



\$~16-18

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

%

Date of Decision : 16.07.2024+ **LPA 392/2017 & CM No.19243/2017**SHAHEED UDHAM SINGH SMARAK
SHIKSHA SAMITI AND ORS

.....Appellants

Versus

USHA TYAGI AND ORS

.....Respondents

AND

+ **LPA 393/2017**SHAHEED UDHAM SINGH SMARAK SHIKSHA
SAMITI AND ORS

.....Appellants

Versus

SANTOSH VERMA AND ANR

.....Respondents

AND

+ **LPA 394/2017 & CM No.19398/2017**SHAHEED UDHAM SINGH SMARAK SHIKSHA
SAMITI AND ORS

.....Appellants

Versus

SUMAN LATA AND ORS

.....Respondents

Advocates who appeared in this case

For the Appellants : Mr. Rahul Sharma, Ms. Praneeta Sharma,
Mr.Ayush Bhatt & Ms.Sarika Rathore, Advs
for appellants.

For the Respondents : Mr. Vivek B. Saharya & Mr. Nishant, Advs.
for R1.
Mr. Yeeshu Jain & Ms. Jyoti Tyagi, Advs.
for DoE.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**



1. The controversy involved in the captioned appeals is common. These appeals being LPA 392/2017, LPA 393/2017 and LPA 394/2017 have been filed by the appellants challenging the judgments / orders passed in W.P.(C) 5781/2013, W.P.(C) No.193/2011, and W.P.(C) 3723/2012, whereby these writ petitions were dismissed. W.P.(C) 3723/2012 and W.P.(C) 5781/2013 preferred by the appellant were disposed of by the learned Single Judge by separate orders, albeit in terms of the judgement dated 14.03.2017 (hereafter *the impugned judgement*) passed by the learned Single Judge in W.P.(C) No.193/2011 captioned *Shaheed Udham Singh Smarak Shiksha Samiti & Ors. v. Santosh Verma & Anr.* The said judgement is the subject matter of challenge in L.P.A 393/2017 and the same is treated as the lead matter. For the purposes of addressing the controversy, we shall refer to the facts pertaining to W.P.(C) No.193/2011 and L.P.A 393/2017. Respondent no.1 in the said appeal is hereafter also referred to as the respondent.

2. The appellants had preferred the above-captioned writ petition – W.P.(C) No.193/2011 captioned *Shaheed Udham Singh Smarak Shiksha Samiti & Ors. v. Santosh Verma & Anr* – impugning an order dated 25.11.2010 of the Delhi School Tribunal (hereafter *the DST*) rendered in Appeal No.51/2009. The respondent (appellant before the DST) had preferred the said appeal under Section 11 read with Section 8(3) of the Delhi School Education Act, 1973 (hereafter *the DSE Act*) challenging an order dated 16.05.2009, whereby respondent no.1 was placed under suspension and order dated 08.06.2009 dismissing her from the services of Shaheed Udham Singh Smarak Co-Ed. Primary Public School, Shastri Nagar, Delhi-110052.



3. The DST decided the appeal in favour of the respondent and held that the appellant no. 1 and appellant no. 3 (Shaheed Udham Singh Smarak Co-ed Primary Public School) are to be construed as one institution for all purposes. Resultantly, the respondent was held to be entitled to protections under the DSE Act and the rules made thereunder. The learned DST further observed that the respondent was admittedly terminated from service of the appellant no.3 without following the principles of natural justice and without resorting to the provisions of Rule 120 of the Delhi School Education Rules, 1973 (hereafter *the DSE Rules*). Accordingly, by the order dated 25.11.2010, the DST directed the respondent to be reinstated in service within a period of one month and also directed the appellants to pay full back wages with all consequential benefits. In addition, the DST also directed that a copy of the said order be forwarded to the Chairman, DDA and the Secretary of Education, Government of NCT of Delhi for taking necessary action against the erring school.

4. Aggrieved by the same, the appellants [petitioners in W.P. (C) 193/2011] preferred the writ petition, assailing the order dated 25.11.2010 passed by the DST, *inter alia*, on the ground that the respondent was not entitled to protection under the DSE Act and the DSE Rules. Therefore, the appeal before DST was not maintainable.

5. The said writ petition was dismissed by the learned Single Judge by a judgment dated 09.09.2013 holding that the appeals filed by the employees of the unaided unrecognized schools is also maintainable before the DST under Section 8(3) of the DSE Act.



6. The appellants assailed the judgment dated 09.09.2023 of the learned Single Judge before the Division Bench of this Court in LPA No.825/2013. The Division Bench of this Court allowed the said appeal by an order dated 12.08.2015 with the observation that the decision relied upon by the learned Single Judge – *Social Jurist, a Civil Rights Group v. GNCT & Ors.: 2008 SCC OnLine Del 176* – was not an authority for the proposition that the teachers and employees of unrecognized private schools in Delhi had a right to file an appeal before the DST constituted under Section 11 of the DSE Act.

7. It is important to note that the order dated 12.08.2015 passed by the Division Bench of this Court is a common order in three appeals being LPA No.825/2013 captioned *Shaheed Udham Singh Smarak Shiksha Samiti & Ors. v. Smt. Santosh Verma & Anr.*; LPA No.826/2013 captioned *Shaheed Udham Singh Smarak Shiksha Samiti & Ors. v. Mrs. Usha Tyagi & Anr.*; and, LPA No.827/2013 captioned *Shaheed Udham Singh Smarak Shiksha Samiti & Ors. v. Mr. Suman Lata & Ors.* Whilst LPA No.825/2013 and LPA No. 827/2013 were preferred against the order dated 09.09.2013 passed by the learned Single Judge in W.P.(C) No.193/2011 and W.P. (C) 3723/2012; the other LPA [being LPA No. 826/2013] was in respect of an order dated 11.09.2013 passed in W.P.(C) No. 5781/2013.

8. By the said common order dated 12.08.2015, the said writ petitions were remanded to the learned Single Judge with the direction to determine whether the respondents were employees of Shaheed Udham Singh Smarak Co-Education Secondary School, which was a recognized school.

9. The learned Single Judge considered the decision dated 15.02.2016 of



the Division Bench of this Court in *M/s Samarth Shiksha Samiti (Regd.) & Anr. v. Shakuntala Maggo & Ors.: LPA No.857/2015* and observed that the said decision is binding. It was held therein that the DSE Act applies to all schools in Delhi irrespective of whether they are recognized or unrecognized. The learned Single Judge has noted that in view of the said decision and in view of the decision of the Supreme Court in *Management Committee of Montfort Senior Secondary School v. Vijay Kumar & Ors.: (2005) 7 SCC 472*, Rules 118 and 120 of the DSE Rules were applicable even to unrecognized schools. Accordingly, the appellants' petitions were dismissed.

10. The learned counsel appearing for the appellants does not dispute that the DSE Act is applicable. He also readily concedes that the respondent had a right to file an appeal before the DST. He, however, submits that the learned Single Judge has not addressed the remit of the Division Bench of this Court in terms of the common order dated 12.08.2015 in as much as it has not ascertained whether the respondent was an employee of aided secondary school (appellant no. 2) or the unaided unrecognized primary school (appellant no. 3).

11. According to the appellants, the respondent was an employee of appellant no.3 school.

12. It is noticed that the learned Single Judge had found that there was no dispute as to the said issue and it was admitted that the respondent was an employee of appellant no.3 school.

13. The respondent has not assailed the aforesaid finding. The appellants also do not dispute that the respondent was an employee of appellant no.3



school. In the aforesaid view, the contention that the learned Single Judge has not complied with the direction of the Division Bench of this Court is, clearly, erroneous.

14. It is also relevant to note that the question whether the respondent was an employee of appellant no.3 school (unaided unrecognized school) or the recognized aided school would, in the given context, be material only if the DST lacked the jurisdiction to entertain the respondent's appeal on account of her being an employee of an unrecognized unaided school, as was contended by the appellants at that stage. Concededly, the said issue is settled and the question whether an employee of an unrecognized unaided school has a right to approach the DST under the DSE Act is no longer *res integra*. The observations made by the Division Bench of this Court in the order dated 12.08.2015 remanding the petitions to learned Single Judge were premised on the assumption that an appeal to DST by an employee of an unrecognized and unaided school would not be maintainable under the DSE Act. The said issue, as stated above, is settled and the appellants no longer dispute that the respondent's appeal before the DST was maintainable. This was the principal issue raised by the appellants/petitioners in their writ petitions before the learned Single Judge. The same stands addressed.

15. The appeal is, thus, unmerited and is, accordingly, dismissed with costs quantified at ₹10,000/-. The pending application is also disposed of.

LPA 392/2017 & CM No.19243/2017
LPA 394/2017 & CM No.19398/2017

16. The present appeals were heard along with *LPA 393/2017* captioned *Shaheed Udham Singh Smarak Shiksha Samiti and Ors. v. Santosh Verma*



and Anr.

17. The reasons stated above in LPA 393/2017 are equally applicable in the present appeals and accordingly, the same are also dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 16, 2024

‘gsr’