

\$~

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

Date of decision: 14.11.2022

+ W.P.(C) 10523/2019, CM APPL.43562/2019, 43563/2019,
8567/2020, 12862/2022

SMT. ANJNA LUTHRA

..... Petitioner

Through: Ms. Nandni Sahni and Mr. Sachin
Bandooni, Advs.

Versus

GOVERNMENT OF NCT OF DELHI AND ORS..... Respondents

Through: Mr. Yeeshu Jain, Addl. Standing
Counsel with Ms. Jyoti Tyagi, Adv.
for R-1 & 2.
Mr. R.M. Sinha and Mr. A.M. Sinha,
Advs. for R-3 & 4 with Ms Nandini
Harsh, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, who was an employee of respondent no. 3-school, having joined the said school in 1986, has approached this Court seeking the following reliefs:

“(a)allow the writ petition and be pleased to issue an appropriate order or writ directing the respondents no. 1 to 4 not to take any coercive/adverse action against petitioner till she retires in September, 2021 and permit her to complete her term as a Vice Principal/HOS of respondent no.4 school in accordance with law; and

(b) direct the respondents no.1 to 4 to ensure smooth running of respondent no.4 school by petitioner as Vice Principal/HOS and look into the matter and ensure that petitioner is not

harassed/victimised and is compelled to tender her resignation or to take voluntary retirement from her service as threatened by respondent no.3 & 4; and

c) pass an appropriate writ order or direction declaring that the order dated 13.11.2019 passed by defendants no.3 and 4 against petitioner is an illegal and wrong order which has been passed contrary to law and the same may kindly be set aside/quashed by this Hon'ble Court and it be also directed by Hon'ble Court that petitioner continues to be the Vice Principal/HOS of the respondent no.4 school till she retires and she should be allowed to complete her tenure as Vice Principal/HOS of respondent no.4 school up to September 2021 without any obstruction or hindrance caused by respondents; and respondent no.3 & 4 be directed to pay all legitimate dues of petitioner during the pendency of present writ petition.

(d) allow that in view of Section 8(4) of DSE Act, the petitioner be allowed to join back her job in respondent no.4 school as HOS/Vice Principal as the suspension order dated 13.11.2019 issued by respondents no.3 & 4 has automatically lapsed as respondents no.3 & 4 school have not been granted any approval within the period of 15 days as per law and thus suspension order has automatically ceased to operate and petitioner is entitled to join back her job as Vice Principal/HOS in respondent no.4 school with immediate effect.”

2. Learned counsel for the petitioner submits that during the pendency of the present petition, the petitioner has superannuated from service on 30.09.2021, and therefore she is confining the present petition only to the grant of her terminal benefits including leave encashment, gratuity, arrears of salary towards the amount payable as per the recommendations of the 6th and 7th CPC as also for the differential amount payable to her for the period between 13.11.2019 to 30.09.2021, when she remained illegally suspended.

She submits that it is an admitted position that the petitioner was suspended from service on 13.11.2019 without seeking any prior approval from the respondent no. 2 and therefore, contends that in view of the decision of the Apex Court in ***Raj Kumar vs. Directorate of Education & Another*** 2016 Vol IV AD (SC) 490, the said suspension has to be treated as *non-est*. She also draws my attention to the affidavit filed by the respondent nos.1 & 2- the Director of Education (DoE), wherein it has been clearly stated that in terms of the Delhi School Education Act and Rules, prior approval of the DoE is mandatory before termination/suspension of an employee of a private unaided school. The said affidavit also states that the order suspending the petitioner having been passed without prior approval from the DoE, her suspension was illegal and *non-est*. Consequently, vide orders dated 25.06.2020, 23.09.2021 and 16.05.2022, the respondent nos.1 & 2 have directed respondent nos.3 & 4 to reinstate the petitioner with all consequential benefits.

3. While learned counsel for respondent nos.1 & 2 supports the claim of the petitioner and submits that since her suspension from service with effect from 13.11.2019 was illegal and *non-est*, she would be entitled to receive full salary for the period from 13.11.2019 to 30.09.2021 on which date she superannuated, Mr. Sinha, learned counsel for respondent nos.3 & 4 vehemently oppose the writ petition. While not denying that as per the ratio of the decision dated 13.04.2016 in ***Raj Kumar*** (supra), an order of termination of an employee of unaided private school passed thereafter without prior approval from the DoE would be bad in law, contends that the decision in ***Raj Kumar*** (supra) does not lay down the correct law as the same failed to appreciate the ratio of the decision of the Constitution Bench

in *T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors* (2022) Vol VIII SC 481. By relying on the decision of the Full Bench of the Madras High Court in *Philip Jeyasingh vs. The Joint Registrar of Co-operative Societies* 1992-1-L.W.216, he contends that in the light of the decision in *T.M.A. Pai Foundation & Ors.* (supra), the decision in *Raj Kumar* (supra), which has been rendered in ignorance of the legal position settled in *T.M.A. Pai Foundation & Ors.* (supra), is not binding on this Court and ought to be treated as *obiter dicta*. He further seeks to place reliance on the decision of the Apex Court in *Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others* to contend that when there are two contradictory judgments of two different Benches, it is the judgment of the larger Bench which would be binding on the Court. He, therefore, prays that this Court ought to ignore the dictum in *Raj Kumar* (supra) and instead follow the ratio of the decision in *T.M.A. Pai Foundation & Ors.* (supra), wherein the 11 Judge Constitution Bench clearly held that private unaided institutions would have autonomy with regard to administration including the right of appointment, disciplinary powers qua its employees. Moreover, the decision in *Raj Kumar* (supra) also overlooks an earlier decision of the Apex Court itself in *Brahmo Samaj Education Society & Ors. Vs. State of West Bengal & Ors.* , wherein the Court opined that when a Larger Bench consisting of 11 Judges in *T.M.A. Pai Foundation & Ors.* (supra) had declared what the law on the matter was , it would not be appropriate to dilute the effect of the same. He, therefore, contends that the stand taken by the petitioner as also by the respondents no. 1 & 2 that the suspension of the petitioner without seeking approval from the DoE, was *non-est*, is liable to be rejected. He,

therefore, contends that the petitioner is not entitled to receive any further amount for the period during which she was suspended.

4. Mr. Sinha next submits that in any event, since disciplinary proceedings against the petitioner are still pending, no further amounts can be released in her favour till the conclusion of the said proceedings. He, however, concedes that the disciplinary proceedings initiated against the petitioner are subject matter of challenge in ***W.P.(C) 5738/2020*** and have already been stayed. He, therefore, contends that even the terminal benefits of the petitioner can be released to her only after completion of the disciplinary proceedings, which can be completed only after disposal of ***W.P.(C)5738/2020*** filed by her.

5. Having considered the submissions of learned counsel for the parties and perused the decisions relied upon by the parties, I find that the parties are ad idem that the decision in ***Raj Kumar (supra)*** clearly lays down in unambiguous terms that prior approval from the DoE would be mandatory before passing an order of termination against an employee of a private unaided school. The parties are also in unison that this judgment would also govern the cases of suspension as is in the present case. The only submission of the learned counsel for the respondent nos.3 & 4 is that the decision in ***Raj Kumar (supra)*** is erroneous having been rendered without considering the settled legal position in ***T.M.A. Pai Foundation & Ors. (supra)*** which gives complete autonomy to private unaided schools in matters of disciplinary powers qua its employees. He has, therefore, urged that the same ought to be treated as obiter dicta and the impugned suspension order ought not to be tested on the parameters laid down in ***Raj Kumar (supra)***

6. Having perused the decision in *Raj Kumar (supra)*, I find that the Apex Court, while rendering the said decision, had taken due note of the decision in *T.M.A. Pai Foundation & Ors. (supra)* and thereafter arrived at a conclusion that in terms of the provisions of the Delhi School Education Act, it was mandatory for a private unaided school to obtain prior approval before passing of an order of termination. The relevant extracts of the said decision, wherein the Court after referring to the decision in *T.M.A. Pai Foundation & Ors. (supra)* opined that Section 8(2) of the Delhi School Education Act was a precautionary safeguard, which was required to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management, read 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 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] 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 : 2 SCEC 1] , 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.

51. The Division Bench of the Delhi High Court, while striking down Section 8(2) of the DSE Act in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC

OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] has not correctly applied the law laid down in Katra Education Society [Katra Education Society v. State of U.P., AIR 1966 SC 1307] , 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 [Katra Education Society v. State of U.P., AIR 1966 SC 1307] 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 [Frank Anthony Public School Employees' Assn. v. Union of India, (1986) 4 SCC 707 : (1987) 2 ATC 35] is also misplaced as the institution under consideration in that case was a religious minority institution.ss

52. The reliance placed by the learned counsel appearing on behalf of the respondents on T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] is also misplaced as the same has no bearing on the facts of the instant case, for the reasons discussed supra. The reliance placed upon the decision of the Delhi High Court in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2 Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] is also misplaced as the same has been passed without appreciating the true purport of the Constitution Bench decision in Katra Education Society [Katra Education Society v. State of U.P., AIR 1966 SC 1307] . Therefore, the decision in Kathuria Public School [Kathuria Public School v. Director of Education, 2005 SCC OnLine Del 778 : ILR (2005) 2

Del 312 : (2005) 123 DLT 89 : (2005) 83 DRJ 541] , striking down Section 8(2) of the DSE Act, is bad in law.

55. The respondent Managing Committee in the instant case did not obtain prior approval of the order of termination passed against the appellant from the Director of Education, Govt. of NCT of Delhi as required under Section 8(2) of the DSE Act. The order of termination passed against the appellant is thus, bad in law.

7. Once it is clear that the decision in **Raj Kumar (supra)** has been rendered by the Apex Court after taking note of the decision of the Constitution Bench in **T.M.A. Pai Foundation & Ors. (supra)**, the plea of respondent nos.3 & 4 that this Court should treat the decision in **Raj Kumar (supra)** as obiter dicta has to be necessarily rejected. It is only if the decision in **Raj Kumar (supra)** had been rendered without noticing the decision in **T.M.A. Pai Foundation & Ors. (supra)** would the decisions in **Brahmo Samaj Education Society & Ors. (supra)**, **Siddharam Satlingappa Mhetre (supra)** and **Philip Jeyasingh (supra)** have any applicability. In the present case, not only is it evident that the decision in **Raj Kumar (supra)** has been rendered after examining the decision in **T.M.A. Pai Foundation & Ors. (supra)**, but even otherwise the question answered by the Court in **Raj Kumar (supra)** regarding the mandatory requirement of prior approval from the DoE was not even subject matter of the decision in **T.M.A. Pai Foundation & Ors. (supra)**. This Court is, therefore, bound by the decision of the Apex Court in **Raj Kumar (supra)** wherein it has been clearly held that prior approval of the DoE would be necessary in the case of termination of an employee of a private unaided school.

8. I may also note that the respondent nos.3 & 4 have not challenged any of the three orders, i.e., order dated 25.06.2020, 23.09.2021 and 06.05.2022, whereby the DoE while categorically revoking the suspension of the petitioner had directed the respondent nos.3 & 4 to reinstate her with all consequential benefits. These orders passed by the respondent nos.1 & 2 have, therefore, attained finality. I, therefore, have no hesitation in holding that the suspension order dated 13.11.2019 is bad in law and consequently the petitioner would be entitled to full salary for the period between 13.11.2019 to 30.09.2021 during which she remained illegally suspended. The respondent nos.3 & 4 are, accordingly, directed to release the differential amount payable to the petitioner for this period after taking into account the amount already paid to her as subsistence allowance.

9. Now coming to the petitioner's claim for release of her terminal benefits after her superannuation on 30.09.2021. The only defence taken by respondents nos. 3 & 4 to deny the terminal benefits to the petitioner, who superannuated more than one year ago is that she cannot be paid her terminal dues till the disciplinary proceedings initiated against her are finalized. Even though this plea appears to be attractive on the first blush, what needs to be noted is that as on date the disciplinary proceedings against the petitioner have been stayed by this Court vide its order passed in **W.P.(C) 5738/2020**. An employee who superannuates from an organization after a long service, looks up to the terminal benefits with a hope that the said amount will act as a succour to him/her in old age and therefore, the same should unless withheld for any valid reason, normally be paid to the employee at the earliest.

10. In the present case, once the disciplinary proceedings against the petitioner have been stayed, the respondent nos. 3 & 4 evidently cannot proceed with the same. Does it imply that the petitioner should be penalised and not paid her terminal dues, even though the proceedings against her have been stayed by the Court after finding prima facie merit in her challenge to the same. In my considered view, this would be highly unfair and against the interest of justice. The petitioner cannot be made to suffer merely because she has chosen to assail the disciplinary proceedings, which she perceives to have been illegally initiated against her by respondent nos.3 & 4. The petitioner must, therefore, receive all her terminal benefits at the earliest. However, in order to protect the interest of the respondent nos. 3 & 4, it is directed that the terminal benefits of the petitioner including arrears of salary as per the recommendations of the 6th and 7th Central Pay Commission, leave encashment and gratuity would be released to her, subject to her filing an undertaking before this Court, with a copy to respondent nos. 1 & 2 as also to respondent nos. 3 & 4, that in case any penalty is imposed on her warranting recoveries to be made from her, she would, subject to any appellate remedy, abide by the terms thereof.

11. The amounts in terms of para 8 and 10, will be paid to the petitioner within a period of six weeks, failing which the same will bear interest @6% per annum from the date of her superannuation.

12. The writ petition, is accordingly, disposed of.

(REKHA PALLI)
JUDGE

NOVEMBER 14, 2022/acm