
(2015) 05 DEL CK 0163
In the Delhi High Court
Case No : WP (C) 8058 of 2011

Guru Harkishan Public School

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 23, 30(1)
Delhi School Education Act, 1973 — Section 10, 10, 10, 11, 11, 11

Citation : (2015) 9 AD 281 : (2015) 221 DLT 448 : (2015) 151 DRJ 24 : (2015) LabIC 4410 : (2015) 4 LLN 660 : (2016) 1 SCT 706

Hon'ble Judges : Pradeep Nandrajog, J; Sanjiv Khanna, J; Ashutosh Kumar, J

Bench : Full Bench

Advocate : A.P.S. Ahluwalia, Senior Advocate instructed by S.S. Ahluwalia, for the Appellant; Gautam Narayan and Asmita Singh, Advocates for the Respondent

Judgement

Pradeep Nandrajog, J.—Reference has been made to a larger Bench by the learned Single Judge vide order dated March 27, 2015 noting a conflict between opinions expressed by two learned Single Judges of this Court in the decision reported as The Manager, Arya Samaj Girls Higher Secondary School and Another Vs. Sunrita Thakur etc., (1991) 43 DLT 139 : (1991) LabIC 1822 and the decision dated January 17, 2006 in W.P.(C) No. 7617/2000 The Managing Committee Heera Lal Jain Vs. Shri Chander Gupt Sharma and Ors. The former decision holds that the Delhi School Tribunal constituted under Section 11 of the Delhi School Education Act, 1973, does not have the power to decide the issue of back wages to be paid for the period interregnum an employee of a recognized school is compulsorily retired from service till reinstatement and that matters regarding payment of salary and allowances to such employee on reinstatement is regulated by Rule 121 of the Delhi School Education Rules, 1973; as per which the necessary decision has to be taken by the Managing Committee of the school. The latter view holds to the contrary. The reference therefore would be : whether the Delhi School Tribunal has the power, while reinstating in service an employee of a recognized school who has been dismissed, removed or

compulsorily retired from service to make any order with regard to the salary and allowances to be paid to the employee for the period of his absence of duty as also whether said period shall be treated as period spent on duty.

2. At the outset we note that the two conflicting decisions concern schools recognized by the Appropriate Authority under the Delhi School Education Act, 1973 and both schools were governed by the provisions of the Delhi School Education Act, 1973 and the Delhi School Education Rules, 1973. The issue of applicability of the Act and the Rules to unaided schools established by minority communities was not an issue in the two decisions. The writ petitioner is a recognized unaided minority school and thus, though not a part of the reference made by the learned Single Judge, since the issue arising out of the two conflicting views by two learned Single Judges of this Court enwombs an unaided minority school, the learned counsel for the parties addressed arguments on said ancillary issue which is tied with an umbilical cord to the main issue. Thus while answering the reference we express our opinion on the said ancillary issue as well.

3. Though not relevant for the purpose of answering the reference, the backdrop facts are being noted because sans the backdrop facts noted in an opinion, its contextual setting may be blurred.

4. The second respondent was appointed as a PGT (Chemistry) by the Guru Harkishan Public School, admittedly a minority institution, on July 02, 1984. As per the school, on January 22, 1994 the respondent No. 2 not only misbehaved but even molested a newly married employee of the school in full public view and when the tormented lady complained to the principal of the school, on being summoned the said respondent not only profusely apologized but to save his honour and respect so that no stigma was cast tendered a voluntary resignation on January 22, 1994 and requested the principal of the school to accept the same forthwith. The principal forwarded the letter of resignation to the Chairperson of the Managing Committee of the School who accepted the same; and thus ceased the employer-employee relationship between the school and the second respondent. The respondent No. 2 disputes the version and claims that the resignation was the result of coercion and that the letter of resignation was withdrawn the next day on January 23, 1994 before it could be acted upon. He also questions the competence of the Chairperson of the Managing Committee of the school to accept the same. It is in this backdrop that appeal No. 14/1994 fell in the lap of the Delhi School Education Tribunal for decision. Unfortunately, the appeal came to be decided after 17 years of it being filed. Vide order dated August 18, 2011 the Tribunal held that the letter of resignation submitted by the said respondent was withdrawn before it was accepted and thus could not be acted upon. The Tribunal has also held that the Chairperson of the Managing Committee was not the Competent Authority to accept the resignation. As a result the termination of the second respondent's service has been held to be illegal. The said respondent has been directed to be reinstated in service. 50%

back wages have been directed to be paid. The writ petition challenges the award granting 50% back wages.

5. The order dated August 18, 2011 passed by the Delhi School Tribunal gives a clue as to why it took 17 years for the Tribunal to decide the appeal. An erroneous order passed by a learned Presiding Officer of the Tribunal resulted in useless evidence being led by the school and the respondent as regards the alleged incident of molestation of the newly married employee of the school, which evidence was ultimately rightly ignored by the Tribunal because the issue before the Tribunal had nothing to do with the truthfulness or otherwise of the incident. The copious evidence led, as a result of the enigmatic order directing parties to lead evidence, has also left us baffled in the context of the nature of evidence. We also find two other reasons for the delay. The first is the bureaucratic inefficiency in not filling up the vacancy to the Tribunal occasioned by the retirement or repatriation of the holder of the post and we find that the appeal lay dormant for a little over 4 years on said account. The second reason for the delay was the appeal being dismissed in default and restored after around 4 years. In other words three principal causes of delay are surfacing : (i) time spent in recording pointless evidence which was ultimately opined to be useless and ignored, (ii) there being no presiding officer of the Tribunal for nearly 4 years; and (iii) the appeal being dismissed in default and restoration sought after nearly 4 years.

6. To the meat of the matter now. With a view to provide for better organization and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto, the Delhi School Education Act, 1973 was promulgated on April 10, 1973 and 8 months later, on December 31, 1973 the Delhi School Education Rules, 1973 were promulgated. The administrator of the Union Territory of Delhi was empowered to regulate education of schools in Delhi as per Section 3 of the Act. An Appropriate Authority as defined in Section 2(e) was empowered, vide Section 4 of the Act, to accord recognition to schools and vide Sections 5 thereof schools which had obtained recognition were regulated by the Act and the Rules. Chapter IV, comprising Sections 8 to 12, deal with terms and conditions of service of employees of recognized schools. Vide Section 11 a Tribunal known as Delhi School Tribunal is constituted, to decide disputes falling within the scope of sub-Section 3 of Section 8 of the Act. Section 9 concerns code of conduct of employees of recognized schools and Section 10 with salaries and emoluments of said employees. Vide sub-Section 2 of Section 8 of the Act, embargo has been placed on the power of the management of recognized schools to dismiss, remove or reduce in rank employees of the recognized schools. Section 12 excludes the applicability of the Chapter to unaided minority schools.

7. Since the reasoning in the conflicting opinions of two learned Single Judges of this Court emanates from the language of sub-Section 3 of Section 8 and the language of Rule 121 of the Rules, it would be useful for us to note the two

statutory provisions, one in the statute and the other in the Rules. Sub-Section 3 of Section 8 reads as under:-

"(3) Any employee of a recognized private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under Section 11."

8. Rule 121 of the Delhi School Education Rules, 1973 reads as under:-

"121. Payment of pay and allowances on reinstatement -

(1) When an employee who has been dismissed, removed or compulsorily retired from service is reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, as the case may be, the managing committee shall consider and make a specified order:-

(a) with regard to the salary and allowances to be paid to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as the period spent on duty.

(2) Where the managing committee is of opinion that the employee who had been dismissed, removed or compulsorily retired from service had been fully exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service or suspended prior to such dismissal, or compulsory retirement from service, as the case may be:

Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representations and after considering the representation, if any, made by the employee, direct, for reasons to be recorded by it in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowances as it may determine.

(3) The payment of allowances shall be subject to all other conditions under which such allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances."

9. Rule 117 of the Delhi School Education Rules, 1973 stipulate the penalties which can be imposed upon employees of a recognized school and are classified into two : (i) minor penalties and (ii) major penalties. The minor penalties are censure, recovery from pay any pecuniary loss caused to the school and withholding increment of pay. Major penalties include reduction in rank, compulsory retirement, removal and dismissal from service.

10. Sub-Section 3 of Section 8 of the Delhi School Education Act, 1973 provides for an appeal before the Delhi School Tribunal only against an order of dismissal, removal or reduction in rank; and for reasons unknown excludes an order of compulsory retirement by way of penalty. As elucidated below compulsory retirement would be included in the expression "removal".

11. Rule 121 of the Delhi School Education Rules, 1973 is akin to FR 54- A of the Fundamental Rules and requires the Managing Committee of a School to make a specific order regarding payment of salary and allowances to an employee who has been reinstated, post dismissal, removal or compulsorily retirement from service.

12. There is an apparent legislative omission while drafting the Rules keeping in view the Act for the reason under the Act only a penalty of dismissal, removal or reduction in rank is liable to be challenged before the Delhi School Tribunal but Rule 121 conceives of an employee who has been dismissed, removed or compulsorily retired from service. Thus, filling the void so that there is no hiatus, a penalty of compulsory retirement would be treated as one of removal from service because master-servant relationship is snapped in both cases.

13. Parties were not at variance that a penalty of compulsory retirement is liable to be challenged before the Delhi School Tribunal constituted under Section 11 of the Delhi School Education Act, 1973.

14. In Sunrita Thakur's case, a learned Single Judge of this Court held that since Rule 121 of the Delhi School Education Rules, 1973 occupies the territory of payment of pay and allowances on reinstatement once an order of dismissal, removal or compulsory retirement from service is set aside as a result of an appeal by the Delhi School Tribunal, the necessary power has to be exercised by the Managing Committee and hence Delhi School Tribunal lacks jurisdiction to pass any order regarding wages to be paid. The learned Single Judge has held that the specific power conferred upon the employer as a result of reinstatement of an employee cannot be usurped by the Delhi School Tribunal.

15. In Chander Gupt Sharma's case (supra) another learned Single Judge, while noting the decision in Sunrita Thakur's case, took a different view on the reasoning that in view of the decision of the Supreme Court reported as Shashi Gaur Vs. NCT of Delhi and Others, (2000) 87 FLR 561 : (2000) 10 JT 481 : (2001) 10 SCC 445 , the opinion of the learned Single Judge in Sunrita Thakur's case could not be considered as conclusive on the point. Referring to two decisions of the Supreme Court reported as M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, AIR 1968 SC 240 : (1968) 16 FLR 432 : (1968) LabIC 216 : (1968) 2 LLJ 125 : (1968) 1 SCR 355 and O.P. Gupta Vs. Union of India (UOI) and Others, AIR 1987 SC 2257 : (1987) 3 JT 532 : (1988) 1 LLJ 453 : (1987) 2 SCALE 457 : (1987) 4 SCC 328 : (1988) 1 SCR 27 : (1988) 1 SLJ 121 the decision in Sunrita Gupta's case could not be considered as conclusive on the point. The learned Single Judge has further held that it would be anomalous if it

is held that pertaining to dismissal, removal or reduction in rank; which orders are liable to be challenged before the Delhi School Tribunal, the power to grant wages would be with the Delhi School Tribunal, but not when termination of service is set aside, for which reasoning the learned Single Judge has highlighted that Rule 121 of the Delhi School Education Rules, 1973 empowers the Managing Committee to decide on the payment of salary and allowances where the employee has been dismissed, removed or compulsory retired from service but is reinstated. The Rule has no reference to a case where the penalty of reduction in rank is set aside.

16. It is trite that law interpreted by a Bench of a Court of record is binding on a coordinate bench of the Court concerned and if the successor bench is of the opinion that the view taken by the earlier bench needs reconsideration, giving reasons the matter has to be placed before the Hon"ble Chief Justice. Law of precedents warrants said approach because inasmuch as a correct interpretation of law is in the interest of the society so is consistency in the law. The exception to this Rule predicated on self- restraint and discipline is where the earlier bench has ignored binding precedents, may be of that Court or has overlooked a decision of the Supreme Court or may be where a point has remained sub silentio i.e. where the earlier decision proceeds on an assumption of law which is later on found to be incorrect.

17. In Chander Gupt Sharma's case the learned Single Judge has held that the law declared in Sunrita Thakur's case cannot be considered as conclusive on the point in view of the decisions of the Supreme Court in Shashi Gaur's case, M.Gopala Krishna Naidu's case and O.P. Gupta's case.

18. Said three decisions of the Supreme Court are wholly unrelated to interpreting Rule 121 of the Delhi School Education Rules, 1973 and sub- Section 3 of Section 8 of the Delhi School Education Act, 1973, in the context of the question : whether the Delhi School Tribunal has the power to decide what pay and allowances need to be paid to an employee of a recognized school who is reinstated in service pertaining to the period interregnum the services were terminated till reinstatement.

19. In Shashi Gaur's case the hiatus created by sub-Section 3 of Section 8 of the Delhi School Education Act, 1973 by not expressly contemplating a challenge to an order of compulsory retirement by way of penalty and the statute being restricted to only 3 types of orders : (i) order of dismissal, (ii) order of removal from service, and (iii) an order of reduction in rank, was resolved with the Supreme Court taking the view that the legislative intent was to provide a remedy by way of appeal before the Delhi School Tribunal to the employee of a recognized school against any order which had the genus of service being terminated; dismissal and removal being the species thereof and so also an order of compulsory retirement.

20. O.P. Gupta's case and M.Gopala Krishna Naidu's case concern the manner in

which power had to be exercised by the Competent Authority under FR 54 and needless to state also embraced FR 25. The view taken was that orders passed under said Fundamental Rules by the competent authority impacted the interest of the government servant for wages and thus the competent authority was obliged to grant a hearing to the government servant before denying wages, both in case where benefit of increment above the stage of efficiency bar was denied or as a result of penal proceedings initiated the employee was denied the benefit of full wages in the applicable pay scale. M.Gopala Krishna Naidu's case concerned FR 25 and the reasoning thereof was opined to be equally applicable to FR 54 in O.P. Gupta's case.

21. The reasoning by the learned Single Judge in Chander Gupt Sharma's case that in view of the decision of the Supreme Court in Shashi Gaur's case, M.Gopala Krishna Naidu's case and O.P. Gupta's case the decision in Sunrita Thakur's case could not be considered as conclusive is therefore clearly erroneous because we find nothing in the ratio of the three decisions or the reasoning therein which has any bearing on the question whether keeping in view Rule 121 of Delhi School Education Rules, 1973, the Delhi School Tribunal has the power to direct wages to be paid for the period interregnum dismissal, removal or compulsory retirement of an employee of a recognized school till the employee is reinstated pursuant to the decision taken by the Delhi School Tribunal that the penalty of dismissal, removal from service or compulsory retirement was illegal.

22. The reasoning by the learned Single Judge is that the Rule in question contemplates a situation where dismissal, removal or compulsory retirement from service is set aside and not when an order of reduction in rank is set aside.

23. The learned Single Judge has reasoned that it would be anomalous to hold that the Delhi School Tribunal would have the power to direct full wages to be paid to an employee who has been reduced in rank but has been restored to the original rank but would have no power to pass such an order if an employee is reinstated in service. The reasoning by the learned Single Judge overlooks a very vital and critical fact which clearly distinguishes cases of a penalty of reduction in rank being set aside and the rank being restored vis-a-vis a penalty of dismissal, removal or compulsory retirement being set aside and reinstatement ordered. In the former situation the employee would be working in the school, albeit at a lower post and there would be no case warranting an inquiry to be held of the kind contemplated by Rule 121 of the Delhi School Education Rules, 1973 i.e. whether the employee was gainfully employed somewhere else. But where a penalty of a kind where secession takes place is passed, the employee has not to report to the employer and may be gainfully employed somewhere else.

24. As held in the decisions reported as Kishen Lal L.R. of Mohanlal Vs. Sohanlal and Others, AIR 1954 Raj 138 and AIR 1967 AP 267 M.R. Veerayya Vs. State of AP, the right of appeal being a creature of the statute, its scope must be determined by reference to the provisions of the statute conferring it, and the

corollary thereof would be as held in the decision reported as AIR 1954 Bom 55 Prem Narain Vs. Divisional Traffic Manager, an Appellate Court can exercise only such powers as are conferred on it.

25. Rule 121 of the Delhi School Education Rules, 1973 expressly confers the power on the Managing Committee of a school to consider and make a specific order with regard to the salary and allowances to be paid to the employee for the period of his absence from the duty in case a penalty of dismissal, removal or compulsory retirement from service is set aside, and which would include any order which has the effect of services being terminated in view of the law declared by the Supreme Court in Shashi Gaur's case. It is important to note that the statute i.e. the Delhi School Education Act, 1973 does not empower the Delhi School Tribunal to pass any consequential order regarding payment of salary and wages if the order passed by the Tribunal results in the employee being reinstated in service. Thus, the twin :absence of a power in the Delhi School Tribunal and the specific power conferred on the Managing Committee of a recognized school warrants the conclusion to be arrived at : wherever an order passed by the Management Committee of a recognized school governed by the Delhi School Education Act, 1973 and the Rules framed thereunder which has the effect of employment being terminated is set aside by the Delhi School Tribunal, the Managing Committee of the school would be obliged to pass an order concerning wages payable to the employee and not the Tribunal. In a case where the penalty is one of reduction in rank, upon the same being set aside the Tribunal would have the power to decide whether the employee needs to be compensated by directing wages to be paid at the scale of pay of the post held by the employee prior to the penalty of reduction in rank being imposed.

26. We overrule the view taken by the learned Single Judge in Chander Gupta Sharma's case and declare the view taken in Sunrita Thakur's case is the correct view.

27. Now to the ancillary issue concerning minority unaided schools.

28. Learned counsel for the respondent urged that Rule 96 of the Delhi School Education Rules, 1973, vide sub-Rule 1 thereof, expressly excludes the applicability of Chapter VIII of the Rules to unaided minority schools. Learned counsel urged that Rule 121 of the Delhi School Education Rules, 1973 is a part of Chapter VIII of the Rules. Thus, the contention was that in case of unaided minority schools, since Rule 121 of the Delhi School Education Rules, 1973 is not applicable, the Delhi School Tribunal would have the power to pass an order regarding salary and allowances to be paid to the employee for the period interregnum service being terminated till reinstatement.

29. The argument would warrant a consideration of the decision of the Supreme Court reported as Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, AIR 1987 SC 311 : (1986) JT 861 : (1987) LabIC 427 : (1986) 2 SCALE 805 : (1986) 4 SCC 707 : (1987) 1 SCR 238 The

petitioner before the Supreme Court was an association of the employees of Frank Anthony Public School, a recognized unaided minority school. The scale of pay and other conditions of service of teachers and other employees of the said school were less as compared to their counterparts of the schools established by the Delhi Administration. The petitioner had relied upon Section 10 of the Delhi School Education Act, 1973 as per which the pay and allowances of employees of recognized private schools could not be less than those of the employees of the Government run schools. The vires of Section 12 of the Delhi School Education Act, 1973, which excluded the applicability of Sections 8 to Sections 11 of the Act to unaided minority schools was challenged.

30. The Supreme Court noted that in order to resolve the controversy, the constitutionality of certain Sections of the Delhi School Education Act, 1973 had to be considered. The Supreme Court noted that Chapter IV of the Delhi School Education Act, 1973 had provisions dealing with "Terms and conditions of service of employees of recognized private schools" and comprises of Sections 8 to 12. If Sections 8 to 11 were applicable to the teachers and other employees of unaided minority schools, they would be at par with the teachers and employees of Government schools holding corresponding posts. But since Section 12 excluded the applicability of part IV of the Act to unaided minority schools, said provisions would not be applicable and no benefit could be claimed by the employees of unaided minority schools, which would be governed by Chapter v. comprising Sections 13 to 15.

31. Since the petitioner before the Supreme Court had sought a declaration that Section 12 of the Delhi School Education Act, 1973 be declared unconstitutional being violative of Articles 14, 21 and 23 of the Constitution, the Supreme Court held that the provisions embodied in Sections 8 to 11 of the Delhi School Education Act, 1973 had to be measured alongside the Fundamental Right guaranteed by Article 30(1) of the Constitution to minorities in India. It had thus to be determined whether any of the above Sections impinges the said Fundamental Right.

32. The Supreme Court noted that Section 8(1) of the Delhi School Education Act, 1973 stipulated condition of service and merely empowered the administrator to make rules regulating the minimum qualifications for recruitment, and condition of service of recognised private schools. The Supreme Court held that the sub-Section 1 of Section 8 was innocuous and was worded on the same lines as Section 13 which applies to unaided minority schools. Focusing on sub-Section 2 of Section 8 of the Delhi School Education Act, 1973 the Supreme Court noted that the said sub- Section stipulated that, subject to any rule that may be made, "no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise be terminated except with the prior approval of the Director". The Supreme Court held that for unaided minority institutions this sub-Section would not be applicable because it infringed their autonomy to manage their institutions.

Proceeding further to consider sub-Section 3 of Section 8 of the Delhi School Education Act, 1973 which provided for an appeal to the Tribunal constituted under Section 11, the Supreme Court noted that the Tribunal was to be presided by a person who has held office as a District Judge or any equivalent judicial office. The Supreme Court noted that the appeal is not to any departmental official but to a Tribunal manned by a person who has held office as a District Judge and who is required to exercise his powers not arbitrarily but in the same manner as a court of appeal under the Code of Civil Procedure. The right to appeal itself is confined to a limited class of cases namely dismissal, removal or reduction in rank and not to every dispute between an employee and the management. The limited right to appeal, the character of the authority and the manner in which the appellate power is required to be exercised make the above provision reasonable even as regards minority unaided schools. Focusing thereafter on sub-Section 4 of Section 8 the Supreme Court held that the issue of its application to minority institutions had to be considered whether the provision conferred a blanket power on the Director of Education to grant or withhold prior approval in every case in which the management proposed to suspend an employee. On finding none, the Supreme Court held that its applicability to minority unaided schools would not infringe on their autonomy.

33. Finding Section 9 *pari materia* with Section 14, which applied to unaided minority schools, the Supreme Court held that the applicability of Section 9 to minority unaided school did not infringe on their autonomy.

34. Focusing then on Section 10 of the Delhi School Education Act, 1973 which requires that scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private schools shall not be less than those of the corresponding status in schools run by the appropriate authority, the Supreme Court held that such permissible regulation does not in any way detract from the fundamental right guaranteed under Article 30(1) to the minority institutions to administer their educational institutions. Therefore to the extent Section 12 makes Section 10 inapplicable to unaided minority schools was held to be clearly discriminatory. The Court relied on its earlier decision reported as *All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others*, AIR 1980 SC 1042 : (1980) 2 SCC 478 : (1980) 2 SCR 924 to draw the above conclusion wherein it was expressly stated that for the maintenance of educational standards of an institution it was necessary to ensure that it was competently staffed and therefore, conditions of service prescribing minimum qualifications for the staff, their pay-scales, their entitlement other benefits of service and the safeguards which must be observed before they were removed or dismissed from service or their services terminated were permissible measures of a regulatory character.

35. The court further held that "mere prescription of scales of pay and other conditions of service would not jeopardise the right of the management of minority institutions to appoint teachers of their choice. The excellence of the

instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority Educational institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education".

36. Thus, Section 8(1), 8(3), 8(4) and 8(5) were held not to encroach upon any right of the minorities to administer their educational institutions. However, Section 8(2) was held to be not applicable to minority institutions.

37. The Court finally held 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".

38. In the decision reported as *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, AIR 1958 SC 956 : (1959) 1 SCR 995 , the Court observed : " The right to administer cannot obviously include the right to mal-administer. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the

excellence of the institutions to be aided."

39. In the decision reported as *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, AIR 1974 SC 1389 : (1974) 1 SCC 717 : (1975) 1 SCR 173 it was pointed by Khanna J., "The idea of giving special rights to the minorities is not to have a kind of a privileged or pamper a section of the population but to give to the minorities a sense of security and a feeling of confidence."

40. Under the scheme of the Delhi School Education Act, 1973, unmindful of its impact on Article 30(1) of the Constitution of India which guarantees to all minorities the right to establish and administer educational institutions of their choice, the legislature was of the view that Sections 8 to Section 11 of the Delhi School Education Act, 1973 should not be made applicable to unaided minority schools and thus Section 12 was enacted in the statute. Giving teeth to the statutory provisions of the Act when the Delhi School Education Rules, 1973 were promulgated, it is apparent that even the Rules would reflect a similar exclusion. This explains sub-Rule 1 of Rule 96 excluding the applicability of Chapter VIII of the Rules to unaided minority schools.

41. Since Section 12 of the Delhi School Education Act, 1973 has already been struck down by the Supreme Court in *Frank Anthony's case* (supra) its corollary would be that sub-Rule 1 of Rule 96 also has to be struck down.

42. Since no arguments were advanced regarding the various Rules in Chapter VIII of the Rules regarding their constitutionality, we would only observe that such Rules or part thereof which impinge upon the right of the minority institutions to manage schools established in Delhi would be treated as not applicable to the minority unaided schools, but such provisions which do not impact the right of the minorities to manage their schools would have to be treated as applicable to minority schools which are unaided.

43. Regarding Rule 121 of the Delhi School Education Rules, 1973 it vests the power in the Managing Committee of recognized unaided schools to consider and make specific orders with regard to the salary and allowances to be paid to the employee of the school who has been reinstated when an order terminating the services is set aside by the Delhi School Tribunal. It would be a case of reverse and unintended discrimination if it is held that the Rule which empowers the Managing Committee of a school would apply to all private schools other than minority unaided schools because it would result in a power to manage the affairs of a school established by a minority community being taken away.

44. Accordingly we hold that Rule 121 of the Delhi School Education Rules, 1973 is fully applicable to unaided minority schools which are recognized by the Appropriate Authority under the Delhi School Education Act, 1973.

45. We answer the reference as under:-

(i) The law declared by the learned Single Judge of this Court in the decision

reported as The Manager, Arya Samaj Girls Higher Secondary School and Another Vs. Sunrita Thakur etc., (1991) 43 DLT 139 : (1991) LabIC 1822 correctly lays down the law concerning the interpretation of Rule 121 of the Delhi School Education Rules, 1973 and the view taken by the learned Single Judge in the decision dated January 17, 2006 in W.P.(C) No. 7617/2000 The Managing Committee Heera Lal Jain Vs. Shri Chander Gupt Sharma and Ors. is overruled.

(ii) Rule 121 of the Delhi School Education Rules, 1973 would apply to minority unaided schools recognized under the Delhi School Education Rules, 1973.

46. The writ petition be listed before the learned Single Judge for further proceedings on July 06, 2015.