

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

Date of Decision : 15.02.2010

+ CS(OS) 24/2007

MS. ROSETTA WILLIAMS ..... Plaintiff  
Through: Mr. T.N. Bhatt and Mr. P.L. Chopra, Advocates.

versus

DELHI PUBLIC SCHOOL SOCIETY ..... Defendant  
Through: Sh. V.P. Singh, Sr. Advocates with Mr. Puneet  
Mittal and Mr. Manoj Kumar, Advocates.

**CORAM:**

**MR. JUSTICE S. RAVINDRA BHAT**

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to Reporter or not?  | Yes. |
| 3. | Whether the judgment should be reported in the Digest?                    | Yes. |

**MR. JUSTICE S.RAVINDRA BHAT**

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1. The plaintiff seeks a declaration that the order of suspension made against her, by the defendant (hereafter called “the DPS School” is null and void.

2. The suit contends that the plaintiff is a renowned educationist, with several achievements to her credit and also that she is recipient of several awards, etc. It is submitted that the DPS school has been regarded as a success in the education field, and has affiliation with the CIE-Cambridge, London. The suit also says that every school in Delhi comes within the ambit of the definition “school” under the Delhi School Education Act (hereafter “the Act”). For this, the plaint refers to Section 2 (u) of the Act. It is stated that the Principal of the school is to be regarded as the head of the school, and entitled to be treated as such, with all the powers, conferred for the purpose. The suit refers to Clause XVII of the Memorandum of Association of the DPS Society. The suit also adverts to Rule 59 framed under the Act, which

talks of the scheme of Management of every recognized school; the managing or governing body would include the Head of school. The plaintiff also refers to guideline No. 2 relating to the school, to say that she is an integral part of the school's managing body.

3. The suit further states that the principal is an *ex-officio* member of the Managing Committee of the school, and that such committee was constituted on 7-9-2004, with Shri V.M. Thapar as its chairman. By dint of the plaintiff's effort, says the suit, the DPS society's pupil population reached 900. It is submitted that under the plaintiff's leadership and guidance, the school achieved laurels; she relies on press clippings of the time, during early 2006, as well as a letter dated 28-1-2006, issue on the school's behalf, commending her for the contribution in respect of the O level performance achieved by the students at that time. The plaintiff also relies on other documents, such as copies of proposals made by her in relation to the school's improvement, and the fact that she was nominated as member of the Managing Committee of another DPS school, at Allahabad. In sum, it is argued that the plaintiff's contribution was substantial for the growth and excellence of the school, for which the latter acknowledged her work, at every stage.

4. In support of the contention that the school is governed by provisions of the Act, the plaintiff relies on the copy of a letter dated 27<sup>th</sup> February, 2006, addressed by the school to the Director, School Education on its behalf by the officiating secretary. The copy of a form submitted to the Directorate, seeking recognition of the DPS school has also been submitted. These documents were admitted (but contents denied) by the school; it is exhibited as Ex. D-1. Reliance is also placed on Ex. P-9, a letter dated 5-12-2006, with reference to the requirement of furnishing the scheme of management of DPS schools, for the purpose of recognition of the defendant school.

5. The plaintiff contends that such being the position, the school, with *mala fide* intent, excluded her from the reconstituted Managing Committee; the document produced in this regard is the resolution of the DPS society dated 20-12-2006, in which her name is absent. It is contended that this move is contrary to Rules 182 to 185 of the rules framed under the Act, which contemplate not only the principal's presence in the governance of a school, and that too as an active participant.

6. The plaintiff submits that by an order dated 20-12-2006, the defendant appointed a Director, although there is no such provision either under the Act or the Rules. The said office order is as follows:

"With immediate effect Mrs. Aruna Ummat, Director in the DPS Society, will also take charge as Director DPS International, Saket. She will be in supervisory charge of all financial and administrative matter and will supervise the general work of Principal DPS International, Saket. She will report to the Managing Committee of the School and specifically to the Chairman of the Managing Committee of the School."

It is submitted that above action is in conflict with Rule 59 (2) (h) (ii). It is submitted that the said order, appointing a director of the school, was challenged as illegal and arbitrary, and contrary to provisions of the Act, by filing CS (OS) 2401/2006, seeking permanent injunction against the school, as well as mandatory injunction, in respect of her (the plaintiff's) functioning as Principal. The suit is pending in this Court. It is alleged that the Court made an order, in respect of the meeting scheduled for 28-12-2006; however, the school became aware of it, and when the plaintiff went to the school, she was asked to leave the meeting, after which the impugned suspension order was issued. It is contended that the suspension is illegal and unsustainable, as it is contrary to the mandate of Section 8 (4) of the Act, and Rule 115, as well as an office order of the Directorate, dated 2-4-1997 (a copy of which has been produced along with the list of documents filed with the plaint). The office order had required all unaided schools in Delhi to seek prior approval, of the department (Directorate) before suspending an employee.

7. The defendant school challenges the maintainability of the suit, contending that the cause of action pertains to a service contract, in respect of which the plaintiff cannot seek declaratory relief, having regard to the relationship of parties as private employer and employee. It is argued also that the Act and Rules do not apply (to the school) and that it (the school) is not a recognized institution under its provisions.

8. The school contends that the plaintiff cannot also seek the relief of declaration, in view of Section 25 of the Act, which bars maintainability of the suit, in regard to matters for which the Director or his nominee have jurisdiction. It is also argued that assuming that the Act or Rules do apply, the appropriate remedy for the plaintiff is not a suit, but to approach the Education Tribunal, under Section 11 of the Act, in view of the decision of a Division Bench in *Kathuria Public School v. Director of Education*, 2005 (6) AD (Del) 893. That judgment had held that:

*“42. No restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal. Under the said Act in question, the Tribunal is already constituted. Thus, all that is to be done is that the Tribunal should be able to hear all grievances including in respect of suspension by a teacher or an employee. Taking into consideration the observations made by the Apex Court in T.M.A.Pai Foundation case (supra), we are of the considered view that pending necessary legislative action by the State, the Tribunal constituted should be able to hear all grievances of the staff and teacher and not necessarily as restricted to in Sub section (2) of Section 8 of the said Act. The result would be that if a teacher is aggrieved by a suspension order or its prolongation, the grievance can be made before the Tribunal depending upon the fact and circumstances of the case.”*

9. It is argued that in any event, in view of the circumstance that the school is not recognized under the Act, and its *regime* does not apply, the Court should follow the Supreme Court ruling in *The Principal and others v The Presiding Officer & others*, 1978 (1) SCC 498, where it was held as follows:

*“6. From the above definitions, it is clear that no school can be treated as a 'recognised school' unless it is recognised or acknowledged by the 'appropriate authority'. In case of the School in question, it is the Administrator or the officer authorised by him who could accord recognition to it. A perusal of letters dated April 6, 1976, February 1, 1977 and June 6, 1977 of the Directorate: of Education, New Delhi (at pages 90, 95 and 162 of the record) makes, it clear beyond any shadow of doubt that the School was not recognised in terms of the Act till the end of April, 1977 and it was only with effect from May 1, 1977 i.e. long after the relevant date viz. August 8, 1975 that the approval or recognition was accorded to it vide letter No. F.22(15)Z-XI(B)-1968/2003 dated June 6, 1977 of the Directorate of Education, Rajinder Nagar, New Delhi. This position has been admitted even by respondent No. 2 in para 4 of the Supplementary Affidavit filed by him before this Court. Even according to para 2 of the said affidavit, the recognition of the School by the competent authority was not there on the relevant date. The observations of the Tribunal in regard to the point under consideration appear to be based on a misconception of the true legal position. It seems to think that since the name of the School figured in the list of the Higher Secondary and Middle Schools in the Union Territory of Delhi for 1974-75 prepared by the Statistical Branch of the Directorate of Education of the Delhi Administration, the School must be treated as a 'recognised school'. This is clearly a wrong assumption. The fact that the name of the School finds a mention in the aforesaid list is not enough to clothe it with the status of a 'recognised school'. It appears to us that since the School was affiliated to the Board, the Delhi Administration caused its name to be included in the aforesaid list. The fact that the School is affiliated or attached to the Board is also of no consequence and cannot justify the conclusion that the School is a 'recognised school'. There is a significant difference between 'affiliation' and 'recognition'. Whereas 'affiliation', it may be noted, is meant to prepare and present the students for public examination, 'recognition' of a private school is for other purposes mentioned in the Act and it is only when the School is recognised by the 'appropriate authority' that it becomes*

*amenable to other provisions of the Act. Again the fact that the School was in existence at the commencement of the Act cannot confer on it the status of a recognised school and make it subject to the provisions of the Act and the rules made thereunder. To clothe it with that status, it is essential that it, should have been a 'recognised private school as contemplated by the Act. Nothing has, however, been brought to our notice to show that it was an 'existing school' as defined in Section 2(j) of the Act. In view of all this, we have no hesitation in holding that the School was not a 'recognised private school' on the relevant date and was, therefore, not amenable to the provisions of the Act.*

*7. Re. Point No. 2 : Sub-section (2) of Section 8 of the Act ordains that 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 of Education. From this, it clearly follows that the prior approval of the Director of Education is required only if the service of an employee of a recognised private school is to be terminated. As in the instant case, the School was not a recognised private school, the approval of the Director of Education was not at all necessary to make the order of termination of service of respondent, No. 2 valid and legal”*

10. The school denies the various allegations and contentions made by the plaintiff, and says that the averments about illegal changes in the memorandum and appointment of director being contrary to law are baseless. It justifies the suspension order impugned in the suit, saying that it was, after consideration of a report by the auditors, in relation to certain expenditure sanctioned as well as incurred at the behest of the plaintiff, which were irregular.

11. Counsel for parties were heard on the question of maintainability of the suit, in view of the preliminary objections of the defendant. They reiterated the positions reflected in the pleadings, and also pointed out to the documents filed on the record. This Court, on 27-2-2007, permitted an inquiry, which had been instituted by the school, in the meanwhile, to continue, but also recorded the following condition, on the basis of the school's statement:

Learned counsel for the defendants submits that enquiry will be carried out following the principles of natural justice. After the enquiry report is finalised, the same shall be placed before the disciplinary authority/managing committee who will file their recommendations in a sealed cover before this Court.

The parties admitted and denied their respective documents, on 25<sup>th</sup> August, 2009. The case was thereafter listed before Court, for consideration, at the stage of framing issues. The defendant, in addition to other submissions, also argued that the enquiry permitted by the court, was conducted by Mr. Justice R.C. Chopra (retired) who presided over the proceedings. He submitted his report, dated 25-9-2008, to the management; a copy of the report has been placed on record, in a sealed cover. The defendants say, in their application, IA 13908/2008, that they had taken a decision, on the basis of the report, through the managing Committee meeting of 16<sup>th</sup> October, 2008. In the application, they seek liberty to act on the decision, so taken.

12. The above discussion would show that the plaintiff is seeking a declaration that the order of suspension, made against her is illegal and unenforceable. It is argued that the order violates mandatory provisions of the Act and Rules, that mandate prior approval (before such suspension) and that the order could not have been made by the Managing Committee, which is improperly constituted. The defendant disputes the applicability of the Act, arguing that it is not a recognized school; it also submits that in any event, the relief of declaration pertains to a contract of personal service, which is incapable of specific performance. The defendant submits further that in any event, even if the suit averments are held to be correct, the suit is not maintainable in view of the bar under Section 25 and the *Kathuria Public School (supra)* decision of the Division Bench.

13. The Act applies to recognized schools, as held by the Supreme Court, in *The Principal (supra)* case. It would be relevant here to extract certain provisions:

“Section 2....

t) "**recognised school**" means a school recognised by the appropriate authority;  
u) "**school**" includes a pre-primary, primary, middle and higher secondary school, 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;....”



The provision pertaining to recognition of schools, is contained in Section 3; it reads as follows:

**“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 thereunder and any school or higher class established or opened other than in accordance with the provisions of this Act shall not be recognised by the appropriate authority.*

**(4) Recognition of schools-** (1) *The appropriate authority may on 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 1 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.*

(2) *Every application for recognition of a school shall be entertained and considered by the appropriate authority and the decision thereon shall be communicated to the applicant within a period of four months from the date of receipt of the application; and where recognition is not granted, the reasons for not granting such recognition shall also be communicated to the applicant within the said period.*

(3) *Where recognition to a school is refused, any person aggrieved by such refusal may, within thirty days from the date of communication to him, of such refusal, appeal against such refusal, in the prescribed manner, to the prescribed authority and the decision of the prescribed authority thereon shall be final :*

*Provided that the prescribed authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of thirty days, extend, for reasons to be recorded by it in writing, the said period by a further period of sixty days.”*

14. Section 8, *inter alia*, deals with certain aspects relating to conditions of service of employees and teachers, which every recognized school has to follow. The relevant part of Section 8 reads thus:

**“8. Terms and conditions of service of employees of recognised private schools- (1)** The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognized private schools....

(4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such-suspension shall be made except with the prior approval of the Director :

Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct within the meaning of the Code of Conduct prescribed under section 9, of the employee :

Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.

(5) Where the intention to suspend, or the immediate suspension of an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension.”

Section 11 prescribes for the constitution of a tribunal, to be manned by a District Judge (or equivalent) level judicial officer; the jurisdiction of the tribunal, *inter alia*, is in respect of disciplinary matters relating to employees and teachers of recognized schools, as provided under Section 8 (3). Section 25 bars jurisdiction of the civil court, and reads as follows:

**“25. Jurisdiction of civil Courts barred-** No civil Court shall have jurisdiction in respect of any matter in relation to which the Administrator or the Director or any other person authorised by the Administrator or Director or any other officer or authority appointed or specified by or under this Act, is empowered by or under this Act to exercise any power, and no injunction shall be granted by any civil court in respect of anything which is done or intended to be done by or under this Act.”

15. It is evident from a facial consideration of Sections 8 (4) of the Act and Section 25, that the civil court’s jurisdiction, in respect of matters to which “*the Administrator or the Director or any other officer or authority appointed or specified by or under this Act, is empowered....to exercise any power...*”, is barred. Now, it is absolutely clear beyond any doubt, that the plaintiff is seeking relief *in respect of matters* over which “*...the Director....is empowered by or under this Act to exercise any power...*” In fact, the plaintiff’s precise grievance is in respect of the power conferred under Section 8 (4); she complains that the impugned suspension order was issued without following the procedure. This grievance – about the suspension order – would also arise, in every case where the permission to suspend is granted. In other words, if the plaintiff’s contentions were accepted, wherever the school



does not seek, or seeks and is granted permission, by the director or any other officer authorized to exercise such power, the suit would, regardless of Section 25, be maintainable. Such construction is, in this Court's opinion, unfeasible, as it negates the categorical bar under Section 25 "*No court shall have jurisdiction in respect of any matter in relation to which...*" and denudes its content, in respect of all kinds of action covered by Section 8. It is therefore, held that Section 25 is a bar to maintainability of the present suit, for declaration. The provision does not apply only in respect of claims for injunctive relief, but in respect of all matters, over which the Director can exercise jurisdiction.

16. The second aspect is the plaintiff's contention that the provisions of the Act apply to all schools, and that the defendant is a recognized school. In the list of documents filed, no doubt, the plaintiff has produced copies of certain letters, and also a form, which sought recognition of the school. Yet, in the Court's opinion, these are insufficient to disclose whether the school at all was granted recognition. The plaintiff says in the suit that the school is affiliated to the CIE-Cambridge, London. Under Section 3 (4) of the Act, a school has to apply for recognition; the lodging of an application does not automatically result in grant of such recognition, or a deeming fiction that such recognition follows. In fact, the use of the expression "may" in the provision suggests that the authority has discretion to grant or not grant recognition, having regard to the relevant facts. No doubt, there are provisions suggesting that the application has to be considered within a time frame; yet there is no express provision enacting that in the absence of any communication, there is a deemed recognition.

17. In the *The Principal* judgment, the Supreme Court underlined the need for a specific order granting recognition to the school, failing which it is not considered as a "recognized school" within the meaning of Sections 2 (t) and 3 of the Act. In this case, the plaintiff's reliance on the application – seeking recognition, can at best lead to the inference that the school had applied for recognition; there is, however, nothing on record to show that such recognition was granted. The suit has been pending for these last four years; the plaintiff has filed two lists of documents, yet has not been able to produce the recognition order.

18. The last aspect is as to the contention that even if it were assumed that the school is governed by provisions of the Act, nevertheless, the judgment of the division bench, in *Kathuria Public School*, requires her to approach the school tribunal. The scheme of Section 8 (3) is such that any employee of any recognized school aggrieved by an order of dismissal, reduction in rank, or removal, has to approach the tribunal, which derives jurisdiction under Section 11. That position, however, changed with the decision of the Supreme Court, in

*T.M.A. Pai v State of Karnataka*, 2002 (8) SCC 481, where a majority of 11 judges held that provisions mandating prior approval for suspension, in relation to teachers, etc., in private unaided schools, cannot be imposed. Following that ruling, the Division Bench, in *Kathuria*, held that employees aggrieved by orders of suspension can appeal to the school tribunal.

19. In view of the above discussion, it is apparent that even if the plaintiff can establish that the school is a recognized one, under the Act, by virtue of Section 25 the present suit is barred; her remedy is to approach the tribunal, in respect of the impugned suspension order. No decree for declaration, of the kind sought can be granted.

20. For the above reasons, this Court finds that the present suit is not maintainable. However, nothing said here will preclude the plaintiff's remedies available to her under law. The suit is therefore, rejected in exercise of the powers conferred under Order VII, Rule 11 (d) of the Code of Civil Procedure. All pending applications, too, are disposed of. In the circumstances of the case, the parties shall bear their costs.

15<sup>th</sup> February, 2010

**(S.RAVINDRA BHAT)**  
**JUDGE**