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

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Date of Decision: 15.10.2019

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LPA 516/2019

RED ROSES PUBLIC SCHOOL

..... Appellant

Through: Mr. Kamal Gupta, Adv.

versus

RESHMAWATI & ANR

..... Respondent

Through: Mr. Suryakant Singla with Ms.
Rimjhim Naudiyal, Advs. for R-1.
Mr. Naushad Ahmed Khan with Mr.
Zahid Hanief and Ms. Manisha
Chauhan, Advs. for DOE.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (ORAL)

1. In the Letters Patent Appeal, the judgment dated 01.07.2019 rendered by the learned Single Judge is assailed by the appellant management. The respondent was appointed as a sweeper by the appellant school vide appointment letter dated 01.07.1989. However, her identity card described her as an Aaya.

2. While she was in service, she along with several other employees had preferred a Civil Suit No. 522/2011 to claim the benefits of pay and perks as admissible under the Sixth Central Pay Commission Report.

3. That suit was referred to mediation. In mediation, the parties arrived at a settlement on 05.06.2012. The respondent also signed the said

settlement, wherein she was described as a sweeper. She also received payment, like others, under the said settlement.

4. On 26.10.2012, the respondent was issued a charge sheet. The articles of the charge was as follows:

“Article of charge-I

Smt. Resham Wati while working as Sweeper in Red Roses Public School, New Delhi refused to sign the duty charge dated 16.08.2012 after its contents were explained to her in Hindi; she also refused to discharge duties assigned to her in the said chart, defeating the very purpose of optimum utilization of class IV staff in the school.

She thereby knowingly and wilfully neglected her duties violating code of conduct Rule 123 sub-rule (1)(a)(i) of Delhi School Education Rules 1973 and showed disrespect to the constituted authority violating code of conduct Rule 123 sub-rule (1)(c)(ii) of the DSER 1973.

Article of charge II

Smt. Resham Wati while working as sweeper in the Red Roses Public School New Delhi made false entries in her attendance as (i) 7:30 a.m. when she actually attended the school at 8 a.m. during the period 28.08.12 to 05.09.12 and (ii) 8 a.m. on 12.09.12 when she had taken half day's leave and actually came to the school at 10 a.m. and thus committed act of moral turpitude involving breach of sub-rule (1)(b)(xvii) of Rule 123 of DSER 1973.

Article of charge III

Smt. Resham Wati while working as sweeper in the Red Roses Public School New Delhi deliberately failed to return the old identity card for replacing it with the newly printed card despite verbal and written reminders dated 24.09.12, 01.10.12

and 10.10.12 and also defiantly refused to wear the new one on duty, thereby committed misconduct of not obeying the – school instructions and instead arrogantly proclaiming herself as a Ayah for ulterior/vested interest, violating term 11 of the appointment letter dated 19.06.12 and also of code of conduct no. (1)(b)(xvii) of the DSER 1973.

Article of charge IV

Smt. Resham Wati while working as sweeper in the Red Roses Public School New Delhi refused to receive official letters dated 18.09.12 and 24.09.12 asking her to show cause why action should not be taken against her for her acts of defiance and disobedience, thereby showing disrespect to the constituted authority and violated Rule 123(1)(c)(ii) of DSER 1973 and term 11 of the appointment letter dt. 19.06.12.

Article of charge V

Smt. Resham Wati while working as sweeper in the Red Roses Public School New Delhi while failing to abide by written and verbal instructions and refusing to sign/accept notices, orders etc. issued by the school as specified in misconducts alleged in articles of charge I, II, III and IV, has violated the terms and conditions no.4.3, 4.5 and 7 of the Memorandum of Settlement mediated on 05.06.12 and decreed by court of civil judge 1 south district court at Saket, New Delhi on 06.06.12 in suit no. 522/2011 as well as term 11 of the appointment letter dated dt. 19.6.12.”

5. The appellant conducted a departmental enquiry and examined several witnesses to prove the charge. On finding the respondent guilty of the alleged misconduct, she was terminated from service. She preferred an appeal vide Appeal No. 51/2013 before the Delhi School Tribunal, which too was dismissed by the Tribunal on 27.08.2015. There against, the respondent preferred the writ petition i.e. W.P.(C.) No. 11565/2015, which

has been allowed by the learned Single Judge by the impugned order.

6. The learned Single Judge found in favour of the respondent, firstly, that the management proceeded with bias against her, only on account of the fact that she had made a claim in the aforesaid civil suit and soon after the disposal of the said suit, the respondent was sought to be proceeded against on false charges. The second aspect raised by the respondent before the learned Single Judge was that her termination was not in accordance with Section 8(2) of the Delhi School Education Act, which, inter alia, provides that “*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*”.

7. The learned Single Judge found – and this fact is not disputed, that the prior approval of the Director had not been sought by the appellant before terminating the services of the respondent.

8. The submission of learned counsel for the petitioner on the second aspect taken note of hereinabove is that in the year 2005, a Division Bench of this Court rendered its decision in ***Kathuria Public School Vs. DoE &Anr.*** 123 (2005) DLT89 (DB), decided on 22.07.2005. This Court examined Section 8(2) and the other provisions of the Delhi School Education Act and by placing reliance on the observations made by the Supreme Court in the case of ***T.M.A. Pai Foundation and Others v. State of Karnataka and Others***, (2002) 8 SCC 481, this Court observed as follows:

“44. The result of the aforesaid is that the provisions of Sections 8(2) and 8(4) of the said Act, Rules 115(2) & (5) and 120(1)(d)(iii) & (iv) and 120(2) of the said Rules requiring prior and ex-post facto approval for disciplinary proceedings would have no application to private unaided schools. As a sequator to that; sub-section (5) of Section 8 would also really have no application to such private unaided schools. Needless to say that these directions are in respect only of unaided non-minority institutions since the relevant provisions have been held as inapplicable only to such institutions and that was the question raised before this Hon'ble Court. We draw strength for taking such a view even from the observations of the Supreme Court in Sunil Batra v. Delhi Administration & Ors., etc., AIR 1978 SC 1675 where Justice V.R. Krishna Iyer, J. had observed that the interpretation of statutes which preserves and sustains the validity of the provision should be adopted and the Courts with functional flexibility should explore the meaning or meanings to adopt that construction which humanely constitutionalizes the statute in question. Thus, these provisions may have application to other institutions, but in view of the observations of the Supreme Court in T.M.A. Pai Foundation's case (supra) in respect of unaided non-minority institutions, these provisions would have no application to such institutions and such an interpretation based really on a reading down of the statutory provision would be the acceptable mode of interpretation of the statute.

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50. In view of the aforesaid, following the dictum of the Supreme Court in T.M.A. Pai Foundation's case (supra), the provisions dealing with prior approval and post-facto approval in respect of disciplinary matters of teachers and employees are held not to be applicable to unaided non-minority educational institutions with the remedy being provided to agitate the grievances before the Tribunal constituted under the said Act.”

(emphasis supplied)

9. The submission of the appellant is that when the services of the respondent were terminated in the year 2013, the said decision was in vogue and, consequently, the appellant did not consider it necessary to obtain the prior approval of the Director of Education. Learned counsel submits that only in the year 2016, vide a judgment delivered on 13.04.2016, in the case of **Raj Kumar vs. DoE & Ors**, (2016) 6 SCC 541, the decision of this Court in **Kathuria Public School** (supra) was held to be bad law, and the Supreme Court held that prior approval of the Director of Education was imperative to be obtained under Section 8(2) of the Delhi School Education Act. Learned counsel further submits that the decision in **Raj Kumar** (supra) itself shows that the appellant was bound to follow the law as it prevailed when the appellant proceeded to terminate the services of the respondent. In this regard, he has referred to paragraph 52, 53 and 54 of the said decision, which read as follows:

“52.The reliance placed upon the decision of the Delhi High Court in Kathuria Public School is also misplaced as the same has been passed without appreciating the true purport of the Constitution Bench decision Katra Education Society. Therefore, the decision Kathuria Public School, striking down Section 8(2) of the DSE Act, is bad in law.

53. Furthermore, the decision in the case of Kathuria Public School (supra) does not come to the aid of the respondents for one more reason. Undisputedly, the notice of retrenchment was served on the appellant on 07.01.2003 and he was retrenched from service on 25.07.2003. The decision in the case of Kathuria Public School (supra), striking down Section 8(2) of the DSE Act was rendered almost exactly two years later, i.e.

on 22.07.2005. Surely, the respondents could not have foreseen that the requirement of prior approval of the order of termination passed against the appellant from Director would be struck down later and hence decided to not comply with it. Section 8(2) of the DSE Act was very much a valid provision of the statute as on the date of the retrenchment of the appellant, and there is absolutely no reason why it should not have been complied with. The rights and liabilities of the parties to the suit must be considered in accordance with the law as on the date of the institution of the suit. This is a fairly well settled principle of law. In the case of Dayawati v. Inderjit[12], a three judge bench of this Court held as under:

“10.Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been tendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit.”

54. More recently, in the case of Carona Ltd v. Parvathy Swaminathan and Sons[13], this Court held as under:

“42.....The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit. Thus, if the plaintiff has no cause of action on the date of the filing of the suit, ordinarily, he will not be allowed to take advantage of the cause of action arising subsequent to the filing of the suit. Conversely, no relief will normally be denied to the plaintiff by reason of any subsequent event if at the date of the

institution of the suit, he has a substantive right to claim such relief.” (emphasis supplied)

10. Learned counsel also submits that in pursuance of the said decision, the Director of Education issued the order dated 20.05.2016 stating that “*in view of the pronouncement of the judgment of Hon’ble Supreme Court in , the provisions of sub-section (2) of section 8 of the Delhi School Education Act, 1973 and its connected rule 120 (1)(d)(iii) and (iv) and rule 120 (2) of the Delhi School Education Rules, 1973 became applicable to Private Recognized Unaided Schools with effect from the date of judgment. Now, therefore, all the Private Recognized Unaided Schools are directed to comply with the provisions of sub-section (2) of section 8 of the Delhi School Education Act, 1973 and its connected rule 120 (1)(d)(iii) and (iv) and rule 120 (2) of the Delhi School Education Rules, 1973 with effect from the date of aforesaid judgment of Hon’ble Supreme Court in Civil Appeal No. 1020 of 2011 in the matter of Raj, Kumar v. Directorate of Education and Others.*”

11. Ld. Counsel submits that even before the Delhi School Tribunal, the stand of the DOE was that the petitioner being an unaided private school, was not obliged to obtain prior approval of the Director. The submission is that, therefore, non-compliance of Section 8(2) of the Act could not be a reason in the facts of the present case to hold that the termination of the respondent’s services was not justified.

12. Learned counsel for the appellant submits that on the aspect of bias, the learned Single Judge has proceeded on conjectures and assumptions. He points out that the Appellate Tribunal had specifically dealt with the said

plea of the respondent and rejected the same. It had found that apart from the respondent, several other school employees had similarly sought relief in the said suit. Some of them were even closely related to her. No such disciplinary proceedings were undertaken against any of them, and they continued to serve in the appellant school. The Tribunal had found that the charge of bias against the appellant had not been made out. In this regard, learned counsel has referred to paragraph 25 of the order passed by the Appellate Tribunal, which reads as follows:

“25. According to the Appellant, show cause notice as well as charge sheet in question was issued to her malfidely because the school authorities were biased against her as she had filed civil suit against the school alongwith other class IV employees. It is undisputed that in the Civil Suit, husband of the Appellant was also a party. Two brothers of the Appellant as well as two other close relatives of the Appellant are working in the School, no action has been taken against any of them. Had the school authorities been biased against the Appellant they could have started proceedings against her husband, her brothers and other close relatives. The school authorities had not taken any action against any of the relatives of the Appellant, it shows that – there is no bias against the Appellant and any of her family members in the mind of school authorities.” (emphasis supplied)

13. Learned counsel for respondent No. 1 submits that, in the present case, the Appellate Tribunal has not proceeded to examine the case on merits by assuming that it undertakes only judicial review while dealing with a case of termination founded upon a disciplinary proceeding. The Appellate Tribunal has not gone deeper into the merits of the case after satisfying itself that there was compliance of the Principles of Natural

Justice, and it could not be said that it was a case of no evidence. Learned counsel for respondent No. 1 submits that since the employee is entitled to prefer a statutory appeal under Section 8 read with section 11(6) of the Delhi School Education Act, it was obligatory for the Tribunal to examine the matter on merits. Learned counsel relies on Section 11(6), which specifically provides “*The Tribunal shall for the purpose of disposal of an appeal preferred under this Act have the same powers as are vested in a court of appeal by the Code of Civil Procedure, 1908 (5 of 1908) and shall also have the power to stay the operation of the order appealed against on such terms as it may think fit.*”, to submit the statutory appeal is a full fledged appeal – both on facts and law, and it is not merely a judicial review which the tribunal undertakes.

14. Counsel for respondent No. 4 submits that the appellant was bound to comply with the provision of Section 8(2) i.e. to obtain the prior approval of the Director of Education, and that not having been done, the termination of the respondent was illegal. Learned counsel submits that even now, the appellant should be required to obtain the prior approval of the Director of Education.

15. Having heard learned counsels, we are inclined to accept the submissions of learned counsel for the appellant, as well as the submission of learned counsel for the respondent No. 1.

16. So far as the aspect of bias is concerned, we find that the learned Single Judge has proceeded only on an assumption that the appellant could have acted with bias. The observation made by him in this regard reads as

follows:

*“25. Regarding the issue of biasness is concerned, she was appointed in the year 1989 and till 2012, there was no complaint against the petitioner. **It cannot be believed that after succeeding the petitioner and other employees in the said suit, biasness has not come in mind of the administration because the school is private and unaided and has to pay salary to the employees as per 6th Pay commission in future, in addition to the amount paid as per the settlement.** Before the settlement, they were not paying such amount, therefore, on this ground, **it cannot be ruled out that there was no biasness against the petitioner.** Therefore, the dismissal order dated 05.03.2013 deserves to be set aside on this count. Moreover, **the allegations against the petitioner have not been proved by independent witnesses.** The total case rest upon mere allegations based upon the documents generated by the respondent school. The petitioner has denied the allegations during enquiry.*

26.....

*27. In the present case, all allegations are made against the petitioner only after the suit was decreed in favour of the class IV employees including the petitioner. Thus, **the respondent school made such allegations and were determined to remove the petitioner from service.** If it is accepted that the charges are proved, even then the charges are not so serious. The disciplinary authority would have given to the other punishment lesser than removal from service.” (emphasis supplied)*

17. It is well settled in law that personal bias has to be specifically pleaded, and specific allegations have to be made as to who, and for what reason, the person is acting with bias. Not only that, evidence has to be lead to establish actual bias. Bias cannot remain in the mind of the person making the allegation. It has to appear to be in existence on the record. In

the present case, the allegation of bias was made by respondent No. 1 on the premise that she had preferred the Civil Suit to claim higher wages payable under the Sixth Central Pay Commission Report and that she was targeted for that reason, since she was considered to be the ring leader. It appears that no evidence in this regard was lead by her. In any event, the Tribunal dealt with this submission and returned a finding that there was no evidence of bias, since there were several others, including her own relatives serving in the same school, who had made the same claim and the claim had been mutually settled in mediation to the satisfaction of all concerned. No other person had been targeted or subjected to disciplinary proceedings like the respondent.

18. The learned Single Judge, in our view, could not have interfered with that finding of the Tribunal, which was biased on appreciation of the allegation and evidence in that regard. The learned Single Judge certainly could not have proceeded only on the basis of assumptions, which he has done. Thus, the finding of bias returned against the appellant cannot be sustained and is set aside.

19. We also find that the learned Single Judge, while dealing with the said aspect, found that the allegations against the respondent had not been proved by “independent witnesses”. Even this finding of the learned Single Judge cannot be sustained. Looking to the nature of the allegations/ charge framed against the respondent, it is obvious that the witnesses would be those serving in the school, since the allegations related to the alleged misconduct by the respondent while so serving in the school. Obviously, outsiders

would not, normally, be witnesses to ongoing inside the school premises, which is not a public place or a thoroughfare.

20. Merely because those produced as witnesses by the appellant to prove the charge, were also serving in the same school, would not lead to inference that the witnesses were not independent witnesses. They were independent because they had no axe to grind against the respondent and it was not established by the respondent that they were coerced to make statements against the respondent No. 1. If the measure adopted by the learned Single Judge is applied to determine the independence – or lack of it, of the witnesses, hardly ever departmental proceedings in relation to misconduct undertaken within the four corners of the organization, would be established, since it is likely that there would be no outsider, who would be in a position to make any statement or depositions.

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*** (supra) 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*** (supra). 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*** (supra).

22. No doubt, the well settled position in law is that the Supreme Court

merely declares the law as it has always been 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 Kumar** (supra), the prior approval of the Director of Education should be obtained from the date of the judgment in **Raj Kumar** (supra). 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 Kumar** (supra) prospectively, and not from an anterior date. Moreover, the decision in **Kathuria Public School** (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 School** (supra) was dismissed by a three-Bench Judge in limine.

23. A perusal of the relevant extract of **Raj Kumar** (supra) also shows that the Supreme Court rejected the reliance placed by the management on **Kathuria Public School** (supra) on the premise that the decision in **Kathuria Public School** (supra) 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**

Kumar (supra) from an anterior date would lead to re-opening of cases and claims, which are already settled in terms of **Kathuria Public School** (supra). We, therefore, reject this submission.

25. We now proceed to examine the submission of respondent No. 1. A reading of the decision of the Delhi School Tribunal shows that the Tribunal has expressly held that there is no power of judicial review of administrative action. The Tribunal has proceeded on the assumption that it is a Tribunal akin to a Tribunal created under Article 323A of the Constitution, which it is not. In **Jomi C. Nidheeri Vs. Elanji Grama Panchayat**, (2007) 2 KLT 345, a Division Bench of the Kerala High Court had occasion to consider a pari-materia provision, namely Section 271 S of the Kerala Panchayat Raj Act, 1994. It was contended on behalf of the respondent Grama Panchayat that the Appellate Tribunal constituted under the said Act had no power to set aside the order passed by the Local Self Government Institution in view of Rule 18 of the Kerala Local Self Government Institutions Rules, 1999. The Division Bench of the Kerala High Court rejected this submission in the following words:

“2. Preliminary ground taken by the Grama Panchayat was that the Appellate Tribunal has no power to set aside the order of the Tribunal considering R. 18 of the Tribunal for the Kerala Local Self Government Institutions Rules, 1999 (hereinafter referred to as ‘the Rules’) read with S. 271(5) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as ‘the Act’).

3. It is the contention of the appellants that only procedural defects can be cured by the Tribunal and, at the maximum, it can remand the matter and the Tribunal has no power to decide the matter on merits. Sub-s. (1) of S. 271-S of the Act reads as

follows:

“271S. Constitution of Tribunal for local Self Government Institutions:— (1) The Government shall constitute a Tribunal for every district or for more than one district, to consider and dispose of the appeal or revision filed against the decisions of the Local Self Government Institutions under S. 276 of this Act and S. 509 of the Kerala Municipality Act, 1994.”

4. Sub-clause gives the same power as vested in the civil court when trying suit under the Code Of Civil Procedure with regard to certain Acts. It is also mentioned that the proceeding before the Tribunal shall be deemed to be proceeding within the meaning of S. 193 and 228 of the Penal Code, 1860. S. 276 of the Act authorises appeal to be filed before the Tribunal.

5. It also further provides that appeals pending before other authorities also shall be handed over to the Tribunal. R. 18 of the Rules reads as follows:

“18. Directions to the Local Self Government Institutions:— If the Tribunal, on considering the petition and connected records, is satisfied that any notice or order issued or action taken by the Village Panchayat, Municipality or its Secretary as the case may be, is not issued or taken in accordance with the procedure under, the Panchayat Act or the Municipality Act or the rules made thereunder it may direct such Village Panchayat or Municipality or the Secretary to issue notice or order or to take action afresh complying the procedure under law.”

6. R. 18 only provides, if there is any procedural irregularity, the Tribunal can remand the matter and direct the Secretary to issue notice and comply with the procedure and pass fresh orders. Then, the above rule will not restrict the power of the

Tribunal in hearing the appeal and passing orders on merit. Rule 16 provides issuance of notice to the counter petitioners before passing orders. Rule 19 speaks about hearing to be granted by the Tribunal and power of the Tribunal to decide the matter ex parte. R. 20 of the Rules reads as follows:

“20. Order of the Tribunal:—

(1) The Tribunal shall, after considering the petition and connected records of, if there is trial of the parties, after the completion of such trial, issue an order recording its decision on the petition:

Provided that if the Tribunal thinks it necessary so to do, it may declare in advance a date to issue such order and shall issue the order on that date.

(2) An order of the Tribunal shall be in writing and shall bear the signature and seal of the Tribunal on it.”

7. A reading of the statutory provisions would show that the Appellate Tribunal is vested with the power to hear the appeal on merit and can decide the matter like any other appellate authority and Tribunal's order is not restricted regarding the procedural matters only. Therefore, Tribunal can hear and dispose of the matter on merits as a full-fledged appeal and objection by the petitioners to that effect is not tenable.”

26. The Delhi School Tribunal is a statutory Tribunal constituted under Section 11 of the Delhi School Education Act. Section 11 of the Delhi School Education Act reads as follows:

“11. Tribunal.—(1) The Administrator shall, by notification, constitute a Tribunal, to be known as the “Delhi School Tribunal”, consisting of one person: Provided that no person shall be so appointed unless he has held office as a District

Judge or any equivalent judicial office.

(2) If any vacancy, other than a temporary absence, occurs in the office of the presiding officer of the Tribunal, the Administrator shall appoint another person, in accordance with the provisions of this section, to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Administrator shall make available to the Tribunal such staff as may be necessary in the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) The Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sittings.

(6) The Tribunal shall for the purpose of disposal of an appeal preferred under this Act have the same powers as are vested in a court of appeal by the Code of Civil Procedure, 1908 (5 of 1908) and shall also have the power to stay the operation of the order appealed against on such terms as it may think fit."

27. From the above, it would be seen that the Delhi School Tribunal is an Appellate Tribunal and, for the purpose of disposal of an appeal preferred under the Act, it has the same powers, as are vested in a Court of appeal by the Code of Civil Procedure. Therefore, the appeal preferred before Delhi School Tribunal is a full-fledged appeal, both on facts and in law. The Delhi School Tribunal is not a Tribunal constituted under Article 323A of the Constitution and its jurisdiction is, therefore, not confined to the undertaking of only a judicial review in respect of the order which is brought before it in

appeal. In our view, looking to the provision of the Section 11 of the Delhi School Education Act, which is pari-materia with Section 271 S of the Kerala Panchayat Raj Act, 1994, the aforesaid decision in *Jomi C. Nidheeri* (supra) is useful for interpretation of the scope of the power of the Delhi School Tribunal while dealing with an appeal. Since, in the present case, the Delhi School Tribunal has not examined the appeal of the respondent No. 1 on merits, we are inclined to set aside the impugned order passed by the learned Single Judge, as also the earlier order passed by the Delhi School Tribunal dated 27.08.2015, and to remand the case back to the Tribunal for hearing of the appeal preferred by respondent No. 1 on all aspects, except the aspects of bias and non-compliance of Section 8(2) of the Delhi School Education Act. These two aspects stand concluded by our decision.

28. The parties shall appear before the Delhi School Tribunal on 08.11.2019.

29. Since the matter has been hanging fire since 2013, we request the Tribunal to expedite the hearing of the appeal and to dispose of the same in the next six months.

30. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

OCTOBER 15, 2019

Kd/N.Khanna