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

% **Reserved on : 22.09.2020**
Pronounced on: 01.10.2020

\+ W.P.(C) 4048/2020

S. S. TYAGI ……Petitioner
Through Mr. Anuj Aggarwal, Advocate

versus

RAVINDRA PUBLIC SCHOOL & ANR. …..Respondents
Through Mr. Justin George and Mr. Himanshu Kumar, Advocates for R-1
Mr. Gaurav Dhingra, Advocate for R-2

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Present Petition is directed against the Suspension Letter dated 17.06.2020 whereby the Petitioner was suspended from service for a period of four weeks commencing from 17.06.2020 to 16.07.2020 by Respondent no.1/Ravindra Public School. Petitioner also seeks a direction against Respondent No.2/Directorate of Education (hereinafter referred to as 'DOE') for not taking appropriate action against Respondent No.1 (hereinafter referred to as 'School') on account of violation of the provisions of Delhi School Education Act and Rules, 1973 (hereinafter referred as 'DSEA&R').

2. The narrative of facts is in a narrow compass. Petitioner was appointed as TGT (English) in the School on 05.08.1988 and was confirmed on the said post in November 1992.

3. Petitioner avers that he had an unblemished record of service till the impugned Suspension Order. The troubles of the Petitioner began when he, along with the other staff members, on not being paid salary in terms of Section 10 of the DSEA&R, preferred a writ petition before this Court. The said writ petition, being *WP(C) 11114/2018 titled Kalpana Khan and Ors. vs. Ravindra Public School and Anr*. is still pending in this Court and the relief sought therein is grant of salary to the Petitioners as per the 6th and 7th Central Pay Commissions.

4. While the issue of grant of the Pay Commission's benefits was still pending in the Court, the School stopped paying even the salary under the 5th Pay Commission on a monthly basis and started making payments intermittently. Petitioner being the President of the "Swastik Teacher Forum", which is a registered Association of the teachers of the School, led the staff members in making repeated requests to the School to release their due salary and emoluments. Petitioner further avers that on 26.04.2020, the above mentioned Forum made a written complaint to the Education Minister, Govt. of NCT of Delhi, regarding the non-payment of regular salaries and being the President of the Association, the Petitioner signed on the complaint. This was followed by another complaint dated 29.04.2020 and repeated representations thereafter.

5. On 16.06.2020, two Memorandums were served upon the Petitioner via e-mail by the School, issuing warnings for allegedly instigating the staff members and not performing the duties assigned to

him. Petitioner responded to the said Memorandums on 17.06.2020 and denied the allegations levelled against him. This was followed by a letter dated 17.06.2020, suspending the Petitioner from service for four weeks from 17.06.2020 to 16.07.2020. It is this Suspension Order which is assailed by the Petitioner in the present petition.

6. Learned counsel for the Petitioner challenging the Suspension Order contends that the order is in violation of Section 8(4) of the DSEA&R read with Rule 115 of the said Act and Rules. It is submitted that no approval from the DOE has been taken by the School Management and the Suspension is thus illegal and also unjustified. Reliance is placed by the counsel on the judgement of this court in ***Ruchi Malhotra vs. Guru Nanak Public School, WP(C) No.3567/2019*** as well as in ***Delhi Public School & Anr. vs. Director of Education, (2002) SCC OnLine Del 1086*** and ***Ganesh Ram Bhatt vs. Director of Education & Anr., 2014 SCC OnLine Del 3572***. Learned counsel contends that in all the above judgements, this Court has clearly held that wherever the Managing Committee of a recognized Private School intends to suspend its employee, the intention shall be communicated to the Director and no suspension shall be made except with the prior approval of the Director. It is further contended that Courts have also held that in a case where the Managing Committee suspends an employee with immediate effect on account of an imminent necessity due to reason of gross misconduct, the said suspension shall remain in force only for a period of 15 days, unless it is approved by the Director, before the expiry of the said period. It is argued that in the present case, since no approval was taken from the Director prior to the suspension, the suspension shall be deemed to be

invalid and illegal. Even assuming that the suspension was on ground of immediate necessity, there being no approval within 15 days from the date of suspension, the suspension lapsed on the expiry of the said period and cannot be sustained.

7. It is pertinent to mention at this stage that after the Court had issued notice in the present petition and stayed the operation of the Suspension Letter, School issued a letter dated 14.07.2020 revoking the Suspension Order dated 17.06.2020 with effect from 09.07.2020. This fact was brought to the notice of the Court by the School through its Affidavit and the order of revocation of the suspension dated 14.07.2020 was appended to the Counter Affidavit.

8. In light of the above development during the pendency of the petition, relief sought by the Petitioner in prayer (i) for a direction to set aside the Suspension Letter no longer survives. Petitioner is therefore pressing his relief in prayer (ii) for payment of consequential benefits including full salary for the period of suspension prior to revocation and in this view the Court is called upon to decide if the suspension is valid in law, in the absence of approval by DOE within 15 days reckoned from the date of suspension order.

9. Counsel for the School seeks to defend the Suspension Order and argues that it has been issued in accordance with the provisions of the DSEA&R. Learned counsel relies on Section 8(4) and Section 9 of DSEA&R and argues that the School has the power to suspend its employees with immediate effect for any act of gross misconduct without the permission of the DSEA&R. Section 9, according to the counsel, mandates that every employee of a recognized School shall be governed

by a Code of Conduct and any violation of the Code shall make the employee liable for disciplinary action. Rule 115 of the DSEA&R, it is contended, provides for suspension of an employee in addition to Section 8(4). It is argued that the Petitioner through his conduct in refusing to take online classes for the students in 9th and 10th standard as well as instigating the other staff members to do the same, as also writing false complaints to the higher authorities had made himself liable to suspension as these acts were a violation of the Code of Conduct.

10. It is further contended that the Petitioner is not right in arguing that there was a mandate to take approval from the DOE prior to suspending the Petitioner under Section 8(4) of the DSEA&R or even post thereto, within 15 days. Counsel submits that the School is an unaided Senior Secondary School administered by a Trust and therefore no approval of the DOE is required for suspending its employees. Reliance is placed on the judgement of this Court in ***Jatinder Kaur Saini vs. School Management of G.H.P.S., W.P.(C) 8412/2011***, para 5 of which is as follows :-

> *"5. The issue as to whether a private unaided school requires or does not require the approval of the Director of Education for suspending of an employee is no longer res integra and has been decided upon by a Division Bench of this Court in the case of Kathuria Public School Vs. Director of Education, 123 (2005) DLT 89(DB). In Kathuria Public School (supra), the Division Bench of this Court has held that for a private unaided school, no prior or ex post facto approval is required for suspension of a teacher/employee of a school. In fact, in another very recent Division Bench judgment this court in Delhi Public School V. Shalu Mahendroo (2013) 196 DLT 147(DB) has similarly held that no prior approval of the Director*

of Education is required before suspending of an employee and nor is an ex post facto approval is necessary."

11. It is argued that the School has already issued an order revoking the suspension of the Petitioner from 09.07.2020, but the suspension is valid from 17.06.2020 till 08.07.2020 and therefore, the Petitioner is not entitled to any other benefits except for subsistence allowance which stands duly paid. The judgements relied upon by the Petitioner in ***Ruchi Malhotra (supra)***, ***Delhi Public School & Anr. (supra)*** and ***Ganesh Ram Bhatt (supra)*** are distinguished on the ground that in the aforesaid judgements the issue was with respect to requirement of approval of suspension by the DOE within a period of 15 days and payment of subsistence allowance, till the imposition of penalty. Mr. Justin George arguing for the School further relies on the judgement of the Division Bench of this Court in ***Kathuria Public School vs. Director of Education, 123 (2005) DLT 89(DB)*** and argues that the ratio of the said judgement squarely covers the issue that an unaided School does not require to seek prior approval of the DOE to suspend its employees. Counsel also relies on a judgement of the Constitution Bench of the Supreme Court in ***TMA PAI Foundation and Ors. vs. State of Karnataka and Ors., (2002) 8 SCC 481*** where the Supreme Court had categorically held that unaided Private Schools must have maximum autonomy with respect to disciplinary matters and also held that there is no requirement of prior approval of the Government while taking disciplinary action against the teacher. In the alternative, it is also contended that the statutory provision being the Proviso to Section 8(4) in

any case empowers the School to suspend an employee without prior approval with immediate effect.

12. Learned counsel for Respondent No.2/DOE submits that the Suspension Order has been revoked with effect from 09.07.2020 and hence the petition is rendered infructuous. However, on the merits of the Suspension Order and the law thereto, Respondent No.2 supports the Petitioner. It is contended that the intent of the legislature in enacting the DSEA&R was to provide security to the employees of the School and regulate the terms and conditions of their employment. Judgement of the Supreme Court in ***Raj Kumar vs. Director of Education and Ors., (2016) 6 SCC 541*** is relied, more particularly paras 50 and 52, to rebut the contention of the School that unaided Schools are beyond the purview of Section 8(4) of the DSEA&R.

13. Learned counsel submits that no approval was sought by the School from the DOE for the suspension of the Petitioner and therefore in terms of the judgement of this Court in ***Nisha Tyagi vs. Seema Model School, (1997) 66 DLT 814*** and in ***Delhi Public School vs. Directorate of Education, 2003 (67) DRJ 419***, the Suspension Order stood lapsed on expiry of 15 days from the date of communication of the order. In so far as the grant of consequential benefits of revocation of suspension to the Petitioner is concerned, counsel for DOE contends that no such benefits can be granted to the Petitioner as the Suspension Order has been revoked by the School and even otherwise the powers to decide on the payment of salary for the suspension period vests in the Management of the School in terms of the provisions of Rule 121 of the DSEA&R.

14. As mentioned above, the suspension has been revoked by the School with effect from 09.07.2020 and therefore the issue that remains to be decided is the validity of Suspension for the period prior to revocation and the entitlement of the consequential benefits, if any, to the Petitioner for the said period.

15. I have heard the learned counsels for the parties and examined their rival contentions.

16. The heart of the dispute lies in the applicability of provisions of Sub-section (4) of Section 8 of the Act to the School, being an unaided School. The Section is reproduced herein below for ready reference:

> *"8. Terms and conditions of service of employees of recognised private schools.*
> *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."*

17. It is apparent from a perusal of the aforesaid provision that if the Managing Committee of a recognised private school intends to suspend

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

18. In the present case it is an undisputed fact that Respondent No.2/DOE did not accord approval to the suspension of the Petitioner within a period of fifteen days reckoned from 17.06.2020 i.e on or before 01.07.2020. As a result, when the school had invoked the first Proviso to Sub-section (4) of Section 8 of the Act, to suspend the Petitioner expressing urgency, then in the absence of approval within 15 days, suspension could have remained in force only for a period of fifteen days, i.e., from 17.06.2020 till 01.07.2020 and shall be deemed to have lapsed from 02.07.2020.

19. The question of validity of suspension of an employee of a school beyond 15 days from the date of order of suspension, in the absence of approval of DOE under Section 8(4) came up for consideration before a

Division Bench of this Court in the case of ***Anand Dev Tyagi vs. Lt. Governor of Delhi, 1996 SCC Online Del 537.*** In the said case, the employee had been placed under suspension, in an emergency and thus 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 Act or the Rules 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 according of his 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 mandate of the Legislature for 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 paras 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 tmless Managing Committee, for reasons to be recorded takes a decision to continue the suspension beyond the period of six months.

13. In the instant case respondent No. 4 placed the petitioner under suspension forthwith on 10.7.1994 and it is contended that the order was communicated to the Director and his approval was sought. The record reveals that respondent No. 4 merely forwarded a copy of memorandum Annexure PX to the Director saying this is being intimated to Director to Education as well". Copy was also sent to District Education Officer. The communication, which thereafter was sent by respondent No. 4 to the Director of Education is Annexure R-4/24 dated 26.7.1994 with a copy to Education Officer. The petitioner was placed under suspension on 10.7.1994. In case the petitioner had been put under suspension on 10.7.1994 by the Managing Committee, in exercise of its power to put an employee under suspension with immediate effect on its satisfaction that immediate suspension was necessary by reason of gross misconduct, the same could remain in force at the most for a period of 15 days from the date of suspension. Suspension thereafter could remain operative only on the Director's according his approval before the expiry of the period of 15 days. No doubt the suspension was communicated by respondent No. 4 to the Director but no approval was granted by the

Director before the expiry of period of 15 days. Director was required to take a decision within the ambit of Sub-section (5) of Section 8 on his satisfaction that there were adequate and reasonable grounds for suspension. There is nothing in the Act or in the Rules that in the event of Director not according his approval, the same will be deemed to have been accorded. In other words, there is no deeming provision. Communication of the fact of suspension to the Director of Education and according of his approval to this act of placing an employee under suspension before the expiry of period of fifteen days is a sine qua non for the period of suspension before the expiry of period of fifteen days. On approval not being granted the suspension will cease to be operative. Power lies with the Director either to approve or not to approve. It is only on approval being granted that period of suspension will extend beyond fifteen days. Not taking decision by the Director within fifteen days will also amount to approval not being accorded. No doubt the management in an emergent situation, as is referred to in the second proviso to Sub-section (4) of Section has a right to forthwith place the employee under suspension, but this act of placing suspension requires approval. Approval has to be accorded by the Director on his satisfaction that there are reasonable grounds for such suspension. It requires positive decision to be taken. Approval may be either accorded or withheld or may not be accorded at all There is no question deemed approval as is contended on behalf of respondent No. 4. Reference may be made to a decision of the Supreme Court in HPMC v. Shri Suman Behari Sharma, 1996 (5) SCC 40.

14. In view of the above there being no approval accorded by the Director before the expiry of period of 15 days from 10.7.1994 the suspension of petitioner automatically came to an end on 25.7.1994. On and from 25.7.1994, it cannot be said that the petitioner has remained under suspension. Petitioner thereafter was neither placed under suspension afresh separately nor a request was made by respondent No.

4 to the Director for placing the petitioner again under suspension. It is not shown that Education Officer or Deputy Education Officer concerned were delegated with the powers of the Director. It is the Director of Education alone who can exercise the power to grant prior or post approval of suspension under Section 8(5) of the Act. Education Officer or Deputy Education Officer could not have taken any decision at their own end."

20. Relying upon the dicta laid down by the Supreme Court in ***Frank Anthony Public School Employees Association vs. Union of India, (1986) 4 SCC 707***, 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.

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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.

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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."

21. A Coordinate Bench of this Court also in the case of ***Ganesh Ram Bhatt (supra)*** following the judgement of the Full Bench in ***Delhi Public School (supra)*** and echoing its observations that suspension order automatically lapses and ceases to operate on the expiry of the 15th day from its coming into effect, held as under:

"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.

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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."

22. Against the said judgement, an appeal was filed by the School namely, ***Sharda Devi Sanskrit Vidyapeeth vs. Director of Education & Anr., being LPA no. 229/2016***. 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 said order is unenforceable thereafter. Significantly, in the said case the Director had granted approval to the order of suspension, but belatedly, after nearly seven months. The Court observed that the approval will not have a retrospective effect, but would be effective from the date it is granted. In the circumstances, the Court upheld the order in the writ petition 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 paras of the judgement are as under:-

"15. In Gurudevdatta 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."

23. Recently another Coordinate Bench of this Court in ***Ruchi Malhotra vs. Guru Nanak Public School and Ors., being W.P.(C) 3567/2019, decided on 09.12.2019*** relying on the judgement in ***Delhi Public School (supra)*** quashed a suspension order on the ground that there was no approval of the DOE within a period of 15 days as mandated by provision of Section 8(4) of DSEA&R. Relevant paras 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."

24. In the present case, it is admitted by the School that Respondent No.2/DOE did not accord approval to the suspension of the Petitioner

within a period of fifteen days reckoned from 17.06.2020 i.e. on or before 01.07.2020. It may also be noted that it is not as if the School is helpless if timely approval is not granted by DOE. The Full Bench has in so many words observed that there are several courses open to the School Managements if the approval is not forthcoming within the timelines stipulated in the Statute. Relevant portion of the judgement has been extracted above. Thus, from 02.07.2020 it cannot be said that the Petitioner remained under suspension as neither was an approval given for the said suspension nor a fresh order suspending the Petitioner was passed. Following the judgements alluded to above, it can be safely held that the action of the School in treating the Petitioner under suspension from 02.07.2020 till the date of revocation, is not in consonance with law and the suspension would be deemed to have lapsed on 02.07.2020 and from the said date petitioner shall be treated to have occupied the position that he did prior to 17.06.2020.

25. While the learned counsel for Respondent No.1/School did not and in my view, cannot, dispute that the provisions of Section 8(4) of DSEA&R read with several judicial pronouncements on the subject mandate an approval by the DOE, but the real contest is that the School being an unaided private Institution is outside the purview of the said mandate as the provisions of Section 8(4) of DSEA&R do not apply to unaided educational Institutions. It was argued that once the provisions do not apply, there was no legal requirement to seek prior or post approval of the DOE for suspending the Petitioner. It was further contended that in the case of unaided private schools, maximum autonomy has to be left with the management of the school, especially in

matters of administration which include the right of appointment, disciplinary powers etc. In support of this contention learned counsel placed reliance on the judgement of the Constitution Bench of the Supreme Court in ***TMA Pai (supra)***. Relevant para relied upon by the learned counsel is as under:

> *"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 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."

26. Learned counsel also placed reliance on the Judgement of a Division Bench of this Court in ***Kathuria Public School (supra)*** wherein the Court, relying upon Para 6 of the judgement of the Constitution Bench Supreme of Court in ***TMA Pai (supra)*** struck down Section 8(2) of DSEA&R and held that there was no requirement of prior approval of

the DOE before imposing penalties on the employees of the Schools pursuant to disciplinary action. Relevant para reads as under:

> *"21. If the aforesaid observations of the Supreme Court in T.M.A. Pai case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] 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."*

27. In my opinion, the above judgements relied upon by the School do not inure to its advantage. This is for twofold reasons. Firstly, the Supreme Court in the case of ***Raj Kumar (supra)*** while dealing with the issue of requirement of approval of the DOE under Section 8(2), prior to the School Authorities imposing penalties of dismissal/removal/ reduction in rank specifically dealt with the observations of the Constitution Bench in ***TMA Pai (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 that 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 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."

28. Secondly, in so far as reliance on the judgement in ***Kathuria Public School (supra)*** is concerned, the Supreme Court in the same judgement in ***Raj Kumar (supra)*** observed that the Division Bench of the Delhi High Court while striking down Section 8(2) of the DSEA&R in ***Kathuria Public School*** has not correctly applied the law laid down in ***Katra Education Society v. State of U.P., AIR 1966 SC 1307*** wherein the Constitution Bench of the Supreme Court with reference to provision similar to Section 8(2) and keeping in view the object of regulation of an aided or unaided recognized school has held that the regulation of the service conditions of the employees of private recognized schools is required to be controlled by educational authorities and the State Legislature is empowered to legislate such provisions in the DSEA&R. Relevant paras of the judgement have been extracted above in the judgement.

29. The issue again came up before the Supreme Court in the case of ***Marwari Balika Vidyalaya vs. Asha Srivastava & Ors., 2019 SCC OnLine SC 408.*** Relevant paras are as under:

"13. In Raj Kumar v. Director of Education (supra) 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:

> *"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 (supra) that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short, 'the DSE') 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 the 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."

30. A Coordinate Bench of this Court has in case of a resignation of an employee in ***Meena Oberoi vs. Cambridge Foundation School & Ors., 2019 SCC OnLine 11702,*** has made the following observations:-

> *"57. In view of this opinion of the law, enunciated in Marwari Balika Vidyalaya by the Supreme Court, it would, in my opinion, not be open to this Court to continue applying the law laid down in Kathuria Public School which defeats the salutary purpose of obtaining of*

prior approval, as underscored by the Supreme Court in Marwari Balika Vidyalaya. Kathuria Public School having been disapproved, in no uncertain terms, not in one, but in two judgments of the Supreme Court, continuing reliance, by this Court, on the principles enunciated in Kathuria Public School, would, in my opinion, do complete disservice to Article 142 of the Constitution of India. Once the Supreme Court has held a decision, laid down by the High Court, to be bad in law, it is highly questionable whether any High Court could, thereafter, apply the said decision at all, irrespective of the practical difficulties which may, or may not, arise if the decision were not to be applied."

31. It is true that the judgements referred and alluded to above deal with the provisions of Section 8(2) of DSEA&R, which are as follows:-

"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."

32. However, what needs to be noticed is that while under Section 8(2) approval is required for imposing penalties, under Section 8(4) approval is required for suspension. In ***Raj Kumar (supra)*** the Supreme Court delved into the Statement of Objects and Reasons of the DSEA&R and observed that the intent of the Legislature while enacting a provision such as Section 8(2) was to provide security of tenure to the employees of the School and regulate their terms of employment. It was also observed that the functioning of the Educational Institutions must be free from

unnecessary Governmental interference but this needs to be reconciled with the conditions of employment of the employees and therefore there must be provisions of adequate precautions to safeguard their interest. Section 8(2), was held to be 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. Significantly, reference was made to the Constitution Bench judgement in ***Katra Education Society (supra)*** where the Court had while dealing with *pari materia* provision observed that regulation of service conditions of employees of private recognized schools is required to be controlled by educational authorities and thus Legislations can be made to that effect. It is pertinent to point out that while making these observations the Court had referred to both 'aided and unaided' Institutions.

33. What thus emerges from a reading of the judgements is that the Courts wanted to ensure that the employees are safeguarded against arbitrary and whimsical actions of the school managements so that penalties are not imposed as a mere act of victimization or harassment. For this reason, it was held that provisions such as Section 8(2) which require approval of DOE will act as regulatory and safeguarding mechanisms and in case the action of the management is found to be illegal or arbitrary, DOE will decline to grant the approval.

34. If this is the rationale, in the background of which these observations have been made in the judgements, keeping also in view the laudable object behind enactment of provision such as Section 8(2) of DSEA&R as is further evident from its Statement of Objects and Reasons, the same rationale shall apply when an order is passed under

Section 8(4). This Court thus finds no reason to meet out a differential treatment to an employee and deprive him of the safeguarding procedural mechanism of approval by the DOE before/after suspension, only because he is an employee of an unaided school. On an analogy, I am of the view that if provisions of Section 8(2) have been held applicable to unaided Institutions, the provisions of Section 8(4) shall also apply to the unaided Educational Institutions and there is no force in the contention of the School that it was not bound by the procedural requirements of obtaining the approval of DOE under Proviso to Section 8(4) of DSEA&R. The Legislature in its wisdom while enacting Sub-sections (2) and (4) envisages no difference in their applicability to unaided or aided school.

35. In view of the discussion above and the observations of the Supreme Court in ***Katra Education Society (supra)*** and ***Raj Kumar (supra)***, the reliance of the Respondents on the two judgements referred to above would be misplaced.

36. In light of the aforesaid observations and reasoning and in the absence of approval by the DOE within 15 days of the order of suspension, it is held that the suspension of the Petitioner lapsed at the end of 15 days i.e. 01.07.2020. The petitioner would therefore be entitled to consequential benefits of full salary and allowances from 02.07.2020 till the date the School itself revoked the suspension order. The amounts shall be calculated by the School after adjustment of any subsistence allowance that may have been paid to the Petitioner during the said period and the balance shall be released within three weeks from today.

37. Petition is allowed in the aforesaid terms.

38. Parties are left to bear their own costs.

JYOTI SINGH, J

OCTOBER 1st , 2020
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