Gajanand Sharma vs Adarsh Siksha Parisad Samiti on 19 January, 2023

Author: M. R. Shah

Bench: C.T. Ravikumar, M. R. Shah

REPOR

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 100-101 OF 2023
(@ SLP(C) NOS. 12645-12646 OF 2022)

Gajanand Sharma ...Ap

Versus

Adarsh Siksha Parisad Samiti & Ors. ...Res

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.05.2022 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Special Appeal Writ Nos. 1077/2005 (filed by the management) and 826/2011 (filed by the employee), by which the Division Bench of the High Court has allowed the appeal preferred by the respondent(s) herein – management and has quashed and set aside the judgement and order passed by the learned Single Judge and the order passed by the learned Tribunal quashing and setting aside the order of termination dated 06.08.1998 and consequently upheld the same, the employee has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under: -

> 2.1 That the appellant herein – employee was serving with respondent Nos. 1 and 2. A disciplinary enquiry was initiated against him under provisions of the Rajasthan Non-Governmental Educational Institutions Act, 1989 (hereinafter referred to as the Act, 1989). That thereafter on conclusion of the departmental enquiry services of the appellant came to be terminated which was the subject matter of challenge before the learned Tribunal. The Tribunal set aside the order of termination by observing and holding that the prior approval of the Director of Education as mandatory under Section 18 of the Act, 1989 was not obtained. The learned Single Judge confirmed the order passed by the learned Tribunal. By the impugned judgment and order and

> despite the fact that the decision of this Court in the case of Raj Kumar Vs. Director of Education and Ors., (2016) 6 SCC 541 dealt with the pari materia provisions of the Delhi School Education Act (hereinafter referred to as the DSE Act), taking the view that before termination of an employee, prior approval of the Director of Education is mandatory and required, the Division Bench of the High Court has not followed the decision of this Court in the case of Raj Kumar (supra) by erroneously observing that in the case of Raj Kumar (supra), this Court had not considered the earlier decision in the case of T.M.A. Pai Foundation Vs. State of Karnataka; (2002) 8 SCC 481. That thereafter, after following the decision of the Larger Bench of the High Court in the case of Central Academy Society Vs. Rajasthan Non-Govt. Educational Institutional Tribunal; (2010) 3 WLC 21 reading down Section 18 of the Act, 1989, observed that in case of a termination after the disciplinary enquiry/proceedings prior approval of the Director of Education is not required, the Division Bench of the High Court has allowed the writ appeal and has set aside the orders passed by the learned Tribunal as well as the learned Single Judge and has upheld the order of termination. That the impugned judgment and order passed by the High Court is the subject matter of one of the present appeals. At this stage, it is required to be noted that letters patent appeal (D.B. Special Writ Appeal) No. 826/2011 was the subject matter of order dated 06.01.2011 passed by the learned Single Judge denying the case of the appellant for equal pay for equal work.

However, since the termination order came to be upheld, thereafter, without further entering into the merits of the appeal, the Division Bench of the High Court has dismissed the said appeal, which is also the subject matter of one of the present appeals.

3. Now so far as the impugned judgment and order passed by the Division Bench of the High Court upholding the order of termination and quashing and setting aside the orders passed by the learned Tribunal and the learned Single Judge is concerned, it is vehemently submitted by the learned counsel appearing on behalf of the appellant – employee that as such the High Court has materially erred in not following the binding decision of this Court in the case of Raj Kumar (supra). It is submitted that though not permissible, observing and holding that the decision of this Court in the case of Raj Kumar (supra), the Division Bench of the High Court has not followed the decision in the case of Raj Kumar (supra) on the ground that in the case of Raj Kumar (supra), this Court had not considered the decision in the case of T.M.A. Pai Foundation (supra). It is submitted that the aforesaid is factually incorrect. It is submitted that as such while passing the judgment and order in the case of Raj Kumar (supra) this Court had taken into consideration at least in more than 8-9 paragraphs the decision of this Court in the case of T.M.A. Pai Foundation (supra) (paragraphs 13, 42, 43, 47, 50-52, 61 & 64). It is submitted that therefore, the Division Bench of the High Court has seriously erred in not following the binding decision of this Court in the case of Raj Kumar (supra).

3.1 It is further submitted by the learned counsel appearing on behalf of the appellant that as such in the case of Raj Kumar (supra) while dealing with and considering the pari materia provisions of DSE Act, namely, Section 8 of the DSE Act, this Court has specifically observed and held that before terminating an employee even in case of a non- aided institution, the prior approval of the Director

of Education is mandatory. It is submitted by the learned counsel appearing on behalf of the appellant that while holding so this Court did consider the decision of this Court in the case of T.M.A. Pai Foundation (supra). It is submitted that therefore, the Division Bench of the High Court has materially erred in taking the contrary view than the decision of this Court in the case of Raj Kumar (supra) and the Division Bench of the High Court has materially erred in relying upon the Larger Bench's judgment/decision in the case of Central Academy Society (supra) and taking the view that in case of termination followed by the disciplinary proceedings/enquiry, Section 18 requiring the prior approval of the Director of Education shall not be applicable.

3.2 It is submitted that even in the case of Marwari Balika Vidyalaya Vs. Asha Srivastava; (2020) 14 SCC 449 after following the decision of this Court in the case of Raj Kumar (supra), it is observed and held that before terminating/dismissing an employee, the prior approval of the Direction of Education is required/mandatory. 3.3 It is further submitted by the learned counsel appearing on behalf of the appellant that the decision in the case of Raj Kumar (supra) has been subsequently followed by the Delhi High Court in the case of Mangal Sain Jain Vs. Principal Balvantray Mehta Vidya Bhawan & Ors. [W.P. (C) No. 3415/2020] against which the Special Leave Petition filed by the management has been dismissed by this Court in the case of Principal Balvantray Mehta Vidya Bhawan Vs. Mangal Jain vide order dated 11.01.2021. Therefore, it is submitted that the Division Bench of the High Court has materially erred in restoring the order of termination by observing that in a case of non- aided institution and in a case where the termination is after the disciplinary enquiry/proceedings, the prior approval of the Director of Education is not mandatory. 3.4 Making the above submissions and relying upon the decision of this Court in the case of Raj Kumar (supra), it is prayed to allow the present appeals.

4. Present appeals are vehemently opposed by the learned counsel appearing on behalf of the management - respondent(s).

4.1 It is vehemently submitted by the learned counsel appearing on behalf of the management that as such the decision of this Court in the case of Raj Kumar (supra) and T.M.A. Pai Foundation (supra) shall not be applicable to the facts of the case on hand as in the aforesaid decisions, it was a case of termination without holding any disciplinary enquiry/departmental proceedings. In the case of Raj Kumar (supra) this Court was considering Section 8 of the DSE Act. It is submitted that in the present case as such the order of termination was passed after following a departmental enquiry and after all the charges and the misconduct held to be proved. It is submitted that therefore first part of Section 18 of the Act, 1989 shall not be applicable.

4.2 Learned counsel appearing on behalf of the management has heavily relied upon Larger Bench decision of Rajasthan High Court in the case of Central Academy Society (supra). It is submitted that the Larger Bench of the High Court has dealt with and/or considered the very provision, namely, Section 18 of the Act, 1989 and has read down the same after considering the decision in the case of T.M.A. Pai Foundation (supra) and has observed and held that in case of termination of an employee after departmental enquiry/proceedings, Section 18 of the Act, 1989 shall not be applicable and the prior approval of the Director of Education is not required.

4.3 It is further submitted that even otherwise in the present case, the order of termination is not required to be set aside on the ground that the prior approval of the Director of Education was not obtained as the disciplinary committee was consisted of District Education Officer. It is submitted that the Committee, of which a nominee of the District Education Officer was a member, held all the charges and the misconduct alleged proved. It is submitted that the charges and the misconduct proved against the appellant were very serious of abusing, misbehaving, and threatening the school Principal, embezzlement of school funds and being negligent in handling school property. It is submitted that therefore, when in the disciplinary committee a nominee of the District Education Officer was member, the order of termination without even the prior approval of the Director of Education is not required to be set aside.

4.4 Making the above submissions, it is prayed to dismiss the present appeals.

5. At the outset, it is required to be noted that and it is an admitted position that parties are governed by the Rajasthan Non-Governmental Educational Institutions Act, 1989. Section 18 provides that no employee of a recognized institution shall be removed, dismissed, or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken and that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorized by him in this behalf has been obtained. The learned Tribunal set aside the order of termination on non-compliance of Section 18 of the Act, 1989 inasmuch as before terminating the services of the appellant – employee prior approval of the Director of Education was not obtained. The same came to be confirmed by the learned Single Judge, however, by the impugned judgment and order taking a contrary view, the Division Bench of the High Court has allowed the appeal and has restored the order of termination.
5.1 From the impugned judgment and order passed by the High Court, it appears that before the High Court the decision of this Court in the case of Raj Kumar (supra) taking a contrary view and taking the view that before terminating the services of an employee of a recognized institution prior approval of the Director of Education is required was pressed into service. However, though impermissible the Division Bench of the High Court has not followed the said binding decision by observing that in the case of Raj Kumar (supra), this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra). Apart from the fact that the same is wholly impermissible for the High Court even the said observations are factually incorrect. If the decision in the case of Raj Kumar (supra) is seen in more than 8-9 paragraphs, this Court had referred to and as such dealt with the decision of this Court in the case of T.M.A. Pai Foundation (supra). Even the decision in the case of T.M.A. Pai Foundation (supra) was explained and considered by this Court in the case of Raj Kumar (supra). Therefore, the Division Bench of the High Court is factually incorrect in observing that while deciding the decision in the case of Raj Kumar (supra) this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra). Before commenting upon the decision of this Court in the case of Raj Kumar (supra) the Division Bench of the High Court ought to have thoroughly read and/or considered the decision in the case of Raj Kumar (supra). Even after making the incorrect observations that in the case of Raj Kumar (supra) this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra) the Division Bench of the High Court has considered few decisions of judicial discipline which were not applicable at all. Judicial discipline also requires that the judgment/decision of this Court

should be considered and read thoroughly. As observed hereinabove, the decision of this Court in the case of Raj Kumar (supra) was binding upon the High Court. Therefore, the Division Bench of the High Court has seriously erred in not following the decision of this Court in the case of Raj Kumar (supra).

5.2 Now so far as the decision of this Court in the case of Raj Kumar (supra) is concerned, this Court was considering pari materia provisions under the DSE Act. This Court was considering Section 8 of the DSE Act, which reads as under:-

> "8. (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." 5.3 Similar is the provision so far as Section 18 of the Act, 1989 is concerned which reads as under: -
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> "18. Removal, dismissal or reduction in rank of employees.- Subject to any rules that may be made in this behalf, no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken;
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> Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained." 5.4 In the case of Raj Kumar (supra) while dealing with the pari materia provision under the DSE Act and after considering the decision of this Court in the case of T.M.A. Pai Foundation (supra), it is specifically observed and held by this Court that in case of a recognized institution, before terminating the services of an employee, prior approval of the Director of Education is required.

Therefore, a contrary view taken by the Larger Bench of the High Court relied upon by the Division Bench of the High Court is not a good law. It is required to be noted that the decision of this Court in the case of Raj Kumar (supra) has been considered by this Court in the case of Marwari Balika Vidyalaya (supra) and also by the Delhi High Court in the case of Mangal Sain Jain (supra). In the case of Marwari Balika Vidyalaya (supra) this Court considered the decision in the case of Raj Kumar (supra) and object and purpose of Section 8 of DSE Act in paragraphs 13 and 14 as under: -

> "13. In Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court

observed : (SCC p. 560, para

45) "45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent school. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school."

14. This Court has laid down in Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short "the DSE Act") was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to the reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management." 5.5 Even on fair reading of Section 18 of the Act, 1989, we are of the opinion that in case of termination of an employee of a recognized institution prior approval of the Director of Education or an officer authorised by him in this behalf has to be obtained. In Section 18, there is no distinction between the termination, removal, or reduction in rank after the disciplinary proceedings/enquiry or even without disciplinary proceedings/enquiry. As per the settled position of law the provisions of the statute are to be read as they are. Nothing to be added and or taken away. The words used are "no employee of a recognized institution shall be removed without holding any enquiry and it further provides that no final order in this regard shall be passed unless prior approval of the Director of Education has been obtained." The first part of Section 18 is to be read along with first proviso. Under the circumstances, taking a contrary view that in case of dismissal/removal of an employee of a recognized institution which is after holding the departmental enquiry the prior approval of the Director of Education is not required is unsustainable and to that extent the judgment of the Larger Bench of the Rajasthan High Court in the case of Central Academy Society (supra) is not a good law.

5.6 Therefore, on true interpretation of Section 18 of the Act, 1989, it is specifically observed and held that even in case of termination/removal of an employee of a recognized institution after holding departmental enquiry/proceedings prior approval of the Director of Education has to be obtained as per first proviso to Section 18 of the Act, 1989.

6. In view of the above and for the reasons stated hereinabove, the impugned judgment and order passed by the Division Bench of the High Court restoring the order of termination which as such was

without obtaining the prior approval of the Director of Education deserves to be quashed and set aside and is accordingly quashed and set aside. The order of learned Tribunal setting aside the order of termination confirmed by the learned Single Judge is hereby restored. Consequently, the appellant shall have to be reinstated in service and considering the fact that the respondent(s) is/are un-aided institution and the order of termination was passed as far as back in the year 1998, we direct that the appellant shall be entitled to 50% of the back wages, however, he shall be entitled to all other benefits notionally including the seniority etc., if any. 6.1 Civil appeal No. 100/2023 arising out of the impugned judgment and order passed in D.B. Special Appeal Writ No. 1077/2005 is hereby allowed according to the aforesaid extent.

6.2 Now so far as Civil Appeal No. 101/2023 arising out of the impugned judgment and order passed in D.B. Special Appeal Writ No. 826/2011 is concerned, the Division Bench of the High Court has not at all dealt with the said appeal on merits while upholding the order of termination. Therefore, we set aside the order passed by the High Court in D.B. Special Appeal Writ No. 826/2011 and remand the matter to the High Court to decide the same afresh in accordance with law and on its own merits. Both the appeals are accordingly allowed to the aforesaid extent and in terms of the above. In the facts and circumstances of the case there shall be no order as to costs.

……J. (M. R. SHAH) ……J. (C.T. RAVIKUMAR) NEW DELHI, JANUARY 19, 2023.