



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 14.09.2023

+ **LPA 177/2012****SH. C.S. CLARKE**

.....Appellant

versus

**MANAGING COMMITTEE OF THE FRANK
ANTHONY PUBLIC SCHOOL AND ORS.**

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Amiet Andlay and Mr. Arun K. Sharma, Advocates.

For the Respondents : Mr. J.K. Dass, Senior Advocate with Mr. Puneet Taneja, Mr. Manmohan Singh Narula & Mr. Amit Yadav, Advs. for R-1.
Mr. Mohnish Sehrawat, Mr. Nitesh Kumar Singh & Mrs. Avnish Ahlawat (DoE), Advocates for GNCTD.

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HON'BLE MR JUSTICE VIBHU BAKHRU**HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

VIBHU BAKHRU, J

1. The principal questions that fall for consideration of this Court are, whether Rule 118 of the Delhi School Education Rules, 1973 (hereafter '**the DSE Rules**'), to the extent it requires the Disciplinary Committee to include a nominee of the appropriate authority



(Administrator of the Union Territory of Delhi) is applicable to unaided minority; and whether Rule 120 of the DSE Rules to the extent it requires approval of the Director of Education (hereafter ‘DoE’) for imposition of major penalty, is applicable to unaided minority school.

2. The appellant was an employee of Frank Anthony Public School (hereafter ‘**the School**’) which is an unaided minority school. He was dismissed from the service of the School pursuant to an enquiry by the Disciplinary Committee of the School, which found him guilty of ‘grave misconduct’. It is the appellant’s case that the enquiry was vitiated and his dismissal is illegal as the Disciplinary Committee was not constituted in terms of Rule 118 of the DSE Rules. The appellant also claims that since prior approval of the DoE was neither sought nor granted, his dismissal from service is in violation of Rule 120 of the DSE Rules.

3. According to the School, Rules 118 and 120 of the DSE Rules are inapplicable to unaided minority schools.

Factual context

4. The appellant and his wife (since deceased) were employed with the School in terms of the Service Agreement, which included the terms and conditions as well as the mode for enforcing the code of conduct. In terms of the Service Agreement, they were allotted a residential accommodation, which was leased by the School.



5. The landlady of the said premises had instituted proceedings before the Rent Controller for eviction of the School. She succeeded in the said proceedings and by an order dated 02.09.1987, the Rent Controller directed that the residential accommodation, which was leased by the School be vacated by 30.11.1988.

6. The Principal (Mr. G.W. Mayer) of the School informed the appellant and his wife regarding the order passed by the Rent Controller. He also informed them that the School was in the process of finding another suitable residential accommodation for them so that they can be relocated. Sometime in November, 1988, the School found another residential flat located at Malviya Nagar and the Principal of the School called upon the appellant to inspect the same for further shifting into the said premises. But the appellant allegedly declined to inspect the premises. Thereafter, on 14.12.1998, the appellant and his wife were evicted from the residential accommodation occupied by them in the proceedings instated by the landlady.

7. On 14.12.1988, the Principal of the School, as a measure of temporary arrangement, permitted the appellant and his wife to use the guest room on the first floor of the building in the School Block and to also store some of their belongings in the basement of the main school building. The appellant and his wife were intimated that they were required to shift to another leased residential accommodation as and when the School finalized the same.



8. It is alleged that in the morning of 15.12.1988, the appellant and his wife came to the Principal's office demanding that they be provided residential accommodation within the school premises. At the material time, a new bungalow had been constructed for the residence of the Principal and was at the finishing stage. It was at the material time unoccupied. The appellant and his wife demanded that the said bungalow be made available to them for their residence. On the said date, it is alleged that they forcibly attempted to enter into the said bungalow. According to the Principal, he proceeded to the said bungalow but was accosted by the appellant and his wife. It is stated that the appellant's wife used abusive language against the Principal and seized his coat, which resulted in the buttons being ripped off. She allegedly pushed him and threatened to slap him. The Principal did not retaliate but held up his hand so that it was visible to all that he was not touching her. In the meanwhile, the appellant broke open the chain of the gate of the bungalow and forcibly entered the premises. The appellant attempted to break the entrance door of the bungalow but was unsuccessful. Some of the students raised an alarm. On hearing the commotion, some senior teachers came at the site and requested the appellant and his wife not to create any further disturbance.

9. In the afternoon of the said day, that is 15.12.1988, the Principal was informed that the appellant's wife had forcibly occupied another room (Tutorial Room), which was adjacent to the guest room occupied by them. It is alleged that they threw out the furniture kept in the said



room and, thereafter, refused to vacate the same. Subsequently, on 20.12.1988, the appellant and his wife were served with a Memorandum regarding their conduct on 15.12.1988. In the meanwhile, the School located an alternative residential accommodation at Dayanand Colony, Lajpat Nagar, New Delhi. The appellant and his wife were informed of the same on 22.12.1988 and they were called upon to vacate the guest room as well as the tutorial room which were forcibly occupied by them, on or before 27.12.1988. However, the appellant and his wife did not vacate the said rooms on the pretext that the leased accommodation at Dayanand Colony, Lajpat Nagar, New Delhi is very small. The School claims that the leased accommodation at Dayanand Colony, Lajpat Nagar, New Delhi was larger than the leased residential flat occupied by the appellant and his wife prior to them being evicted from the same on 14.12.1988.

10. The appellant and his wife responded to the Memorandum dated 20.12.1988 disputing the Principal's version of the incidents of 15.12.1988. The appellant and his wife were granted further time till 05.01.1989 to vacate the guest room and tutorial room but they continued to occupy the same.

11. The appellant was the class teacher of Class-VI(F) and it was also alleged that he had not submitted the report cards of the students to the Head Master for further forwarding of the same to the students (their parents). On 21.12.1988, he allegedly had informed the Principal that he was unable to do so.



12. In view of the aforesaid, the Board of Governors (Managing Committee of the School) framed charges of serious misconduct against the appellant and his wife. The Articles of Charges included a charge that the appellant and his wife had “*openly insulted and humiliated the Principal in an attempt to forcibly enter the Principal’s as-yet unoccupied bungalow*”. The Articles of Charges also included a charge to the effect that the appellant had made a deliberate attempt to harm the School and its students by not preparing their report cards.

13. The Board of Governors, thereafter, appointed Sh. H.N. Kashyap, former Principal of the Delhi Public School as an Enquiry Officer. The Articles of Charges and statement of imputations were served on the appellant and his wife. They adopted the response filed by them to the Memorandum dated 20.12.1988.

14. The Enquiry Officer conducted the enquiry. Witnesses were examined on behalf of the School and were also cross-examined by the appellant. After enquiry was completed, the Enquiry Officer submitted a report, with findings that the charges as framed against the appellant and his wife were established.

15. On 23.06.1989, Vice Chairman of the Managing Committee of the School furnished a copy of the report to the appellant and his wife. The appellant responded by a letter dated 16.07.1989. The Board of Governors / Managing Committee of the School considered the report and the appellant’s response at a meeting held on 30.07.1989 and



passed a resolution, thereby removing the appellant and his wife from service on the ground of ‘grave misconduct’.

16. The appellant and his wife appealed against the decision of the Board of Governors / Managing Committee of the School for removing them from service of the School by filing appeals (Appeal No.36/1989 and Appeal No.37/1989) under Section 8(3) of the Delhi School Education Act, 1973 (hereafter ‘**the DSE Act**’) before the Delhi School Tribunal (hereafter ‘**the Tribunal**’).

17. The appellant and his wife prevailed in their respective appeals before the Tribunal. By a common order dated 22.06.2000, the Tribunal directed that the appellant and his wife be reinstated in service with all consequential benefits.

18. The Managing Committee of the School preferred two separate writ petitions [W.P.(C) Nos.1666/2001 and W.P.(C) Nos.1672/2001] impugning the common order dated 22.06.2000 challenging the respective reinstatement of the appellant and his wife into service.

19. The aforementioned writ petitions were allowed by the common judgment dated 03.10.2011, which is impugned in the present appeal.

20. While the aforementioned petitions were pending before the learned Single Judge, the appellant’s wife expired. The legal heirs of the appellant’s wife have not challenged the impugned order to the extent it allowed W.P.(C) No.1672/2001, being the writ petition preferred against the common order dated 22.06.2000, passed by the



Tribunal in respect of Appeal No.37/1989 preferred by the appellant's wife. The appellant has filed the present appeal in his individual capacity and not that as a legal heir of his deceased wife.

Submissions

21. Mr. Amiet Andlay, learned counsel appearing for the appellant clarified that the appellant was not seeking any relief in respect of his wife and the present appeal is confined for seeking restoration of the common order dated 22.06.2000 passed by the Tribunal in respect of the appellant's appeal (Appeal No.36/1989).

22. He submitted that since the Disciplinary Committee was not constituted as required under Rule 118 of the DSE Rules, the enquiry was vitiated. Thus, the appellant's removal from service of the School was illegal and liable to be set aside. He submitted that Rule 118 of the DSE Rules expressly requires that a nominee of an appropriate authority is to be included as part of the Disciplinary Committee. The School was recognized by Delhi Administration. Therefore, in terms of Section 2(e)(ii) of the DSE Act, the Administrator (Lieutenant Governor of Delhi) was the appropriate authority, and his nominee was required to be part of the Disciplinary Committee. He submitted that in the present case, the enquiry was conducted by an Enquiry Officer and the decision to terminate the services of the appellant was taken by the Board of Governors / Managing Committee. The said Committee also neither included the Administrator nor his nominee.



23. Next, he submitted that the procedure as prescribed under Rule 120 of the DSE Rules for imposing major penalty was not followed. Sub-rule (1) of Rule 120 requires that no order of a major penalty would be made by the Disciplinary Authority except with the approval of the DoE. He referred to a letter dated 16.10.1989 sent by the Deputy Director of Education in regard to termination of services of the appellant and his wife, informing the School that in view of the decision of the Supreme Court in *Frank Anthony Public School Employees' Association v. Union of India & Ors.*¹, the minority institutions are also required to conduct the disciplinary proceedings in accordance with Rules 117, 118 and 120 of the DSE Rules. Since the Disciplinary Authority did not include a nominee from Department of Education, the same was not in accordance with Rule 118 of the DSE Rules and any action in regard to the disciplinary proceeding was vitiated. The School was also informed that the termination of the appellant and his wife would not be considered as valid.

24. Mr Andlay also referred to the decision of the Full Bench of this Court in *Guru Harkishan Public School through its Managing Committee v. Directorate of Education & Anr.*² and drew the attention of this Court to paragraph 41 of the said decision whereby the Full Bench of this Court had observed that since Section 12 of the DSE Act was struck down by the Supreme Court in *Frank Anthony Public School Employees' Association v. Union of India & Ors.*¹, its

¹ AIR 1987 SC 311

² 2015 SCC OnLine Del 9530



corollary would be that Sub-rule (1) of Rule 96 also has to be struck down.

25. On the strength of the aforesaid observations, he contended that since Sub-rule (1) of Rule 96 of the DSE Rules expressly provided that the provisions of Chapter VIII would not apply to unaided minority schools, all Rules falling within Chapter VIII of the DSE Rules (Rule 96 to Rule 121) were applicable to an unaided minority school. He also referred to the decision of a Coordinate Bench of this Court in *The Principal St Mary's School & Anr v. Rajendra Pratap Singh & Ors.*³ and submitted that in the said case, the Court upheld the decision to set aside the order terminating the services of the respondent in that case and consequently reinstated him.

26. Mr. J.K. Dass, learned senior counsel appearing for the respondents referred to the decision of the Supreme Court in *Frank Anthony Public School Employees' Association v. Union of India & Ors.*¹ and submitted that the Supreme Court had set aside the provisions of Section 12 of the DSE Act, which provided that the provisions of Chapter IV were inapplicable to unaided minority schools. However, the Supreme Court had carved out an exception in respect of Section 8(2) of the DSE Act and thus there was no dispute that the said section was made inapplicable to unaided minority schools. He submitted that Rules 118 and 120 of the DSE Rules were

³ Neutral Citation No.2018:DHC:7296-DB



traceable to Section 8(2) of the DSE Act and therefore were inapplicable to minority unaided schools.

27. He submitted that the observations made by the Full Bench of this Court in *Guru Harkishan Public School through its Managing Committee v. Directorate of Education & Anr.*² were in the light of the questions involved in the said case and cannot be read to mean that all Rules under Chapter VIII of the DSE Rules were struck down in entirety. He submitted that the observations were made in the context of the Supreme Court decision to strike down Section 12 of the DSE Act by virtue of which, the provisions of Chapter IV of the DSE Act became applicable to unaided minority school. As a corollary to the same, Chapter VIII of the DSE Rules to some extent would also be applicable to minority unaided schools.

Reasons & Conclusion

28. The first question to be addressed is whether the appellant's removal from service is vitiated under Rule 120(2) of the DSE Rules for want of DoE's approval.

29. The issue whether imposition of any major penalty on an employee of a school requires the approval of the DoE is no longer *res integra*; it is squarely covered by the decision of the Supreme Court in *Frank Anthony Public School Employees' Association v. Union of India & Ors.*¹. In the said case, the petitioner's had challenged Section 12 of the DSE Act, *inter alia*, as violative of Article 14 of the



otherwise terminated except with the prior approval of the Director.”

32. Sub-section (2) of Section 8 of the DSE Act, expressly provides that no employee of a recognised private school would be dismissed, removed or reduced in rank except with the prior approval of the DoE. The Supreme Court accepted that the said provision interferes with the rights of the minorities to administer the institutions of their choice. The Court accepted that such a provision –which makes the approval of DoE mandatory for dismissal, removal from service, or reduction in rank – falls foul of Article 30(1) of the Constitution of India. Thus, the Court did not strike down the provisions of Section 12 of the DSE Act in its entirety; the Court upheld Section 12 *albeit* to the limited extent that it made provisions of Section 8(2) of the DSE Act inapplicable to unaided minority schools.

33. It is also relevant to refer to the decision of the Supreme Court in the case of *State of Kerala, Etc. v. Very Rev. Mother Provincial, Etc.*⁴. In the said case, the Constitution Bench of the Supreme Court considered an appeal from the decision of the High Court of Kerala pursuant to the certificates granted by the said Court under Article 132(1) and 133(1)(c) of the Constitution of India. The Kerala High Court had declared that certain provisions of the Kerala University Act, 1969 were, *inter alia*, violative of Article 30(1) of the Constitution of India.

⁴ 1970(2) SCC 417



34. Section 56(2) of the said Kerala University Act, 1969 expressly provided that no teacher of a private college would be dismissed, removed or reduced in rank by the governing body of the Managing Council without the previous sanction of the Vice Chancellor. The Supreme Court upheld the decision that the said provision violated the right of the minority to administer the institution. Paragraph 16 of the said judgment is relevant and is set out below:

“16. Section 53, sub-sections (1), (2) and (3) confer on the Syndicate of the University the power to veto even the action of the governing body or the managing council in the selection of the principal. Similarly, sub-section (4) takes away from the educational agency or the corporate management the right to select the teachers. The insistence on merit in sub-section (4) or on seniority-cum-fitness in sub-section (7) does not save the situation. The power is exercised not by the educational agency or the corporate management but by a distinct and autonomous body under the control of the Syndicate of the University. Indeed sub-section (9) gives a right of appeal to the Syndicate to any person aggrieved by the action of governing body or the managing council thus making the Syndicate the final and absolute authority in these matters. Coupled with this is the power of Vice-Chancellor and the Syndicate in sub-sections (2) and (4) of Section 56. These sub-sections read:

“56. Conditions of service of teachers of private colleges.—(1) * * *

(2) No teacher of a private college shall be dismissed, removed, or reduced in rank by the governing body or managing council without the previous sanction of the Vice-Chancellor or placed under suspension by the governing body or managing council for a continuous period exceeding fifteen days without such previous sanction.

(3) * * *



(4) A teacher against whom disciplinary action is taken shall have a right of appeal to the Syndicate, and the Syndicate shall have power to order reinstatement of the teacher in cases of wrongful removal or dismissal and to order such other remedial measures as it deems fit, and the governing body or managing council, as the case may be, shall comply with the order.”

These provisions clearly take away the disciplinary action from the governing body and the managing council and confer it upon the University. Then comes Section 58 which reads:

“58. *Membership of Legislative Assembly, etc., not to disqualify teachers.*—A teacher of a private college shall not be disqualified for continuing as such teacher merely on the ground that he has been elected as a member of the Legislative Assembly of the State or of Parliament or of a local authority:

Provided that a teacher who is a member of the Legislative Assembly of the State or of Parliament shall be on leave during the period in which the Legislative Assembly or Parliament, as the case may be, is in session.”

This enables political parties to come into the picture of the administration of minority institutions which may not like this interference. When this is coupled with the choice of nominated members left to Government and the University by sub-section (1)(d) of Sections 48 and 49, it is clear that there is much room for interference by persons other than those in whom the founding community would have confidence.”

35. In view of the above, the contention that in terms of Rule 120 of the DSE Rules, the dismissal of the appellant is vitiated for want of approval of the DoE, is unmerited and accordingly rejected.

36. The second question to be examined is whether Rule 118 of the DSE Rules to the extent it requires the Disciplinary Committee to



include a nominee of the appropriate authority is applicable to a unaided minority institution.

37. Rule 118 of the DSE Rules prescribes constitution of a Disciplinary Authority, which includes a nominee of the appropriate authority (Administrator of the Union Territory of Delhi) in case of an unaided school. Rule 118 of the DSE Rules is set out below:

“118. Disciplinary authorities in respect of employees

The disciplinary committee in respect of every recognised private school, whether aided or not, shall consist of:-

- (i) the chairman of the managing committee of the school;
- (ii) the manager of the school;
- (iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;
- (iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director;
- (v) a teacher who is a member of the managing committee of the school, nominated by the Chairman of such managing committee.”

38. It is the appellant’s case that Rule 118 of the DSE Rules do not encroach on or interfere with the rights of minorities to administer educational institutions of their choice. Thus, the said Rule would be applicable notwithstanding that Rule 96(1) of the DSE Rules expressly



provides that nothing contained in Chapter VIII of the DSE Rules (which includes Rules 96 to 121 would apply to an unaided minority school.

39. The appellant relies on the decision of the Full Bench of this Court in *Guru Harkishan Public School through its Managing Committee v. Directorate of Education & Anr.*² and the observations to the effect that in view of the decision of the Supreme Court in *Frank Anthony Public School Employees' Association v. Union of India & Ors.*¹ to strike down Section 12 of the DSE Act as *ultra vires* the constitution, Rule 96(1) of the DSE Rules has to be struck down.

40. The contention that Chapter VIII of the DSE Rules are applicable as a necessary corollary of Section 12 of the DSE Act being struck down by the Supreme Court by virtue of the decision in *Frank Anthony Public School Employees' Association v. Union of India & Ors.*¹, is unpersuasive. The contention that by virtue of the decision of the Full Bench of this Court in *Guru Harkishan Public School through its Managing Committee v. Directorate of Education & Anr.*², Rule 96(1) of the DSE Rules was struck down is unmerited. In the said case, the Full Bench of this Court was concerned with the conflict in the opinions of two learned Single Judges of this Court. In *The Manager, Arya Samaj, Girls Higher Secondary School v. Sunrita Thakur etc.*⁵, a Single Judge of this Court had held that the Delhi School Tribunal constituted under Section 11 of the DSE Act

⁵ 1990 SCC OnLine Del 283



did not have the power to decide on the issue of back wages to be paid for the interregnum period between the date on which the employee of a recognized school is compulsorily retired from service till the date of his reinstatement. The learned Single Judge had reasoned that the matters relating to payment of salary and allowances to such employee on reinstatement was regulated by Rule 121 of the DSE Rules, which requires the said decision to be taken by the Managing Committee of the School. Whereas, in *The Managing Committee Heera Lal Jain v. Shri Chander Gupt Sharma & Ors.*⁶, another Single Judge of this Court had taken a contrary view.

41. In view of the conflicting decisions, the writ petition relating to Guru Harkishan Public School, which is an unaided minority school, was referred to the Full Bench of this Court.

42. At the outset, the Court noted that the two conflicting decisions⁷ did not relate to applicability of the DSE Act and the DSE Rules to unaided minority schools. In aforesaid context, the Full Bench proceeded to answer the reference as well as addressed the other ancillary issues relating to the applicability of the DSE Act and the DSE Rules to unaided minority schools.

43. It was, *inter alia*, contended on behalf of the petitioner before the Full Bench of this Court that since Rule 96(1) of the DSE Rules expressly excludes the applicability of Chapter VIII to unaided

⁶W.P.(C) No.7617/2000 dated 17.01.2006

⁷ The Manager Arya Samaj Girls Higher Secondary School & Anr. v. Sunrita Thakur and The Managing Committee Heera Lal Jain v. Shri Chander Gupt Sharma & Ors.



minority schools, the said provision was not applicable to Guru Harkishan Public School, the petitioner in that case². The Full Bench of this Court referred to the decision of the Supreme Court in *Frank Anthony Public School Employees' Association v. Union of India & Ors.*¹ and noted that the Supreme Court had struck down Section 12 of the DSE Act inasmuch as it made not only the provisions of Section 10 of the DSE Act inapplicable to minority institutions but had also made Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 of the DSE Act inapplicable to such institutions. The Court further observed that as a necessary corollary Rule 96(1) of the DSE Rules has also to be struck down inasmuch as the said sub-rule makes Chapter VIII of the DSE Rules wholly inapplicable to unaided minority schools. However, the Court also observed that the question whether any such Rule impinge on the right of the minorities to manage the schools established in Delhi would require to be treated as inapplicable to minority unaided schools.

44. The observations made by the Full Bench in paragraph 41 of their decision –which is relied upon by the appellant – cannot be read in isolation. It is required to be read in its context. Paragraphs 41 and 42 of the said decision clarify the view of the Full Bench in this regard. The said paragraphs are set out below:

“41. Since Section 12 of the Delhi School Education Act, 1973 has already been struck down by the Supreme Court in *Frank Anthony's* case (supra) its corollary would be that sub-Rule 1 of Rule 96 also has to be struck down.



42. Since no arguments were advanced regarding the various Rules in Chapter VIII of the Rules regarding their constitutionality, we would only observe that such Rules or part thereof which impinge upon the right of the minority institutions to manage schools established in Delhi would be treated as not applicable to the minority unaided schools, but such provisions which do not impact the right of the minorities to manage their schools would have to be treated as applicable to minority schools which are unaided.”

45. It is apparent from the above that although the Full Bench had observed that Rule 96(1) of the DSE Rules has to be struck down, it had also clarified that the question whether any of the Rules falling within Chapter VIII are applicable to minority unaided schools would require to be considered on the basis whether it impacts the right of minorities to manage the schools.

46. Thus, the principal question to be addressed is whether Rule 118 of the DSE Rules, which necessarily requires a nominee of the appropriate authority to be included in the Disciplinary Committee, impacts the right of the minorities to establish and administer the educational institutions.

47. The appellant’s contention that Rule 118 of the DSE Rules is applicable is founded on the observations made by the Full Bench of this Court in *Guru Harkishan Public School through its Managing Committee v. Directorate of Education & Anr.*² and the decision of the Supreme Court in *Frank Anthony Public School Employees’ Association v. Union of India & Ors.*¹.



48. It is important to note that in *Frank Anthony's case*, the Supreme Court did not strike down Rule 96(1) of the DSE Rules. The examination was confined to the challenge by the Frank Anthony Public School Employees' Association to their conditions of service on the ground of violation of Article 14 of the Constitution of India. At the material time, the scales of pay and other conditions of service of teachers and other employees of Frank Anthony Public School, New Delhi were less favourable than those of teachers and employees of other schools under the Delhi Administration. It was contended on behalf of the petitioners that the provisions of Section 12 of the DSE Act, which renders Chapter IV of the DSE Act inapplicable, offended Article 14 of the Constitution of India.

49. Section 8 of the DSE Act relates to the terms and conditions of service of employees of recognized private schools. Sub-section (1) of Section 8 empowers the Administrator to make Rules for regulating the minimum qualification for recruitment and the conditions of service for employees of recognized private schools. Sub-section (2) of Section 8 proscribes dismissal, removal or reduction in rank of any employee except with the prior approval of the DoE. Sub-section (3) of Section 8 grants an employee who is dismissed, removed or reduced in rank, the right to appeal against such punitive action to a Tribunal constituted under Section 11 of the DSE Act. Sub-section (4) of Section 8 requires the Managing Committee of a recognized private school to communicate to the DoE, its intention to suspend any employee and that no employee be suspended without the prior



approval of the DoE. However, the proviso to Sub-section (4) of Section 8 of the DSE Act empowers the Managing Committee to suspend an employee with immediate effect without prior approval of the DoE but by virtue of the second proviso to Sub-section (4) of Section 8, such suspension has a limited life of a period of fifteen days unless it is communicated to the DoE and approved by him prior to the expiry of the said period of fifteen days. Sub-section (5) of Section 8 of the DSE Act requires the DoE to approve suspension of an employee if he is satisfied that there are adequate and reasonable grounds for such suspension.

50. Section 9 of the DSE Act requires the employees of a recognized school to abide by such Code of Conduct as may be prescribed. Violation of any of the provisions of the Code of Conduct renders the employee liable for disciplinary action.

51. Section 10 of the DSE Act relates to the salaries payable to the employees and Section 11 of the DSE Act relates to the constitution of an independent tribunal known as 'Delhi Schools Tribunal' consisting of one person. It is further provided that no person would be appointed unless he has held the office of a District Judge or any equivalent judicial office.

52. Section 12 of the DSE Act expressly provided that Chapter IV would not apply to an unaided minority schools.



53. As noticed above, the Supreme Court did not find any of the provisions of Sections 8 to 11 [other than Section 8(2)] of the DSE Act as offending Article 30 of the Constitution of India. The clear reasoning being that matters for ensuring standards for education can be a subject matter of state regulation. And, prescribing qualifications and stipulating the conditions of service of employees were relevant for maintaining the standards of education. In its decision, the Supreme Court also referred to the following passage from the opinion of Ray, C.J. (with Palekar, J. concurring) in *Ahmedabad St. Xavier's College Society & Anr. v. State of Gujarat & Anr.*⁸:

“.....Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30.”

54. It is now well settled that regulations and provisions to maintain the standards of education do not fall foul of the right of the minorities to establish and administer minority institutions of their choice. In *State of Kerala, Etc. v. Very Rev. Mother Provincial Etc.*⁴, the Supreme Court had observed that the management of affairs of an

⁸(1974) 1 SCC 717



institution must be free from control. However, standards of education were an exception and were not part of management of an institution. The Court further observed that right of a State to regulate educational standards and allied matters cannot be denied. In the aforesaid context, the Court also held to the certain extent, the State may “*regulate the conditions of employment of teachers and health and hygiene of students*”. Paragraphs 9 and 10 of the said decision are relevant and are set out below:

“9. The next part of the right relates to the administration of such institutions. Administration means “management of the affairs” of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

10. There is, however, an exception to this and it is that the standards of education are not a part of management as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to



them, they may be compelled to keep in step with others. These propositions have been firmly established in *State of Bombay v. Bombay Education Society* [(1955) 1 SCR 568] , *State of Madras v. S.C. Dorairajan* [1951 SCC 351 : (1951) SCR 525] , *In re the Kerala Education Bill, 1957* [(1959) SCR 995] , *Sidharajbhai v. State of Gujarat* [(1963) 3 SCR 837] , *Katra Education Society v. State of U.P.* [(1966) 3 SCR 328] , *Gujarat University, Ahmedabad v. Krishna Ranganath Mudholkar* [(1963) Supp 1 SCR 112] and *Rev. Father W. Proost v. State of Bihar* [(1969) 2 SCR 73] . In the last case it was said that the right need not be enlarged nor whittled down. The Constitution speaks of administration and that must fairly be left to the minority institutions and no more. Applying these principles we now consider the provisions of the Act.”

[emphasis added]

55. It is also relevant to refer to Sub-section (1) of Section 56 of the Kerala University Act, 1969 which was also subject matter of challenge in *State of Kerala, Etc. v. Very Rev. Mother Provincial, Etc.*⁴. The said section is reproduced below:

“56. Conditions of service of teachers of private colleges. –
(1) The conditions of service of teachers of private colleges, including conditions relating to pay, pension, provident fund, gratuity, insurance and age of retirement shall be such as may be prescribed by the Statutes,”

56. As is apparent from the above that Sub-section (1) of Section 56 of the Kerala University Act, 1969 pertains to the conditions of service of teachers of private colleges. As noted herein before, the Supreme Court found that Sub-section (2) of Section 56 of the Kerala University Act, 1969, which made the approval of Vice Chancellor mandatory for removal, dismissal or reduction in rank any employee, offended Article 30(1) of the Constitution of India. However, the



Supreme Court did not find any fault with Sub-section (1) of Section 56 of the Kerala University Act, 1969.

57. There is, thus, a clear distinction between provisions that make inroads into management and administration of a minority institution and those, which are necessary for maintaining the standards of education. Insofar as the conditions of service of teachers and employees of educational institutions are concerned, the Supreme Court has consistently held that the same concerns the standards of education and do not offend the right of minorities to manage and administer their institutions as guaranteed under Article 30 of the Constitution of India.

58. In *All Saints High School v. Govt. of Andhra Pradesh*⁹, Y.V. Chandrachud, C.J. had referred to the various earlier decisions of the Supreme Court and observed as under:

“3. These decisions show that while the right of the religious and linguistic minorities to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining the excellence thereof can be validly prescribed. For maintaining educational standards of an institution, it is necessary to ensure that it is competently staffed. Conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character. As observed by Das, C.J., in *Re Kerala Education Bill* [AIR 1958 SC 956 :

⁹ (1980) 2 SCC 478



1959 SCR 995 : 1959 SCJ 321] , “Right to administer cannot obviously include the right to maladminister”, and in the words of Shah, J., in Rev. Sidhajibhai [AIR 1963 SC 540 : (1963) 3 SCR 837] , “The right is subject to reasonable restrictions in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like”. Hidayatullah, C.J. said in Very Rev. Mother Provincial [(1970) 2 SCC 417 : (1971) 1 SCR 734] that “Standards of education are not a part of management as such”, that the “minority institutions cannot be permitted to fall below the standard of excellence expected of educational institutions” and that “the right of the State to regulate education, educational standards and the allied matters cannot be denied”. Justice Jaganmohan Reddy, in D.A.V. College [(1971) 2 SCC 269 : 1971 Supp SCR 688] , reiterated while upholding clause 18 of the Guru Nanak University Amritsar Act, 1969 that regulations governing recruitment and service conditions of teachers of minority institutions, which are made in order to ensure their efficiency and excellence do not offend against their right to administer educational institutions of their choice.”

59. The Supreme Court in *All Saints High School v. Govt. of Andhra Pradesh*⁹, *inter alia*, was concerned with the challenge to Section 3(1) and 3(2) of the Andhra Pradesh Recognized Private Educational Institutions (Control) Act, 1975. The said provisions read as under:

“3. Dismissal, removal or reduction in rank or suspension of teachers employed in private educational institutions.—(1) Subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated, except with the prior approval of the competent authority:

Provided that if any educational management, agency or institution contravenes the provisions of this sub-section, the teachers affected shall be deemed to be in service.



3(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.”

60. Syed Murtaza Fazal Ali, J. after referring to the earlier decisions held that Section 3(1) the Andhra Pradesh Recognized Private Educational Institutions (Control) Act was clearly violative of Article 30(1) of the Constitution of India and would have no application to any minority institution. Y.V. Chandrachud, C.J. concurred with the said conclusion.

61. The management and administration of an institution entails several functions including management and administration of its human resources. Taking disciplinary action in respect of an employee is clearly a matter of management and administration of an institution. Whilst there is no cavil that regulations can be framed for ensuring a fair procedure for such disciplinary action; it would be impermissible to exclude this function from the management of an institution under its charter and vest it with another body constituted for the said purpose. As observed by the Supreme Court in *State of Kerala, Etc. v. Very Rev. Mother Provincial, Etc.*⁴, no part of the management can be taken away and vested with another body without encroachment upon the guaranteed right. However, *to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students.* Thus, so far as regulating the conditions of



service, namely, the pay, scales and even the procedure for any disciplinary action, the same would not offend the Article 30 of the Constitution of India even though it does indirectly impact the management of the institution. However, the State cannot vest any part of the core management and administration of the minority institution in a body other than the one constituted by the minorities. The administration and management of an organization includes the human resource management, which is one of the core management functions. Providing recourse before an independent adjudicatory body against unfair punitive action, is clearly a matter of substantive right of an employee. Thus, denying such remedy to employees of minority institution was held¹ to offend the equal protection clause of the Constitution of India.

62. In view of the above, we are unable to agree that the disciplinary action against the appellant is vitiated on account of a Disciplinary Committee not comprising of a nominee of the appropriate authority in terms of Rule 118 of the DSE Rules.

63. The learned counsel for the appellant has also referred to the decision of the Coordinate Bench of this Court in the *The Principal St Mary's School & Anr v. Rajendra Pratap Singh & Ors.*³, however, the said decision is not applicable in the present case as it relates to the applicability of Rule 105 of the DSE Rules which relates to probation of an employee in case of unaided minority school. Probation of employee is clearly a matter of conditions of service and as noted



above statutory provisions regulating conditions of service do not fall foul of Article 30 of the Constitution of India.

64. In view of the above, the appeal is unmerited and the same is accordingly dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 14, 2023
GSR/RK