



2026:DHC:2351-DB



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

+ LPA 651/2013

TEJINDER KAURAppellant

Through: Mr. Arvind Kumar, adv.

versus

SCHOOL MANAGEMENT OF GURU

HARKISHAN PUBLIC SCHOOL THR

PRINCIPAL & MANAGER & ORSRespondents

Through: Mr. Abinash K. Mishra and Mr.
Gaurav Kumar Pandey, Advs. for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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12.03.2026

C. HARI SHANKAR, J.

1. This appeal assails order dated 16 April 2013 passed by a learned Single Judge of this Court in WP (C) 8040/2011. In the said proceedings, the appellant challenged an order dated 30 September 2011, suspending her from the services of Guru Harkishan Public School¹ as well as a communication dated 18 October 2011 issued by the school initiating a fact-finding inquiry.

2. Having failed in both the challenges before the learned Single Judge, who has dismissed the writ petition by judgment dated 16 April 2013, the petitioner before the learned Single Judge has preferred the present appeal.



3. The sole ground on which the appellant assailed the order of suspension before the learned Single Judge was that the suspension had taken place without obtaining the prior approval of the Directorate of Education².

4. The learned Single Judge has, in para 4 of the impugned judgment, held that as the respondent was an unaided private school, it was not required to obtain any prior approval of the DOE.

5. In arriving at the said conclusion, the learned Single Judge has *inter alia* relied on the judgment of the Division Bench of this Court in ***Kathuria Public School v. Director of Education***³.

6. That aspect of the matter has been considered by this Court in various decisions, one of the most recent being a decision of a Coordinate Bench of this Court, authored by one of us (C. Hari Shankar, J.) in ***Ramjas School Anand Parvat Senior Wing v. Archana Chugh***⁴, in which, after considering the decision in ***Kathuria Public School***, we took the view that the matter was thereafter concluded by the judgment of the Supreme Court in ***Raj Kumar v. Director of Education***⁵.

7. Learned Counsel for the respondent, however, points out that ***Ramjas School*** was not a case of an unaided minority institution. On

¹ “the School” hereinafter

² “DOE” hereinafter

³ 123 (2005) DLT 89 (DB)

⁴ 2025 SCC OnLine Del 1360

⁵ (2016) 6 SCC 541



this aspect, too, the law stands settled against the respondent by the judgment of the Supreme Court in *Frank Anthony Public School Employees' Association v. UOI*⁶.

8. Section 8 of the Delhi School Education Act⁷ occurs in Chapter IV thereof, which is titled “terms and conditions of service and employees of recognised private schools”. Section 8(4) does not, in any manner, except its application to unaided minority schools and covers, on its face, all “recognised private schools”. However, Section 12 of the DSE Act, which also occurs in Chapter IV, states that nothing contained in Chapter IV would apply to an unaided minority school.

9. Section 12 of the DSE Act came up for consideration before the Supreme Court in *Frank Anthony Public School*. In para 21 of the said decision, the Supreme Court has, in unequivocal terms, held Section 12 to be unconstitutional, save and except to the extent that it excludes the applicability of Section 8(2) to unaided minority schools. We reproduce, for ready reference, paras 19 to 21 of *Frank Anthony Public School*, thus:

“19. Section 8(4) would be inapplicable to minority institutions if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in order to prevent an abuse of power by the management a safeguard is provided to the employee that approval should be obtained within 15 days. The

⁶ (1986) 4 SCC 707

⁷ “DSE Act” hereinafter



Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension. The provision appears to be eminently reasonable and sound and the answer to the question in regard to this provision is directly covered by the decision in All Saints High School where Chandrachud, C.J. and Kailasam, J. upheld Section 3(3)(a) of the Act impugned therein. We may also mention that in that case the right of appeal conferred by Section 4 of the Act was also upheld. How necessary it is to afford some measure of protection to employees, without interfering with the management's right to take disciplinary action, is illustrated by the action taken by the management in this very case against some of the teachers. These teachers took part along with others in a "silent march", first on April 9, 1986 and again on April 10, 1986, despite warning by the principal. The march was during the break when there were no classes. There were no speeches, no chanting or shouting of slogans, no violence and no disruption of studies. The behaviour of the teachers appears to have been orderly and exemplary. One would have thought that the teachers were, by their silent and dignified protest, setting an example and the soundest of precedents to follow to all agitators everywhere. But instead of sympathy and appreciation they were served with orders of immediate suspension, something which would have never happened if all the provisions of Section 8 were applicable to the institution.

20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold 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.

21. *The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and*



void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We, therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff.”

10. Though learned Counsel for the respondent sought to contend that paras 19 to 21 of the judgment in *Frank Anthony Public School* are obiter and would not, therefore, be binding, we are unable to accept the argument for three reasons.

11. Firstly, when we read *Frank Anthony Public School* in its entirety, we cannot hold that the findings with respect to Section 12 of the DSE Act are obiter. They are integral, to our mind, to determination of the controversy in *Frank Anthony Public School*.

12. The second reason why we cannot accept the submission is that, when the Supreme Court strikes down a statutory provision, there is no question of treating the said decision as obiter. A statutory provision which is struck down by the Supreme Court ceases to be enforceable in law. It would amount to folly, therefore, if the said decision is either to be treated as obiter or restricted to the facts of the case before the Supreme Court.

13. The third reason why we cannot accept this submission is because even obiter of the Supreme Court is binding on all courts lower in the judicial hierarchy. We may refer, for this proposition, to



***Peerless General Finance & Investment Co. Ltd. v. CIT⁸ and
Municipal Committee v. Hazara Singh⁹***

14. For the aforesaid reasons, it is clear that Section 12 of the DSE Act would not render Section 8(4) inapplicable to unaided minority schools. The sequitur would be that the order suspending the petitioner from service, having been issued without the prior approval of the DOE, would be rendered null and void to that extent as it breaches Section 8(4) of the DSE Act.

15. We may also note, in this context, that though Chapter V of the DSE Act contains “provisions applicable to unaided minority schools”, there is no provision in Chapter V which deals with suspension, unlike Section 8(4) of the DSE Act. To the extent of the requirement of obtaining prior approval of the DOE before suspending an employee from service, it is clear that Section 8(4) would apply to all recognised private schools aided or unaided, minority or non-minority.

16. We, therefore, set aside the impugned judgment of the learned Single Judge to the extent that it has rejected the petitioner’s challenge to the order dated 30 September 2011 suspending her from service. Resultantly, the order of suspension would also stand quashed and set aside and WP (C) 8040/2011 filed by the petitioner before the learned Single Judge would stand allowed to that extent.

⁸ (2020) 18 SCC 625

⁹ (1975) 1 SCC 794



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17. We are, however, not inclined to interfere with the decision of the learned Single Judge, insofar as he has not chosen to entertain the challenge to the preliminary enquiry. The school had clearly stated before the learned Single Judge that the preliminary enquiry was merely fact finding in nature and that, if disciplinary proceedings were to result, they would take place in accordance with the provisions of the Act. Mr. Arvind Kumar, learned Counsel for the appellant has not been able to show us any law or provision which could restrain the respondent from holding such a preliminary fact finding authority. To the extent that the writ petition challenged the holding of the fact finding authority, therefore, we uphold the decision of the learned Single Judge that the challenge was misconceived.

18. We have also been informed that, after the passing of the impugned order, disciplinary proceedings ensued, following which the petitioner was terminated from service and that the challenge was, thereafter, taken to the Delhi School Education Tribunal where, too, the petitioner did not succeed and that a further challenge thereto is pending before a learned Single Judge of this Court.

19. Needless to say, though we have set aside the order of suspension, any substantive relief could enure to the petitioner only if she succeeds in her challenge before the learned Single Judge against the order of termination.

20. As such, our decision on the order of suspension would be subject to the outcome of the challenge by the petitioner to her order



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of termination from service.

21. The appeal is disposed of in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 12, 2026

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