



2024:DHC:8737



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 12th November, 2024

+

W.P.(C) 12136/2023

ARCHNA CHUGH

.....Petitioner

Through: Mr. Rahul Singhal, Advocate

versus

RAMJAS SCHOOL, ANAND PARVAT, SENIOR
WING & ORS.

.....Respondents

Through: Mr. Sacchin Puri, Senior Advocate
with Mr. Mohd. Amanullah, Mr. Soumya
Bhaumik, Mr. Misbah Bin Tariq, Ms. Shahin Alvi,
Mr. Fardeen Khan, Ms. Ashna and Mrs. Shabeena
Anjum, Advocates for R-1 and 2.

Mr. Shishir Singh, Advocate for R-3.

Mr. Gaurav Dhingra, Mr. Shashank Singh and
Ms. Tapasiya Tomar, Advocates for R-4.

+

W.P.(C) 12603/2023

RANJANA TREHAN

.....Petitioner

Through: Mr. Rahul Singhal, Advocate

versus

RAMJAS SCHOOL ANAND PARVAT SENIOR WING
THROUGH ITS V CHAIRMAN MR VINOD GUPTA & ORS.

.....Respondents

Through: Mr. Sacchin Puri, Senior Advocate
with Mr. Mohd. Amanullah, Mr. Soumya
Bhaumik, Mr. Misbah Bin Tariq, Ms. Shahin Alvi,
Mr. Fardeen Khan, Ms. Ashna and Mrs. Shabeena
Anjum, Advocates for R-1 and 2.

Mr. Shishir Singh, Advocate for R-3.

Mr. Gaurav Dhingra, Mr. Shashank Singh and
Ms. Tapasiya Tomar, Advocates for R-4.



**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

JUDGEMENT

JYOTI SINGH, J.

1. Both these writ petitions have been filed by the Petitioners laying a challenge to their respective suspension orders, issued by Respondents No.1 and 2/Ramjas School, Anand Parvat ('School'). Direction is sought to the School to pay full salary for the suspension periods along with all other consequential benefits. Since both petitions concern teachers of the same School and common questions of law are raised, with the consent of the parties they were heard together and are being decided by this common judgment.

W.P.(C) 12136/2023

2. Petitioner was employed with the School in July, 1991 as PGT (Biology) and her services were confirmed in 1993. Petitioner claims to be serving the School for the last 33 years prior to suspension without any complaint and with an unblemished record of service. Petitioner was appointed on various additional portfolios such as HOS, HOD (Science), Academic/Educational Co-ordinator and Administrative In-charge, reflecting her extraordinary work performance.

3. Pursuant to an e-mail and acknowledgement sent by the Petitioner herself, referring to a missing Court case file in the case of one Ritu Phore, a memorandum was issued to the Petitioner on 21.02.2023, calling upon her to give a written explanation with respect to the alleged gross misconduct in her capacity as a temporary HOS. Petitioner responded to the memorandum and rendered her explanation pointing out that she was not at fault for



the reasons mentioned therein. This memorandum was followed by memorandums dated 03.03.2023 and 10.03.2023 on the same issue and finally the impugned suspension order dated 05.04.2023 was issued by the Chairman of the School, placing the Petitioner under suspension with immediate effect and it is this order which is the subject matter of challenge in the present writ petition.

W.P.(C) 12603/2023

4. Petitioner was employed as TGT in Science and Maths with the School in July, 1993 and her services were confirmed in the year 1995. Petitioner asserts that she worked with the School for 31 long years without any complaint and has an unblemished record of service till the passing of the impugned suspension order dated 17.04.2023. It is averred that Petitioner was appointed on several additional portfolios such as Educational Co-ordinator, Administrative In-charge, Transport In-charge, SMC Teacher Representative of the School, Disciplinary Committee Member in an inquiry proceeding against another suspended employee of the School. Petitioner lays a siege to the suspension order in the present writ petition.

COMMON CONTENTIONS OF THE PETITIONERS

5. The suspension orders were passed in violation of Section 8(4) of Delhi School Education Act and Rules, 1973 ('DSEAR') read with Rule 115 of DSEAR as no approval was taken from the Directorate of Education ('DoE') by the School, prior to passing of the said orders. Under the first Proviso to Section 8(4), it is open to the school management to suspend an employee without prior approval of the Director, if there is an imminent necessity due to reason of gross misconduct, but in that event, suspension shall remain in force only for a period of 15 days and unless it is approved



by the Director before the expiry of the said period, the order shall lapse. In the instant case, there was no approval from the Director within 15 days from the dates of the suspension orders and thus the impugned orders lapsed on expiry of the prescribed period and cannot be enforced in law. To support this plea, reliance was placed on the judgment of the Co-ordinate Bench of this Court in ***Ruchi Malhotra v. Guru Nanak Public School & Ors., being W.P. (C) 3567/2019*** decided on 09.12.2019, which was upheld by the Division Bench in ***Guru Nanak Public School and Another v. Ruchi Malhotra and Another, 2024 SCC OnLine Del 383*** as well as on the judgment of this Court in ***Nisha Tyagi v. Seema Model School, 1997 SCC OnLine Del 224; Delhi Public School & Anr. v. Director of Education & Ors., 2002 SCC OnLine Del 1086; and S.S. Tyagi v. Ravindra Public School and Another, 2020 SCC OnLine Del 2084.***

6. The sole ground on which the School, which is a private unaided school, contests these writ petitions is that the Supreme Court in ***TMA PAI Foundation and Others v. State of Karnataka and Others, (2002) 8 SCC 481***, held that there ought to be minimal regulatory control over the unaided private schools and maximum autonomy must be given to them in administration and disciplinary matters etc. and thus there is no reason why Managements of private unaided educational institutions should seek the consent or approval of any Governmental authority before taking any action pursuant to disciplinary inquiry initiated on account of a misconduct of the school employee, cannot aid the School as this very contention was raised by the school before the Supreme Court in ***Raj Kumar v. Director of Education and Others, (2016) 6 SCC 541*** and rejected *albeit* in the context of prior approval required under Section 8(2) of DSEAR, dealing with



penalties of dismissal, removal and reduction in rank. After considering these very observations of the Supreme Court in *TMA PAI Foundation (supra)*, the Supreme Court in *Raj Kumar (supra)* observed that Section 8(2) of DSEAR was a procedural safeguard in favour of an employee to ensure that an order of termination or dismissal is not passed without the prior approval of DoE and this is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.

7. Reliance of the School on the judgment of this Court in *Kathuria Public School v. Director of Education & Anr., 2005 SCC OnLine Del 778*, is wholly misplaced in view of the observations of the Supreme Court in *Raj Kumar (supra)*, that the Division Bench of the High Court while striking down Section 8(2) of DSEAR in *Kathuria Public School (supra)* has not correctly appreciated the law laid down in *Katra Education Society v. State of Uttar Pradesh and Others, 1966 SCC OnLine SC 61*, wherein a Constitution Bench of the Supreme Court, dealing with a provision similar to Section 8(2), held that regulation of the service condition of the employees of private recognised schools is required to be controlled by educational authorities and State Legislature is empowered to legislate such provisions in DSEAR. The Supreme Court in *Raj Kumar (supra)* held that the decision of the High Court striking down Section 8(2), was bad in law.

COMMON CONTENTIONS ON BEHALF OF THE SCHOOL

8. There can be no quarrel that Section 8(4) of DSEAR provides that where the school Management intends to suspend an employee, approval of the Director is required, however, Section 8(4) *per se* is inapplicable to unaided private schools, in view of the judgement of the eleven-Judge Bench in *TMA PAI Foundation (supra)*, wherein the Supreme Court



2024:DHC:8737



observed that there is no reason why the private unaided educational institutions should seek consent or approval of any Governmental Authority before taking any action in disciplinary matters. In paragraphs 61 and 64 of the said judgment, the Supreme Court has underscored that maximum autonomy must be given to unaided private schools in matters relating to administration, appointments, disciplinary actions, admission and fees pertaining to students etc. and thus in the instant case, being a private unaided school, the Management Committee was not required to seek approval of the Director for passing the suspension orders, either prior thereto or even within the prescribed period of 15 days, post the dates of the impugned orders.

9. Petitioners cannot place reliance on the judgment in *Raj Kumar (supra)*, since the judgment in *TMA PAI Foundation (supra)* was delivered by eleven-Judge Bench and moreover, in *Raj Kumar (supra)* the Supreme Court erred in appreciating the true import of observation in *TMA PAI Foundation (supra)*. In *Brahmo Samaj Education Society and Others v. State of W.B. and Others, (2004) 6 SCC 224*, while discussing the effect of pronouncement in *TMA PAI Foundation (supra)*, the Supreme Court observed that when a larger Bench of eleven Judges in *TMA PAI Foundation (supra)* has declared the law, it cannot be diluted by analysing various settlements made or by indulging in any dissection of the principles underlying therein. In a subsequent decision in *P.A. Inamdar and Others v. State of Maharashtra and Others, (2005) 6 SCC 537*, the Constitution Bench of the Supreme Court in the context of the same controversy observed that even if they were inclined to disagree with any of the findings amounting to declaration of law by the majority in *TMA PAI Foundation*



(*supra*), they cannot, that being a judgment of eleven-Judge Bench. In *Raj Kumar (supra)*, by holding that the High Court in *Kathuria Public School (supra)*, wrongly quashed Section 8(2), the Supreme Court has in effect disagreed with *TMA PAI Foundation (supra)*, which was impermissible and this Court being bound by the judgment in *TMA PAI Foundation (supra)*, ought to dismiss the writ petitions, as no regulatory regime can be imposed on the present School, being an unaided private school, including the mandate to take prior or post approval of the Director under Section 8(4), pertaining to suspension of its employees.

10. Respondent No.3/Ramjas Foundation Managing Committee has filed short affidavits in both the petitions, stating that in replies to the legal notices dated 26.07.2023 sent by Petitioners to Respondent No.3, it disassociated itself from the suspension orders and replied that it did not agree with the suspension orders and therefore, broadly understood, Respondent No.3 supports the Petitioners.

COMMON CONTENTIONS ON BEHALF OF DOE

11. DoE supported the cause of the Petitioners and urged that the School, which is an unaided private school recognised by DoE under provisions of DSEAR, is bound by the provisions of the enactment. The intent of the Legislature while enacting DSEAR, in addition to providing for better organisation and development of educational institutions in Delhi, was also to provide security of tenure to the employees of the schools and regulate their terms and conditions of employment. Under Rule 59 of DSEAR, the Managing Committee, entrusted with the management of any recognised private school, is bound to follow the statutory provisions of DSEAR while managing the affairs of the school. It is therefore incumbent on the



Management to comply with all provisions including the mandate of Section 8(4) of DSEAR.

12. Chapter IV of DSEAR concerns the terms and conditions of service of employees of recognised private schools and includes Section 8(4) and (5) and none of these provisions carve out any distinction between unaided and aided recognised private schools, since these are in the nature of safeguarding provisions meant to protect employees from harassment at the hands of the school authorities. If the recognised private schools are left totally unregulated, it would be to the detriment of the employees of the school and will ultimately impact the education system. In the present case, the impugned suspension orders were passed without prior approval of the DoE and no approval was given by the Director, even after passing of the suspension orders within the prescribed statutory period and thus the suspension orders cannot be sustained in law. It was emphasised that even in respect of unaided private minority schools, the Supreme Court in ***Frank Anthony Public School Employees' Association v. Union of India and Others, (1986) 4 SCC 707***, held that Section 8(4) does not encroach upon the rights of the minorities to administer their educational institutions and in ***Raj Kumar (supra)***, after considering the observations in ***TMA PAI Foundation (supra)***, heavily relied upon by the school, the Supreme Court held that Section 8(2) of DSEAR being a procedural safeguard in favour of an employee, dismissal order cannot be passed without the approval of DoE. In ***Gajanand Sharma v. Adarsh Siksha Parisad Samiti and Others, 2023 SCC OnLine SC 54***, the Supreme Court set aside the order of the High Court with a serious observation that despite the judgment in ***Raj Kumar (supra)***, a contrary view was taken by the Division Bench of the High Court



that before terminating the services of an employee, approval of DoE was not required. It was further observed that in ***Raj Kumar (supra)***, the Supreme Court referred to and discussed the decision in ***TMA PAI Foundation (supra)*** and therefore, the observation of the High Court that in case of ***Raj Kumar (supra)***, the Supreme Court had not considered the decision in ***TMA PAI Foundation (supra)***, was factually incorrect.

13. Heard learned counsels for the Petitioners and DoE and learned Senior Counsel for the School and examined their submissions.

14. The neat legal nodus that arises for consideration before this Court is the applicability of sub-Section (4) of Section 8 of DSEAR to the School, which is an unaided recognised private school. Section 8(4) is extracted hereunder, for ready reference:-

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

xxx

xxx

xxx

(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.”

15. Section 8(4) of DSEAR in no uncertain terms provides 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 Director



and no employee can be suspended except with the prior approval of the Director. First Proviso to sub-Section (4), empowers the Managing Committee to suspend an employee with immediate effect and without prior approval of the Director, if it is satisfied that immediate suspension is necessitated by reason of gross misconduct of the employee within the meaning of Code of Conduct prescribed under Section 9 of DSEAR, but the validity of the suspension is subject to the second Proviso, which stipulates 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.

16. The legal issue raised by the Petitioners with respect to the validity of the suspension orders, passed without approval of the Director under Section 8(4), is no longer *res integra* and in this context, I may first refer to one of the earlier judgments 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 DSEA&R observed that there is nothing in the DSEA&R 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 8 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."



17. Relying upon the law laid down by the Supreme Court in *Frank Anthony (supra)*, a Full Bench of this Court in *Delhi Public School (supra)* held as under:

“21. In view of the afore-mentioned pronouncement of the Apex Court, there cannot be any doubt whatsoever that on the expiry of 15 days from the date of communication of the order of suspension, an order of suspension lapses, in the event no order of the Director of Education approving the same is received within the said period.

xxx

xxx

xxx

23. We, with respect, agree with the said findings. The petitioners herein had not questioned the vires of the afore-mentioned provisions nor having regard to the *Frank Anthony's* case (*supra*), the same could be done.

xxx

xxx

xxx

28. The decision in *Prem Sehgal's* case (*supra*), therefore, cannot be said to be an authority on the proposition as to whether on the expiry of 15 days from the date of order of suspension, in the event, no approval is granted, the order of suspension lapsed or not. Apart from the fact that the Director of School Education in terms of the provisions of the Act is bound to accord his approval only when he comes to the requisite conclusion as is required. We may notice that in terms of the provisions of the Act, the Director is bound to accord his approval only if there are adequate and reasonable grounds for such suspension. In terms of sub-section (4) of Section 8, an order of suspension has to be passed only upon obtaining prior approval of the Director. Proviso appended to sub-section (4) of Section 8 is an exception to the main provision. An order of suspension can be passed only when the Managing Committee is satisfied that such immediate suspension is necessary by reason of a gross misconduct. The second proviso appended thereto, in no uncertain terms, fixes the period during which the said order of suspension shall remain in force. Such a provision has been made for the benefit of the teachers against whom an interim order of suspension has been passed whereas departmental proceedings are pending or are contemplated; and having regard to the clear provisions of the statute, he cannot continue to remain under suspension although no approval therefor is granted within the period of 15 days.

29. An interim order of suspension, it will bear a repetition to state, must be passed by the managing committee of the institution in an exceptional situation.

30. In fairness to Mr. V.P. Singh, we may state that the main ground on



which he wanted reading down of the provisions of Section 8 of the Act was his apprehension to the effect that even in a case where the alleged misconduct committed by an employee of the school is serious warranting immediate suspension and further even when the circumstances of the case justify the approval by the Director of Education, the Director of Education and/or his subordinate functionaries may defeat the objective by intentionally delaying the matter and thereby ensuring that no decision is taken within 15 days from the date of communication of the order of suspension. We have already stated that the petitioner has not challenged the vires of Section 8 of the Act. That apart, in such a situation the Managing Committee of the school would not be remediless. Illegal and/or arbitrary exercise of jurisdiction by the Director of Education in a given case can always be subject-matter of judicial review and in such a case it would always be open to the Managing Committee of the school to challenge the inaction and/or wrong decision of the Director of Education. We may observe here that it is the statutory duty cast upon the Director to take appropriate decision within 15 days as to whether approval is to be given or not. He cannot, by delaying the matter beyond 15 days, make it a fait accompli. No doubt, if no decision is taken within 15 days from the days of communication of the order of suspension, the necessary consequence thereof is that the suspension order lapses. However, that does not mean that if no decision is taken at all or the matter is unnecessarily delayed, it would not be permissible for the Managing Committee of the school to insist the Director of Education to take a decision even after 15 days of the communication of the order of suspension. If such a decision is taken, though belatedly, the fresh order of suspension can always be passed. Further, if the Director of Education takes a decision and refuses to accord his approval to the order of suspension and if the Managing Committee in such a case feels aggrieved by that decision, it is always open for the Managing Committee to challenge the decision of the Director of Education by appropriate proceedings on well-established grounds of judicial review that would be available to the Managing Committee in a given case.

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

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



33. *The matter may also be considered from another angle.*

34. *An employer has an inherent right of suspension in the sense that it may not take any work from its employees. But in such a situation, he has to pay the entire salary to the employee. Thus, where in terms of an order of suspension passed under a statute, the employee would be entitled only to the subsistence allowance, as provided for in the rules, he would, in the event the inherent power of suspension of the employer is taken recourse to, be entitled to full salary.*

35. *In that view of the matter too, despite non-grant of approval by the Director of School Education, the Managing Committee, in the event it is found that it is expedient not to take work from the employee concerned, may take recourse thereto but as noticed hereinbefore, in such a situation, it will have to pay the entire salary and not the subsistence allowance alone.*

36. *We, therefore, are of the opinion that upon expiry of 15 days from the date of order of suspension, the order of suspension lapsed and the employee shall be entitled to all consequential benefits."*

18. In ***Nisha Tyagi (supra)***, the Division Bench of this Court in the context of Section 8(4) of DSEAR observed as follows:-

"54. The language of the section is clear that no suspension shall be made except with the prior approval of the Director. Admittedly, in this case, there has been no prior approval of the Director and in accordance with the Section 8(4), the Managing Committee may suspend the employees with immediate effect if it is satisfied that immediate suspension is necessary within the meaning of the Code of Conduct. In exceptional cases, it may be possible to suspend an employee without taking prior permission of the Director but no such suspension shall remain in force for more than 15 days from the date of suspension unless it has been communicated and approved by the Director before the expiry of that period. In this case, till this date, the Director of Education has not approved the suspension of petitioner No. 1. The suspension is clearly in violation of Section 8(4) of the Delhi School Education Act, 1973. Consequently she would deem to be in regular service of respondent No. 1."

19. A Co-ordinate Bench of this Court also, in the case of ***Ganesh Ram Bhatt v. Director of Education & Anr., 2014 SCC OnLine Del 3572***, following the judgement of the Full Bench in ***Delhi Public School (supra)***



and echoing the observation that suspension order automatically lapses and ceases to operate on the expiry of the 15th day from its coming into effect, in the absence of approval from the Director, held as follows :

“8. It is apparent from a perusal of the aforesaid provision that if the Managing Committee of a recognised private school intends to suspend any of its employees, then the said intention has to be communicated to the Director of Education and no suspension shall be made except with his prior approval. However, the first proviso of sub-section(4) of Section 8 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 attached 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 and his approval before the expiry of the said period.

xxx

xxx

xxx

11. In view of the aforesaid decision of the Full Bench in the case of Delhi Public School (supra), there cannot be any doubt that upon expiry of fifteen days from the date of the order of suspension coming into effect, the said order automatically lapses and thereafter, an employee is entitled to all the consequential benefits. The contention of the learned counsel for the School that the letter dated 13.1.2012 issued by the respondent No. 1/DOE during the pendency of the present petition, according approval to the suspension of the petitioner with retrospective effect shall meet the requirements of sub-section(4) of Section 8 of the Act, is found to be devoid of merits. Quite clearly, the Act and Rules do not provide for an eventuality where if the respondent No. 1/DOE fails to accord his approval to the suspension, then the same would be deemed to be accorded, there being no deeming provision to the said effect in the Act. In other words, if a positive approval of the suspension of an employee made by the Managing Committee of the School is not granted by the respondent No. 1/DOE within the period prescribed under the Statute, then the said suspension would automatically cease to operate at the end of the fifteenth day, reckoned from the date of his suspension. Only in the event of approval being granted by the Director of Education and that too within the prescribed period of fifteen days, would such a suspension be valid for the extended period. Any other interpretation would render the second proviso of sub-section (4) of Section 8 of the Act, nugatory.



12. As a result, the act of the School in issuing the memorandum dated 26.7.2011 informing the petitioner that the Managing Committee had decided to continue his suspension till further orders, was illegal, the same having been issued without obtaining the approval of the respondent No. 1/DOE. As was observed by the Full Bench in the case of Delhi Public School (supra), in the event the respondent No. 1/DOE did not take a decision on the earlier decision of suspension taken by the School and referred to him within the period of fifteen days from the date of communication of the said order, an option was still available with the Managing Committee of the School to issue a fresh order suspending the petitioner. However, in the present case, the Managing Committee of the School did not take any steps to pass a fresh order of suspension against the petitioner. Instead, after a lapse of almost three months from the date of issuance of the first suspension order, the school decided to continue the said suspension order which was impermissible and is contrary to the very purport and intent of the Act.

13. In view of the aforesaid facts and circumstances, this court is of the opinion that failure on the part of the respondent No. 1/DOE to take a decision on the recommendation made by the Managing Committee of the School with regard to the petitioner's suspension within a period of fifteen days, would result in the period of suspension having elapsed at the end of the fifteenth day. Failure on the part of the respondent No. 1/DOE to communicate a decision within the stipulated period, cannot be interpreted to mean that the petitioner would automatically remain under suspension till further orders. Neither can the subsequent approval granted by the respondent No. 1/DOE on 13.1.2012 be treated as having a retrospective effect. There being no deeming provision in the statute, the impugned suspension order dated 28.4.2011 passed in respect of the petitioner died a natural death at the end of the fifteenth day, reckoned from 30.4.2011."

20. Against the said judgment, an appeal was filed by the School, titled **Sharda Devi Sanskrit Vidyapeeth v. Director of Education & Anr., 2016 SCC OnLine Del 3950**, wherein the Division Bench, while examining the judgement of the learned Single Judge, observed that the object behind Section 8(4) is to protect the employees from suspension without approval of the DOE. In an emergent situation, an employee can be suspended, but if the approval is not granted by the Director within 15 days of suspension, the



suspension shall lapse at the end of the fifteenth day. Significantly, in the said case the Director had granted approval to the order of suspension, but belatedly, after nearly seven months. Court observed that the approval will not have a retrospective effect, but would be effective from the date it was granted. In the circumstances, the Court upheld the order passed by the learned Single Judge, declaring the suspension to have lapsed after expiry of 15 days, while upholding the suspension order from the date of approval. Respondent was held entitled to full salary and allowances for the relevant period. Relevant paragraphs of the judgement are as under:-

“15. In Gurudevdatto VKSSS Maryadit v. State of Maharashtra. (2001) 4 SCC 534, it was observed that the cardinal principle of interpretation of statutes is that words of a statute must be understood in the natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. Efforts must be made to give meaning to each and every word used by the legislature and the words and language used in the statute should not be brushed aside if they have proper application in circumstances conceivable within the contemplation of the statute. The object behind sub-section 4 to Section 8 is to protect the employees, who should not be suspended without approval from the Director of Education. In emergent situations an employee can be suspended but the suspension is unenforceable where approval is not granted by the Director within 15 days. In the present case, the Director of Education had granted consent/approval to the order of suspension belatedly on 13th January, 2012, but not within 15 days. The provision does not bar or prohibit the Director of Education from passing an order granting approval. The provision does not state that the request for approval would be deemed as rejected, if not accepted or decided within 15 days. The approval may not have retrospective effect, but would be effective from the date it is granted. Thus with effect from 13th January, 2012, Ganesh Ram Bhatt's suspension had approval of the Director. In such circumstances, the condition of approval of the Director postulated under sub-section (4) to Section 8 would be satisfied.

16. It could be urged that sub-section 4 to section 8 refers to prior approval before an order of suspension is passed, and in the present case Ganesh Ram Bhatt had throughout remained under suspension post



30th April, 2011 and a formal order of suspension after the approval of the Director dated 13th January, 2012, was never passed. We would not like to read Section 8(4) of the Act in a narrow and technical manner and would rather refer and rely on the intent behind the provision. Issuing a new or confirmatory letter of suspension on or after 13th January, 2012 would have been a ministerial act and a redundant formality. It is not that Ganesh Ram Bhatt was not suspended and had not remained under suspension post 13th January, 2012. He had not worked. We are examining whether the continued suspension of Ganesh Ram Bhatt would be legal and valid. The appellant-school had always treated and considered Ganesh Ram Bhatt as suspended. Once the approval was granted it can be held that there was compliance with Section 8(4) of the Act and henceforth the suspension was as per the law and valid. The suspension thereafter would be as per the mandate and requirement of the section 8(4) for the approval of the Director exists and is on record. When approval/sanction is granted after more than 15 days, the approval/sanction is not non est and a nullity. The Full Bench of the Delhi High Court in the Delhi Public School (supra) had observed that the Managing Committee in the event of non grant of approval by the Director may find it expedient not to take work, but would have to pay the entire salary. Thus Ganesh Ram Bhatt though under suspension, would be entitled to full salary and allowances for the period when the suspension was unapproved. Post the approval, Ganesh Ram Bhatt would be paid the suspension or subsistence allowance.

17. Therefore, on or after 13th January, 2012 Ganesh Ram Bhatt would be entitled to subsistence allowance and not full salary and allowances. To this extent, we find that the impugned order dated 11th July, 2014 is not in accordance with the mandate of Section 8(4) of the Act. The direction to the appellant-school to pay salary and allowances on or after 13th January, 2012, therefore, is contrary to law and cannot be sustained.

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

“30. In fairness to Mr. V.P. Singh, we may state that the main ground on which he wanted reading down of the provisions of Section 8 of the Act was his apprehension to the effect that even in a case where the



alleged misconduct committed by an employee of the school is serious warranting immediate suspension and further even when the circumstances of the case justify the approval by the Director of Education, the Director of Education and/or his subordinate functionaries may defeat the objective by intentionally delaying the matter and thereby ensuring that no decision is taken within 15 days from the date of communication of the order of suspension. We have already stated that the petitioner has not challenged the virus of Section 8 of the Act. That apart, in such a situation the Managing Committee of the School would not be remediless. Illegal and/or arbitrary exercise of jurisdiction by the Director of Education in a given case can always be subject matter of judicial review and in such a case it would always be open to the Managing Committee of the school to challenge the inaction and/or wrong decision of the Director of Education. We may observe here that it is the statutory duty cast upon the Director to take appropriate decision within 15 days as to whether approval is to be given or not. He cannot, by delaying the matter beyond 15 days, make it a fait accompli. No doubt, if no decision is taken within 15 days from the date of communication of the order of suspension, the necessary consequence thereof is that the suspension order lapses. However, that does not mean that if no decision is taken at all or the matter is unnecessarily delayed, it would not be permissible for the Managing Committee of the school to insist the Director of Education to take a decision even after 15 days of the communication of the order of suspension. If such a decision is taken, though belatedly, the fresh order of suspension can always be passed. Further, if the Director of Education takes a decision and refuses to accord his approval to the order of suspension and if the Managing Committee in such a case feels aggrieved by the decision, it is always open for the Managing Committee to challenge the decision of the Director of Education by appropriate proceedings on well-established grounds of judicial review that would be available to the Managing Committee in a given case.

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

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



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

21. Another Co-ordinate Bench of this Court in ***Ruchi Malhotra (supra)***, relying on the judgement in ***Delhi Public School (supra)***, quashed the suspension order on the ground that the same was issued without approval of the DOE, within the prescribed period of 15 days, as mandated by Section 8(4) of DSEAR. Relevant paragraphs are as under:-

“Ld. counsel for the respondents on being specifically asked as to whether the Director of Education has given any approval of suspension of the petitioner, the response is in the negative. The suspension of the petitioner is thus clearly violative of the statutory provisions of the Act, 1973. Consequently, in the given facts and circumstances and taking note of the specific violation of the provisions of the special enactment i.e. the Act, 1973, the respondent school cannot escape the liability to pay the full back wages till the time of imposition of the penalty, which is under challenge before the Delhi School Tribunal.

For the foregoing reasons, the writ petition is disposed of with a writ of mandamus issued to the respondent school – Guru Nanak Public School to pay the arrears of salary and other perks if any, giving adjustments for the subsistence allowance from the date of suspension till the imposition of penalty vide reference no. GNPS/PPURA/1887 dated 16.08.2019, within eight weeks from today, failing which, the arrears shall carry interest @ 8% per annum. The petition stands disposed off accordingly.”

22. Coming to the present writ petitions, it is an undisputed fact that both the Petitioners were suspended without prior approval of DoE. Assuming in favour of the School, *albeit* that is not the case set up, that there was an immediate necessity of suspending the Petitioners, the School was not helpless and as observed by the Full Bench of this Court in ***Delhi Public***



School (supra), it was open to the Managing Committee to suspend the Petitioners without prior approval and then seek approval from the Director within the period specified in the first Proviso to Section 8(4) of DSEAR. In the eventuality that the Director did not grant approval within the period prescribed under the Statute, then the suspension would have automatically lapsed at the end of 15th day reckoned from the date of suspension, but if the approval was granted within 15 days, the suspension would have been valid. Even where the Director did not take a decision, if approval was sought within the prescribed period, an option was available to the Managing Committee of the School to either insist that the decision be taken, though belatedly and thereafter pass a fresh order of suspension or if the Director took a decision and refused to accord approval, to challenge the said decision on well-established grounds of judicial review, but it was certainly not open to the School to charter a course different from any of the legally permissible ones. Admittedly, suspension orders were passed without prior approval of the Director and even post passing of the orders there is no approval with the prescribed period of 15 days and hence it has to be held that the suspension orders lapsed on the expiry of the 15th day from the dates of issuance of the said orders. Read simply, the object of Section 8(4) of DSEAR is to protect and safeguard the employees and at the same time counter balance the right of the School to suspend a delinquent employee and it is a cardinal principle of interpretation of statutes that words of the Statute must be understood in their natural and ordinary sense unless the construction leads to an absurdity or runs contrary to the object of the Statute.



23. As noted above, learned Senior Counsel for the School candidly did not dispute that provisions of Section 8(4) of DSEAR read along with the judicial precedents on the subject, mandate an approval by DoE but contested the applicability of the said provisions to the School on the ground that it is an unaided private institution and to so contend, vehemently relied on and took support from the judgment of the Constitution Bench of the Supreme Court in ***TMA PAI Foundation (supra)***, with special emphasises on paragraphs 61 and 64 thereof, where the Supreme Court held that in case of unaided private schools, maximum autonomy has to be left with the Management of the School and that there is no reason why Management of a private unaided institution should seek the consent or approval of any Governmental Authority before taking action in a disciplinary inquiry. Learned Senior Counsel emphatically submitted that the Supreme Court in ***Raj Kumar (supra)***, erroneously interpreted the judgment in ***TMA PAI Foundation (supra)*** and this Court is bound by the latter decision, which was delivered by eleven Judges of the Supreme Court.

24. Broadly understood, learned Senior Counsel for the School calls upon this Court to hold that the Supreme Court in ***Raj Kumar (supra)***, erred in appreciating the true import of ***TMA PAI Foundation (supra)*** and the judgement is thus *per incuriam*. There cannot be an iota of doubt that this Court cannot be called upon to hold that the Supreme Court in ***Raj Kumar (supra)***, erroneously interpreted the observations in ***TMA PAI Foundation (supra)*** and is bound by the interpretation of the Supreme Court in ***Raj Kumar (supra)***, wherein while examining Section 8(2) which mandates approval of DoE prior to imposing penalty of dismissal/removal/reduction in rank, the Supreme Court dealt with the observations of the Constitution



Bench in ***TMA PAI Foundation (supra)*** and held as under:-

“44. The learned counsel appearing on behalf of the respondent School submits that not obtaining prior approval for the termination of the services of the appellant is thus, justified.

45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent School. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that an order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.

46. The State Legislature is empowered to enact such statutory provisions in relation to educational institutions, from Schedule VII List II Entry 11 of the Constitution of India, which reads as:

“11. Education including universities....”

(emphasis supplied)

47. A number of legislations across the country have been enacted which deal with the regulation of educational institutions, which contain provisions similar to the one provided for under Section 8(2) of the DSE Act. One such provision came for consideration before a Constitution Bench of this Court in *Katra Education Society v. State of U.P.* [*Katra Education Society v. State of U.P.*, AIR 1966 SC 1307] The impugned provisions therein were certain sections of the amended Intermediate Education Act (U.P. Act 2 of 1921). Section 16-G of the Intermediate Education (Amendment) Act, 1958 provided that the Committee of Management could not remove or dismiss from service any Principal, Headmaster or teacher of a college or school without prior approval in writing of the Inspector. The Amendment Act also contained other provisions providing for governmental control over certain other aspects of the educational institutions. Adjudicating upon the competence of the State Legislature to enact the amending Act, this Court held as under: (AIR pp. 1310-11, paras 8 & 10)

“8. Power of the State Legislature to legislate under the head ‘education including universities’ in Schedule VII List II Entry 11 would prima facie include the power to impose restrictions on the management of educational institutions in matters relating to education. The pith and substance of the impugned legislation being in regard to the field of education within the competence of the State Legislature, authority to legislate in respect of the maintenance of control over educational institutions imparting higher secondary education and for that purpose to make provisions for proper



*administration of the educational institutions was not denied. But it was said that the impugned Act is inoperative to the extent to which it seeks to impose controls upon the management of an educational institution registered under the Societies Registration Act and managed through trustees, and thereby directly trenches upon legislative power conferred by List I Entry 44 and List III Entries 10 and 28. This argument has no substance. This Court has in *Ayurvedic and Unani Tibia College v. State of Delhi* [Ayurvedic and Unani Tibia College v. State of Delhi, AIR 1962 SC 458] held that legislation which deprives the Board of Management of a Society registered under the Societies Registration Act of the power of management and creates a new Board does not fall within List I Entry 44, but falls under List II Entry 32, for by registration under the Societies Registration Act the Society does not acquire a corporate status. It cannot also be said that the pith and substance of the Act relates to charities or charitable institutions, or to trusts or trustees. If the true nature and character of the Act falls within the express legislative power conferred by List II Entry 11, merely because it incidentally trenches upon or affects a charitable institution, or the powers of trustees of the institution, it will not on that account be beyond the legislative authority of the State. The impact of the Act upon the rights of the trustees or the management of a charitable institution is purely incidental, the true object of the legislation being to provide for control over educational institutions. The amending Act was therefore within the competence of the State Legislature and the fact that it incidentally affected the powers of the trustees or the management in respect of educational institutions which may be regarded as charitable, could not distract from the validity of the exercise of that power.*

*

*

*

10. ... If the management fails to comply with the directions made by the Director, that Officer may after considering the explanation or representation, if any, given or made by the management, refer the case to the Board for withdrawal of recognition or recommend to the State Government to proceed against the institution under sub-section (4) and the powers which the State Government may exercise after being satisfied that the affairs of the institution are being mismanaged or that the management has wilfully or persistently failed in the performance of its duties, include the power to appoint an Authorised Controller to manage the affairs of the institution for such period as may be specified by the Government. The provision is disciplinary and enacted for securing the best interests of the students. The State in a democratic set up is vitally interested in securing a healthy system of imparting education for its coming generation of citizens, and if the



management is recalcitrant and declines to afford facilities for enforcement of the provisions enacted in the interests of the students, a provision authorising the State Government to enter upon the management through its Authorised Controller cannot be regarded as unreasonable.” (emphasis supplied)

From a perusal of the above judgment [Katra Education Society v. State of U.P., AIR 1966 SC 1307] of the Constitution Bench, it becomes clear that the State Legislature is empowered in law to enact provisions similar to Section 8(2) of the DSE Act.

48. At this stage, it would also be useful to refer to the Statement of Objects and Reasons of the DSE Act, 1973. It reads as under:

“In recent years the unsatisfactory working and management of privately managed educational institutions in the Union Territory of Delhi has been subjected to a good deal of adverse criticism. In the absence of any legal power, it has not been possible for the Government to improve their working. An urgent need is, therefore, felt for taking effective legislative measures providing for better organisation and development of educational institutions in the Union Territory of Delhi, for ensuring security of service of teachers, regulating the terms and conditions of their employment. ... The Bill seeks to achieve these objectives.”

A perusal of the Statement of Objects and Reasons of the DSE Act would clearly show that the intent of the legislature while enacting the same was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment.

49. In *Principal v. Presiding Officer* [Principal v. Presiding Officer, (1978) 1 SCC 498:1978 SCC (L&S) 70], a Division Bench of this Court held as under: (SCC p. 503, para 7)

“7. Sub-section (2) of Section 8 of the Act ordains that subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director of Education. From this, it clearly follows that the prior approval of the Director of Education is required only if the service of an employee of a recognised private school is to be terminated.”

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 at 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.*

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*



2024:DHC:8737



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."

25. Reading of the judgement makes it luminously clear that the Supreme Court in ***Raj Kumar (supra)***, negated the contention that unaided private schools were not bound to take approval of DoE as mandated under Section 8(2) of DSEAR and observed that the said provision was a procedural safeguard in favour of an employee to ensure that an order of termination or dismissal or reduction in rank is not passed without prior approval of DoE and this is to avoid an arbitrary or unreasonable action against an employee of a recognised private school. The Supreme Court also referred to the Statement of Objects and Reasons of DSEAR, which was to provide for better organisation and development of educational institutions in Delhi for ensuring security of service of teachers. Be it noted that the Supreme Court considered the observations in ***TMA PAI Foundation (supra)***, before arriving at the aforesaid conclusion and it is not open to this Court to give a different interpretation and take a contrary view.

26. It may be emphasised here that in ***Raj Kumar (supra)***, the Supreme Court also held that the decision of the High Court in ***Kathuria Public School (supra)*** striking down Section 8(2) was bad in law. It was observed that the Delhi High Court erred in striking down Section 8(2) by placing reliance on the decision in ***TMA PAI Foundation (supra)***, as the subject matter in controversy therein was not the security of tenure of the employees of a school but the question was right of educational institutions to function unfettered. It was observed that 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. The Supreme Court held that Section 8(2) 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. It may be flagged that the Supreme Court also observed that the High Court had not correctly appreciated the law laid down in *Katra Education Society (supra)*, wherein the Constitution Bench of the Supreme Court with reference to a provision similar to Section 8(2) and keeping in view the objection of regulation of an aided or unaided recognised school, held that regulation of service conditions of employees of private recognised school is required to be controlled by educational authorities and the State Legislature is empowered to legislate such provisions in the DSEAR. Relevant paragraphs from *Raj Kumar (supra)*, in this context have been extracted in the earlier part of this judgement.

27. In fact, at this stage, I may allude to a judgment of the Supreme Court in *Gajanand Sharma (supra)*, where the Supreme Court was examining a judgment of the Division Bench of the High Court allowing an appeal preferred by the school Management against the order of the learned Single Judge confirming an order of the School Tribunal setting aside the termination order on the ground that prior approval of DoE was not taken. Notably, the judgment in *Raj Kumar (supra)* was brought to the notice of the Division Bench of the High Court but the same was not followed observing that in *Raj Kumar (supra)*, the Supreme Court had not considered the decision in *TMA PAI Foundation (supra)*. Setting aside the judgment of the Division Bench, the Supreme Court in *Gajanand Sharma (supra)*, made



the following observations:-

“15. From the impugned judgment and order passed by the High Court, it appears that before the High Court the decision of this Court in the case of Raj Kumar (supra) taking a contrary view and taking the view that before terminating the services of an employee of a recognized institution prior approval of the Director of Education is required was pressed into service. However, though impermissible the Division Bench of the High Court has not followed the said binding decision by observing that in the case of Raj Kumar (supra), this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra). Apart from the fact that the same is wholly impermissible for the High Court even the said observations are factually incorrect. If the decision in the case of Raj Kumar (supra) is seen in more than 8-9 paragraphs, this Court had referred to and as such dealt with the decision of this Court in the case of T.M.A. Pai Foundation (supra). Even the decision in the case of T.M.A. Pai Foundation (supra) was explained and considered by this Court in the case of Raj Kumar (supra). Therefore, the Division Bench of the High Court is factually incorrect in observing that while deciding the decision in the case of Raj Kumar (supra) this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra). Before commenting upon the decision of this Court in the case of Raj Kumar (supra) the Division Bench of the High Court ought to have thoroughly read and/or considered the decision in the case of Raj Kumar (supra). Even after making the incorrect observations that in the case of Raj Kumar (supra) this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra) the Division Bench of the High Court has considered few decisions of judicial discipline which were not applicable at all. Judicial discipline also requires that the judgment/decision of this Court should be considered and read thoroughly. As observed hereinabove, the decision of this Court in the case of Raj Kumar (supra) was binding upon the High Court. Therefore, the Division Bench of the High Court has seriously erred in not following the decision of this Court in the case of Raj Kumar (supra).

16. Now so far as the decision of this Court in the case of Raj Kumar (supra) is concerned, this Court was considering pari materia provisions under the DSE Act. This Court was considering Section 8 of the DSE Act, which reads as under:—

“8.(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.”



17. Similar is the provision so far as Section 18 of the Act, 1989 is concerned which reads as under:—

“18. Removal, dismissal or reduction in rank of employees.- Subject to any rules that may be made in this behalf, no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken;

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained.”

18. In the case of *Raj Kumar (supra)* while dealing with the *pari materia* provision under the DSE Act and after considering the decision of this Court in the case of *T.M.A. Pai Foundation (supra)*, it is specifically observed and held by this Court that in case of a recognized institution, before terminating the services of an employee, prior approval of the Director of Education is required. Therefore, a contrary view taken by the Larger Bench of the High Court relied upon by the Division Bench of the High Court is not a good law. It is required to be noted that the decision of this Court in the case of *Raj Kumar (supra)* has been considered by this Court in the case of *Marwari Balika Vidyalaya (supra)* and also by the Delhi High Court in the case of *Mangal Sain Jain (supra)*. In the case of *Marwari Balika Vidyalaya (supra)* this Court considered the decision in the case of *Raj Kumar (supra)* and object and purpose of Section 8 of DSE Act in paragraphs 13 and 14 as under:—

“13. In Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed : (SCC p. 560, para 45)

“45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent school. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education.



This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.”

- 14.** *This Court has laid down in Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short “the DSE Act”) was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. 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.”*
- 19.** *Even on fair reading of Section 18 of the Act, 1989, we are of the opinion that in case of termination of an employee of a recognized institution prior approval of the Director of Education or an officer authorised by him in this behalf has to be obtained. In Section 18, there is no distinction between the termination, removal, or reduction in rank after the disciplinary proceedings/enquiry or even without disciplinary proceedings/enquiry. As per the settled position of law the provisions of the statute are to be read as they are. Nothing to be added and or taken away. The words used are “no employee of a recognized institution shall be removed without holding any enquiry and it further provides that no final order in this regard shall be passed unless prior approval of the Director of Education has been obtained.” The first part of Section 18 is to be read along with first proviso. Under the circumstances, taking a contrary view that in case of dismissal/removal of an employee of a recognized institution which is after holding the departmental enquiry the prior approval of the Director of Education is not required is unsustainable and to that extent the judgment of the Larger Bench of the Rajasthan High Court in the case of Central Academy Society (supra) is not a good law.*
- 20.** *Therefore, on true interpretation of Section 18 of the Act, 1989, it is specifically observed and held that even in case of termination/removal of an employee of a recognized institution after holding departmental enquiry/proceedings prior approval of the Director of Education has to be obtained as per first proviso to Section 18 of the Act, 1989.*
- 21.** *In view of the above and for the reasons stated hereinabove, the impugned judgment and order passed by the Division Bench of the High*



Court restoring the order of termination which as such was without obtaining the prior approval of the Director of Education deserves to be quashed and set aside and is accordingly quashed and set aside. The order of learned Tribunal setting aside the order of termination confirmed by the learned Single Judge is hereby restored. Consequently, the appellant shall have to be reinstated in service and considering the fact that the respondent(s) is/are un-aided institution and the order of termination was passed as far as back in the year 1998, we direct that the appellant shall be entitled to 50% of the back wages, however, he shall be entitled to all other benefits notionally including the seniority etc., if any.”

28. It is important to allude to the judgment of the Supreme Court in ***Frank Anthony (supra)***, albeit the case pertains to an unaided private recognised non-minority school, wherein Section 8(4) of DSEAR, a protective gear for the employees of the School, was held to be applicable even to minority institutions and Section 12 of DSEAR, which made the provisions of Chapter IV inapplicable to unaided minority institutions was held to be discriminatory and void, save and except, to the extent it made Section 8(2) of DSEAR inapplicable. The Supreme Court observed as follows:-

“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 prevent 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 [(1980) 2 SCC 478 : AIR 1980 SC 1042] 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 behaviour 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.*

21. *The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.”*

29. It would also be useful to allude in this context to a judgment of the



Division Bench of this Court in **Guru Nanak Public School (supra)**, where the judgment of the learned Single Judge in **Ruchi Malhotra (supra)** was upheld. The issue in the said case was with regard to applicability of Section 8(4) of DSEAR in case of unaided private minority school and the primordial contention of the school was that in view of the decision in **TMA PAI Foundation (supra)**, provisions of Section 8(4) of DSEAR will be inapplicable. Negating this contention, the Division Bench dismissed the appeal and the Supreme Court dismissed Special Leave to Appeal (C) No. 10055/2024 on 10.05.2024 and relevant passages 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(c) 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.

xxx

xxx

xxx



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(c) 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. (c) 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(c) 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 prevent 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."

30. In view of the wealth of judicial precedent referred to above, this Court cannot accept the contention of the School that provisions of Section 8(4) of DSEAR are inapplicable to the School only because of its status as



2024:DHC:8737



an unaided private school. School cannot be permitted to take a plea that it was not bound by the procedural requirements of obtaining approval of DoE. I may note that even the Legislature in its wisdom while enacting sub-Sections (2) and (4) of Section 8 has envisaged no difference in their applicability to unaided or aided schools. In light of this, the impugned order of suspension dated 05.04.2023 in W.P.(C) 12136/2023 and suspension order dated 17.04.2023 in W.P.(C) 12603/2023 are hereby quashed and set aside. Petitioners shall be entitled to consequential benefits of full salary and allowances as per law. The amounts shall be calculated by the School after adjustment of any subsistence allowance that may have been paid to the Petitioners during the suspension periods and the balance due and payable to the Petitioners shall be released within four weeks from today.

31. Both writ petitions are allowed in the aforesaid terms with cost of Rs.20,000/- each to the Petitioners payable by the School within six weeks from today.

32. Writ petitions stand disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 12, 2024/shivam