

Unrecognized Schools: Right to be or not to be?

- Prashant Narang with inputs from Mimansa Ambastha

Recently, a Single Judge in [Shaheed Udham Singh Smarak v Suman Lata and Ors, W.P.\(C\) nos. 3723/2012 and 193/2011 in the High Court of Delhi, Judgment dated 9th Sep. 2013](#) held that the termination of teacher/employees of any school- whether recognized or unrecognized, can be appealed before the DST under Section 8(3) of the Delhi School Education Act 1973 ('Act').

Facts

A writ petition was filed challenging the order of the Delhi School Tribunal (DST) dated 17.5.2012. The DST by the impugned order held the termination of services of the respondent teachers as illegal for want of enquiry as per Rule 120 of the Delhi School Education Act and Rules, 1973 ('DSEAR') which is applicable to recognized schools only. Counsel for the petitioner school consequently appealed before the Delhi High Court and argued that the provisions of DSEAR, i.e. the filing of an appeal under Section 8(3) by a teacher/employee, will not apply to the petitioner-school which is an unrecognized school. (Reliance placed on *The Principal and Ors V. The Presiding Officer and Ors*¹).

Analysis

The Court based its reasoning on four grounds: (i) the judgment of the Division bench of the Delhi High Court in *Social Jurist, a Civil Rights Group v. GNCT & Ors.*² implies that the entire Act including Section 8(3) is applicable to unrecognized schools; (ii) As per *Kathuria Public School v. Director of Education*,³, provisions of DSEAR will also apply to unaided private unrecognized schools; (iii) *Presiding Officer* redundant now, i.e. times have changed since Supreme Court delivered the judgment in 1978 in *Presiding Officer* based on literal interpretation of the section; (iv) as per *Shashi Gaur vs. NCT of Delhi and Ors*⁴, appeal against every type of termination of services of a teacher/ employee of a school has necessarily to be filed before the DST.

Firstly, in *Social Jurist Case*,⁵ while extrapolating the applicability of recognition norms to unrecognized schools, the Division Bench did not consider the question of applicability of other provisions of DSEAR on unrecognized schools. It is not disputed that a plain reading of the provisions, especially Section 3(1), would show that the administrator has the power to regulate education in 'all the schools in Delhi'. But to conclude, all the provisions thereof, including Section 8(3) that expressly apply to only recognized schools, would also apply to unrecognized schools, is judicial overreach. Especially when the *Social Jurist* judgment in itself

¹ 1978 (1) SCC 498

² 147 (2008) DLT 729

³ 123 (2005) DLT 89 (DB)

⁴ 2001 (10) SCC 445

⁵ As per [an order dated 2.04.2009](#) by the Hon'ble Supreme Court, no schools are to be closed down before the Committee constituted to oversee the matter submits its final report and recommendations.

does not cite any Supreme Court rulings that would justify such a radical alteration of the letter of the law found in the DSEAR and *Presiding Officer*.

Secondly, the Court ignored the literal and plain meaning of Section 8(3). Section 8 falls under Chapter IV of the Act, titled 'Terms and Conditions of Service of Employees of Recognized Private Schools'. Section 8(3) clearly states that 'any employee of a *recognized* private school' may challenge his termination of employment within three months before the Tribunal. The plain meaning rule dictates a statute is to be interpreted using the ordinary meaning of the language unless a statute explicitly defines some of its terms otherwise or unless the result would be cruel or absurd. This is because the intention of the legislature is indicated primarily by the words it has framed as law. In light of the plain meaning of Section 8(3), it becomes obvious that for the present issue at hand the Court ignored the text of the statute itself, by implication refusing to the law laid down by the legislature. Instead, it chose to rely on the broad meaning of Section 3 which in the present matter was relatively irrelevant as the matter concerning appeals by teacher employees fell squarely within Section 8(3).

Thirdly, the Court essentially held *Presiding Officer* to now be irrelevant, as "much water has been flown under the bridge since the Supreme Court delivered the judgment in the year 1978 ..."⁶ The rule of precedent requires a lower court to follow the ratio laid down by the higher court; however, the High Court chose to ignore the clear holding of the Supreme Court in *Presiding Officer*, and instead chose to uphold the ruling of a Division Bench of the Delhi High Court in the more recent case of *Social Jurist*.

Fourth, the Court erroneously interpreted the ratio in *Shashi Gaur* which lays down that any kind of *termination* would become liable to be challenged before the DST but not any kind of *school*. This means that while a teacher's employment terminated by a recognized school can be challenged irrespective of the grounds underlying the same, there is no such court dictate when it comes to unrecognized schools. But the Court interpreted otherwise.

Fifth, the judgment does not explain the relevance of *Kathuria Public School* wherein it was held that "the provision of Section 8(2) of DSEAR providing for requirement of prior approval of Director of Education to be obtained for terminating the services of the teachers/employees of a school will not apply to unaided private schools". Paragraph seven lacks explanation as to how *Kathuria Public School* makes it "clear that provisions of DSEAR will also apply to unaided private unrecognized schools".

It is pertinent to mention that the judgment is currently in appeal in [LPA 827/2013](#) before the Division Bench in the High Court of Delhi wherein the Bench has granted an interim stay on the said judgment via [order dated 1.11.2013](#).

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⁶ Shaheed Udham Singh Smarak v. Suman Lata And Ors. W.P.(C) Nos. 3723/2012, Para 9