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

Date of decision:19.01.2024

\+ LPA 222/2020

GURU NANAK PUBLIC SCHOOL & ANR. ..... Appellants

Through: Mr.T.K.Tiwari, Advocate

Versus

RUCHI MALHOTRA & ANR. ..... Respondents

Through: Mr. Anuj Aggarwal, Mr. Manas Verma and Ms. Shreya and Mr. Siddharth, Advs. for R-1.
Mrs. Avnish Ahlawat, Standing Counsel for GNCTD (Services) with Mr. N.K. Singh, Ms. Laavanya Kaushik, Advs. for R-2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

LPA 222/2020, CM APPL. 20292/2020 & CM APPL. 20293/2020

1. The present appeal under Clause X of the Letters Patent Appeal seeks to assail the order dated 09.12.2019 passed by the learned Single Judge in W.P.(C) 3567/2019. Vide the impugned order, the learned Single Judge has allowed the writ petition preferred by the respondent no. 1, and consequently while quashing the order dated 23.10.2017, vide which she was suspended, directed the appellant to pay her full wages for the period between the date of her suspension and the date of her termination.

2. Before dealing with the rival submissions of the parties, it may be apposite to note, in brief, the factual matrix emerging from the record.

3. The respondent no.1 had joined services of the appellant/school as a teacher on 02.07.1997. After almost 20 years of service of the respondent, the appellant, in contemplation of disciplinary proceedings to be held against her, passed an order dated 23.10.2017 suspending her during the pendency of the enquiry. Since this order was passed without seeking any approval from the Director of Education, the respondent approached this Court to assail the said order. In the meanwhile, the appellant also passed an order terminating the service of the respondent on 16.08.2019, challenge to which order at the behest of the respondent is pending before the Delhi School Tribunal.

4. In the light of these facts, the learned Single judge after considering the admitted position that no prior approval of the Director of Education had been taken by the appellant before passing the suspension order, set aside the same as being violative of Section 8(4) of the Delhi School Education Act, 1973 (DSE Act). However, taking into account that the respondent had in the meanwhile been terminated from service on 16.08.2019, the learned Single Judge directed the appellant to pay full wages to the respondent no. 1 for the period between the date of her suspension and the date of her termination.

5. Being aggrieved, the appellant/school has preferred the present appeal.

6. In support of the appeal, learned counsel for the appellant submits that while passing the impugned order, the learned Single Judge failed to

appreciate that the appellant, being an unaided minority private school, has full autonomy in the matter of disciplinary proceedings against its employees. He contends that Section 8(4) of the DSE Act is not applicable to a minority institution like the appellant, for which purpose he seeks to place reliance on the answer to question no. 5(c) as formulated by the Constitution Bench in ***T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481.*** He submits that the Constitution Bench has held that in case of an unaided minority educational institution, the regulatory measure of control should be minimal with the only condition being that the minority institution should evolve a rational procedure for selection of teaching staff and for taking disciplinary actions against them. He, therefore, prays that the impugned order, which is premised solely on the provisions of section 8(4) DSE Act be set aside.

7. In response, learned counsel for the respondent no. 1 supports the impugned order and submits that the appellant's plea that Section 8(4) of the Act is not applicable to an unaided minority institution is wholly misconceived. He submits that not only was this issue dealt with by the Apex Court in ***Frank Anthony Public School Employees Assn. vs. Union of India* (1986) 4 SCC 707** but also thereafter in ***G. Vallikumari vs. Andhra Education Society and Others* (2010) 2 SCC 497**. By drawing our attention to paragraphs nos. 12 & 17 of the decision in ***G. Vallikumari (supra)***, he contends that the Apex Court has categorically held that provisions of Section 8(4) of the Act are applicable to unaided minority educational institutions as well. He, therefore, prays that the appeal be dismissed.

8. In order to appreciate the rival submissions of the parties, we may

begin by noting the provisions of Section 8(4) of the DSE Act, which read as under:

> *"Sub-section (4) of Section 8 reads as follows::*
> *(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."*

9. In the light of this statutory provision, learned counsel for the appellant does not deny that as per section 8(4), it is mandatory for a recognized private school to seek prior approval of the Director of Education before passing an order of suspension. His only plea, however, is that in view of decision of the Constitution Bench in ***T.M.A. Pai Foundation (supra)***, the provisions of Section 8(4) of the Act are not applicable to unaided minority educational institutions. In order to appreciate this plea of the appellant, we may now refer to the manner in which question no. 5(c) has been answered by the Apex Court in the decision of ***T.M.A. Pai Foundation (supra)***. Relevant extract of the decision reads as under-

Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. ***So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.***

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution. Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering

with the overall administrative control of the management over the staff. Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

(Emphasis Supplied)

10. From a perusal of the aforesaid, we are of the view that though the Apex Court in ***T.M.A. Pai Foundation (supra)*** has held that there ought to be minimal regulatory control over administration of unaided minority educational institutions, this, however, in itself does not imply that Section 8(4) of the DSE Act would not be applicable to these unaided minority educational institution. In our view, merely because the Constitution Bench has observed that minority institutions must evolve a rational procedure for selection of its teaching staff and for taking disciplinary action, this does not imply that the statutory mandate under Section 8(4) would not be applicable to them. We are unable to agree with the learned counsel for the appellant that the manner in which the question 5(c) has been answered by the Constitution Bench would imply that Section 8(4) DSE Act would not be applicable to the appellant.

11. On the other hand, we have also considered the decision in ***Frank Anthony Public School Employees Assn.(supra),*** and in ***G. Vallikumari (supra)*** relied upon by the respondents and find that in these decisions the Apex Court has specifically held that Section 8(4) of the DSE Act which provides that no minority educational institutions will suspend an employee without prior approval of the Director of Education, is valid. It would therefore be useful to refer to the relevant extracts of the decision in ***Frank Anthony Public School Employees Assn.(supra)*** which reads as under:

"19. ***Section 8(4) would be inapplicable to minority institutions if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in order to present an abuse of power by the management a safeguard is provided to the employee that approval should be obtained within 15 days. The Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension.*** *The provision appears to be eminently reasonable and sound and the answer to the question in regard to this provision is directly covered by the decision in All Saints High School,where Chandrachud, C.J. and Kailasam, J. upheld Section 3(3)(a) of the Act Impugned therein. We may also mention that in that case the right of appeal conferred by Section 4 of the Act was also upheld. How necessary it is to afford some measure of protection to employees, without interfering with the management's right to take disciplinary action, is illustrated by the action taken by the management in this very case against some of the teachers. These teachers took part along with others in a 'silent march', first on April 9, 1986 and again on April 10, 1936, despite warning by the principal. The march was during the break when there were no classes. There were no speeches, no chanting or shouting of slogans, no violence and no disruption of studies. The behavior of the teachers appears to have been orderly and exemplary. One would have thought that the teachers were, by their silent and dignified protest, setting an example and the soundest of precedents to follow to all agitators everywhere. But instead of sympathy and appreciation they were served with orders of immediate suspension, something which would have never happened if all the provisions of Section 8 were applicable to the institution.*

20. Thus, ***Sections 8(1), 8(3), 8(4) and 8(5) do not encroach***

> ***upon any right of minorities to administer their educational institutions***. *Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 1 1 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government."*
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> ***(Emphasis Supplied)***

12. We may now also refer to the decision in ***G. Vallikumari (supra),*** where the Apex Court after considering the decision in ***T.M.A. Pai Foundation (supra)*** has while holding Section 8(2) as being violative of rights of minority institutions, categorically held that the Section 8(4) of the DSE Act was valid. It would, therefore, be apposite to note the relevant findings of the Apex Court as contained in para 12 and 17 of the decision in ***G. Vallikumari (supra)***, which read as under:

> *"12. Shri L.N. Rao, learned Senior Counsel appearing for Respondents 1 and 2 supported the impugned order and argued that in view of the judgment in* ***Frank Anthony Public School Employees' Assn. case****, Section 8(2) cannot be treated as*

*applicable to aided minority institutions and Section 8(3) cannot be read as providing an effective remedy to the management of the school against an order passed by the Director. He submitted that if Section 8(2) is not applicable to unaided minority institutions then its applicability to aided minority institutions would result in violation of Article 14. Shri. Rao also relied upon the larger Bench judgment in T**.M.A. Pai Foundation case** and submitted that the right of the private aided minority institutions to regulate the discipline cannot be curtailed by a provision like the one contained in Section 8(2) of the Acts.*

17. The propositions which can be culled out from the above noted two judgments are:

(i) Sections 8(1), (3), (4) and (5) of the Act do not violate the right of the minorities to establish and administer their educational institutions. However, Section 8(2) interferes with the said right of the minorities and is, therefore, inapplicable to private recognised aided/unaided minority educational institutions.

(ii) Section 12 of the Act, which makes the provisions of Chapter IV of the Act inapplicable to unaided private, recognised minority educational institutions is discriminatory except to the extent of Section 8(2). In other words, Chapter IV of the Act except Section 8(2) is applicable to private recognised aided as well as unaided minority educational institutions and the authorities concerned of the Education Department are bound to enforce the same against all such institutions."

(Emphasis Supplied)

13. For the aforesaid reasons**,** we have no hesitation in rejecting the appellant's plea that Section 8(4) of the DSE Act is not applicable to unaided minority educational institutions. This provision in our view is a part of the limited supervisory powers, which the Director of Education exercises over the functioning and administration of minority educational institutions like the appellant. We, therefore, find no infirmity with the order passed by the learned Single Judge. The appeal being meritless is, accordingly, dismissed with all pending applications.

14. At this stage we may note that, the learned counsel for the appellant submits that the amounts in terms of the impugned order had already been released to respondent no.1. Whereas, the learned counsel for the respondent no. 1, submits that the full amount in terms of the impugned order has not been paid and there are some surviving issues regarding the calculation of the amount payable under the impugned order. We, however, do not deem it necessary to delve into this aspect of the matter and therefore leave the parties to work out the said aspect in appropriate proceedings.

REKHA PALLI
(JUDGE)

RAJNISH BHATNAGAR
(JUDGE)

JANUARY 19, 2024
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