

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: December 10, 2021

+ W.P.(C) 1112/2021, CM No. 3096/2021

SARIKA PRASAD

..... Petitioner

Through: Mr. Khagesh B. Jha, Adv. with
Ms. Shikha Sharma Bagga, Adv.

versus

DELHI PUBLIC SCHOOL-DWARKA & ORS. Respondents

Through: Mr. Puneet Mittal, Sr. Adv. with
Mr. Rupendra Pratap Singh and
Ms. Vasudha Bajaj, Adv. for R-1 & R-2
Mrs. Avnish Ahlawat, SC GNCTD
with Mrs. Tania Ahlawat,
Mr. Nitesh Kumar Singh &
Ms. Palak Rohemetra, Adv. for R-3 &
R-4

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

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

“It is therefore, most respectfully prayed that this Hon'ble court may graciously be pleased to:

A) Issue a writ of mandamus or any other appropriate writ directing the Respondent No.1 to revoke the suspension order dated 24.02.2020 and the order dated 20.08.2020 extending the suspension order dated 20.02.2020;

B) Issue a writ of mandamus or any other appropriate writ directing the Respondent No.1 to revoke the articles of memorandum/charges dated 24.07.2020;

C) Issue a writ of mandamus or any other appropriate writ directing the Respondent Nos.1 & 2 to revoke the Inquiry Proceedings initiated against the Petitioner;

D) Issue a writ of mandamus or any other appropriate writ directing the Respondent Nos. 1&2 to disclose the constituents of the Disciplinary Committee/Authority that needs to be constituted as per Rule 18 of the DSEAR, 1973;

E) Issue a writ of mandamus or any other appropriate writ directing the Respondent No.2 to transfer back Petitioner to Delhi Public School, Dwarka from the Delhi Public School Society, East of Kailash;

F) Pass any other or further orders that this Hon'ble Court may deem necessary in the facts and circumstances of the case or in the interest of justice,

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY."

2. On the first date of hearing i.e., January 29, 2021, I heard the Counsels for the parties at length, after which the learned Counsel for the petitioner stated that the prayer in the present petition shall be confined to the prayer for revocation of suspension of the petitioner. As far as the other payers are concerned the same are not being considered in the present petition and the right of the petitioner to agitate the same is kept open. The relevant portion of the said order reads as under:-

“It is agreed by the learned counsel for the petitioner that the present petition shall be confined to the prayer for revocation of the suspension of the petitioner. It is the submission of Mr. Singh that the suspension has been made without taking approval from the Directorate of the Education. Mr.Mittal contest the submission made by Mr.Singh.

If that be so, appropriate shall be for the respondents to file short affidavit, on the plea advanced by Mr. Singh on the suspension, within ten days from today. Response thereto, be filed by the petitioner within one week thereafter.

Insofar as the other prayers are concerned, the same are not being considered in this petition and the right of the petitioner, to agitate the said prayers and related grounds at relevant point of time after the proceedings initiated against the petitioner are over, is kept open.”

3. Subsequently during the course of hearing on May 12, 2021, the counsel for the petitioner had stated that the petitioner was willing to tender her resignation with a three months’ notice provided the respondent No.1 / School drops all charges against the petitioner. The matter was then listed on May 13, 2021 on which date the counsel for the petitioner stated that upon reconsideration the proposed solution was not agreeable to the petitioner. It is thereafter that I proceeded to hear the matter on merits, limited to prayer ‘A’ regarding revocation of suspension.

4. Mr. Khagesh B. Jha, learned counsel for the petitioner has stated that he shall confine his prayer to the revocation of the suspension order dated February 24, 2020. He argued that as per the powers provided under Section 8(4) of the Delhi School Education Act, 1973 (‘DSE Act’ for short) the Managing

Committee vide resolution dated February 20, 2020 had decided to place the petitioner under suspension. The order of suspension was issued on February 24, 2020, which was further extended vide letter dated August 20, 2020 (collectively referred to as 'suspension orders'). It is the case of Mr. Jha that during the pendency of the present petition the suspension orders were approved with retrospective effect and the same can be challenged in the present proceedings.

5. According to him, the case of the petitioner is covered by the judgment of a Full Bench of this Court in the case of ***Delhi Public School & Anr. vs. Director of Education & Ors., 2003 (67) DRJ 419 (FB)*** wherein a similar issue was considered by this Court. He stated that since the respondent No.1 was a party to the said proceedings therefore the said respondent is aware of the judgment in the said case and on the basis of the said judgment alone the petitioner is entitled to a revocation of suspension and full salary from the date petitioner was suspended till the date of revocation of suspension. Mr. Jha contended that as far as the law is concerned Section 8(4) of the DSE Act is clear and that mere writing complaints to an authority cannot be a ground for invoking provision of Section 8(4) of the DSE Act. Such a routine invocation of the said provision renders the legislative intent behind it otiose. The proviso under Section 8 (4) of the DSE Act states that only in cases of gross misconduct should the said provisions be used and not as a tool of vendetta.

6. The periods of suspension can be divided into three time periods i.e., February 02, 2020 to March 11, 2020 i.e., the first

period of suspension. The second period of suspension is from March 11, 2020 to March 11, 2021 and the third part of the suspension is for the duration of March 11, 2021 to August 19, 2021. According to Mr. Jha, on August 20, 2021 the respondent No.1 / School issued a letter for extension of suspension and not a fresh suspension order which is different from the factual background of the judgment in the case of *N.N. Seth & Ors. vs. Renu Gupta & Ors. 2006 (128) DLT 626*. The petitioner was never allowed to work unlike in the case of *N.N. Seth (supra)* since the petitioner therein was allowed to join the service. He stated the approval order by the Directorate of Education ('DoE' for short) was only issued after this Court had issued notice.

7. Mr. Jha stated that the issue regarding the legality of suspension ought to be decided on the basis of the facts and the law which was prevailing at the time when the petitioner had approached this Court and not on the factual developments which took place later on, such as the approval given by the DoE, as the same has no bearing on the present case. According to him it is an admitted position that the respondent No.1 / School at the time did not have any approval, which was then granted subsequently by the DoE. As per Section 8(4) of the DSE Act or the Rule 115 of the Delhi School Education Rules, 1973 ('DSER', hereinafter) there isn't any express provision stipulating the DoE to grant approval after 15 days, but the provision clearly states that the suspension shall not remain in force beyond 15 days. The DoE cannot exercise powers beyond the powers delegated under Rule 56 of the DSER.

8. As per Mr. Jha, the case of the petitioner does not fall under the first proviso of the Section 8(4), since the only allegation against the petitioner was that she was writing complaints to the authorities. Mr. Jha has stated that even if it were to be accepted that the suspension was necessary even in such a scenario there should be a finding in that regard, either in the resolution or in the communication for suspension. He argued that the Chargesheet which is the subsequent action, cannot be justified since the same follows the resolution, which only mentions the written complaints.

9. Mr. Jha has argued that even if it has to be accepted that the case of the petitioner falls under the first proviso of Section 8(4) of the DSE Act, in such a scenario also, the second proviso to the said section comes into the picture and with the passage of 15 days' the time limit so fixed by the legislature, would render the act of the respondents as illegal. Mr. Jha stated that this issue regarding continuance of suspension after 15 days has been settled by this Court involving the respondent No.1 / School.

10. Mr. Jha has argued that the intent behind Section 8 of the DSE Act is clear and has been dealt by the Supreme Court in the case of *Raj Kumar vs. Directorate of Education & Ors. (2016) 6 SCC 541*, wherein the Supreme Court overruled the decision in the case of *Kathuria Public School & Ors. vs. Directorate of Education & Anr. 113 (2004) DLT 703 (DB)* based on the autonomy of the private schools. The Supreme Court went on to observe that the provisions are a protective umbrella for the employees of the school and the intent of the

legislature was clear in the context of Section 8(2) of the DSE Act and has to be read in conjunction with Section 8(4). He placed reliance on paragraphs 48 and 54 of the judgement in **Raj Kumar (supra)** to state that the DSE Act is a protective act for the teachers and should be interpreted as such.

11. Mr. Puneet Mittal, learned Senior Counsel appeared along with Mr. Rupendra Pratap Singh on behalf of respondent Nos. 1 & 2 has at the outset raised three issues for consideration by this Court, which are as follows:

“1. Whether the DoE can give an approval for suspension with retrospective effect specifically when there has been no rejection / denial of suspension within 15 days or thereafter?”

2. Whether the school, who has communicated within 15 days to DoE for approval of suspension, could the school be held liable for the default / inaction of the DoE?

3. Whether 15 days time stipulated under section 8(4), Delhi Education Act contemplate 15 working days or 15 days simpliciter?”

12. Mr. Mittal stated that it is undisputed that the petitioner was placed under suspension on February 24, 2020 vide resolution dated February 20, 2020 and it was on February 24, 2020 itself that the school sent a request to the DoE to approve her suspension. Thereafter the school sent several reminders dated March 03, 2020, May 22, 2020, June 17, 2020, June 19, 2020 and July 01, 2020 to the DoE to grant approval of suspension of the petitioner. On August 20, 2020 the respondent No.1 / School extended the suspension of the petitioner and it

was only on March 11, 2021 that the DoE approved the suspension of the petitioner with retrospective effect from February 24, 2020. In this regard Mr. Mittal has placed reliance on the following judgements:

- i. *N.N. Seth (supra)*;
- ii. *Prem Sehgal vs. Directorate of Education 1986 Raj LR 147*;
- iii. *T.M.A Pai Foundation & Ors. vs. State of Karnataka & Ors. (2002) 8 SCC 481*;
- iv. *Delhi Public School & Anr. vs. Directorate of Education & Ors. 2002 VIII AD (DELHI) 645*; and
- v. *Kathuria Public School (supra)*.

13. Mr. Mittal relied on the case of *Prem Sehgal (supra)* to state that in the case of private unaided institutions the principle of internal management is paramount and that the DoE only exercises a regulatory power. Only if the action of the Managing Committee is *malafide* or arbitrary can the DoE withhold approval. He stated that the Division Bench in *N.N. Seth (supra)* after considering the various judgements held that there is no bar on a fresh suspension order being passed subsequently or extension of suspension order even after the suspension period lapses, as there is no rule prohibiting the same. According to Mr. Mittal the Court in that case was of the view that there was nothing in law which prohibited the DoE from granting extension of suspension after the suspension had lapsed and that re-suspension of the petitioner would not be illegal particularly when there are grave charges against the petitioner. Even in this case the petitioner has failed to show that there is a prohibition against the re-suspension or extension of the period of suspension

after it had lapsed.

14. The DoE has relied upon the judgment of *Sharda Devi Sanskrit Vidyapeeth vs. Director of Education & Anr., LPA 229/2016* which in turn has referred to the Full Bench decision of this Court in *Delhi Public School & Anr. vs. Directorate of Education & Ors. 2002 VIII (DELHI) AD 645*, wherein it was held that after a period of 15 days, the suspension order could not be enforced and that the same is illegal, till the approval is granted by the DoE.

15. Mr. Jha in his rejoinder arguments has argued that the reliance on the judgment of *N.N. Seth (supra)* is misplaced since that was a completely different case where the challenge was made after the approval from DoE and the allegation therein was that a parallel school was being run. As per Mr. Jha the judgment in the case of *Kathuria Public School (supra)* stands overruled and the judgment in *T.M.A Pai (supra)* has been differently interpreted by the Supreme Court in *Raj Kumar (supra)* judgment. Mr. Jha stated that whether the DSER has any provision regarding the delay or not, Section 8(4) of the DSE Act is clear, and the same is applicable.

16. Mr. Jha argued that the judgement in the case of *Sharda Devi Sanskrit Vidyapeeth (supra)* is partially in favour of the petitioner inasmuch in the said judgment the Division Bench of this Court had directed the school to pay the salary for the period of 15 days from suspension up to the date of approval by the DoE and unlike in the case of *Sharda Devi Sanskrit Vidyapeeth (supra)* the present petition was not filed after a delay. According

to him, the case before the Division Bench was also covered under the first proviso of Section 8(4) of the DSE Act and also that the Division Bench had not considered the judgment in the case of **Raj Kumar (supra)** and there was no challenge to the approval by the DoE either on merit or on the delegation of power. Mr. Jha stated that the decision in the case of **Sharda Devi Sanskrit Vidyapeeth (supra)** is different to that of the petitioner as the only ground of suspension is that the petitioner had been writing complaints to the authorities about the problems that the petitioner was facing due to fact that she had raised her voice. He contended that the *bonafide* of the complaint is reflected in the contents of the complaint itself and that the representations made are squarely covered under Rule 123(2)(c) DSER of the DSE Act. According to him, the dignity of the petitioner need to be preserved and her case should be handled with some amount of sensitivity as was observed by the Division Bench in paragraphs 22 and 23 in **Ms(X) vs. Union of India & Ors. 2020 SCC Online Del 1618**. Mr. Jha seeks that the prayers in the present petition be granted and prays that liberty may be given to the petitioner with regard to her seeking compensation under the various provisions governing sexual harassment at workplace.

17. Having heard the learned counsels for the parties and perused the record, a short question which arises for consideration is, whether the suspension of the petitioner vide order dated February 24, 2020 is justified. The issue is no more *res integra* in view of the Judgment of the Supreme Court in **Raj Kumar (supra)**. Though, the judgment of the Supreme Court in

the case of ***Raj Kumar (supra)*** was related to termination, the question of law decided by the Supreme Court, in that case squarely applicable to the facts of this case. In paragraph 45, the Supreme Court has stated as under:-

“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.”

18. The respondent No.1 / School was required to take permission of the DoE within 15 days for continuing suspension of the petitioner. It is the case of the respondent No.1 / School that though, on the same date on which the petitioner was suspended, i.e., February 24, 2020, they had sought the approval of the DoE, it is the DoE who has delayed in granting the approval and has only done it on March 11, 2021 w.e.f February 24, 2020 and hence, the School cannot be held responsible. Though plea looks appealing on a first blush, but on a deeper consideration, is totally unmerited. The provision under the DSE Act, i.e., Section 8(4) is very clear which contemplates that beyond the period of 15 days, suspension shall not remain in force unless it has been communicated to the Director and approved by him before the expiry of the said period. Section 8(4) of the DSE Act is produced below:

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

xxx

xxx

xxx

(4) Where the managing committee of a recognized private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director:

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct within the meaning of the Code of Conduct prescribed under Section 9, of the employee:

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.”

19. I also deem it appropriate to refer to the judgment of the Full Bench of this Court in the case of ***Delhi Public School (supra)*** which reads as follows:

“31. What we are called upon to decide in this case is the effect on the suspension order passed by the Managing Committee under first proviso to Subsection (4) of Section 8 of the Act and the effect of non-grant of approval in such a case within a period of 15 days from the date of suspension as contemplated in the second proviso thereof. To that, our answer is that such an order of suspension lapses after a period of 15 days as is clearly contemplated by the second proviso.”

(emphasis supplied)

20. Even a Coordinate Bench of this Court in the case of ***S.S. Tyagi vs. Ravindra Public School & Ors. W.P.(C) 4048/2020***

decided on October 01, 2020, has in paragraph 34 held as under:-

“34. If this is the rationale, in the background of which these observations have been made in the judgements, keeping also in view the laudable object behind enactment of provision such as Section 8(2) of DSEA&R as is further evident from its Statement of Objects and Reasons, the same rationale shall apply when an order is passed under Section 8(4). This Court thus finds no reason to meet out a differential treatment to an employee and deprive him of the safeguarding procedural mechanism of approval by the DOE before/after suspension, only because he is an employee of an unaided school. On an analogy, I am of the view that if provisions of Section 8(2) have been held applicable to unaided Institutions, the provisions of Section 8(4) shall also apply to the unaided Educational Institutions and there is no force in the contention of the School that it was not bound by the procedural requirements of obtaining the approval of DOE under Proviso to Section 8(4) of DSEA&R. The Legislature in its wisdom while enacting Sub-sections (2) and (4) envisages no difference in their applicability to unaided or aided school.”

21. Concedingly, the period of 15 days had expired on or around March 10, 2020, whereas the approval had come on March 11, 2021 that too with retrospective effect, i.e., after more than 365 days. On this ground itself, the suspension beyond the period of 15 days is not sustainable.

22. Mr. Mittal in support of his submission had relied upon the Judgment of this Court in the case of *N.N. Seth (supra)* wherein in paragraphs 8 and 9 this Court has held as under:

“8. It is alleged in paragraph 22 of the writ petition that the Directorate of Education had refused permission for the suspension and the 15 days time expired on 10.6.2000 and as such the petitioner was

taken back in service and rejoined the school on 12.6.2000. However, the management appeared before the Director of Education with another letter dated 2.6.2000 seeking approval of extension of the suspension period. Hence the Director of Education extended the suspension for another one month up to 11.7.2000.

9. *In paragraph 23 of the writ petition, it is alleged that on 12.7.2000 the petitioner again joined the school. The management again on 13.7.2000 suspended the petitioner for 15 days. Thereafter she was again put under suspension from 31.7.2000 for 15 days. It is alleged that these suspension orders were illegal, because suspension orders cannot be passed by the management once the suspension is refused by the Director. On 24.11.2000 the then Dy. Director of Education conveyed the approval of the Director of Education for extension of the petitioner's suspension up to 31.3.2001."*

23. I note, this Court has in paragraph 24 of the said Judgment, has also held as under:

"24. With respect we cannot agree. There is nothing in law which prohibits the Director of Education from granting approval of the extension of suspension after the suspension had lapsed. In our opinion, there is nothing illegal in re-suspension of the petitioner particularly when there were grave and serious charges against her. No rule has been shown to us prohibiting such re-suspension, or extending the suspension period after it had lapsed."

24. Even the Division Bench in the case of **Sarada Sanskrit Vidyapeeth (supra)** while relying on the case of **Delhi Public School (supra)** has in paragraph 15 held as under:

"15. However, we do not find any infirmity in the direction for payment of salary and allowances for the

period from 15th May, 2011 to 12th January, 2012. Learned counsel for the appellant-school has submitted that the school was not at fault, for there was delay and lapse on the part of the Director of Education in disposing of the request made by the school vide their letter dated 28th April, 2011. Thus, the appellant school should not be burdened and compelled to pay salary and allowances. This aspect and question was examined by the Full Bench of Delhi High Court in the case of Delhi Public School (supra) and it was held as under:-

“30. In fairness to Mr. V.P. Singh, we may state that the main ground on which he wanted reading down of the provisions of Section 8 of the Act was his apprehension to the effect that even in a case where the alleged misconduct committed by an employee of the school is serious warranting immediate suspension and further even when the circumstances of the case justify the approval by the Director of Education, the Director of Education and/or his subordinate functionaries may defeat the objective by intentionally delaying the matter and thereby ensuring that no decision is taken within 15 days from the date of communication of the order of suspension. We have already stated that the petitioner has not challenged the virus of Section 8 of the Act. That apart, in such a situation the Managing Committee of the School would not be remediless. Illegal and/or arbitrary exercise of jurisdiction by the Director of Education in a given case can always be subject matter of judicial review and in such a case it would always be open to the Managing Committee of the school to challenge the inaction and/or wrong decision of the Director of Education. We may observe here that it is the statutory duty cast upon the Director to take appropriate decision within 15 days as to whether approval is to be given or not. He cannot, by delaying the matter beyond 15 days, make it a fait

accompli. No doubt, if no decision is taken within 15 days from the date of communication of the order of suspension, the necessary consequence thereof is that the suspension order lapses. However, that does not mean that if no decision is taken at all or the matter is unnecessarily delayed, it would not be permissible for the Managing Committee of the school to insist the Director of Education to take a decision even after 15 days of the communication of the order of suspension. If such a decision is taken, though belatedly, the fresh order of suspension can always be passed. Further, if the Director of Education takes a decision and refuses to accord his approval to the order of suspension and if the Managing Committee in such a case feels aggrieved by the decision, it is always open for the Managing Committee to challenge the decision of the Director of Education by appropriate proceedings on well-established grounds of judicial review that would be available to the Managing Committee in a given case.

31. What we are called upon to decide in this case is the effect on the suspension order passed by the Managing Committee under first proviso to Subsection (4) of Section 8 of the Act and the effect of non-grant of approval in such a case within a period of 15 days from the date of suspension as contemplated in the second proviso thereof. To that, our answer is that such an order of suspension lapses after a period of 15 days as is clearly contemplated by the second proviso.

32. It is for the Director of School Education, therefore, to consider as to whether such immediacy was required in the facts and circumstances of the case.”

The reasoning given in the aforesaid judgment would squarely apply and negate the contention of the appellant-school. The appellant-school did not take the required steps highlighted in the aforesaid quotation after communicating their request for approval to the Director of Education. The effect of sub-section (4) to Section 8 is clear and categorical. After the prescribed period of 15 days, the suspension order could not have been enforced and was illegal, till the approval was granted.”

25. Mr. Mittal relied upon the judgments in the cases of ***Kathuria Public School (supra)*** and ***T.M.A. Pai Foundation (supra)***, but the said judgments have been considered by the Supreme Court in ***Raj Kumar (supra)*** wherein, the Supreme Court, in paragraph 50 has stated as under:-

“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 [Kathuria Public School v. Director of Education, (2005) 123 DLT 89] by placing reliance on the decision of this Court in T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481] , 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.”

26. On a reading of the aforesaid, the position of law is clear as day, it must be held that in the absence of approval of the suspension of the petitioner within 15 days of the order dated February 24, 2020, the same has lapsed from February 24, 2020. Nothing precludes the School to pass a fresh suspension order. Accordingly, the petitioner shall be entitled to back wages. The same shall be paid to her within four weeks. The petition stands disposed of. No costs.

CM No. 3096/2021 (for stay)

In light of the fact that I have heard the parties on merits and decided the petition this application does not survive. The same is disposed of.

V. KAMESWAR RAO, J

DECEMBER 10, 2021/jg

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