

(2017) 11 DEL CK 0006

In the Delhi High Court

Case No : Letter Patent Appeal No. 464, 465 Of 2016, Civil Miscellaneous
Application No. 30564, 30573 Of 2016

SANJIVAYYA MEMORIAL TRUST & ANR.

APPELLANT

Vs

ANJU HARIT & ANR.

RESPONDENT

Date of Decision : 06-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 21A, 226

Delhi School Education Rules, 1973 — Rule 44, 50, 51, 52

Delhi School Education Act, 1973 — Section 3, 3(2), 3(6), 4, 8, 8(2), 8(3), 11, 34, 52

Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2017) 11 DEL CK 0006

Hon'ble Judges : S. Ravindra Bhat, Sanjeev Sachdeva

Bench : DIVISION BENCH

Advocate : Piyush Sharma, ??Mukesh M. Goel, Ashi Rawat, Eshita Baruah,
Gaurang Kanth

Final Decision : Dismissed

Judgement

1. The question which the appellant urges in these two appeals is whether the reversal of an order of 24.07.2014, by which the Delhi School Tribunal dismissed the respondent/writ petitioner's appeal before it under Section 8(3) of the Delhi School Education Act, 1973 ("the Act") by the learned single judge, in a writ petition filed in that regard, is correct.

2. The brief facts are that the respondent/writ petitioner had approached the tribunal. The tribunal rejected his appeal, holding that the petitioner was an employee of an unrecognized school/appellant and the provisions of the Act do not apply to unrecognized schools.

3. The single judge noted an earlier decision about applicability of provisions of the Act to all schools, recognized and unrecognized, in Social Jurist, a Civil Rights Group Vs. GNCT &Ors. 147 (2008) DLT 729. That judgment had been distinguished by a later decision in Shaheed Udham Singh Smarak Shiksha

Samiti (Regd.) and Ors. Vs. Suman Lata and Ors. (LPA 825-827/2013 decided on 12.08.2015). The impugned judgment further noted that the later decision in Shaheed Udham Singh Smarak (supra) was not followed, as it had not taken into account the observations in Social Jurist. The later decision in Samarth Shiksha Samiti v ShakultalaMaggo 229 (2016) DLT 01 specifically observed that the wide nature of the directions in Social Jurist (supra) clarified that the provisions of the Act had universal applicability and provided consequences for its breach. The following observations in Social Jurist (supra) were cited:

"32. It is evident from a reading of the above provision that the take-over of the Management of the Schools whether recognized or not is also envisaged only in cases where the Managing Committee or the Manager has neglected to perform any of the duties imposed upon it by or under the said Act or the Rules made thereunder. The occasion to take over would also arise only if the School was established with the permission of the administrator. In the instant case, unrecognized schools have been established without the permission of the administrator required under Section 3(2) of the Act. No notice of intention to open the school in terms of Section 34 has ever been given by these institutions nor have these institutions been subjected to any inspection or evaluation to determine whether they fulfill the bare minimum requirements for running an institution in terms of Rules 50 and 51 of the Delhi School Education Rules, 1973. As a matter of fact, for some inexplicable reason, the Government and the Directorate of Education have been under the impression that neither any permission nor any intimation in terms of the provisions mentioned above is necessary for starting a school and that it is none of their business or responsibility to regulate the setting up of such institutions or their continuance in Delhi. That impression, as already noticed earlier, is against the specific provisions of the Act and the scheme underlying the same. The result is that there is a total breakdown of the machinery which the Act had envisaged for regulating and organizing planned development of school education in Delhi. The situation is not however totally irremediable. While the schools may have, on account of the inaction of the authorities, come up and functioned all these years, there is no reason why the same cannot be brought under the regulatory control of the authorities under the Act. A direct and ruthless approach to that issue may have called for a mandamus to the authorities to shut down such institutions. Keeping however in view the fact that a very large number of students are admitted to such institutions and are likely to get displaced by any such direction, a more realistic and workable solution shall have to be found out by which both the objectives, namely, the establishment of the supremacy of the law as enacted by the Parliament and the protection of the interest of the students at large can be achieved. That can, in our opinion, be done by giving to the institutions established without due and proper authority of the administrator an opportunity to make such applications and seek recognition within a specified period by fulfilling the requirements stipulated under Section 4 of the Act read with Rules 50 and 51 of the Delhi School Education Rules,

1973. Such of the institutions as satisfy the requirements of the said provisions could then be recognized upon a proper evaluation of their infrastructure as stipulated by the statutory provisions. Such of the others as do not satisfy the requirements of the statute or fail even to seek waiver of compliance with the said provisions in terms of Rule 52 of the Rules could then be identified and their cases referred to the local authority concerned for taking appropriate action by way of closure of the institutions in accordance with the relevant statutory provisions having due regard to the user prescribed for the premises from which they are operating in terms of the Master Plan and the requirements of safety measures stipulated for running an educational institution of a public character."

4. The Court (in Samarth Shiksha) thereafter held that:

"13. This Court is of the opinion that Shaheed Udham Singh Smarak Shiksha Samiti (supra) cannot be regarded as a binding authority for more reasons than one. First, it did not examine, closely - at least a reading of the judgment does not establish so- the reasoning which led the previous Division Bench in Social Jurist (supra) to hold that unrecognized schools too were regulated by the Act. Apart from the definition of "schools", Section 3, Section 52, Rule 44 and Rule 50, that judgment also noted that the power of taking over management, applied widely to all schools, regardless of recognition. This was a clear pointer to the overarching State interest in ensuring that schools secured recognition. Even the provision in Section 3 (6) brings home this concern: "(6) Every existing school shall be deemed to have been recognised under this section and shall be subject to the provisions of this Act and the rules made thereunder". 14. Apart from the binding nature of Social Jurist (supra), the declaration in which has attained finality, it seems abhorrent to this Court, that when the State has assured every child education, which is guaranteed as a fundamental right no less, and the fruition of which has led to the enactment of an elaborate mechanism under a special Parliamentary legislation (Right to Education Act), it can nevertheless be considered perfectly reasonable to say that some institutions which choose to not be regulated, can be held to be so. Compliance with the law is the norm, and violation is deemed deviant, inviting penal sanction. However, allowing such "outlaws" is to undermine those that abide by the law. In the vital area of education, it is not possible to countenance the submission of such outlaws that they stand outside the pale of regulation and are to be "let alone" to do what they please, by way of imparting what they deem to be education, in whatever terms they choose and through personnel holding such qualifications that they (and not the law) deem appropriate."

After noticing the above position, the impugned order, in this case held that the writ petitioner's appeal to the tribunal was maintainable.

5. It is contended by Mr. Piyush Sharma that a reading of Social Jurist (supra) shows that the court was influenced by the fact that no school could impart education in Delhi, which was not recognized, and all schools imparting

education without obtaining recognition were liable to be closed. As a remedial measure, the Division Bench allowed unrecognized schools imparting education to apply to the Directorate of Education for grant of recognition. The directions had required evaluation of infrastructure and facilities available and thereafter deciding whether the unrecognized school deserved recognition.

6. Mr. Sharma submitted that *Social Jurist* (supra) cannot be read as an authority to say that teachers and employees of unrecognized private schools in Delhi can appeal to the Delhi School Tribunal constituted under Section 11 of the Act. It was pointed out that the text of Section 8(3) did not permit such an interpretation. Furthermore, the impugned order (and the previous ruling in *Samarth Shiksha*) had ignored a ruling of the Supreme Court in *Principal and Others Vs. Presiding Officer and Others* (1978) 1 SCC 498.

7. Counsel for the respondent/employee resisted the submissions of the management appellant and urged that this court should not interfere with the impugned order. It was argued that the single

judge followed the previous authority in *Social Jurist* (supra) and the judgment in *Samarth Shiksha* and gave proper reasons for distinguishing *Shaheed Udham Singh* (supra). Furthermore, the enactment of Article 21A and the obligation of society to ensure universal education of a certain standard, pursuant to the Right to Education Act, meant that the restricted reading of the statute in *Presiding Officer* (supra) was no longer applicable. Counsel also contended that the judgment of the Supreme Court in *Shashi Gaur Vs. NCT of Delhi and Ors* (2001) 10 SCC 445 held that appeals against every class of termination of services of a teacher/employee of a school are maintainable before the School Tribunals.

8. The material part of the judgment in *Presiding Officer* (supra), by the Supreme Court, reveals that the emphasis was on the text of the provision (Section 8 (3)); there the employee had been terminated, otherwise than by way of removal, dismissal or reduction in rank. The court observed as follows:

"Under Sub-section (3) of Section 8 of the Act it is only an employee of a recognised private school against whom an order of dismissal, removal or reduction in rank is passed who is entitled to file an appeal against such order to the Tribunal constituted under Section 11 of the Act within three months from the date of communication to him of the order. For the applicability of this provision of the Act, two conditions must co-exist. These are (1) that the employee should be an employee of a recognised private school and (2) that he should be visited with either of the three major penalties of dismissal, removal or reduction in rank. As the School was neither a recognised private school on the relevant date nor was

the impugned order one of dismissal, removal or reduction in rank but was an order simpliciter of termination of service, the aforesaid appeal filed by respondent No. 2 to the Tribunal constituted under Section 11 of the Act was

manifestly incompetent and the order passed therein by the Tribunal was clearly without jurisdiction."

9. Now, this understanding or, rather, emphasis on the text of the statute was to a certain extent departed from in *Shashi Gaur* (supra) where the Supreme Court held as follows, first referring to Presiding Officer (supra) and then indicating its interpretation:

"This judgment and the interpretation put to the provisions of Sub-sections (2) and (3) of Section 8 undoubtedly, is of sufficient force. But, the question for our consideration would be that, would it be appropriate for us to give a narrow construction to Sub-section (3) of Section 8, thereby taking the teachers whose services were terminated not by way of dismissal, removal or reduction in rank but otherwise, out of the purview of the Tribunal constituted under Section 11 of the Act. The Statute has provided for a Tribunal to confer a remedy to the teachers who are often taken out of service by the caprices and whims of the management of the private institutions. The Governmental authorities, having been given certain control over the action of such private management, if an appeal to the Tribunal is not provided to such an employee, then he has to knock the doors of the Court under Article 226 of the Constitution which is a discretionary one. The remedy provided by way of an appeal to the Tribunal is undoubtedly a more efficacious remedy to an employee whose services stand terminated

after serving the institution for a number of years, as in the present case where the services are terminated after 14 years. 8. In this view of the matter, we are persuaded to take the view that under Sub-section (3) of Section 8 of the Act, an appeal is provided against an order not only of dismissal, removal or reduction in rank, which obviously is a major penalty in a disciplinary proceeding, but also against a termination otherwise except where the service itself comes to an end by efflux of time for which the employee was initially appointed. Therefore, we do not find any infirmity with the order of the High Court not entertaining the Writ Application in exercise of its discretion, though we do not agree with the conclusion that availability of an alternative remedy oust the jurisdiction of the Court under Article 226 of the Constitution."

10. We also notice that the single judge, while deciding *Shaheed Udham Singh* (supra) took into consideration that despite the plain language of Section 8, *Kathuria Public School v. Director of Education*, 123 (2005) DLT 89 (DB) after by referring to the 11 judge Constitution Bench judgment In *T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors* (2002) 8 SCC 481 ruled that Section 8(2) providing for prior approval of Director of Education for terminating the services of the teachers/employees of a school are inapplicable to unaided private schools i.e. an unaided private school does not require prior permission of the Director of Education for terminating the services of its employees. The

school's argument that as it was unrecognized, Section 8(3) is inapplicable, was

rejected.

11. This court is of the opinion that the impugned judgment cannot be faulted; besides noticing all the judgments, and distinguishing the two judgments cited by the appellant, the single judge noticed that subsequent rulings have departed from a purely textual interpretation of Section 8 of the Act. The need for objective scrutiny of termination orders in a meaningful manner, and effective remedy available through the tribunal, cannot be overstated. Those employed in schools, especially teachers, cannot be treated as workmen. Indeed, a Supreme Court judgment in *A. Sunderambal v Govt of Goa Daman and Diu* AIR 1988 SC 1700 held as much:

"We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post graduate education cannot be called as "workmen" within the meaning of section 2 (s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching."

12. Furthermore, a purposive interpretation rather than a narrow interpretation of Section 8 is to be adopted. As observed in *Katra Educational Society vs. State of Uttar Pradesh and Ors* . AIR 1966 SC 1307 by the Supreme Court, provisions enacted to safeguard teachers' rights by protecting their tenure - and in this case, by providing an effective forum against arbitrary or malicious termination, are in larger public interest. Again, as held in *Samarth Shiksha Samiti (supra)*, an "outlaw" or a deviant who chooses deliberately to flout the law and not seek recognition, and what is more, not follow prescribed educational standards, such as syllabus, rules of instruction, student teacher ratio, the place where education is imparted, the salary to be paid, cannot be allowed to say that it is not accountable, whenever a grievance regarding arbitrary or obnoxious behavior arises. Therefore, we are of the opinion that the impugned judgment does not call for interference. When *Presiding Officer (supra)* was decided, Article 21A creating a universal right to basic education was not a part of our Constitution; equally, a later development took place; the observations of the Supreme Court in *Frank Anthony Public School Employees Association v Union of India* AIR 1987 SC 311 which too dealt with the Act, are crucial. The court highlighted the public interest in resolving disputes relating to employee's termination, by a judicial body:

"Section 8(3) provides for an appeal to the Tribunal constituted under Section 11, that is, a Tribunal consisting of a person who has held office as a District Judge or any equivalent judicial office. 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 of appeal itself is confined to a limited class of cases, namely, those of dismissal, removal or reduction in rank and not to every dispute between an employee and the management. The limited right of appeal, the character of the authority constituted to hear the appeal and the manner in which the appellate power is required to be exercised make the provision for an appeal perfectly reasonable, in our view."

13. In view of the foregoing conclusions, the appeals have to fail and are, accordingly dismissed without any order as to costs.