



2025:DHC:10166-DB



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

Reserved on : 6th November, 2025.

Pronounced on : 19th November, 2025

+ **LPA 1125/2024, CM APPL. 67042/2024, CM APPL. 67043/2024,
CM APPL. 13399/2025, CM APPL. 62568/2025**

NDMC

.....Appellant

Through: Mr. Sanjeev Anand Sr. Adv. and Mr.
Arun Birbal Adv.

Versus

KANHAIYA MANJHI AND ORS

.....Respondents

Through: Mr. Rakesh Munjal, Sr. Adv. with Mr
Pardeep Kumar and Ms Sanskriti
Advocates for R-14.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

DINESH MEHTA, J.

1. The present Letters Patent Appeal has been filed under Clause 10 of the Letters Patent against the impugned order dated 02.05.2024 passed by the learned Single Judge in *W.P.(C) 12374/2021* titled *Kanhaiya Manjhi and Ors. v. Govt. of NCT of Delhi and Ors.* whereby the learned Single Judge had allowed the writ petition filed by the Petitioners- Kanhaiya Manjhi and Ors. and directed the Respondents- Govt. of NCT of Delhi and Ors. to absorb the Petitioners- Kanhaiya Manjhi and Ors. holding that they are entitled to be absorbed.

2. While allowing the writ petition, learned Single Judge has held that the Petitioner therein would be entitled to only 50% of the pay and perquisites while also holding that the interregnum would be counted for



their pensionary and other statutory benefits.

3. Learned Senior Counsel appearing for the present Appellant-New Delhi Municipal Corporation (hereinafter referred as 'NDMC'), at the outset invited the Court's attention to Rule 46 and Rule 47 of the Delhi School Education Rules 1973 (hereinafter referred as the 'DSER1973') and argued that Rule 47, which provides a right to the employees of a school that has been closed, to be absorbed in any of the government schools is subject to Rule 46 of the DSER 1973 and it cannot be read in isolation.

4. He argued that Respondent Nos. 1 to 12 (writ petitioners) were erstwhile employees of R.M. Arya Girls Primary School (hereinafter referred to as the 'School') which was receiving 95% aid from the Appellant-NDMC, but was later on closed by the society on its own volition, without obtaining prior approval of the Director as mandated by Rule 46 of the DSER 1973.

5. Learned Senior Counsel further argued that unless the school has been closed in accordance with Rule 46 of the DSER 1973, neither its staff nor its students can claim absorption as a matter of right. In support of his contention aforesaid, learned counsel relied upon the judgment of Hon'ble the Supreme Court in the case of *New Delhi Municipal Corporation & Anr. vs. Manju Tomar & Ors.*, reported in 2024 SCC OnLine SC 2275.

6. Learned Senior Counsel without prejudice to the above contention, argued that as per Rule 47 of DSER 1973, any employee who has become surplus can be absorbed in government schools or aided schools, as the Administrator may specify, taking into account availability of vacancy and fulfilment of requisite qualifications.

7. He argued that learned Single Judge has passed direction to the



appellant to absorb the writ petitioners not realizing that the authority competent as per Rule 47 of DSER 1973 is the Administrator and not the NDMC. He further argued that there is a purpose in using the expression “Administrator” in Rule 47 of DSER 1973 because a surplus employee may be absorbed in a government school or aided school and it is the Administrator alone who has the complete record of vacancy positions in government or aided schools. It was argued by the learned counsel for the Appellant that so far as NDMC is concerned, it has limited schools under its control, whereas the government of NCT of Delhi is running a number of schools, maybe aided or unaided.

8. Learned Senior Counsel contended that there is no vacancy in the schools run by NDMC and, therefore, the impugned order passed by the learned Single Judge is contrary to both facts and law since availability of vacancy is a condition precedent for absorption of a surplus employee.

9. Learned counsel argued that learned Single Judge has misread the provision contained in Rule 47 of the DSER 1973 and has erroneously held that any authority which sanctions and accords grant in aid to any aided school or runs any school, is the competent authority under Rule 47 of the DSER 1973, whereas said Rule uses the expression “Administrator” and not “appropriate authority” or the “NDMC”.

10. Taking the Court through various documents and the factual backdrop, learned counsel submitted that the School was being run in a rented premises, against which the landlord had filed a petition for eviction which was allowed and despite a long legal battle up to Hon’ble the Supreme Court, the decree of eviction was maintained.

11. He further submitted that when the School was faced with the decree



of eviction, keeping in mind the best interest of the students, NDMC adjusted the students in the nearby schools run by it but so far as teachers and other staff working therein were concerned, no such order of absorption came to be passed since the prior approval before closing down the school, as necessary under Rule 46 of the Rules of DSER 1973 was not obtained.

12. Mr. Rakesh Munjal, learned Senior Counsel appearing on behalf of the Respondent Nos. 1 to 12 (writ petitioners), on the other hand, argued that that there is no infirmity in the order passed by learned Single Judge and that the instant appeal is an appeal in disguise filed merely due to the appellants' apprehension of severe punishment in the contempt proceedings which the Respondents have instituted.

13. He argued that when the notice of contempt was served upon the Appellants, they appeared before the Court and prayed for time to file compliance report, however, later they chose to contest the case and the present appeal came to be filed with a delay of 135 days. He further argued that as a matter of fact, the instant appeal is not a *bonafide* appeal and, therefore, the application seeking condonation of delay in filing the appeal be rejected.

14. Learned counsel for the Respondents invited the Court's attention towards the information which was provided by the NDMC to the Respondents (writ petitioners) under Right to Information Act (hereinafter referred to as the 'RTI Act') placed at page number 223 of the paper book and highlighted that there is a vacancy of 122 teachers and 125 teachers respectively in the schools run by NDMC as on 22.10.2021 and the present appeal is simply with a view to deprive the Respondents (writ petitioners) of their legal rights.



15. Learned Counsel also invited Court's attention towards the affidavit, A-10 and argued that, it is an admitted case of the NDMC that permission to close down the school was accorded. He argued that regardless of the *inter-se* dispute between the School and the NDMC, the fact remains that Respondent Nos. 1 to 12 (writ petitioners) were the employees of the school, which had to close down its operations due to circumstances beyond its control.

16. He submitted that when the NDMC has accommodated and admitted students of the school, how can it refuse to absorb its teachers more particularly, when a host of vacant posts are lying in the schools run by NDMC.

17. Learned Senior Counsel argued that the NDMC being an instrumentality of the state which is expected to act as model employer, is acting squarely contrary to such principle and is creating all sorts of technical hurdles to deprive Respondent Nos. 1 to 12 (writ petitioners) of their rights. Having said so, learned Sr. Counsel argued that maybe, it was the fault of the school in not obtaining prior permission before closing down the school but, for this reason alone, the petitioners cannot be denied their rights, who have no control over the affairs of management and who themselves are the sufferers.

18. He argued that to balance the equity, the Court, if deemed appropriate, may direct the School (its management committee) to bear the burden of the salary from the date of closing of the school (01.07.2021), till the date of the judgment of the learned Single Judge dated 02.05.2024 and thereafter, the NDMC may be directed to pay the salary.

19. Learned Senior Counsel further submitted that since the NDMC was



under the directions of this Court to absorb the Respondent Nos. 1 to 12 (writ petitioners) within a period of 10 weeks from the date of the order (i.e. up to 15.07.2024), full salary and emoluments w.e.f. 15.07.2024, be directed to be paid by the NDMC and the appeal be rejected.

20. Learned counsel for Respondent Nos. 14-the Managing Committee of the school, argued that the Committee had applied for prior permission to close the school on 27.02.2021. However, the NDMC, for reasons best known to it, kept the matter pending. He submitted that on the one hand, NDMC neither rejected nor granted the approval for closing the school and on the other hand, ensured, rather facilitated admission of the students studying in the said School. It was vehemently contended by the learned counsel that the NDMC, by its own conduct, has granted the permission to close the School.

21. Learned Counsel for the School argued that NDMC, which is expected to be fair has proceeded vindictively and has on the one hand, kept sitting tight over the matter and on the other hand, did not absorb the erstwhile employees of the school. He argued that since, it was the fault of the NDMC, the Management committee cannot be saddled with the burden of paying the salary to the teachers.

22. Learned counsel invited Court's attention towards paragraph 6 of the counter-affidavit in order to assert that it is an admitted case of the NDMC and the State that prior approval was accorded and, therefore, the NDMC cannot change its stand and contend that prior approval was not taken.

23. Heard learned counsel for the parties.

24. Before dilating upon the arguments advanced by rival counsel, we would like to note that we had put a pointed question before the learned



counsel for the School as to whether the school possess any prior permission for its closure? His answer was in negative.

25. Such being the position, so far as prior permission is concerned, we have to proceed with the finding that no prior permission had been obtained before the closure of the School.

26. There may be different reasons or justification may be because of unavoidable circumstances, for which, the operations of the school had to be closed. However, in the face of the clear mandate contained in Rule 46, of the NDMC Rules, we are of the considered view that the closure of the school was not in accordance with law. It will not be out of place to reproduce Rule 46 and 47 of DSER 1973.

“46. Closing down of a school or any class in a school No managing committee shall close down a recognised school, not being an unaided minority school, or an existing class in such school without giving full justification and without the prior approval of the Director, who shall, before giving such an approval, consult the Advisory Board.

47. Absorption of surplus 1 [employee] etc.

(1) Where as a result of:-

(a) the closure of an aided school or any class or classes in any aided school; or

(b) withdrawal of recognition from an aided school; or

(c) withdrawal of aid from an aided school.

(2) Any student or employee becomes surplus, such student or employee, as the case may be, 2 [may be absorbed] as far as practicable, in such Government school or aided school as the Administrator may specify :

Provided that the absorption in Government service of any employee who has become surplus shall be subject to the availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite qualifications for the post and has not been retrenched by the management of the aided school on any ground other than the



ground of closure of the school or any class or classes of the school, or withdrawal of recognition or aid from the school: Provided further that where any such surplus employee is absorbed in a Government school, he shall be treated as junior to all the persons of the same category employed in the Government Schools on the date immediately preceding the date on which he is so absorbed, and where such surplus employee is absorbed in an aided school, he shall rank as junior to all the persons of the same category employed in that school on the date immediately preceding the date on which he is so absorbed.

(2) Where any surplus 1 [employee] is absorbed under sub-rule (1):—

(a) the salary and other allowance last drawn by him at the school from which he has become surplus shall be protected;

(b) his provident fund account shall be transferred to the school in which he is so absorbed, and thereupon such provident fund shall be governed in accordance with (he rules and regulations in force in that school in relation to provident fund; and

(c) the period of his qualifying service in the school in which he had worked before such absorption and any previous period of qualifying service, if any, in any recognised aided school in Delhi shall be taken into account for the purpose of computing his pension and other retirement benefits.

(3) Without prejudice to the provisions of sub-rules (1) and (2), where an [employee] becomes surplus by reason of the closure of any class or section thereof or the discontinuance of the teaching of any subject, such [employee] [may be absorbed] in the first instance, as far as practicable, in such Government or aided school as the Administrator may specify, and if the class or section which was closed is reopened by the former school or if any new class or section thereof is opened by such school or if the subject, the teaching of which was discontinued, is re-introduced by such school, or strength of the [staff] of the former school is increased, such [employee] shall be reabsorbed in the former school; but if such re-absorption does not take place within a period of five years from the date of absorption of such [employee] in the Government or aided school, such [employee] shall be regularly absorbed in such Government or



aided school, as the case may be.

(4) *Re-absorption of a [employee] in a former school shall not affect his continuity of service or his seniority in relation to that school or his emoluments, provident fund, gratuity and other retirement benefits.*

Explanation:- For the purposes of sub-rules (3) and (4), "former school" means (he school from which an (employee] had become surplus.

Footnotes:

1. *Subs. by DSE(A)R, 1990, R. 10(a).*

2. *Subs. by DSE(A)R, 1990, R. 10(b).*

3. *Subs. by DSE(A)R, 1990, R. 10(c)."*

27. A conjoint reading of Rule 46 and 47 shows that Rule 47 is subject to, if not subservient to Rule 46 and unless a school has been closed with the prior approval of the director after following due process, any student or employee becoming surplus cannot be absorbed.

28. According to us, Rule 47 of the DSER 1973, is not mandatory in nature and does not confer a *Carte Blanche* in favour of the employees to claim absorption not simply because of the use of expression "may be absorbed" but also because of the words "as far as practicable". In any case, since such argument was not advanced by the appellant and the state, so also because of the fact that learned Single Judge has issued directions for their absorption, we do not wish to take a view other than what has been taken by learned Single Judge.

29. The reasons for taking such a view is also that there are a host of posts lying vacant in the Schools run by NDMC, as is evident from the information given to the Respondent Nos. 1 to 12 (writ petitioners) under the RTI Act, hence, the Administrator cannot justifiably deny the absorption of the employees.

30. However, the question which arises for consideration is that who is



the competent authority to pass requisite order of absorbing the employees of a closed-down school? According to Rule 47 of DSER 1973, the said authority is the 'ADMINISTRATOR'.

31. The discretion to absorb a surplus employee, so also the decision in which School such employee shall be accommodated is that of the Administrator, who has within his knowledge the number of Schools aided or otherwise, run by NDMC or the State Government of NCT of Delhi and can take into account while passing the order of absorption.

32. The next issue, which is to be considered, is that whether, in absence of prior approval of the director, a management committee can decide to close down a school?

33. According to us, Rule 46 of DSER clearly prohibits such closing down of a school without prior approval.

34. Maybe, the school had applied for closure on 27.02.2021 but the fact remains that no approval or permission was ever accorded by the director. The NDMC might in the best interest of the students, had accommodated or absorbed the students in other schools but such decision, by itself, can neither be taken to be a deemed permission nor can such decision be framed as acquiescence. We are, therefore, of the firm opinion that since the School was not closed down in accordance with law, the direction to absorb the Respondents could not have been issued.

35. Rival parties have filed and relied upon various counter-arguments and documents about the grant of acceptance of factum of permission to close down the school or its denial. However, without going into these factual disputes, we hold that regardless of the pleadings, since the School has failed to produce any documents showing permission prior to closing the



School, it would be safe to conclude that no such prior permission was obtained by the School from the director.

36. Considering the backdrop facts in which the school came to be closed down and the fact that the students of the school have been given admission in other aided or NDMC-run Schools coupled with the fact that the NDMC had not specifically rejected the application seeking approval to close down school, we are of the view that if the learned Single Judge, in order to meet the ends of justice, has issued direction to absorb the erstwhile employees, no interference is warranted in the impugned order passed by the learned Single Judge.

37. In view of what has been discussed above, we are not inclined to interfere in the substance or the soul of the order passed by the learned Single Judge impugned in present writ petition, being order dated 02.05.2024. However, since it was the School's fault for not obtaining prior permission, we are of the view that the NDMC or the State cannot be saddled with the burden of paying back wages even to the extent of 50%.

38. The appeal is, therefore, partly allowed.

39. While the direction in relation to absorption of the Respondent Nos. 1 to 12 (writ petitioners) is affirmed, judgment of the learned Single Judge is modified to the extent that it shall be required of the Managing Committee of the Respondent-School to send the proposal to the NDMC & the Administrator within two weeks, who shall pass order of absorption qua the respondent Nos.1 to 12 within four weeks of receipt of the proposal so sent by the NDMC. The respondent Nos.1 to 12 shall be entitled to receive due salaries and emoluments (50% of the salary and allowances) as directed by the learned Single Judge *vide* his impugned judgment dated 02.05.2024.



Since the NDMC was supposed to do the needful in 10 weeks, the salary along with allowances etc. upto 15.07.2024 shall be paid by this Management of the School and thereafter the regular salary and other emoluments shall be paid by the NDMC (w.e.f. 15.07.2024). The Respondents Nos. 1 to 12 (writ petitioners) shall, nevertheless, be given the effect to the order of absorption notionally from 15.07.2024, meaning thereby that they shall be placed at the bottom of the seniority in the corresponding schools w.e.f. 15.07.2024

40. A formal order of absorption shall be passed by the Administrator on or before 31.12.2025.
41. Letters Patent Appeal stands disposed of, accordingly.
42. Pending Applications, if any, also stand disposed of.

(DINESH MEHTA)
JUDGE

(VIMAL KUMAR YADAV)
JUDGE

NOVEMBER 19, 2025/MR