cannot sustain either in law, or on facts, and deserves, therefore, to be set aside.

69. Resultantly, the impugned Order/judgment, dated 4th December, 2012, of the learned Tribunal, as well as the removal/termination, from service, of the petitioner, *vide* order dated 21st July, 2009, are hereby quashed and set aside.

²⁸ (2010) 5 SCC 497

²⁹ (2015) 2 SCC 317

70. The petitioner is, therefore, directed to be reinstated, in service, by the School, forthwith. In the facts of the case, the petitioner shall also be entitled to be paid 50% of the back wages, which she would have drawn, had she not been terminated from service. Payment of the said amount shall be made, by the School, within a period of four weeks from the date of receipt, by the School, of a certified copy of this judgment.

71. Inasmuch as the learned Tribunal has not opined on the question of pay fixation, I, too, refrain from expressing any opinion thereon. The petitioner would, however, be at liberty to agitate the said issue separately, by way of appropriate proceedings, in accordance with law.

72. The writ petition is accordingly allowed to the aforesaid extent, with no order as to costs.

C. HARI SHANKAR, J.

DECEMBER 05, 2019

dsn/HJ