



2024:DHC:7593



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

% *Date of Decision: 18th September, 2024*

+ W.P.(C) 4637/2019

UMESH GAUBA

.....Petitioner

Through: Mr. Anuj Aggarwal, Mr. Manas Verma, Mr. Pradeep Kumar and Mr. Avinash Kumar, Advocates.

versus

MODERN CHILD PUBLIC SR. SEC. SCHOOL (RECOGNIZED) &
ANR

.....Respondents

Through: None for R-1.

Mr. Gaurav Dhingra and Mr. Shashank Singh,
Advocates for R-2/DoE.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India assailing order dated 05.02.2019 (Annexure P-1) whereby the petitioner was placed under suspension with immediate effect by Respondent No.1/Modern Child Public Sr. Sec. School ('School') with a further direction to the School to reinstate the Petitioner with full salary from the date of suspension.

2. Facts to the extent necessary are that Petitioner was appointed to the post of Assistant Teacher in the School on 01.09.1993 and was confirmed w.e.f. 01.07.1996. Owing to certain complaints received against the Petitioner, the School passed an order dated 01.06.2018 terminating her



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services with intimation to Respondent No. 2/Directorate of Education ('DoE'). This order was challenged by the Petitioner before Delhi School Tribunal ('DST') in Appeal bearing No.27/2018. During the pendency of the appeal, realising that the order of termination was passed without approval of DoE, School revoked the termination order vide order dated 05.02.2019. By order dated 20.02.2019, DST directed reinstatement of the Petitioner in view of revocation of the termination order with continuity of service from the date of termination and other consequential benefits and costs.

3. Order of DST was challenged by the School in W.P.(C) No.11750/2019 before this Court and the writ petition is stated to be pending. In the meantime, the School passed an order dated 05.02.2019 placing the Petitioner under suspension w.e.f. 05.02.2019 in contemplation of disciplinary proceedings. This was followed by a Memorandum of Charge dated 20.05.2019 under Rule 120 of Delhi School Education Act and Rules, 1973 ('DSEAR'). Petitioner challenged the suspension order dated 05.02.2019 in W.P. (C) No. 4637/2019 and vide order dated 06.05.2019, the Court set aside the order as the same was without approval of DoE and had thus lapsed in terms of Section 8(4) and Rule 115 of DSEAR with a direction to pay full salary with consequential benefits to the Petitioner from 05.02.2019. This order was challenged by the School before the Division Bench in LPA No. 510/2019 on the ground that the direction to pay full salary with consequential benefits was issued without notice to the School and an opportunity of hearing. The Division Bench set aside the order dated 06.05.2019 and remanded the matter for hearing afresh after giving opportunity of hearing to all the parties.



4. At the outset, it be mentioned that after the matter was remanded for reconsideration, School was represented on 19.08.2019 and last opportunity was granted to file counter affidavit. Counter affidavit has been filed on behalf of the School, however, order sheets indicate that from 16.07.2024, there has been no appearance on behalf of the School. On 16.07.2024, the matter was adjourned to 13.08.2024 and none appeared for the School. Even on 13.08.2024 and 12.09.2024, School was unrepresented. Matter has been called over twice but there is no appearance on behalf of the School and considering that the relief sought pertains to suspension of the Petitioner, Court proceeds to hear the matter.

5. Learned counsel for the Petitioner argues that the impugned order of suspension is in violation of Section 8(4) of DSEAR, as no prior approval of DoE was taken by the School before suspending the Petitioner. 15 days having expired from the date of suspension order, the same lapsed in the absence of approval of DoE and Petitioner is entitled to reinstatement with full salary and other consequential benefits. For this proposition, Mr. Aggarwal relies on the judgments of this Court in *Delhi Public School & Anr. v. Director of Education & Ors., 2003 (67) DRJ 419 (FB)*; *Ganesh Ram Bhatt v. Director of Education & Anr., 2014 SCC OnLine Del 3572* and *S.S. Tyagi v. Ravindra Public School and Another, 2020 SCC OnLine Del 2084*.

6. As the School is unrepresented, Court takes note of the stand of the School as captured in the counter affidavit. It is stated that termination order was withdrawn only due to a procedural lacuna of not having taken a prior approval from DoE but that does not amount to exonerating the Petitioner from alleged misconduct. There were serious allegations against the



Petitioner and thus the order of DST granting reinstatement to the Petitioner was challenged before this Court in W.P. (C) 11750/2019, which is pending consideration. The counter affidavit does not shed much light on the legality of the suspension order passed without prior approval of DoE and/or its validity after expiry of 15 days, in view of DoE declining to grant approval.

7. Short affidavit has been filed by DoE stating that School is a recognised private unaided school and governed by provisions of DSEAR. DoE has taken a stand that School issued the suspension order on 05.02.2019 without prior approval and later sent a letter dated 12.02.2019 to DoE seeking approval of suspension of the Petitioner but the approval was not granted. DoE sent several letters to the School, after Petitioner made a representation that the suspension was illegal, seeking explanation from the School as to why prior approval was not obtained, however, no response was received from the School. It is the stand of DoE, as articulated by Mr. Gaurav Dhingra, that as per provisions of Section 8(4) of DSEAR, prior approval of DoE was required to suspend the Petitioner and assuming there was an immediate necessity to suspend, suspension order could have been passed without prior approval but it could have been enforced after expiry of 15 days only if the School had sought and was granted approval within this period, which has not happened in this case as DoE did not grant approval on receipt of letter dated 12.02.2019. Mr. Dhingra also relies on the same judgments on which reliance is placed by learned counsel for the Petitioner.

8. Heard learned counsels for the parties and examined their submissions.

9. The neat legal nodus in the present case is whether a suspension order passed without prior approval of the DoE is enforceable in law, in light of



provisions of Section 8(4) of DSEAR, which read as follows:

“8. Terms and conditions of service of employees of recognised private schools.

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(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.”

10. Plain reading of Section 8(4) of DSEAR makes it palpably clear that if the Managing Committee of a recognised private school intends to suspend its employee, then the proposal to suspend has to be communicated to the DoE and suspension order will be legally tenable only if it is passed after obtaining prior approval of DoE. First Proviso to sub-section (4) of Section 8, however, incorporates an exception and 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 but with a caveat in second Proviso to sub-Section (4) which stipulates that the immediate suspension shall not 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.

11. In the present case, it is the categorical stand of DoE, captured in its short affidavit, that School did not seek prior approval for suspending the Petitioner, as required under Section 8(4) of DSEAR and *albeit* the School did seek approval post the suspension order vide letter dated 12.02.2019, but approval was not accorded by DoE and that despite repeated letters sent to the School to explain why it suspended the Petitioner without prior approval, there was no response from the School. Therefore, it is crystal clear that impugned order dated 05.02.2019 was passed without seeking prior approval from DoE. No doubt first Proviso to Section 8(4) of DSEAR enables the Managing Committee of the School to suspend an employee with immediate effect and without prior approval, if immediate suspension is necessitated by reason of gross misconduct within the meaning of the Code of Conduct prescribed under Section 9 of DSEAR, but the power is hedged by a caveat that in that event, Management is required to communicate the factum of suspension and seek approval before the expiry of 15 days, failing which the suspension order lapses, as per second proviso to Section 8(4) of DSEAR by a deeming fiction of law. In this case even the first Proviso will not aid the School as DoE did not grant approval within 15 days from the date of suspension and thus the impugned order is legally unsustainable.

12. 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 v. 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. On a detailed analysis of provisions of Section 8(4) and (5) of DSEAR, the Division Bench 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. 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 paragraphs of the judgement 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 unless 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 Subsection (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) 4 SCC 584.

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.”

13. Relying upon the dictum of the Supreme Court in ***Frank Anthony Public School Employees’ Association v. Union of India and Others, (1986) 4 SCC 707***, 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 subsection (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.”

14. A Co-ordinate Bench of this Court in the case of **Ganesh Ram Bhatt** (*supra*), following the judgment of the Full Bench in **Delhi Public School**



(*supra*), and echoing the observations that suspension order automatically lapses and ceases to operate on 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.”

15. Against the said judgment, an appeal was filed by the School titled ***Sharda Devi Sanskrit Vidyapeeth v. Director of Education & Anr., 2016 SCC OnLine Del 3950***. The Division Bench while examining the judgment 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 paragraphs of the judgment are as under:—

“15. In Gurudevdatto 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.”

16. Recently another Co-ordinate Bench of this Court in ***Ruchi Malhotra v. Guru Nanak Public School, being W.P. (C) 3567/2019*** decided on 09.12.2019, relying on the judgment 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 DSEAR. 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.”

17. It is pertinent to note that the judgment of the learned Single Judge in ***Ruchi Malhotra (supra)*** has been upheld by the Division Bench in ***Guru Nanak Public School and Another v. Ruchi Malhotra and Another, 2024 SCC OnLine Del 383***. In the present case, as noted above, there was neither any prior approval nor the DoE approved the proposal of the School to suspend the Petitioner within 15 days from 05.02.2019 i.e. the date of



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suspension and therefore, in light of the aforesaid judgments as well as the judgment of this Court in *S.S. Tyagi (supra)*, the suspension order has lapsed on 19.02.2019. Petitioner has superannuated in the meantime on 31.05.2021 and would thus be entitled to all consequential benefits of full salary and allowances from 20.02.2019 in accordance with law. The amounts due to the Petitioner will be calculated by the School and shall be released to her within two months of the date of receipt of this order after adjusting amounts, if any, paid to her towards subsistence allowance.

18. Writ petition is allowed to the aforesaid extent and disposed of.

JYOTI SINGH, J

SEPTEMBER 18, 2024/shivam