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

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Date of Decision: 05th December, 2024

+ W.P.(C) 1852/2024 & C.M. APPL. 45378/2024

RITU SINGHAL

.....Petitioner

Through: Mr. Nikhilesh Kumar, Advocate.

versus

LIONS PUBLIC SCHOOL AND ORS

.....Respondents

Through: Mr. Vivek Kumar Tandon, Ms. Perna Tandon, Mr. Mayank Tiwari, Advocates for the School.

Ms. Latika Choudhury, Advocate for DoE.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner laying a challenge to the suspension order dated 17.10.2023 and extension order dated 07.11.2023 as being illegal and violative of Section 8(4) of Delhi School Education Act and Rules, 1973 (DSEAR).
2. Petitioner was appointed as a Librarian in Lions Public School ('School') on 01.07.2008 and was confirmed on completion of probation period. It is averred in the writ petition that from March, 2010, the School has been claiming a percentage of salary as 'cashback' from the teachers including the Petitioner. On 15.09.2014, Petitioner along with other teachers made a complaint to the Directorate of Education (DoE) regarding non-payment of salaries in terms of the 6th Central Pay Commission (6th CPC) as also on the alleged scam pertaining to 'cashback'. On receipt of the



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complaint, DoE formed an inquiry team to look into the allegations. By order dated 16.01.2015, the School was directed to make payments in accordance with law while the inquiry in respect of 'cashback' remained inconclusive.

3. Being aggrieved by the non-implementation of this order, Petitioner along with others filed writ petition being W.P. (C) 1753/2015, in which notice was issued on 23.02.2015. As a counter blast, the School issued a memo to the Petitioner on 25.07.2015 alleging disobedience of the orders of the seniors with respect to some arrangements in Class-VI to which the Petitioner filed his response on 30.07.2015. During the pendency of this petition, the School entered into a settlement with the Petitioners therein including the present Petitioner and writ petition was disposed of on 15.03.2016 recording the settlement. However, the School never honoured the terms of settlement and arrears of salaries in terms of 6th and 7th CPC were not released. This led to a representation being made to DoE on 14.03.2022 but even there no action was taken and Petitioner filed W.P. (C) 8686/2022 seeking arrears of salary on pay revision. By order dated 31.05.2022, Court by an interim order restrained the School from taking any coercive action against the Petitioner. The School, however, in utter disregard of the order issued a warning letter dated 22.07.2022 levelling false allegations that he was found sitting in the classroom instead of taking a class in the library.

4. According to the Petitioner, this memo was followed by several memos and show cause notices by the School with a view to harass the Petitioner and on 09.01.2023, the School demoted the Petitioner from the post of TGT (Hindi) to the post of Librarian, which order has been



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challenged by the Petitioner. Finally, the School suspended the Petitioner vide order dated 17.10.2023 with immediate effect. By e-mail dated 19.10.2023, Petitioner requested DoE to provide a copy of prior approval for suspension in terms of Section 8(4) of DSEAR, which was never furnished. By order dated 07.11.2023, suspension of the Petitioner was extended and Petitioner approached this Court.

5. The main stake of the argument of learned counsel for the Petitioner is that the suspension order and the order of extension of suspension have been passed in violation of Section 8(4) of DSEAR, which provides that the School is required to take prior approval of DoE before suspending an employee and assuming that immediate suspension is necessary, the Managing Committee may suspend with immediate effect without prior approval but no such immediate suspension shall remain in force for more than 15 days from the date of suspension unless it has been communicated to the Director and approved by him before expiry of the said period. Reliance is placed on the judgment of this Court in *S.S. Tyagi v. Ravindra Public School and Another, 2020 SCC OnLine Del 2084*, to support his argument and it is vehemently urged that in the present case Section 8(4) is not complied with.

6. Ms. Latika Choudhury, learned counsel for DoE supports the case of the Petitioner to the extent that prior approval of the Director was never sought by the School before passing the suspension order dated 17.10.2023. She further submits that a communication was received on 08.05.2023 followed by another letter dated 17.10.2023 but the latter communication was only an intimation to the Director that the School had suspended the Petitioner. This request for post-facto approval of the suspension order was



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duly rejected on 18.10.2023 although the signatures of the Director bear the date of 01.11.2023 but this was also within the statutory period of 15 days. Therefore, according to her, the suspension order cannot sustain in law.

7. Mr. Tandon, learned counsel appearing on behalf of the School defends the suspension order on the ground that the School had sent several communications to the Directorate seeking approval. It is urged that by letter dated 08.05.2023 prior approval was sought from the Director for suspending the Petitioner but there was no response. This was followed up by communications dated 17.10.2023, 25.10.2023, 30.10.2023, 07.11.2023 and 18.11.2023 but again there was no response and it was only 07.05.2024 that the School received a communication dated 01.01.2024 informing that the request of the School for approval had been rejected. Mr. Tandon painfully submits that till date even the file has not been returned to the School and it is a sorry state of affairs that the Directorate takes its own sweet time to communicate to the School of its decision considering that there is a statutory period of 15 days for approval of suspension and failure to grant approval leads to serious consequences of the suspension order becoming vulnerable.

8. The neat legal issue that this Court is called upon to decide is whether the suspension order dated 17.10.2023 and consequential order of its extension are sustainable in law. This issue is no longer *res integra* as it has been held in a number of judgments that a suspension order which is in violation of Section 8(4) of DSEAR read with Rule 115 of the DSEAR is invalid. Before proceeding further, it would be relevant to examine Section 8(4) of DSEAR which is extracted hereunder, for ready reference:-



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

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(4) Where the managing committee of a recognised 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.”

9. It is apparent from a perusal of the aforesaid provision that if the Managing Committee of a recognised private school intends to suspend its employee, then the said intention has to be communicated to the DoE and no employee shall be suspended except with prior approval of DoE. This is however subject to the stipulation in the first Proviso to Subsection (4) of Section 8, which empowers the Managing Committee to suspend an employee with immediate effect, without obtaining the prior approval of the Director of Education, if it is satisfied that such an immediate suspension is necessitated by reason of the gross misconduct of the employee, as provided for under the Code of Conduct prescribed under Section 9 of that Act. The second Proviso to Sub-section (4) of Section 8 prescribes that no such immediate suspension shall remain in force beyond a period of fifteen days from the date of the actual suspension unless and until the same has been communicated to the Director of Education and he grants approval before the expiry of the said period.



10. In the present case, it is an undisputed fact that suspension order dated 17.10.2023 was passed without prior approval of DoE. School had sent a communication on 08.05.2023 seeking prior approval but the same was rejected on 18.10.2023 *albeit* there is no doubt that the rejection was communicated to the School later in point in time. The suspension order is therefore untenable in law. I am fortified in this view by judgment of the Division Bench of this Court in **Anand Dev Tyagi v. Lt. Governor of Delhi, 1996 SCC Online Del 537**. In the said case, the employee had been placed under suspension in an emergency and without prior approval. Though the suspension was communicated to the Director but there was no approval before the expiry of period of 15 days. The Division Bench analyzing the provisions of Section 8(4) and (5) of DSEAR observed that there is nothing in the DSEAR that in the event of the Director not according his approval, the same shall be deemed to have been accorded. It was observed that communication of the fact of suspension to the DoE and grant of approval to the act of placing an employee under suspension, before expiry of period of 15 days, is a *sine qua non* for the period of suspension to remain in force beyond 15 days. On approval not being granted the suspension shall cease to be operative. The Division Bench after taking into consideration various decisions of the Supreme Court emphasized on the statutory mandate of an approval by the DoE and held that in the absence of approval by DoE, order of immediate suspension of an employee shall lapse on the 15th day and cease to have any legal force from the 16th day onwards. Relevant paragraphs are as under:

“12. A combined reading of sub-sections (4) & (5) of Section 8 of the Act and Rule 115(2) and (5) of the Rules would suggest that in ordinary circumstances the Managing Committee of a recognised private school, if



it intends to suspend an employee has first to communicate to the Director and such suspension will become operative only on prior approval being accorded by the Director. Only in an emergent situation the Managing Committee is empowered to forthwith place an employee under suspension, which suspension firstly will remain in force for a period of 15 days. Its extension beyond that period is dependant upon the approval of the Director, to be accorded by him, before the expiry of the said period of 15 days. In the case of prior approval being accorded by the Director permitting the Managing Committee to place its employee under suspension or in the event of the Director having approved the action of the Managing Committee in suspending its employee in emergent situation that such suspension will continue to remain in operation till it is revoked or modified, either by the Managing Committee or by the Director, but in all eventualities suspension will continue to remain in operation for a maximum period of six months unless Managing Committee, for reasons to be recorded takes a decision to continue the suspension beyond the period of six months.

13. *In the instant case respondent No. 4 placed the petitioner under suspension forthwith on 10.7.1994 and it is contended that the order was communicated to the Director and his approval was sought. The record reveals that respondent No. 4 merely forwarded a copy of memorandum Annexure PX to the Director saying this is being intimated to Director to Education as well". Copy was also sent to District Education Officer. The communication, which thereafter was sent by respondent No. 4 to the Director of Education is Annexure R-4/24 dated 26.7.1994 with a copy to Education Officer. The petitioner was placed under suspension on 10.7.1994. In case the petitioner had been put under suspension on 10.7.1994 by the Managing Committee, in exercise of its power to put an employee under suspension with immediate effect on its satisfaction that immediate suspension was necessary by reason of gross misconduct, the same could remain in force at the most for a period of 15 days from the date of suspension. Suspension thereafter could remain operative only on the Director's according his approval before the expiry of the period of 15 days. No doubt the suspension was communicated by respondent No. 4 to the Director but no approval was granted by the Director before the expiry of period of 15 days. Director was required to take a decision within the ambit of Sub-section (5) of Section 8 on his satisfaction that there were adequate and reasonable grounds for suspension. There is nothing in the Act or in the Rules that in the event of Director not according his approval, the same will be deemed to have been accorded. In other words, there is no deeming provision. Communication of the fact of suspension to the Director of Education and according of his approval to this act of placing an employee under suspension before the expiry of period of fifteen days is a sine qua non for the period of suspension before*



the expiry of period of fifteen days. On approval not being granted the suspension will cease to be operative. Power lies with the Director either to approve or not to approve. It is only on approval being granted that period of suspension will extend beyond fifteen days. Not taking decision by the Director within fifteen days will also amount to approval not being accorded. No doubt the management in an emergent situation, as is referred to in the second proviso to Sub-section (4) of Section has a right to forthwith place the employee under suspension, but this act of placing suspension requires approval. Approval has to be accorded by the Director on his satisfaction that there are reasonable grounds for such suspension. It requires positive decision to be taken. Approval may be either accorded or withheld or may not be accorded at all There is no question deemed approval as is contended on behalf of respondent No. 4. Reference may be made to a decision of the Supreme Court in HPMC v. Shri Suman Behari Sharma, 1996 (5) SCC 40.

14. In view of the above there being no approval accorded by the Director before the expiry of period of 15 days from 10.7.1994 the suspension of petitioner automatically came to an end on 25.7.1994. On and from 25.7.1994, it cannot be said that the petitioner has remained under suspension. Petitioner thereafter was neither placed under suspension afresh separately nor a request was made by respondent No. 4 to the Director for placing the petitioner again under suspension. It is not shown that Education Officer or Deputy Education Officer concerned were delegated with the powers of the Director. It is the Director of Education alone who can exercise the power to grant prior or post approval of suspension under Section 8(5) of the Act. Education Officer or Deputy Education Officer could not have taken any decision at their own end.”

11. The same view is taken by another Division Bench of this Court in ***Guru Nanak Public School and Another v. Ruchi Malhotra and Another***, 2024 SCC OnLine Del 383, against which SLP © No. 10055/2024 has been dismissed on 10.05.2024. Relevant paragraphs of the judgment are as follows:-

“6. In support of the appeal, learned counsel for the appellant submits that while passing the impugned order, the learned Single Judge failed to appreciate that the appellant, being an unaided minority private school, has full autonomy in the matter of disciplinary proceedings against its employees. He contends that Section 8(4) of the DSE Act is not applicable to a minority institution like the appellant, for which purpose he seeks to



place reliance on the answer to question no. 5© as formulated by the Constitution Bench in *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481. He submits that the Constitution Bench has held that in case of an unaided minority educational institution, the regulatory measure of control should be minimal with the only condition being that the minority institution should evolve a rational procedure for selection of teaching staff and for taking disciplinary actions against them. He, therefore, prays that the impugned order, which is premised solely on the provisions of section 8(4) DSE Act be set aside.

7. In response, learned counsel for the respondent no. 1 supports the impugned order and submits that the appellant's plea that Section 8(4) of the Act is not applicable to an unaided minority institution is wholly misconceived. He submits that not only was this issue dealt with by the Apex Court in *Frank Anthony Public School Employees Assn. v. Union of India*, (1986) 4 SCC 707 but also thereafter in *G. Vallikumari v. Andhra Education Society*, (2010) 2 SCC 497. By drawing our attention to paragraphs nos. 12 & 17 of the decision in *G. Vallikumari (supra)*, he contends that the Apex Court has categorically held that provisions of Section 8(4) of the Act are applicable to unaided minority educational institutions as well. He, therefore, prays that the appeal be dismissed.

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9. In the light of this statutory provision, learned counsel for the appellant does not deny that as per section 8(4), it is mandatory for a recognized private school to seek prior approval of the Director of Education before passing an order of suspension. His only plea, however, is that in view of decision of the Constitution Bench in *T.M.A. Pai Foundation (supra)*, the provisions of Section 8(4) of the Act are not applicable to unaided minority educational institutions. In order to appreciate this plea of the appellant, we may now refer to the manner in which question no. 5© has been answered by the Apex Court in the decision of *T.M.A. Pai Foundation (supra)*. Relevant extract of the decision reads as under-

Q. 5. © Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be



minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution. Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff. Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

(Emphasis Supplied)

10. From a perusal of the aforesaid, we are of the view that though the Apex Court in *T.M.A. Pai Foundation* (supra) has held that there ought to be minimal regulatory control over administration of unaided minority educational institutions, this, however, in itself does not imply that Section 8(4) of the DSE Act would not be applicable to these unaided minority educational institution. In our view, merely because the Constitution Bench has observed that minority institutions must evolve a rational procedure for selection of its teaching staff and for taking disciplinary action, this does not imply that the statutory mandate under Section 8(4) would not be applicable to them. We are unable to agree with the learned counsel for the appellant that the manner in which the question 5© has been answered by the Constitution Bench would imply that Section 8(4) DSE Act would not be applicable to the appellant.

11. On the other hand, we have also considered the decision in *Frank Anthony Public School Employees Assn.* (supra), and in *G. Vallikumari* (supra) relied upon by the respondents and find that in these decisions the Apex Court has specifically held that Section 8(4) of the DSE Act which provides that no minority educational institutions will suspend an employee without prior approval of the Director of Education, is valid.



It would therefore be useful to refer to the relevant extracts of the decision in *Frank Anthony Public School Employees Assn. (supra)* which reads as under:

“19. Section 8(4) would be inapplicable to minority institutions if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in order to present an abuse of power by the management a safeguard is provided to the employee that approval should be obtained within 15 days. The Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension. The provision appears to be eminently reasonable and sound and the answer to the question in regard to this provision is directly covered by the decision in *All Saints High School*, where *Chandrachud, C.J. and Kailasam, J.* upheld Section 3(3)(a) of the Act Impugned therein. We may also mention that in that case the right of appeal conferred by Section 4 of the Act was also upheld. How necessary it is to afford some measure of protection to employees, without interfering with the management’s right to take disciplinary action, is illustrated by the action taken by the management in this very case against some of the teachers. These teachers took part along with others in a ‘silent march’, first on April 9, 1986 and again on April 10, 1986, despite warning by the principal. The march was during the break when there were no classes. There were no speeches, no chanting or shouting of slogans, no violence and no disruption of studies. The behavior of the teachers appears to have been orderly and exemplary. One would have thought that the teachers were, by their silent and dignified protest, setting an example and the soundest of precedents to follow to all agitators everywhere. But instead of sympathy and appreciation they were served with orders of immediate suspension, something which would have never happened if all the provisions of Section 8 were applicable to the institution.

20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to



minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government.”

(Emphasis Supplied)

12. We may now also refer to the decision in *G. Vallikumari (supra)*, where the Apex Court after considering the decision in *T.M.A. Pai Foundation (supra)* has while holding Section 8(2) as being violative of rights of minority institutions, categorically held that the Section 8(4) of the DSE Act was valid. It would, therefore, be apposite to note the relevant findings of the Apex Court as contained in para 12 and 17 of the decision in *G. Vallikumari (supra)*, which read as under:

“12. Shri L.N. Rao, learned Senior Counsel appearing for Respondents 1 and 2 supported the impugned order and argued that in view of the judgment in **Frank Anthony Public School Employees' Assn. case**, Section 8(2) cannot be treated as applicable to aided minority institutions and Section 8(3) cannot be read as providing an effective remedy to the management of the school against an order passed by the Director. He submitted that if Section 8(2) is not applicable to unaided minority institutions then its applicability to aided minority institutions would result in violation of Article 14. Shri. Rao also relied upon the larger Bench judgment in **T.M.A. Pai Foundation case** and submitted that the right of the private aided minority institutions to regulate the discipline cannot be curtailed by a provision like the one contained in Section 8(2) of the Acts.

17. The propositions which can be culled out from the above noted two judgments are:

(i) Sections 8(1), (3), (4) and (5) of the Act do not violate the right of the minorities to establish and administer their educational institutions. However, Section 8(2) interferes with the said right of the minorities and is, therefore, inapplicable to private recognised aided/unaided minority educational institutions.

(ii) Section 12 of the Act, which makes the provisions of Chapter IV of the Act inapplicable to unaided private, recognised minority educational institutions is discriminatory except to the extent of Section 8(2). In other words, Chapter IV of the Act except Section 8(2) is applicable to private recognised aided as well as unaided



minority educational institutions and the authorities concerned of the Education Department are bound to enforce the same against all such institutions.”

(Emphasis Supplied)

13. *For the aforesaid reasons, we have no hesitation in rejecting the appellant's plea that Section 8(4) of the DSE Act is not applicable to unaided minority educational institutions. This provision in our view is a part of the limited supervisory powers, which the Director of Education exercises over the functioning and administration of minority educational institutions like the appellant. We, therefore, find no infirmity with the order passed by the learned Single Judge. The appeal being meritless is, accordingly, dismissed with all pending applications.”*

12. As rightly contended by counsel for the Petitioner, case of the Petitioner is also covered by a judgment of this Court in ***S.S. Tyagi (supra)*** where suspension order was quashed being in violation of Section 8(4) read with Rule 115 of DSEAR. Learned counsel for DoE has also flagged another issue which goes to the root of the suspension order. It is pointed out that neither of the two Director's nominees had signed the Minutes of the Meeting whereby the Management Committee of the School had taken a decision to suspend the Petitioner. Copy of the Minutes of the Meeting are handed over in Court and taken on record. In my view, this is also a valid reason to quash the suspension order.

13. In view of the aforesaid, suspension order dated 17.10.2023 as well as order dated 07.11.2023, whereby suspension was extended are hereby quashed and set aside. School is directed to reinstate the Petitioner as a consequence of setting aside of the suspension order with consequential benefits, as per law.

14. Before drawing the curtains, this Court takes on record a serious issue flagged by Mr. Tandon appearing for the School that while it is the legal obligation of the School to comply with Section 8(4) of DSEAR, it is



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equally obligatory for DoE to ensure that timely action is taken on the request of the school seeking approval. The serious consequence of DoE sitting over files for long period of time in taking a decision on the approval sought or for communication of the decision, is that the suspension orders become vulnerable and are quashed, which is detrimental to the school. There is merit in this submission and it is therefore directed that timely action must be taken by DoE, as and when requests are made by the schools for seeking approval for suspension. Copy of this order will be brought to the notice of the Directorate of Education for information and compliance.

15. Writ petition stands disposed in the aforesaid terms along with the pending application.

JYOTI SINGH, J

DECEMBER 05, 2024/shivam