

**New Delhi Municipal Council and Another
v.
Manju Tomar and Others**

(Civil Appeal No(s). 7440-7441 of 2012)

28 August 2024

[Hima Kohli and Sandeep Mehta,* JJ.]

Issue for Consideration

Matter as regards, the Delhi Sikh Gurdwara Management Committee-DSGMC, challenging the order passed by the High Court, whereby the NDMC was directed to reimburse the pay and perquisites including the pension and other benefits accruing to the staff of the school and then to recover the same from DSGMC.

Headnotes[†]

Delhi School Education Rules, 1973 – rr. 46, 47 – Closing down of a school or any class in a school – Absorption of surplus [employee] – School being run by Delhi Sikh Gurdwara Management Committee-DSGMC receiving 95% grant from NDMC, and remaining 5% contribution made by the DSGMC towards the budget of the school, closed down without due approval of Director, NDMC – Issue as regards, re-employment and payment of salaries of the surplus teachers and non-teaching staff upon closure of the school – Order passed by the High Court, whereby the NDMC directed to reimburse the pay and perquisites including the pension and other benefits accruing to the staff of the school and then to recover the same from DSGMC – Challenge to:

Held: r.47 cannot be invoked by DSGMC so as to claim that the burden of re-employment and payment of salaries of the surplus teachers and the non-teaching staff upon closure of the school would be that of the NDMC – Absorption only arises when the closure of the school is done in accordance with law, which requires a full justification and prior approval of the Director as per r.46 – Since the closure of the school was undertaken de hors r.46, the submission that the onus to absorb the surplus

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teaching and non-teaching staff would be that of the NDMC, has no legal sanction and cannot be sustained – Bar of limitation would not come in the way of the NDMC in seeking reimbursement of the amounts paid to the staff of the school from the DSGMC – Principal amount having already been paid by NDMC, the direction given by the High Court for payment of interest to the staff of the school, in terms of the impugned judgment does not call for interference – NDMC to pay all remaining dues including interest to the staff of the school, within the stipulated period – NDMC entitled to seek reimbursement of the amounts paid to staff of the school from the DSGMC, in case the DSGMC voluntarily fails to reimburse the said amount. [Paras 18, 19, 21-26]

List of Acts

Delhi School Education Act, 1973; Delhi School Education Rules, 1973.

List of Keywords

Closure of the school; Re-employment; Payment of salaries of surplus teachers and non-teaching staff; Unaided minority school; Absorption; Legal sanction; Reimbursement; Arrears of the salary/pension; Retiral benefits; Payment of principal amount; Limitation; Payment of interest.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7440-7441 of 2012

From the Judgment and Order dated 09.12.2009 of the High Court of Delhi at New Delhi in LPA No. 441 and 442 of 2009

With

Civil Appeal Nos. 7442-7444 of 2012

Appearances for Parties

Yoginder Handoo, Ashwin Kataria, Garvit Solanki, Ms. Medha Gaur, Ritesh Khatri, Advs. for the Appellants.

Pukhrambam Ramesh Kumar, Karun Sharma, Ms. Anupama Ngangom, Ms. Rajkumari Divyasana, Ritesh Khatri, M. C. Dhingra, Advs. for the Respondents.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****Mehta, J.**

1. Heard.
2. These appeals filed by New Delhi Municipal Council¹ (hereinafter being referred to as 'NDMC') and Delhi Sikh Gurdwara Management Committee² (hereinafter being referred to as 'DSGMC') arise out of a common judgment dated 9th December, 2009 passed by the High Court of Delhi in Letters Patent Appeal Nos. 441 and 442 of 2009 and hence, they have been heard and are being decided together.

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3. Facts in a nutshell relevant and essential for disposal of the appeals are noted hereinbelow.
4. The appellant-DSGMC was managing and operating a school, namely, Khalsa Boys Primary School (in short 'school'), constructed by it in the premises of the Gurudwara Bangla Sahib, New Delhi. The school was initially started with 130 students, five teachers including the Headmistress, 2 peons and one helper. The school was receiving 95% grant from the NDMC and remaining 5% contribution was made by the appellant-DSGMC towards the budget of the school. Respondents No. 1, 5, 6, 7 and 8 were employed as the Headmistress, Assistant Teacher, Water Women, Sweeper-cum-Chowkidar, Chowkidar, respectively in the school.
5. It is claimed that over a period of time, the building of the school became old and dilapidated and also, considering the growing number of devotees visiting the Gurudwara, the appellant-DSGMC was finding it difficult to run the school on a day-to-day basis. The appellant-DSGMC, therefore, decided to shift the school from its existing location to a new premises i.e. at Mata Sundari College, Old Building, New Delhi. Since the school was receiving 95% grant from the NDMC, the appellant-DSGMC moved the NDMC seeking permission to shift the school.

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6. Upon receiving information about the proposed shifting of the school by the appellant-DSGMC, the Headmistress and other staff of the school challenged the said proposal by filing Writ Petitions³ in the High Court of Delhi. An *ex-parte* stay order dated 30th May, 2005 was passed by the learned Single Judge of High Court of Delhi, staying the proposed shifting of the school. However, in spite of the stay order being granted and having been communicated, the appellant-DSGMC demolished a substantial part of the school building thereby, making it non-functional. Consequent to the demolition of the school building, the NDMC stopped the grant-in-aid under Rule 69 of the Delhi Education Act and Rules, 1973 (hereinafter after being referred to as 'Delhi Education Rules') on the reasoning that it was under an obligation to provide grant-in-aid to schools which fell within its territorial jurisdiction and that the alternate location selected by the appellant-DSGMC, i.e., Mata Sundari College was outside the jurisdiction of the NDMC.
7. The High Court of Delhi disposed of the above writ petitions *vide* order dated 6th October, 2005 with a direction to the NDMC to consider and decide within four weeks as to whether *ex-post facto* sanction could be granted to the appellant-DSGMC to close down the school since the same was being shifted to an area which was outside the jurisdiction of the NDMC, thus, the shifting could lead to the closure of the school. Following the direction given by the High Court, the NDMC issued an order dated 14th February, 2006 whereby, it invoked Rule 55(1) of the Delhi Education Rules and noted that *ex-post facto* sanction could not be granted for running the school at the Mata Sundari College because it fell beyond its jurisdiction and consequently, it was decided to withdraw the recognition and to stop the grant-in-aid to the school being run by the appellant-DSGMC.
8. The teaching as well as non-teaching staff of the school filed fresh writ petitions⁴ in the High Court of Delhi, seeking a direction for absorption in a NDMC/Government aided school and also to command the appellant-DSGMC to pay them the salaries and other service benefits.

3 WP(C) Nos. 9951-52/2005

4 WP(C) Nos. 13044-55/2006

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9. The said writ petitions were later amended and the order of the NDMC dated 14th February, 2006 was also assailed by the teaching as well as non-teaching staff of the school. The writ petitions were disposed of by the learned Single Judge *vide* order dated 13th July, 2009 in the following manner:-
 - (i) NDMC was directed to pass a speaking order afresh within four weeks from the date of receipt of the decision reflecting as to whether *ex-post facto* sanction in terms of Rule 46 of Delhi Education Rules could be granted to the appellant-DSGMC to close down the school and if not why;
 - (ii) The appellant-DSGMC would continue to pay the salaries to the serving staff and pensionary benefits to petitioners No. 6 to 12(respondents No. 8 to 14 herein) w.e.f. March, 2006, till the NDMC passed a fresh order in terms of the decision.
10. The above order of the learned Single Judge was assailed by the then serving teachers/staff and the retired teachers of the school before the Division Bench of the High Court by filing two Letters Patent Appeals,⁵ which were allowed *vide* order dated 9th December 2009, with the following directions:
 - (i) Pay the arrears of salary;
 - (ii) Employ the petitioners No. 1-5(respondents No. 1-5 herein) in a Government or Government-aided school within twelve weeks of the order dated 9th December, 2009 i.e. by 8th March, 2010;
 - (iii) Otherwise, the DSGMC would be required to pay the petitioners No. 1-5(respondents No. 1-5 herein) the full pay and all perquisites from 4th March, 2010 onwards;
 - (iv) NDMC was directed to pay to petitioners No. 6 to 12(respondents No. 8 to 14 herein) the entire arrears of salary/retiral benefits with simple interest @ 9% per annum within twelve weeks. NDMC was further directed to regularly transfer pensionary amounts directly to the bank accounts of the petitioners No. 6 to 12(respondents No. 8 to 14 herein). However, NDMC was given liberty to seek reimbursement of the entire amount, as

⁵ LPA No. 441 of 2009 in Ms. Manju Tomar & Ors. v. NCT & Ors. & LPA No. 442 of 2009 in Ms. Santosh Kaur & Ors. v. NCT & Ors.

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directed above, from the appellant-DSGMC which had closed the school without prior approval of the appropriate authority;

- (v) After re-employment, the tenure, seniority, pay scales and perquisites of the in-service staff i.e. the petitioners No. 1 to 5(respondents No. 1 to 5 herein) would not be adversely affected just because of closure of the school;
 - (vi) Since the petitioners No. 1 to 5(respondents No. 1 to 5 herein) had not worked during the period 2006-2009, they would be entitled to receive only 50% of their pay and perquisites but this period would be counted for the purposes of their seniority and for computing their pensionary and other statutory benefits.
11. The said common order of the Division Bench of the High Court is assailed in these appeals preferred by the NDMC and the appellant-DSGMC, respectively.
12. We have heard and considered the submissions advanced by learned counsel for the parties and have gone through the impugned judgments and the material placed on record.
13. The following facts as emerging from the record are not in dispute:-
- (i) That appellant-DSGMC demolished a substantial part of the school building without seeking permission from the competent authority, i.e., NDMC, leading to the closure of the school.
 - (ii) That the demolition was undertaken in spite of an interim stay order passed by the High Court of Delhi on 30th May, 2005 in Writ Petition(Civil) Nos. 9951-52 of 2005, staying the proposed shifting of the school.
 - (iii) The recognition and grant extended to the school was withdrawn by the NDMC *vide* order dated 14th February, 2006, and as a corollary thereto, the appellant-DSGMC was no longer entitled to receive 95% grant which was provided by the NDMC for running the school in the premises of the Gurudwara. Thus, the obligation to reimburse the pay and other service benefits accruing to the teaching and non-teaching staff of the school fell upon the appellant-DSGMC.
 - (iv) That the appellant-DSGMC did not challenge the decision of the NDMC dated 14th February, 2006, withdrawing the recognition and the grant-in-aid, before any forum.

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- (v) That the employees of the school have filed a Contempt Petition⁶ before the High Court of Delhi wherein, the learned Single Judge *vide* order dated 1st October, 2019 observed as below: -

“In effect, the respondent no. 4 in the LPA namely: Delhi Sikh Gurdwara Management Committee, Guru Gobind Singh Bhawan, Gurdwara Rakabganj, New Delhi-110001, was required to do the following:

- i) pay the arrears of salary;
- ii) employ the petitioners in a Government or Government-aided school within twelve weeks of the order dated 09.12.2009 i.e. by 08.03.2010.
- iii) otherwise, the DSGMC would be required to pay the petitioners the full pay and all perquisites from 04.03.2010 onwards.

Admittedly, the employment was not done till 30.01.2018. There is a delay of roughly eight years, short of 36 days. Respondent no. 4-DSGMC had offered employment to the petitioners by its letter dated 17.08.2010 calling upon them to join Guru Tegh Bahadur International School, Fatehabad, Haryana. The petitioners declined to join the said school, because the said offer was not in accordance with the directions of this Court i.e. the school was neither Government owned nor Government-aided. Furthermore, it was situated in Haryana and not in Delhi.

Keeping the said response in mind, the DSGMC offered yet another employment at their various schools in Delhi, however, yet again none of these schools were either Government owned or Government-aided. Hence, the petitioners expressed their reservations in joining the said schools. Their concern primarily was that their service conditions and employment benefits should not be affected, which indeed, had been secured by the order of the Division Bench dated 09.12.2009 and 08.02.2010.

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The petitioners replied to the DSGMC on the same date on which they received the offer i.e. 28.08.2010. Their reply reads as under:

“The job offered to us is not as per the judgment of the Delhi High Court dt. 9/12/09 & 8/2/10, in which Para 15, 17 & 20 clearly says that job should be on same terms & conditions on which they were employed when Primary school was owning in the NDMC area. So Please give us job in Govt/Govt-Aided School as per High Court judgement to avoid contempt of Supreme Court dt 9/8/10. We have also filed Affidavit in this connection. In The Supreme Court dt 27/8/10.”

Subsequent to this reply, there was no communication to any of the petitioners by DSGMC. In the absence of such communication, the offer from the DSGMC did not exist. Hence, DSGMC is in breach of the orders of the Division Bench and the orders which had directed that all the five petitioners be re-employed within twelve weeks of the order dated 09.12.2009. The said time got over on 08.03.2010.

Due to the non-compliance the second limb of the order becomes operative. Resultantly, the petitioners are entitled to full pay and all perquisites from 04.03.2010 onwards till 30.01.2018. Respondent no. 4-DSGMC shall, therefore, pay the petitioner nos. 1 to 5 their full pay and all perquisites in terms of the order of the Division Bench dated 08.02.2010. The said monies shall be paid to them within four weeks from the date of receipt of this order. The interest on the delay will be considered thereafter.

The due amounts shall be credited directly into the bank accounts of the petitioners, who shall supply their respective bank account details, to Respondent no.4-DSGMC directly as well as through counsel. Respondent no. 4 shall furnish the computation of the amounts due to each of the petitioners within the next two weeks and shall pay the due amounts by 13.12.2019.”

(emphasis added)

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14. The appellant-DSGMC assailed the aforesaid order passed by the learned Single Judge by filing a Letters Patent Appeal⁷ which was dismissed *vide* order dated 15th March, 2023 for want of prosecution. Hence, the order dated 1st October, 2019 has attained finality.
15. A bare perusal of the above order would clearly indicate that the offer of re-employment made by the appellant-DSGMC to the teaching and non-teaching staff of the school was not found to be *bona fide* as the same was not in conformity with the directions given by the High Court.
16. Thus, in the present appeals, the only issue which requires adjudication is as to whether the appellant-DSGMC has any valid ground so as to assail the impugned judgment of the High Court dated 9th December, 2009, whereby the NDMC was directed to reimburse the pay and perquisites including the pension and other benefits accruing to the staff of the school and “**then to recover the same from the appellant-DSGMC**”.
17. Shri Ritesh Khatri, learned counsel representing the appellant-DSGMC, while referring to Rule 47 of the Delhi Education Rules, urged that where as a result of closure of a recognised school, or withdrawal of the recognition, the staff of the school becomes surplus, they may be absorbed as far as possible in a Government school or aided school. As per learned counsel, the teachers and other staff of the school who became surplus on account of closure of the school would be entitled to the benefit under Rule 47 of the Delhi Education Rules. Thus, in sum and substance, the contention of learned counsel representing the appellant-DSGMC is that the NDMC and the Director (Education), NDMC are primarily responsible for absorption and payment of salary and other service benefits to the staff, which became surplus on account of closure of the school. However, we find it difficult to sustain this argument which is fallacious on the face of record. The closure which is contemplated in Rule 47 of the Delhi Education Rules has to be a valid closure, i.e., having been carried out with the prior approval of the Director as provided under Rule 46 of the Delhi Education Rules which reads as under:-

7 LPA No. 732 of 2019 in Majinder Singh Sora & Anr. v. Manju Tomar & Ors.

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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."

18. A bare perusal of the above Rule concludes beyond the pale of doubt that no recognised school or an existing class in the school, except an unaided minority school, shall be closed without offering full justification and without the prior approval of the Director.
19. Admittedly, the school in question being run by the appellant-DSGMC was receiving 95% grant from NDMC, and the same was closed down without due approval of the Director (Education), NDMC. As a consequence, the appellant-DSGMC cannot be allowed to take the shield of Rule 47 of the Delhi Education Rules so as to claim that the burden of re-employment and payment of salaries of the surplus teachers and the non-teaching staff upon closure of the school would be that of the NDMC. The question of absorption only arises when the closure of the school is done in accordance with law, which requires a full justification and prior approval of the Director as per Rule 46 *supra*. Since the closure of the school in question was undertaken *de hors* Rule 46, the argument advanced on behalf of the appellant-DSGMC that the onus to absorb the surplus teaching and non-teaching staff would be that of the NDMC, has no legal sanction and cannot be sustained.
20. As a result, we do not find any merit in Civil Appeal Nos. 7442-7444 of 2012 preferred by the appellant-DSGMC, which are hereby dismissed. No costs.

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21. The NDMC, being the appellant in these appeals, is primarily aggrieved of the direction given by the Division Bench in the impugned judgment dated 9th December, 2009, that it should bear the burden of the pay and other service benefits accruing to the surplus school staff including the pension pursuant to the illegal closure of the school by the DSGMC. However, we may note that a clear direction was given by the High Court in the impugned judgment that the appellant-

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NDMC would be entitled to seek reimbursement of the entire amount from the DSGMC, because it illegally closed the school without prior approval of the appropriate authority.

22. This Court, while entertaining the special leave petitions, *vide* order dated 7th July, 2010 had directed the appellant-NDMC to make payment of the entire arrears of the salary/pension and other retiral benefits to the respondents, i.e., staff of the school within three weeks. During the course of submissions, learned counsel representing the appellant-NDMC apprised the Court that the NDMC has already paid the principal amount to the staff of the school and now the only issue which survives is regarding the interest component which was kept open for further consideration.
23. During the course of his submissions, learned counsel for the appellant-NDMC urged that since the reimbursement was made in the year 2010, DSGMC might take a defence of the recovery being barred by limitation. However, we are of the firm view that since this Court, while passing the order dated 7th July, 2010 has left the question of reimbursement of the amount being paid by the appellant-NDMC open, the apprehension expressed by the learned counsel representing the appellant-NDMC that its endeavour to seek reimbursement of the amount may be opposed with a plea of being barred by limitation, is unfounded by this Court. Since the issue of seeking reimbursement was left open with a specific observation being made in this regard in the order dated 7th July, 2010, the bar of limitation would not come in the way of the appellant-NDMC in seeking reimbursement of the amounts paid to the staff of the school from the DSGMC.
24. Since the principal amount has already been paid by the appellant-NDMC, there is no reason for this Court to interfere with the direction given by the Delhi High Court for payment of interest to the respondents, i.e., staff of the school, in terms of the impugned judgment.
25. Hence, we direct that appellant-NDMC shall pay all remaining dues including interest to the respondents-staff of the school, within a period of eight weeks from today.
26. It is clarified and reiterated that the appellant-NDMC shall be entitled to take recourse of the appropriate remedy for reimbursement of the amounts paid to respondents-staff of the school from the DSGMC, in case the DSGMC voluntarily fails to reimburse the said amount.

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27. We also grant leave to the appellant-NDMC to seek impleadment in the pending Contempt Petition No. 805 of 2016 before the High Court of Delhi so as to seek a direction for reimbursement of these amounts.
28. The Civil Appeal Nos. 7440-7441 of 2012 are accordingly disposed of in the above terms. No costs.
29. Pending application(s), if any, shall stand disposed of.

Result of the case: Civil Appeal Nos. 7440-7441 of 2012
disposed of.

Civil Appeal Nos. 7442-7444 of 2012
dismissed.

[†]*Headnotes prepared by:* Nidhi Jain