

(2013) 09 DEL CK 0335

In the Delhi High Court

Case No : Writ Petition (C) No. 3723 of 2012

Shaheed Udham Singh Smarak Shiksha Samiti (REGD.) and
Others

APPELLANT

Vs

Suman Lata and Others

RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(g), 26(a), 29(1), 30
Delhi School Education Act, 1973 — Section 11, 19, 2(e), 2(t), 28

Citation : (2013) 09 DEL CK 0335

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : B.B. Gupta and Mr. Yeeshu Jain, in both Cases, for the Appellant;
Brijesh Kumar Gupta, Advocate for Respondent Nos. 1 to 3 in W.P.(C) Nos.
3723/2012 and 193/2011, Mr. Kushal Yadav, Advocate for Respondent No. 4 in
W.P.(C) No. 3723/2012, Mr. Vibhav Misra, Advocate for Respondent No. 4 in W.P.
(C) No. 193/2011, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

W.P. (C) No. 3723/2012 and CM. Nos. 7805/2012 (stay), 12296/2012 (release of amount), 16361/2012 and 3650/2013 (subsistence allowance)

1. This writ petition impugns the order of the Delhi School Tribunal (DST) dated 17.5.2012. By the impugned order DST accepted the appeals which were filed by the respondent Nos. 1 to 3 herein i.e. the teachers, and it was held that termination of their services by the petitioner No. 3-school was illegal. I may note that though there are four petitioners, we are however concerned in the present case only with the petitioner No. 3-school, inasmuch as petitioner No. 3-school, which is an unrecognized school, states that respondent Nos. 1 to 3 are its employees. Tribunal by the impugned order has held the termination of services of the respondent Nos. 1 to 3 as illegal on the ground that provision of

Rule 120 of the Delhi School Education Act and Rules, 1973 (hereinafter referred to as "DSEAR") which mandates holding of an enquiry before terminating services was not complied with and therefore the termination of services were illegal. Para 18 of the judgment passed by the DST reads as under:-

18. Admittedly the Respondent School did not conduct any departmental inquiry against any of the Appellants herein. Appellants were not granted any opportunity to defend their cases. No Inquiry Officer was appointed. No Disciplinary Committee was constituted. It is not the case of the Respondent School that the Disciplinary Authority itself made an inquiry into the alleged charges against the Appellants. No inquiry report was prepared by any Inquiry Officer. The Disciplinary Authority also did not record any inquiry proceedings. No witness was examined to depose in support of the prosecution. The Disciplinary Authority did not issue any notice of any of the Appellants stating the action proposed to be taken. No representation against any tentative punishment was invited. There has, therefore, been flagrant violation of the law laying down the procedure for imposing the penalty of dismissal from service. The impugned orders in all the aforesaid three appeals are, therefore, illegal and unsustainable in the eyes of law. The same are set aside. Appeals are accordingly allowed. All the three Appellants are reinstated in service with 50% of the back wages and other consequential benefits. The Respondent School is directed to reinstate the Appellants in service within a period of one month from today i.e. 17.05.2012. The Appellants shall be entitled to full salary and other allowances w.e.f. today i.e. 17.05.2012. In case the Respondent School fail to pay back wages within a period of two months, the Appellants shall be entitled to a simple interest @ 12% p.a. on the arrears of back wages. Appeals are accordingly disposed of. Files be sent to record room.

2. Before me, counsel for the petitioners argues that the provisions of DSEAR will not apply to the petitioner No. 3-school which is an unrecognized school. What is argued is that provisions of DSEAR pertaining to filing of an appeal u/s 8(3) by a teacher/employee whose services are terminated does not apply to an unrecognized school, and which the petitioner No. 3 is. In support of this argument, reliance is placed upon the judgment of the Supreme Court in the case of The Principal and Others Vs. The Presiding Officer and Others, . Paras 4, 5 and 8 of the said judgment are relied upon which read as under:-

4. Three points viz. (1) whether the School was a recognized private school on the relevant date; (2) whether the service of respondent No. 2 could not be terminated without the prior approval of the Director of Education and (3) whether the impugned order of termination of service of respondent No. 2 was appealable to the Tribunal arise for determination in this case. We shall deal with these points seriatim.

5. Re. Point No. 1: For determination of this point, which is crucial it is necessary to refer to Section 2(t) of the Act which defines a "recognized school" as a school recognized by the appropriate authority. The expression "appropriate authority"

is defined in Section 2(e) of the Act as under:-

2. (e) "appropriate authority" means-(i) in the case of a school recognized or to be recognized by an authority designated or sponsored by the Central Government, that authority;

(ii) in the case of a school recognized or to be recognized by the Delhi Administration, the Administrator or any other officer authorized by him in this behalf;

(iii) in the case of a school recognized or to be recognized by the Municipal Corporation of Delhi, that Corporation;

(iv) in the case of any other school, the Administrator or any other officer authorized by him in this behalf.

8. Re. Point No. 3: Under Sub-section (3) of Section 8 of the Act it is only an employee of a recognized 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 u/s 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 recognized 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 recognized 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 u/s 11 of the Act was manifestly incompetent and the order passed therein by the Tribunal was clearly without jurisdiction.

3. A reference to the aforesaid paras of the judgment of the Supreme Court in the case of The Presiding Officer (supra) shows that the Supreme Court has held that the provision of Section 8(3) which provides for filing of an appeal by an employee/teacher whose services are terminated cannot apply to an appeal filed by the teacher/employee of an unrecognized school. I may note that it is not disputed that the appeal of an employee whose services are terminated by a recognized school does lie before the DST. The issue therefore to be decided by this Court is whether the provision of Section 8(3) of the Delhi School Education Act 1973, and which entitles the employee/teacher of a school to challenge the termination of services by means of filing an appeal before the DST, will or will not entitle the employee/teacher of an unrecognized school to file an appeal in the DST.

4. Before I refer to the judgment of the Supreme Court which is relied upon by the petitioners it would be necessary at this stage to refer to the Division Bench judgment of this Court in the case of Social Jurist, a Civil Rights Group Vs. GNCT and Others, . In this judgment, the Division Bench speaking through Hon"ble Mr.

Justice T.S. Thakur (as he then was), held that when we consider the entire scheme of DSEAR, the provisions will apply to not only recognized schools but also to unrecognized schools. Paras 12 to 15, 17 to 25, 29 and 33 of this judgment are relevant and the same read as under:-

12. The material facts which provide the basis of the present proceedings are not in serious dispute. It is not in dispute that a large number of educational institutions have been established in Delhi which neither have the permission of the Government nor the recognition of the appropriate authority for the same. According to the petitioner, there are nearly 10,000 such institutions in Delhi, while according to the respondent/MCD, the number does not exceed 2000. The Directorate of Education does not, however, have any data available with it as to the total number of institutions that have been unauthorizedly set up and are functioning without due and proper recognition. The Director of Education has on affidavit made the following candid admission in this regard:

3. That there are no norms available in the provision/Act/Rule for schools which are recognized. Primary schools are recognized by MCD, NDMC, Delhi Cantonment Board while recognition to middle, secondary and senior Secondary school is granted by Directorate of Education.

4. That no such survey has been conducted by Education Department regarding the unrecognized schools in Delhi. Most of the unrecognized schools in general are primary, pre-primary or play schools. Since primary education is under the preview of local authority, so MCD, NDMC & Delhi Cantonment Board are the bodies dealing with recognition and other matter of these schools.

13. What was however admitted by learned Counsel for the parties was that a very large number of educational institutions offering pre-primary, primary, secondary and higher secondary classes have been set up in Delhi which have neither the permission of the Government nor the recognition from the appropriate authority. The Director of Education has further stated on affidavit that no norms are applicable to such institutions, nor have these institutions been inspected or evaluated by any officer of the Directorate of Education. The irony is, that according to the Directorate of Education, the Delhi School Education Act, 1973 does not authorize the officers of the Education Department to either inspect or even enter such institutions for purposes of verifying the infrastructural and other facilities made available in the same to the students. The result is that these institutions are islands of authority subject to no control, inspection, supervision or directions of any statutory or non-statutory body or authority. The all important question that arises in that background is whether on a true and correct interpretation of the provisions of the Delhi School Education Act, 1973, the hands off policy adopted by the Department of Education is justified. If one were to go by the affidavit filed on behalf of the Directorate of Education, the Department of Education is pleading nothing but helplessness in the matter on account of a lacuna in the legislation which according to their understanding does not empower them to act in the matter against such

institutions setting up shops without the requisite infrastructural facilities, no matter the institutions may be endangering the lives of the students who get admitted to the same for various reasons and compulsions.

14. To the credit of Mr. Midha, whom we requested to appear and assist us on behalf of the Government of Delhi, we must mention that he departed from the line of defense taken by the Directorate of Education. He argued and in our opinion rightly so that the understanding of the Director of Education regarding the legal position in relation to the regulation of education in Delhi and in relation to the competence of the administrator to provide for planned development of school education in Delhi was not wholly correct. Mr. Midha contended that the scheme of the Act and in particular the provisions of Section 3 and 4 thereof left no manner of doubt that the administrator was competent to regulate education in "all the schools in Delhi" and that no new school can be established and no higher class in any existing school started and no existing class closed down in any existing school except in accordance with the provisions of the Act and the Rules made there under. The argument that the Act envisaged two types of schools, namely, recognized and unrecognized was, according to Mr. Midha, wholly erroneous for after the commencement of the Act, there could be only one class of schools, namely, schools that have been permitted in terms of Section 3 read with Rule 44 of the Delhi School Education Act and the Rules. He also drew our attention to Section 28 of the Act which provides that the administrator was competent to frame rules to carry out the provisions of the Act and in particular to provide for the manner in which the education may be regulated. The rules can also provide for the condition which every existing school should be required to comply with and the requirements of establishment of a school or the opening of a higher class and/or closing down of an existing class in an existing school. Mr. Midha in that view fairly conceded that the Directorate of Education ought to have regulated the establishment of schools in Delhi for there was no question of any school being allowed to come up otherwise than in accordance with the provisions of the said Act. But since the Act did not provide for a closure of any school, such of the schools as were unauthorized and/or unrecognized could be directed to be closed down by the concerned local authority on the ground of misuse of the property in which such schools were running.

15. Appearing for the Delhi Development Authority, Mr. Verma argued that the scheme of the Act did not permit two classes of schools as was the ground reality at present. He urged that Section 4(6) of the Act by a fiction recognized every school that was in existence on the date the Act came into force and subjected such schools to the rigors of the provisions of the Act and the Rules made there under. Proviso to Section 4(6) however authorizes the prescribed authority to withdraw recognition if the school failed to satisfy such conditions as are stipulated for recognition within a specified period. This implied that from the date of commencement of the Act, only such schools could come up as were permitted in terms of Section 3(2) of the Act and recognized in terms of Section 4. He also drew our attention to the provisions of Section 19 to argue that every

school offering higher secondary education had to be affiliated to one or more of the Boards or Councils conducting such examination and to fulfill the conditions specified by the Board or Council and that every recognized primary or middle school had to prepare students for examination held by the local authority competent to hold the examination or by the Directorate of Education, Delhi as the case may be.

17. On behalf of the Association of unrecognized institutions, it was strenuously argued by Mr. Sinha that the right to establish a private educational institution was a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India and was recognized to be so by judicial pronouncements on the subject. He further submitted that any regulatory control exercised by the State that fell foul of the said guarantee had to be necessarily declared unconstitutional. He further contended that on a true and proper interpretation of the provisions of the Delhi School Education Act, 1973, only such schools as were recognized fell under the purview of the Act and under the regulatory control of the administrator. Other unrecognized institutions established and functioning in Delhi were outside the purview of the Act. There was, Therefore, no question of directing any regulation of the said schools directly or indirectly nor could there be any mandamus to the authorities to do something that the Act did not envisage. It was further argued by Mr. Sinha that the unrecognized schools were doing great service and had become a necessity on account of the failure of the State to provide proper educational facilities in Delhi. He submitted that the schools were located in areas where the weaker sections of the society were residing and to which children from the middle and the lower middle class including those living in Jhuggi Jhopdi clusters were admitted. Insistence upon providing the infrastructure required for recognition under the Act would amount to shutting down the schools and would be tantamount to fixing an unreasonable standard and Therefore an unreasonable restriction on the right to establish a school.

18. We have given our careful consideration to the submissions made at the bar and perused the record. The right to establish an educational institution is no doubt a fundamental right guaranteed under Article 19(1)(g) of the Constitution. At the same time, it goes without saying that in terms of Clause 6 of Article 19 of the Constitution, the said right is not absolute and is subject to reasonable restrictions. We need not dilate on this aspect any further for the legal position stands authoritatively settled by the decisions of the Supreme Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, . The court has, in that case, among others, formulated the following two questions:

- (i) Is there a fundamental right to set up educational institutions and, if so, under which provision?
- (ii) In case of private institutions, can there be Government regulation and if so, to what extent?

19. Answering the first question extracted above in the affirmative, the Court

held:

25. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in Sodan Singh's case correctly interpret the expression "occupation" in Article 19(1)(g).

26. The right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognized head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. This would allow members belonging to any religious denomination, including the majority religious community, to set up an educational institution. Given this, the phrase "private educational institution" as used in this judgment would include not only those educational institutions set up by the secular persons or bodies, but also educational institutions set up by religious denominations; the word "private" is used in contradistinction to government institutions.

20. In so far as the second question is concerned, the Court held that the right to establish an educational institution could be regulated but such regulation was limited to only certain aspects and did not extend to fixing a rigid fee structure or dictating the formation and composition of the governing body or compulsory nomination of teachers and staff etc. The Court observed:

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

21. The provisions of Delhi School Education Act, 1973 are meant to better organize and develop school education in Delhi and matters connected therewith or incidental thereto. Chapter II of the said Act deals with establishment, recognition, management of and aid to schools. Section 3 which is by far the most significant of the provisions contained in the Act reads as under:

3. Power of Administrator to Regulate Education in Schools-

(1) The Administrator may regulate education in all the schools in Delhi in accordance with the provisions of this Act and the rules made there under.

(2) The Administrator may establish and maintain any school in Delhi or may permit any person or local authority to establish and maintain any school in Delhi, subject to compliance with the provisions of this Act and the rules made there under.

(3) On and from the commencement of this Act and subject to the provisions of Clause (1) of Article 30 of the Constitution, the establishment of a new school or the opening of a higher class or the closing down of an existing class in any existing school in Delhi shall be subject to the provisions of this Act and the rules made there under and any school or higher class established or opened otherwise than in accordance with the provisions of this Act shall not be recognised by the appropriate authority.

22. Section 4 of the Act deals with recognition of schools and empowers the appropriate authority to recognize any private school on an application made to it in the prescribed form. The proviso however forbids recognition of a school unless the conditions stipulated there under are satisfied. Section 4(1) may at this stage be extracted:

4. Recognition of Schools-(1) The appropriate authority may, on an application made to it in the prescribed form and in the prescribed manner, recognise any private school:

Provided that no school shall be recognised unless-

(a) it has adequate funds to ensure its financial stability and regular payment of salary and allowances to its employees;

(b) it has a duly approved scheme of management as required by Section 5;

(c) it has suitable or adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it;

(d) it provides for approved courses of study and efficient instruction;

(e) it has teachers with prescribed qualifications; and

(f) it has the prescribed facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities.

23. Sub-section 6 to Section 4 deals with schools existing on the date the Act came into force and recognises them by a fiction created under the said provision. It reads:

4. Recognition of Schools-

(1) XXX

(2) XXX

(3) XXX

(4) XXX

(5) XXX

(6) Every existing school shall be deemed to have been recognized under this section and shall be subject to the provisions of this Act and the rules made there under:

Provided that where any such school does not satisfy any of the conditions specified in the proviso to Sub-section (1), the prescribed authority may require the school to satisfy such conditions and such other conditions as may be prescribed, within a specified period and if any such condition is not satisfied, recognition may be withdrawn from such school.

24. A plain reading of the above provisions especially Section 3(1) supra would show that the administrator has the power to regulate education in all the schools in Delhi. The expression "all the schools in Delhi" is significant and leaves no manner of doubt that the Act is not limited in its application only to recognized schools. The term "recognized school" and "school" have been separately defined by the Act in Section 2(t) and 2(u) in the following words:

2(t) "recognized school" means a school recognised by the appropriate authority;

(u) "school" includes a pre-primary, primary, middle and higher secondary schools, and also includes any other institution which imparts education or training below the degree level, but does not include an institution which imparts technical education;

25. The language employed in Section 3 and the definition of the term "School" in 2(u) supra would Therefore make it manifest that the power of the administrator to regulate education extends to not only recognized but all schools whether the same are recognized or unrecognized. We have Therefore no hesitation in rejecting the contention urged by Mr. Sinha that the Act is confined in its application to only recognized schools.

29. The following aspects therefore emerge from the above discussion:

(i) The power of the administrator to regulate school education extends to all the schools in Delhi whether the same are recognized or unrecognized.

(ii) A school can be established only with the permission of the administrator granted in terms of Section 3(2) of the Act and any school established contrary to the said provisions shall not be recognized by the appropriate authority.

(iii) Recognition of the schools shall be granted only if the school satisfies the norms stipulated in Section 4(1) of the Act read with Rules 50 and 51 of the Rules framed under the Act.

(iv) The appropriate authority competent to grant recognition may, in its discretion and for good and sufficient reasons, exempt provisionally any private school seeking recognition from one or more of the provisions of Rule 50 or 51 or both for such period as it may consider necessary.

(v) If a school ceases to fulfill any requirement of the Act or any of the conditions specified in the Rules or fails to provide any facility specified in Rule 51, the appropriate authority may after giving the school a reasonable opportunity of showing cause against the proposed action withdraw recognition in terms of Rule 56 which shall not be restored under Rule 57 unless the authority is satisfied that the reasons which led to the withdrawal have been removed and that in all other respects, the school complies with the provision of the Act.

33. Mr. Sinha, learned Counsel for the Association, vehemently argued that once the standards prescribed for recognition including the requirements of a proper building were enforced against the private unrecognized institutions, these institutions will not be able to comply with the said requirements and shall have to be closed down. Any such closure would, according to him, offend Article 19(1)(g) of the Constitution. We do not think so. The right to establish an educational institution is not absolute. The Parliament or the State Legislature, as the case may be, are competent to stipulate such regulatory measures as are considered necessary in public interest in terms of Clause 6 of Article 19(1)(g). The provisions of Delhi School Education Act, 1973 is a legislation that serves precisely that purpose. It regulates the establishment of educational institutions and their functioning. If the Parliament has, by law, stipulated the standards to be satisfied for establishing an educational institution and if those standards are in themselves reasonable and relevant to the object of ensuring that the institutions are institutions which provide a safe, secure and healthy environment for imparting education to children at different levels, we find it difficult to appreciate how those standards can be said to be prohibitive in nature so as to offend the guarantee contained in Article 19(1)(g). It is important to note that there is no challenge to the provisions of Section 4 of the Act or Rules 50 and 51 of the Education Rules which prescribe standards to be met by the institutions for the grant of recognition. Such being the position, the argument that the institutions can continue even without satisfying the basic requirements as stipulated under the statutory provisions must be rejected out of hand. It is true that one of the reasons that has resulted in the mushrooming of these unrecognized institutions is the failure on the part of the State to provide educational facilities but that failure cannot be remedied by allowing unsafe, unsatisfactory or wholly dysfunctional institutions to come up, no matter they are incapable of achieving the objective which the same are meant to achieve or become institutions that exploit the compulsion of the students for commercial gains. With education up to 14 years becoming a fundamental right, the State shall have not only to take appropriate steps for making available educational facilities in areas where the same do not exist, but also to ensure that till such time the State run schools are started in such areas, the private institutions do

not fill up the vacuum only to exploit the failure of the State in doing what it ought to do. The State shall Therefore have to act on both the fronts as the task of providing adequate and satisfactory educational facilities is stupendous and may not be achieved by relying upon the State run institutions alone.

5. A reference to the aforesaid paras show that the Division Bench of this Court was specifically concerned with the issue as to whether or not the provisions of the DSEAR should or should not apply to unrecognized schools, and it was held that all the provisions of DSEAR will also apply to unrecognized schools which operate in Delhi. No doubt the aforesaid judgment was passed in a Public Interest Litigation case, however, I fail to understand the argument urged on behalf of the petitioner that merely because the judgment was given in a Public Interest Litigation, the said judgment cannot be said to hold that the provisions of DSEAR (including the provision of Section 8(3) which deals with filing of appeals by the teachers/employees against the orders of schools terminating their services) will not apply to unrecognized schools. In fact, the issue only and squarely in question which has been dealt with by the Division Bench in the case of *Social Jurist* (supra) was of applicability of the provisions of DSEAR to unrecognized schools because it was argued by the unrecognized schools that the provisions of DSEAR will only apply to recognized schools and not to unrecognized schools and which argument of the unrecognized schools was rejected. This argument of the petitioners is therefore rejected that the provisions of DSEAR do not apply to unrecognized schools.

6. I may note that a Division Bench of this Court in the case of *Kathuria Public School Vs. Director of Education and Another*, has by referring to the Constitution Bench judgment of Seven Judges in the case of *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, held that the provision of Section 8(2) of DSEAR providing for requirement of prior approval of Director of Education to be obtained for terminating the services of the teachers/employees of a school will not apply 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 Division Bench judgment in the case of *Kathuria Public School* (supra) has been recently followed by another Division Bench of this Court in the case of *Delhi Public School and Another Vs. Shalu Mahendroo and Others*, . Therefore, it is quite clear that provisions of DSEAR will also apply to unaided private unrecognized schools and therefore I reject the argument urged on behalf of the petitioners that since petitioner No. 3-school is an unrecognized school, it will not be governed by the provision of Section 8(3) of the Delhi School Education Act, 1973.

7. I may hasten to add that because of the view which I am taking that the provisions of DSEAR, including Section 8(3) thereof, apply even to unrecognized schools, I am not going into the aspect that the petitioner No. 3-school is in fact a recognized school as is sought to be urged on behalf of respondent Nos. 1 to 3.

8. Let us now examine the issue as to whether the ratio of the judgment of the

Supreme Court in the case of *The Presiding Officer* (supra) holding that the teachers of unrecognized schools cannot file an appeal before the DST by taking aid of the provision of Section 8(3) now applies after the judgment of the Division Bench in *Social Jurist*'s case. Much water has been flown under the bridge since the Supreme Court delivered the judgment in the year 1978 in the case of *The Presiding Officer* (supra). The observations which were made by the Supreme Court in the case of *The Presiding Officer* (supra) were in the plain language of the Delhi School Education Act, 1973, and which plain language as per its literal interpretation only provided for appeals to be filed by the employees/teachers of recognized schools, and which was because it was thought that DSEAR do not apply at all to unrecognized schools. Surely, the provision of Section 8(3) is not an independent statute in itself and the said provision is very much a part and parcel of the DSEAR, and therefore if the Act as a whole applies to unrecognized schools and so held by the Division Bench of this Court in the case of *Social Jurist* (supra), I cannot agree to the argument urged on behalf of the petitioners that the ratio of the judgment of the Supreme Court in the present case should be interpreted to hold that whereas teachers/employees of recognized schools can file appeals before the DST u/s 8(3), however teachers/employees of unrecognized schools cannot file appeals before the DST against the orders of the schools terminating their services.

9. At this stage, it will be relevant to mention that the Supreme Court in the judgment in the case of *Shashi Gaur Vs. NCT of Delhi and Others*, has held that appeal against every type of termination of services of a teacher/employee of a school has necessarily to be filed before the DST. The ratio in the case of *Shashi Gaur* (supra) when read with the ratio of the Division Bench in the case of *Social Jurist* (supra) persuades me to hold that appeals filed even by employees of unrecognized schools will be maintainable before the DST u/s 8(3) of the Delhi School Education Act, 1973. It would be an incongruity in terms to hold that merely on the ground of recognition of school or non-recognition thereof, different remedies lie for challenging orders of termination passed by schools with respect to termination of services of its employees/teachers. Once the Act applies, surely, all the provisions thereof including Section 8(3) apply to unrecognized schools and the observations of the Supreme Court which were made in the year 1978 in the case of *The Presiding Officer* (supra) were as per the plain language of the provision of Section 8(3), however, a Division Bench of this Court subsequently in the case of *Social Jurist* (supra) has explained the scope of applicability of the Act to even unrecognized schools which are functioning in Delhi. I may state that the Supreme Court in the case of *The Presiding Officer* (supra) was not concerned with the situation if all the provisions of DSEAR apply to unrecognized schools and if they do, yet, Section 8(3) will not apply to a school merely on the ground that school is not recognized.

10. Counsel for the petitioners also sought to cite before me judgments of various learned Single Judges of this Court to argue that the provision of Section 8(3) will not apply to appeals being filed by the employees/teachers of

unrecognized schools, however, I need not refer to them in view of ratio of the Division Bench judgment in the case of Social Jurist (supra) which holds that provisions of DSEAR apply also to unrecognized schools. I must also observe that it is not as if the Division Bench in the case of Social Jurist (supra) while holding that all the provisions of DSEAR apply to both recognized and unrecognized schools intended to exclude the applicability of Section 8(3) to the unrecognized schools.

11. Petitioners have deposited the amount which was directed by the DST to be paid to respondent Nos. 1 to 3. This amount was deposited (arrears of salary) as per the interim order passed by this Court. There is no challenge by the petitioners including petitioner No. 3 to that part of the order of the DST by which the teachers/respondent Nos. 1 to 3 were directed to be reinstated with 50% of back wages and the consequential benefits. Since the petition is dismissed, the amount deposited in this Court alongwith accrued interest thereon, if any, be released to respondent Nos. 1 to 3 within a period of two weeks from today by the Registry.

12. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

W.P. (C) No. 193/2011

13. In view of the reasoning given while dismissing the W.P. (C) No. 3723/2012, and adopting the same, this writ petition is also dismissed, leaving the parties to bear their own costs. Petitioners have deposited the amount which was directed by the DST to be paid to respondent No. 1. This amount was deposited (arrears of salary) as per the interim order passed by this Court. There is no challenge by the petitioners including petitioner No. 3 to this part of the order of the DST by which the teacher/respondent No. 1 was directed to be reinstated with 50% of back wages and the consequential benefits. Since the petition is dismissed, the amount deposited in this Court alongwith accrued interest thereon, if any, be released to respondent No. 1 within a period of two weeks from today by the Registry.