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

\+ LPA 627/2018

ASHA RANI GUPTA .....Appellant

Through: Mr. Anuj Aggarwal, Ms. Divya Aggarwal, Mr. Manas Verma, Mr. Pradeep Kumar and Mr. Avinash Kumar, Advs.

versus

RAVINDERA MEMORIAL PUBLIC SCHOOL & ANR .....Respondent

Through: Mr. Ajay Garg, Ms. Tripti Gola, Mr. Ganesh Ojha, Ms. Surbhi Soni and Mr. Uday Garg, Advs. for R-1.
Mrs. Avnish Ahlawat, SC (GNCTD) with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam & Mr. Mohnish Sehrawat, Advs. for DOE.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% 08.10.2024

C. HARI SHANKAR, J.

1. This Letters Patent Appeal impugns judgment dated 13 February 2018 passed by a learned Single Judge in WP (C) 11394/2016[1].

[1] **Ravindra Memorial Public School v Director of Education**

2. The appellant joined the Respondent 1-School[2] as Assistant Teacher on temporary basis in 1988 and continued to serve the School without interruption till June 2013. On the charge that she had inflicted corporal punishment on a Class III student in the School on 17 August 2010 and had abandoned her duties since November 2011, the appellant was subjected to a departmental inquiry resulting in her dismissal from service *vide* order dated 6 June 2013. The appellant challenged the decision by way of appeal before the learned Delhi School Tribunal[3]. By order dated 2 September 2016, the learned Tribunal held that there was no legally admissible evidence on the basis of which the charge against the appellant could be sustained. Accordingly, the learned Tribunal set aside the order of dismissal of the appellant from service and directed her reinstatement with full back wages.

3. Aggrieved by the decision of the learned Tribunal, the School approached this Court by way of WP (C) 11394/2016, which stands allowed by the impugned judgment dated 13 February 2018. The learned Single Judge has held that the principles of natural justice were duly followed before dismissing the appellant from service and that the charge against the appellant stood proved by the evidence of a fellow teacher and of a peon.

4. In the circumstances, it was held that the learned Tribunal had erred in setting aside the order dismissing the appellant from service.

[2] "the School", hereinafter

Accordingly, the judgment of the learned Tribunal was reversed and the order dismissing the appellant from service was restored.

5. Aggrieved thereby, the appellant is before this Court by means of the present Letters Patent Appeal.

6. We have heard Mr. Anuj Aggarwal, learned Counsel for the appellant, and Mr. Ajay Garg, learned Counsel for the School at length.

7. Mr. Aggarwal assailed the decision to uphold the appellant's dismissal from service on a ground entirely different from those which were urged before the learned Tribunal. He submitted that the dismissal of the appellant from service was in violation of Section 8(2)[4] of the Delhi School Education Act, 1973[5] as well as Rule 120(2)[6] of the Delhi School Education Rules, 1973[7], inasmuch as prior approval of the Directorate of Education[8] had not been obtained before dismissing the appellant from service.

8. Mr. Aggarwal submitted that, as the ground taken pertains to the jurisdiction of the School to penalise the appellant, it could be taken at any stage.

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[3] "the learned Tribunal", hereinafter

[4] (2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.

[5] "the DSE Act", hereinafter

[6] (2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director.

[7] "DSE Rules", hereinafter

9. Mr. Garg initially objected to the line of the argument that Mr. Aggarwal was seeking to adopt, submitting that it was a ground which had not been urged either before the learned Tribunal or before the learned Single Judge.

10. The contention of Mr. Garg cannot be accepted because an issue relating to jurisdiction goes, to employ a time worn cliché "to the very root of the matter" and can be raised at any time. An action without jurisdiction is a nullity from its inception. All further proceedings following on the action stands vitiated. For this reason, the Supreme Court has held, in ***Hindustan Zinc Ltd v Ajmer Vidyut Vitran Nigam Ltd***[9] and ***Chief General Manager, M.P. Power Trading Co Ltd v Narmada Equipments (P) Ltd***[10] - and in several other judgements – that a jurisdictional challenge can be raised for the first time at any stage, even in collateral proceedings.

11. Mr. Garg then sought time to examine the issue, as it had been raised for the first time before this Court. The matter was adjourned. On the renotified date, both the learned Counsel have been heard on the jurisdictional challenge to the order of dismissal of the appellant from service.

12. Mr. Aggarwal has placed reliance on the judgment of one of us

[8] "DOE", hereinafter
[9] **(2019) 17 SCC 82**
[10] **(2021) 14 SCC 548**

(C. Hari Shankar, J.), sitting singly in ***Meena Oberoi v Cambridge Foundation School***[11] as well as the judgment of the Supreme Court in ***Raj Kumar v Director of Education***[12] on which ***Meena Oberoi*** placed reliance.

13. As against this, Mr. Garg submits that, after the present writ petition had been filed, *ex post facto* approval of the DOE had been obtained to the passing of the order of dismissal of the appellant from service. He relies on the judgment of a learned Single Judge of this Court ***Abha Pathak v Gyandeep Education Society***[13], as followed by another learned Single Judge in ***Managing Committee, Naval Public School v Neera Chopra***[14]**,** to contend that *ex post facto* approval would suffice. He further impresses on the seriousness of the charge against the appellant, i.e., inflicting corporal punishment on a minor School child, to submit that the facts of the case would not justify setting aside of the order dismissing the appellant from service on the technical ground of failure to obtain prior approval of the DOE, and that, in the facts of the present case, *ex post facto* approval should be held to suffice.

14. Mr. Garg further submits that it was only after the order dismissing the appellant from service had been passed on 6 June 2013 that the judgment of the Supreme Court in ***Raj Kumar*** was rendered on 13 April 2016. Prior thereto, he submits that the law that held the

[11] **(2019) 265 DLT 401**
[12] **(2016) 6 SCC 541**
[13] **2011 SCC OnLine Del 4115**
[14] **2013 (136) DRJ 601 (DB)**

field was that declared by a Division Bench of this Court in ***Kathuria Public School v Director of Education***[15]. ***Kathuria Public School,*** it was submitted, held that the requirement of obtaining prior approval of the DOE before passing an order of dismissal or removal from service, as contained in Section 8(2) of the DSE Act and Rule 120(2) of the DSE Rules, would not apply to private unaided schools. This position continued to hold the field till the judgment in ***Raj Kumar*** was rendered on 13 April 2016. Between the judgment in ***Kathuria Public School*** and the decision in ***Raj Kumar***, the DOE, submits Mr. Garg, was not granting approval under Section 8(2) of the DSE Act or Rule 120(2) of the DSE Rules to any private unaided school for dismissing or removing an employee from service. Even if the respondents were to have applied for approval, therefore, it would not have been possible for the respondents to have obtained approval. In such circumstances, he submits that it would not be legally correct to interfere with the order of dismissal of the appellant from service solely on the ground that prior approval of the DOE had not been obtained.

15. Mr. Garg submits that a learned Single Judge of this Court has, in ***Sunil Kumar Agarwal v Air Force School***[16]**,** noted this fact and modulated the relief by directing the dismissed teacher, in that case, to be awarded compensation of ₹ 2 lakhs, instead of reinstatement in service.

[15] **(2005) 123 DLT 89**
[16] **2023 SCC OnLine Del 4348**

Analysis

16. In view of the judgment of the Supreme Court in ***Raj Kumar***, it is obvious that the order dated 6 June 2013, dismissing the appellant from service, cannot sustain.

17. The entire gamut of case law has been considered by this Court in ***Meena Oberoi,*** which has subsequently been followed in other decisions including ***Mangal Sain Jain v Principal, Balvantray Mehta Vidya Bhawan***[17]. The submission that, in view of the then existing law in ***Kathuria Public School,*** orders of dismissal and removal of employee of private unaided school from service without obtaining prior approval of the DOE, passed before the rendition of the decision in ***Raj Kumar,*** ought not to be reopened, was considered. It was also noted that a Division Bench of this Court had, in its decision in ***Red Roses Public School v Reshmawati***[18] chosen not to follow ***Raj Kumar*** in respect of decisions rendered prior thereto, on the ground that applying ***Raj Kumar*** from a date prior to its rendition would result in reopening of claims which stood settled in terms of the then existing law in the shape of the judgment in ***Kathuria Public School.*** The decision in ***Red Roses Public School***, it was however noted, had been rendered without the Court having been informed of the judgment of the Supreme Court in ***Marwari Balika Vidyalaya v Asha Srivastava***[19], in which the Supreme Court had applied ***Raj Kumar*** retrospectively,

[17] **2020 SCC OnLine Del 2608**
[18] **2019 SCC OnLine Del 10937**
[19] **2019 SCC OnLine SC 408**

to invalidate an order of termination of an employee of private unaided school passed in 2001 without obtaining prior approval of the DOE.

18. As such, this Court, in ***Meena Oberoi***, adopted the view that the decision of the Division Bench in ***Red Roses Public School*** was effectively *per incuriam*, as it was contrary to the prior judgment of the Supreme Court in ***Marwari Balika Vidyalaya***.

19. There can, therefore, be no manner of doubt that the order dated 6 June 2013, whereby the appellant was dismissed from service, has necessarily to be set aside, as it was passed without obtaining prior approval of the DOE.

20. The submission of Mr. Garg that *ex post facto* approval of the dismissal order should suffice is obviously untenable, as what is required by Section 8(2) of the DSE Act and Rule 120(2) of the DSE Rules is prior approval. From the times of ***Taylor v Taylor***[20] through ***Nazir Ahmed v King-Emperor***[21] and a veritable plethora of judgments of the Supreme Court including ***State of UP v Singhara Singh***[22], it is a well settled principle that, where a statute requires a particular act to be done in a particular manner, that act must done in that manner or not done at all, all other modes of doing the act being necessarily forbidden. Where, therefore, Section 8(2) of the DSE Act and Rule

[20] **(1875) 1 Ch D 426**
[21] **AIR 1936 PC 253**
[22] **AIR 1964 SC 358**

120(2) of the DSE Rules require *prior* approval of the DOE to be obtained before an order dismissing, terminating or removing an employee of a School can be passed, it is prior approval, and prior approval alone, which would suffice. Permitting *ex post facto* approval would amount to rewriting the statue, which is obviously impermissible.

21. Mr. Garg's plea that the decision to the judgment of the learned Single Judge should be upheld as *ex post facto* approval had been obtained for passing of the order of dismissal of the appellant from service cannot, therefore, be accepted.

Conclusion

22. The submission of Mr. Aggarwal that the order dated 6 June 2013 dismissing the appellant from service is liable to be set aside for having been passed without obtaining prior approval of the DOE, as required by Section 8(2) of the DSE Act and Rule 120(2) of the DSE Rules has, therefore, necessarily to succeed.

23. For the aforesaid reasons, the dismissal of the petitioner from the services of the respondent school on 6 June 2013 is quashed and set aside. As we are informed that the petitioner has superannuated in 2016, she is entitled to back wages for the period during which she was unable to serve the school on account of her dismissal order and also to whatever retiral benefits she would have been entitled had she

retired as a serving teacher of the school.

24. The appeal is allowed accordingly.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 8, 2024*/aky*

Click here to check corrigendum, if any