



2024:DHC:9943



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

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Date of Decision: 16th December, 2024+ **W.P.(C) 16578/2024****HARSHPAL SINGH NEGI**

.....Petitioner

Through: Mr. Khagesh B. Jha, Ms. Shikha Sharma Bagga, Mr. Ankit Mann, Mr. Naman Jain and Ms. Jyoti Shokeen, Advocates.

versus

**ST MARY'S SCHOOL SAFDARJUNG ENCLAVE
AND ORS**

.....Respondents

Through: Mr. Romy Chacko, Senior Advocate with Mr. Sachin Singh Dalal and Mr. Ashwin Romy, Advocates for Respondent No.1.

Mr. Gaurav Dhingra and Mr. Shashank Singh, Advocates for Respondent No.3/DoE.

Mr. Piyush Gupta, CGSC with Mr. Prateek Gupta and Mr. Atishay Jain, Advocates for Respondent No.4.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****CM APPL. 70066/2024**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 16578/2024 and CM APPL. 70065/2024

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to communication dated 03.09.2024 issued by the Chairman of St. Mary's School/Respondent



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No.1. Direction is sought to the School to reinstate the Petitioner on the post of TGT (Physical Education) with all consequential benefits including back wages. Petitioner also lays a challenge to the minority certificate issued to the School on the ground that it is contrary to provisions of National Commission for Minority Educational Institutions Act, 2004 ('NCMEI Act') and has been issued without considering that the Institute was not established for the minorities but was established for secular education of all the communities. Various other reliefs such as challenge to the show cause notice and the disciplinary proceedings are sought.

4. Facts to the extent necessary are that Petitioner filed W.P.(C)12071/2024 laying a challenge to the Charge Memo dated 23.09.2023 as also the constitution of the 04 Member Disciplinary Committee as well as the disciplinary proceedings and the decision to dismiss the Petitioner from service as reflected in the show cause notice dated 07.06.2024. This writ petition was disposed of on 03.09.2024 by this Court on a statement made on behalf of the School that Disciplinary Committee had passed an order on 20.08.2024 imposing the penalty of 'removal from service' on the Petitioner with liberty to the Petitioner to take recourse to appropriate legal remedy before the Delhi School Tribunal ('DST'). Against the said order Petitioner filed Review Petition 345/2024 by which time termination order dated 03.09.2024 had been served on him. Review Petition was dismissed on 27.09.2024 on the ground that the remedy to challenge the termination order was before the DST.

5. Challenging both the orders, Petitioner filed LPA 1103/2024 before the Division Bench, which was disposed of on 07.11.2024. The Division Bench was of the view that the earlier writ petition ought not to have been



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disposed of when the termination order was not served on the Petitioner at that stage and the order was pre-emptive. The impugned orders dated 03.09.2024 and 27.09.2024 were set aside granting liberty to the Petitioner to challenge the termination order dated 03.09.2024 observing that in so doing, it would be open to the Petitioner to choose his remedy as to whether to file an appeal before the DST or a writ petition. It was observed that in the event Petitioner chooses the latter, it would be for the Single Judge to take a call as to whether to entertain the petition or to relegate the Petitioner to remedy of appeal under DST and in furtherance of this order, Petitioner has chosen to file the present writ petition.

6. Learned Senior Counsel for the School takes a preliminary objection to the maintainability of this writ petition on the ground that termination order dated 03.09.2024 has been served on the Petitioner and his remedy to assail the same, if he so desires, lies by way of an appeal before the DST and in support thereof refers to the judgments of the Supreme Court in *Shashi Gaur v. NCT of Delhi And Others, (2001) 10 SCC 445* and of this Court in *Nauman Ahmad Khan v. Managing Committee Rabea Girls Public School & Ors. 2013 SCC OnLine Del 387* and *Ritu Hooda v. Directorate of Education & Ors., 2020:DHC:2737*.

7. Responding to the preliminary objection, Mr. Jha, learned counsel for the Petitioner submits that Petitioner cannot be ousted from the writ jurisdiction of this Court under Article 226 of the Constitution of India and this fact, he urges, has been recognized by the Division Bench in his appeal by observing that availability of an alternative remedy is not a bar to exercise of jurisdiction under Article 226 of the Constitution, which is a discretionary remedy and in fact the Division Bench has specifically referred



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to the judgment of the Supreme Court in *Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others, 2023 SCC OnLine SC 95*, in this context. It is further argued that there is an additional reason why this writ petition should be entertained and that is a challenge to the minority certificate issued to the School overlooking the provisions of NCMEI Act.

8. In response to the second argument of the Petitioner, Mr. Chacko, learned Senior Counsel as well as the learned counsel for Respondent No.4/ National Commission for Minority Educational Institution submit that the power to cancel the minority status lies with the Commission under Section 12C of the NCMEI Act and even on this aspect, Petitioner has an alternative remedy.

9. Heard learned counsel for the Petitioner and learned Senior Counsel for the School as well as counsels for the other Respondents.

10. Coming to the issue of challenge to the minority certificate issued to the School *inter alia* on the ground that the Commission has allegedly overlooked that the School has not been established for minorities but for imparting secular education for all communities, there is substance in the submission of the Respondents that the remedy of the Petitioner lies before the National Commission for Minority Educational Institution. This is palpably clear from a plain reading of Section 12C of the NCMEI Act, which is extracted hereunder for ease of reference:-

“12C. Power to cancel—The Commission may, after giving a reasonable opportunity of being heard to a Minority Educational Institution to which minority status has been granted by an authority or Commission, as the case may be, cancel such status under the following circumstances, namely:—



(a) if the constitution, aims and objects of the educational institution, which has enabled it to obtain minority status has subsequently been amended in such a way that it no longer reflects the purpose or character of a Minority Educational Institution;

(b) if, on verification of the records during the inspection or investigation, it is found that the Minority Educational Institution has failed to admit students belonging to the minority community in the institution as per rules and prescribed percentage governing admissions during any academic year.”

11. In light of the clear provision of Section 12C of the NCMEI Act, this Court is not inclined to entertain this writ petition laying a challenge to the minority certificate issued to the School.

12. Insofar as challenge to the termination order dated 03.09.2024 is concerned, Mr. Chacko, learned Senior Counsel is right in his submission that the remedy to assail the said order lies before the DST under Section 8(3) of the Delhi School Education Act, 1973 ('1973 Act'). This issue is no longer *res integra*. The Supreme Court in ***Shashi Gaur (supra)***, held as follows:

“7. This judgment and the interpretation put to the provisions of sub-sections (2) and (3) of Section 8 undoubtedly is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to sub-section (3) of Section 8 thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. The statute has provided for a Tribunal to confer a remedy on the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The governmental authorities having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.



8. *In this view of the matter, we are persuaded to take the view that under sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination, otherwise except, where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the writ application in exercise of its discretion though we do not agree with the conclusion that availability of an alternative remedy ousts the jurisdiction of the court under Article 226 of the Constitution."*

13. In ***Nauman Ahmad Khan (supra)***, this Court held that as per Sections 8 and 11 of the 1973 Act an order of termination of an employee/teacher of a School can be challenged only by an appeal before the DST and this law was settled 13 years ago in ***Shashi Gaur (supra)***. Relevant paragraphs from the judgment are as under: -

"4. I may note that as per Sections 8 and 11 of the Delhi School Education Act against an order of termination of services of an employee/teacher of a school, an appeal lies before the Delhi School Tribunal. The law in this regard is well-settled almost since over the last 13 years by the judgment of the Supreme Court in the case of Shashi Gaur v. NCT of Delhi, (2001) 10 SCC 445 which holds that every type of termination of services can be challenged before the Tribunal. I therefore put it to counsel for the petitioner whether the counsel is aware of the judgment of the Supreme Court, and to which the counsel says that she is aware of the judgment whereby the termination of services of an employee have necessarily to be challenged before the Delhi School Tribunal, however, it is stated that since the entire action is without jurisdiction, a writ petition should be entertained.

5. I am indeed surprised as to how writ petitions are filed in spite of the fact that the Supreme Court has made it clear over 13 years back that every type of termination of an employee of school has necessarily to be challenged before the Delhi School Tribunal. Of course, the fact that the actions which have been taken against the petitioner are wrongly taken because according to the petitioner action ought to have been taken by the Managing Committee of the school and not by the respondent No. 2/society, however, that will be a ground to challenge the order of termination of services, and such termination of services is still challengeable/can be impugned before the Delhi School Tribunal. The same relief sought in this Court can also be granted by the Delhi School



Tribunal. I fail to understand therefore the need to rush to this Court seeking exercise of jurisdiction under extraordinary powers under Article 226 of the Constitution of India when there is an established alternative of efficacious remedy to the petitioner, and that too within the city of Delhi itself.”

14. In **Ritu Hooda (supra)**, this Court again had the occasion to consider whether a writ petition should be entertained against an order of dismissal / termination/removal in light of Section 8(3) of the 1973 Act and several judgments holding otherwise. Relying on judgment in **Shashi Gaur (supra)** and other judgments of the Coordinate Benches on this issue, the Court declined to entertain the writ petition leaving it open to the Petitioners to approach the DST. Relevant passages from the judgment are as under:-

“24. Supreme Court in the case of Shashi Gaur (supra) while interpreting sub-Sections (2) and (3) of Section 8 observed that it would be inappropriate to give a narrow construction to sub-Section (3), thereby taking the teachers whose services were terminated not by way of dismissal or removal, but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. Statute has provided a Tribunal, to confer a remedy to the teachers, who are taken out of service on the whims of the Management of private institutions and Governmental Authorities have been given certain control over them and if an appeal to the Tribunal is not provided to the employee as a remedy, he would have to approach a Court under Article 226 of the Constitution, which is a discretionary remedy. The additional reason that weighed with the Supreme Court, to observe so, was that the remedy of an appeal was a more efficacious remedy. In this background, the Court held that Section 8(3) of the Act provides an appeal for challenging any termination except where the service comes to an end by efflux of time. Relevant paras read as under :-

“5. Mr. Das, the learned senior Counsel appearing for the appellant, contends that Section 8(3) provides for an appeal against an order of dismissal, removal or reduction in rank and not against any order of termination as is apparent from the provisions contained in Sub-section (2) of Section 8, which provides for obtaining prior approval of the Director before dismissal, removal or reduction in rank or otherwise terminating the services of an employee of a recognised private school. The very fact of absence of the expression "otherwise



termination" available in Subsection (2) from the provisions of Sub-section (3) clearly demonstrates that against an order of termination which does not come within the expression "dismissal, removal or reduction in rank", the Legislature has not provided for an appeal to the Tribunal constituted under Section 11 of the Act.

*6. In support of this contention, the Counsel also placed reliance on Rule 117 Explanation, which indicates that replacement of a teacher who was not qualified on the date of his appointment by a qualified one, will not amount to a penalty within the meaning of the said Rule [see Explanation (c)]. The learned Counsel also placed before us the observations made by this Court in the case of *The Principal and Ors. v. The Presiding Officer and Ors.* MANU/SC/0046/1978 : [1978] 2 SCR 507 wherein this Court had observed that for applicability of the provisions of Section 11 two conditions must co-exist, namely, (i) that the employee should be an employee of a recognized private school and (ii) that he should be visited with either of the three major penalties, i.e., dismissal, removal or reduction in rank.*

7. This judgment and the interpretation put to the provisions of Subsections (2) and (3) of Section 8 undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Governmental authorities having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated after serving the institution for a number of years, as in the present case where the services are terminated after 14 years.

8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself conies to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that



availability of an alternative remedy out the jurisdiction of the Court under Article 226 of the Constitution.”

25. From the aforementioned observations of the Supreme Court, it is palpably clear that all species of termination, save and except where the service come to an end by efflux of time, can be challenged only before the Tribunal by invoking the provisions of Section 8(3) of the Act. “Termination” by its plain meaning means ‘bring to an end’, ‘conclude’ or ‘cease’. As understood in common parlance and in service jurisprudence, once there is a cessation of an employer-employee relationship, it can be termed as termination. Thus, broadly understood, termination brings to an end the employment of an employee through varied modes of termination and there is a ‘cause’ and ‘effect’. The cause can be several such as misconduct, leading to disciplinary proceedings, irregular process of selection, non-fulfilment of essential qualifications or could be resignation, voluntary retirement, etc. but the effect of all these causes is termination of service. Once the Supreme Court has by its judicial interpretation held that Section 8(3) of the Act covers all kinds of termination, it is not open to the Petitioners herein to contend that only because the cause of the cessation of their employment is that the selection process has been held to be irregular and void ab initio, the Petitioners are not amenable to the jurisdiction of the Tribunal. The alleged irregular selection is only the causative factor but the consequence or the effect is “termination of service” and is covered in the ambit and scope of the provisions of Section 8(3) of the Act. In view of the binding dicta of the Supreme Court there is no reason why the present petition should be entertained under Article 226 of the Constitution, without the Petitioners exhausting the remedy of Appeal before the Tribunal.

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27. In Daya Nand (supra), the Court was confronted with the question of maintainability of the Appeal before the Tribunal in a situation where the Petitioner had resigned from the Service and the Court held that it was one of the modes of illegal removal from service and would be within the purview of provisions of Section 8(3) of the Act.

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31. In fact it is pertinent to observe here that in G.D. Goenka (supra), the Court has followed and applied the above principles and by an analogy held that there was no reason why the grievance of a teacher whose services with the School stand severed by reason of resignation should not be permitted to be agitated by following recourse to an expedient course of action under Section 8(3) of the Act, rather than by any other modus which could be more inexpedient and time consuming. The same principle was followed in the case of Maharaja Agarsain Education Society (supra).



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35. Reliance is also placed by the Petitioners on the judgement of the Co-ordinate Bench in Yenni Srinivasa Rao (supra) wherein the Court was dealing with the aspect of maintainability of the writ petition on account of an objection of the availability of the remedy of appeal before the Tribunal, amongst other grounds assailing the discharge orders of the petitioners. The Court relying upon the judgement of the Full Bench in Presiding Officer 2011 (supra) held that the petitioners were discharged from service being ineligible for appointment and since the appointment was erroneous or under a mistaken belief, the petitioners cannot be said to be employees of the School, who have been dismissed or removed and cannot thus, avail the remedy of appeal before the Tribunal. With respect to the said argument, suffice would it be to state that in the said judgement no specific reference has been made to the binding judgement of the Supreme Court in Shashi Gaur (supra). While the learned counsels for the Petitioners sought to argue that the Court has taken note of the judgement of the Full Bench, which in turn noticed the judgement in Shashi Gaur (supra), but the fact remains that the Court has in Yenni Srinivasa Rao (supra) neither specifically referred to Shashi Gaur (supra) nor its dicta and therefore there was no occasion to deal with the observations of the Supreme Court, that all modes of termination except the one excluded by the judgement, will be covered within the purview of provisions of Section 8(3) of the Act. It may also be noted that in Yenni Srinivasa Rao (supra), the additional factor which weighed with the Court to entertain the petition was that in the said case the petitions had been entertained, interim relief had been granted and arguments on merits had been heard and it was not expedient at that stage to dismiss the petitions and relegate the Petitioners to the remedy of an appeal. In any case, in view of the binding dicta of the Supreme Court, the present petitions cannot be entertained. Insofar as reliance is placed on the judgements in the case of Kiran Jain (supra) and Chairman, Managing Committee Bhai Biba Singh Khalsa Sr. Secondary School (supra), it is evident by a reading of the judgements that in neither of the two judgements an objection was taken to the maintainability of the petition on the ground of availability of the remedy of appeal to the Petitioners therein under Section 8(3) of the Act and thus the Court had no occasion to deal with the issue of maintainability. The judgements can therefore be of no help to the petitioners.

36. In view of the above, the issue of the maintainability of the present petitions is decided in favour of Respondent Nos.1 and 2 and the objection of Respondent Nos.1 and 2 that the Petitioners have a remedy of Appeal under Section 8(3) of the Act before the Tribunal is sustained.

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40. In view of the above, the present petitions cannot be entertained and deserve to be dismissed on the ground of maintainability, leaving it open to the Petitioners to approach the Tribunal and challenge the impugned orders. It is made clear that this Court has not expressed any opinion on the merits of the case. Arguments were heard only on the maintainability of the present petitions and judgement was reserved on this limited aspect.”

15. In light of the judgment of the Supreme Court in ***Shashi Gaur (supra)*** and other judgments mentioned above as also from a plain reading of Section 8(3) of the 1973 Act, I am of the view that remedy of the Petitioner lies before the DST. There can be no debate on the proposition that Article 226 is an inviolable part of the Constitution of India and jurisdiction of the High Court to exercise the power of judicial review can never be ousted as also that availability of an alternative remedy is not a bar to exercise the jurisdiction under Article 226 of the Constitution. However, learned counsel for the Petitioner has not been able to persuade this Court to exercise the discretionary remedy for any special reason making this case any different from all other cases where termination/dismissal orders are challenged before the DST. As per the argument that the Division Bench has granted liberty to the Petitioner to file this writ petition, suffice would it be to state that the Division Bench has observed that the proper course of action would be to leave the Petitioner to take a call as to whether the termination order has to be challenged by way of an appeal before the DST or by a writ petition in this Court. While adopting the latter course of action, Petitioner would run the risk of being relegated to the DST by the writ court, in case the Court feels that no case for exercising extraordinary jurisdiction is made out in face of availability of statutory remedy of appeal. I am unable to read anything in the order of the Division Bench whereby the Court has directed



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that the writ petition, if filed, must be entertained. Though subtly, Mr. Jha also seeks to argue that so far there is no termination order and therefore Petitioner cannot be relegated to the DST but in my view this argument is completely flawed. It is clear from Annexure-P1 to the writ petition that letter dated 03.09.2024 is a communication from the School to the Petitioner informing him that the Disciplinary Committee in its meeting held on 20.08.2024 decided to impose penalty of removal from service on the petitioner, which will not be a disqualification for future employment in any other recognized private school. It is further stated that Petitioner's services will stand terminated effective 04.09.2024 and along with the letter minutes of the DAC dated 20.08.2024 are enclosed. This cannot be termed as anything but a termination order and significantly, even the Division Bench has noted that Petitioner's services stand terminated by termination order dated 03.09.2024. This argument has no merit and is not accepted.

16. Accordingly, this writ petition is dismissed with liberty to the Petitioner to approach the DST if so advised and challenge the termination order. It is made clear that this Court has neither entered into nor expressed any opinion on the merits of the case.

17. Pending application also stands dismissed.

JYOTI SINGH, J

DECEMBER 16, 2024/J