



2025:DHC:1358-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 107/2025, CM APPLs. 8556/2025, 8557/2025 & 8558/2025

RAMJAS SCHOOL ANAND PARVAT SENIOR WING
(THROUGH ITS CHAIRMAN)Appellant

Through: Mr. Alok Kumar, Sr. Adv. with
Mr. Soumya Bhowmik, Mr. Amanullah, Mr.
Amit Kr. Singh, Mr. U. Maheshwari and Mr.
Manan Soni, Advs.

versus

ARCHNA CHUGH & ANR.Respondents

Through: Mr. Pramod Kr. Singhal and
Mr. Rahul Singhal, Advs. for R-1
Mr. Gaurav Dhingra and Mr. Shashank
Singh, Advs. for R-2

+ LPA 108/2025, CM APPLs. 8563/2025 & 8564/2025

RAMJAS SCHOOL ANAND PARVAT SENIOR WING
(THROUGH ITS CHAIRMAN)Appellant

Through: Mr. Alok Kumar, Sr. Adv. with
Mr. Somya Bhowmik, Mr. Amanullah, Mr.
Amit Kr. Singh, Mr. U. Maheshwari and Mr.
Manan Soni, Advs.

versus

RANJANA TREHAN & ANR.Respondents

Through: Mr. Pramod Kr. Singhal and
Mr. Rahul Singhal, Advs. for R-1
Mr. Gaurav Dhingra and Mr. Shashank
Singh, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

Signature Not Verified

Digitally Signed By: ALOK KUMAR
Signing Date: 04.03.2025
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**JUDGMENT (ORAL)****13.02.2025**

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C. HARI SHANKAR, J.

1. The respondents in these appeals were suspended by the Chairman of the appellant-School¹. Prior approval of the Director of Education², under Rule 8(4) of the Delhi School Education Rules, 1973³ was not obtained. A learned Single Judge of this Court has set aside the suspension orders on this sole ground. The School is in appeal.

2. The issue is squarely covered by the judgment of the Supreme Court in *Raj Kumar v Director of Education*⁴.

3. As this is the only issue in dispute, and the fact stand sufficiently captured in the judgment of the learned Single Judge, we need not burden this judgment with a reiteration thereof.

4. Before proceeding further, we may straightaway address the contention, of the appellant in the present appeals, that the judgment in *Raj Kumar* would not apply as it deals with Section 8(2)⁵, and not Section 8(4), of the DSE Act. The contention has merely to be urged to be rejected. Section 8(2), like Section 8(4), requires prior approval

¹ "the School" hereinafter

² "the Director" hereinafter

³ "the DSE Rules" hereinafter

⁴ (2016) 6 SCC 541

⁵ 8. Terms and conditions of service of employees of recognised private schools-

(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.



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of the Director to be obtained before dismissing, removing, or reducing, in rank, any employee of a recognized private school. That the appellant is a recognized private School is not disputed. The only difference between Section 8(2) and 8(4) is that Section 8(4) is hedged in by two provisos, which permit the School to suspend an employee in emergent circumstances, where the School is satisfied that the employee was guilty of gross misconduct. Even in such cases, however, the second proviso to Section 8(4) requires the approval of the Director to be obtained within 15 days, failing which the suspension *ipso facto* comes to an end. Admittedly, no such approval, of the Director, was obtained within 15 days of the suspension of the respondents. The learned Single Judge has dealt with this issue thus, in the impugned judgment, and we agree with her:

“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** ⁶, 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*



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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.”

(Emphasis supplied)

5. The plea that **Raj Kumar** does not apply for this reason, therefore, fails.

6. We turn, now, to **Raj Kumar**.

7. Raj Kumar was a driver, employed with the DAV Public School⁷. His services were terminated by the DAVPS. He instituted an industrial dispute, contending that his termination amounted to “retrenchment” within the meaning of Section 2 (oo) of the Industrial Disputes Act, 1947, and had been effected in breach of Section 25-F of the said Act. That issue does not consider us. However, Issue (iii), as thus framed by the Supreme Court as arising before it for consideration, is relevant:

“(iii) Whether the provision of Section 8(2) of the DSE Act is applicable to the facts of the instant case?”

8. The following paragraphs from the judgment in **Raj Kumar**, which address this issue, merit reproduction :



40. The learned counsel for the appellant contends that the respondent School is a recognised private school and the appellant is an “employee” in terms of Section 2(h) of the DSE Act. Chapter IV of the DSE Act provides for the terms and conditions of services of an employee of a recognised private school. Section 8(2) of the DSE Act contemplates that no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall their services be otherwise terminated except with the prior approval of the Director of Education, Delhi. In the instant case, the respondent Managing Committee, before terminating the services of the appellant did not comply with the said mandatory provision of Section 8(2) of the DSE Act. The learned counsel for the appellant further contends that the notice regarding termination of service was served on the appellant on 7-1-2003, and as on that date, the aforesaid statutory provision was valid and binding.

41. The learned counsel for the appellant submits that Section 8(2) of the DSE Act is a substantive right provided for safeguarding the conditions of services of an employee. The termination of services of the appellant without obtaining prior permission of the Director, renders the action of the respondent School as void. The learned counsel contends that when statutory provisions provide a procedure to do an act in a particular manner, it should be done in that very manner or not at all. Reliance is placed on the decision of this Court in **Babu Verghese v. Bar Council of Kerala**⁸.

“31 . It is the basic principle of law long settled that *if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all*. The origin of this rule is traceable to the decision in **Taylor v Taylor**⁹ which was followed by Lord Roche in **Nazir Ahmad v King Emperor**¹⁰ who stated as under :

‘... where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all.’

32. This rule has since been approved by this Court in **Rao Shiv Bahadur Singh v State of Vindhya Pradesh**¹¹ and again in **Deep Chand v State of**

⁷ “the DAVPS” hereinafter

⁸ (1999) 3 SCC 422

⁹ (1875) LR 1 Ch D 426

¹⁰ 1936 SCC OnLine PC 41

¹¹ AIR 1954 SC 322



*Rajasthan*¹². These cases were considered by a three-Judge Bench of this Court in *State of U.P. v Singhara Singh*¹³ and the rule laid down in *Nazir Ahmad case* was again upheld. *This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.*”
(emphasis supplied)

42. On the other hand, the learned counsel appearing on behalf of the respondent School contends that there was no requirement on the part of the respondent Managing Committee to comply with Section 8(2) of the DSE Act. Reliance is placed on the decision of the Delhi High Court in *Kathuria Public School v Director of Education*¹⁴, wherein Section 8(2) of the DSE was struck down. It was held as under :

“21. If the aforesaid observations of the Supreme Court in *T.M.A. Pai case*¹⁵ are taken to its logical conclusion, it would imply that there should be no such requirement of prior permissions or subsequent approval in matter of discipline of the staff. Thus, whether it is for suspension or disciplinary action, the educational institutions would have a free hand. The safeguard provided is for a judicial tribunal to be set up to examine the cases.”

43. A Constitution Bench of this Court had held in *T.M.A. Pai Foundation v State of Karnataka* as under

“61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged.

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle

¹² AIR 1961 SC 1527

¹³ AIR 1964 SC 358

¹⁴ (2004) 113 DLT 703

¹⁵ *T.M.A. Pai Foundation v State of Karnataka*, (2002) 8 SCC 481



is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. *In the case of a private institution, the relationship between the management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic inquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an Educational Tribunal be set up in each district in a State to enable the aggrieved teacher to file an appeal, unless there already exists such an Educational Tribunal in a State—the object being that the teacher should not suffer through the substantial costs that arise because of the location of the Tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialised tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the Government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can*



file an appeal against the decision of the management concerning disciplinary action or termination of service.”

(emphasis supplied)

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.***¹⁶ 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:

“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***¹⁷ 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 judgment¹⁸ 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.



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49. In *Principal v Presiding Officer*¹⁹, a Division Bench of this Court held as under:

“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.”

9. Thus, the Supreme Court has, after considering a host of authorities, including the earlier judgment of the Constitution Bench in *Pai*, held that an order of termination of service of an employee of a recognized private school, passed without obtaining the prior approval of the Director, is *ex facie* bad in law, as having breached Section 8(2) of the DSE Act.

10. *Mutatis mutandis*, this would render an order of suspension of a employee of a recognized private school equally unsustainable, for having breached Section 8(4).

11. Before us, as before the learned Single Judge, the School could not seriously dispute the fact that the issue in controversy stands covered by *Raj Kumar*. The only contention that was sought to be advanced was that *Raj Kumar* was rendered *per incuriam*, as it was contrary to the judgment of the Constitution Bench of the Supreme Court in *Pai*.



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12. We wish to clear the ground on this issue, as such arguments have been raised before us in more than one case.

13. The High Court cannot declare the judgment of the Supreme Court to be *per incuriam*.

13.1 Firstly, no High Court can declare the judgment of the Supreme Court to be *per incuriam*. A Bench of three Hon'ble Judges of the Supreme Court has clearly so held, in ***South Central Railway Employees Co-operative Credit Society Employees Union v B. Yashodabai***²⁰ :

“14. We are of the view that it was not open to the High Court to hold that the judgment delivered by this Court in ***South Central Railway Employees Coop. Credit Society Employees' Union v Registrar of Coop. Societies***²¹ was *per incuriam*.

15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when CA No. 4343 of 1988 was decided [***South Central Railway Employees Coop. Credit Society Employees' Union v Registrar of Coop. Societies*** (supra)]. If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be rewritten and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the subordinate courts would also be violating the provisions of Article 141 of the Constitution of India.”

²⁰ (2015) 2 SCC 727

²¹ (1998) 2 SCC 580



14. We feel that, 20 years after this judgment was rendered, it is high time parties ceased to contend, before High Courts, that a decision of the Supreme Court is *per incuriam*.

15. When is a judgment rendered *per incuriam*?

15.1 Secondly, there seems to be some misunderstanding regarding the exact scope and ambit of the expression “*per incuriam*”. *Per incuriam* literally translates to “through lack of care”. A judgment is *per incuriam*, therefore, where it is rendered *in ignorance of* a previous binding precedent or statutory mandate.²² ***V. Kishan Rao v Nikhil Super Specialty Hospital***²³ explains the *per incuriam* principle thus:

54. When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are rendered *per incuriam*. This concept of *per incuriam* has been explained in many decisions of this Court. Sabyasachi Mukharji, J. (as his Lordship then was) speaking for the majority in ***A.R. Antulay v R.S. Nayak***²⁴ explained the concept in the following words :

“42. ...*Per incuriam* are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.”

15.2 ***M.P. Rural Road Development Authority v L.G. Chaudhary Engineers & Contractors***²⁵ explained the doctrine, in somewhat greater detail, thus:

²² ***Punjab Land Development & Reclamation Corpn Ltd v Presiding Officer***, (1990) 3 SCC 682

²³ (2010) 5 SCC 513

²⁴ (1988) 2 SCC 602

²⁵ (2012) 3 SCC 495



28. The principle of per incuriam has been very succinctly formulated by the Court of Appeal in *Young v Bristol Aeroplane Co. Ltd.*²⁶ Lord Greene, Master of Rolls formulated the principles on the basis of which a decision can be said to have been rendered “per incuriam”. The principles are:

“...Where the court has construed a statute or a rule having the force of a statute its decision stands on the same footing as any other decision on a question of law, but where the court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute the position is very different. It cannot, in our opinion, be right to say that in such a case the court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given per incuriam.”

29. The decision in *Young* (supra) was subsequently approved by the House of Lords in *Young v Bristol Aeroplane Co. Ltd.*²⁷, Lord Viscount Simon in the House of Lords expressed His Lordship's agreement with the views expressed by Lord Greene, the Master of Rolls in the Court of Appeal on the principle of per incuriam.

30. Those principles have been followed by the Constitution Bench of this Court in *Bengal Immunity Co. Ltd. v State of Bihar*.²⁸

31. The same principle has been reiterated by Lord Evershed, Master of Rolls, in *Morelle Ld. v Wakeling*²⁹. The principle has been stated as follows:

“...As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned; so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong.”

32. In *State of U.P. v Synthetics and Chemicals Ltd.*³⁰ this Court

²⁶ 1944 KB 718 (CA)

²⁷ 1946 AC 163 (HL)

²⁸ AIR 1955 SC 661

²⁹ (1955) 2 QB 379 (CA)

³⁰ (1991) 4 SCC 139



held that the doctrine of “per incuriam” in practice means “per ignoratum” and noted that the English courts have developed this principle in relaxation of the rule of stare decisis and referred to the decision in *Bristol Aeroplane Co. Ltd.* (supra). The learned Judges also made it clear that the same principle has been approved and adopted by this Court while interpreting Article 141 of the Constitution.

33. In *MCD v Gurnam Kaur*³¹ a three-Judge Bench of this Court explained this principle of per incuriam very elaborately and in explaining the principle of per incuriam the learned Judges held:

“11. ...A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute.”

34. In para 12 the learned Judges observed as follows:

“12. ...One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority.”

15.3 In *State of Assam v Ripa Sharma*³², the Supreme Court held that it was an “inescapable fact that that the judgment rendered in *Eastern Coalfields Ltd. v Dugal Kumar*³³ has been rendered in ignorance of the earlier judgments of the Benches of co-equal strength, rendering the same per incuriam”.

15.4 The Supreme Court, in *State of Madhya Pradesh v Narmada Bachao Andolan*³⁴, once again provided a detailed explanation of the *per incuriam* principle:

³¹ (1989) 1 SCC 101

³² (2013) 3 SCC 63

³³ (2008) 14 SCC 295

³⁴ (2011) 7 SCC 639



65. “Incuria” literally means “carelessness”. In practice per incuriam is taken to mean per ignoratum. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the “quotable in law” is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.

66. While dealing with the observations made by a seven-Judge Bench in *India Cement Ltd. v State of T.N.*³⁵ and the five-Judge Bench in *State of W.B. v Kesoram Industries Ltd.*³⁶, observed as under:

“57. ...A doubtful expression occurring in a judgment, *apparently by mistake or inadvertence*, ought to be read by assuming that the court had intended to say only that which is correct according to the settled position of law, and the *apparent error should be ignored, far from making any capital out of it*, giving way to the correct expression which ought to be implied or necessarily read in the context,
...

71. ...A statement caused by an apparent typographical or inadvertent error in a judgment of the court *should not be misunderstood as declaration of such law by the court.*”

(emphasis added)

67. Thus, “per incuriam” are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

15.5 In *U.P. Power Corporation Ltd v Rajesh Kumar*³⁷, the Supreme Court clarified the position thus:

17. Similarly, the Division Bench at Lucknow erroneously treated the verdict of the Allahabad Bench not to be a binding precedent on the foundation that the principles laid down by the

³⁵ (1990) 1 SCC 12

³⁶ (2004) 10 SCC 201

³⁷ (2012) 7 SCC 1



Constitution Bench in *M. Nagaraj v Union of India*³⁸ are not being appositely appreciated and correctly applied by the Bench when there was reference to the said decision and a number of passages were quoted and appreciated albeit incorrectly, *the same could not have been a ground to treat the decision as per incuriam* or not a binding precedent.”

15.6 Thus, a *per incuriam* decision is not one which erroneously interprets an earlier binding precedent or statutory mandate, but one which is rendered in *ignorance* thereof. Viewed thus, the very invocation of the *per incuriam* principle, by the School, to overcome *Raj Kumar*, is misconceived.

16. Precedential principles

16.1 The contention that the judgment in *Raj Kumar* is contrary to the decision in *Pai* is not available to be urged before this Court, for the simple reason that, once a Bench, even if consisting of two Hon’ble Judges of the Supreme Court, has *noticed* the decision of a larger, or even Constitution, bench of the Supreme Court, and arrived at certain findings or conclusions, those findings and conclusions are binding on every hierarchically lower judicial authority, including us. We cannot, thereafter, cite *Pai* to escape *Raj Kumar*, as *Pai* has been noticed and, in fact, relied upon in *Raj Kumar*. The view taken in *Raj Kumar* has, therefore, been taken in full consciousness of the law laid down in *Pai*, and if we were, therefore, to hold that *Raj Kumar* is contrary to *Pai*, we would be holding that a Bench of two Hon’ble Judges of the Supreme Court, after noticing *Pai*, has ruled contrary thereto, or, worse, has misinterpreted *Pai*, which would be judicial



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indiscipline of the highest degree.

16.2 In fact, this is but another facet of the principle that the High Court cannot regard a judgment of the Supreme Court as *per incuriam*.

16.3 If a judgment of a larger Bench of the Supreme Court is not noticed by a smaller Bench, it is open to any hierarchically lower Court to follow the earlier larger Bench in preference to the later smaller Bench. The entire paradigm, however, shifts, if the larger Bench decision is noticed by the smaller Bench. In that case, the smaller Bench binds, for, if we are to hold contrary to the smaller Bench on the ground that the earlier decision of the larger Bench exposit a contrary view, we would be holding that the larger Bench was not properly appreciated by the smaller Bench, which we, as the High Court, cannot do.

17. *Pai* has been noticed, and followed, in *Raj Kumar*. Any recourse to *Pai*, to escape *Raj Kumar*, therefore, stands ruled out.

The sequitur

18. The single Judge is, therefore, correct in her view that, in view of the decision in *Raj Kumar*, the orders of suspension of the respondents, having been passed without obtaining the prior approval of the Director under Section 8(4) of the DSE Act, were illegal.



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19. They were, therefore, rightly quashed by the learned Single Judge.

20. The appeals are, therefore, dismissed *in limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 13, 2025/aky

Click here to check corrigendum, if any