



2026:DHC:5360-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 12327/2021 and CM APPLs. 38764/2021 and
38765/2021

HEMA BAJAJ

.....Petitioner

Through: Mr. Khagesh B Jha, Ms. Shikha
Sharma Bagga and Ms. Shivani, Advs.

versus

RAO MEHAR CHAND SARASWATI

VIDYA MANDIR SCHOOL AND ORS.Respondents

Through: Mr. Rajesh Gupta and Mr.
Harpreet Singh, Advs. for R-1 & 2
Mr. V. Balaji and Mr. Nizamuddin, Advs.
for DOE

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT(ORAL)

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03.07.2026

C. HARI SHANKAR, J.

1. This matter was listed before this Full Bench pursuant to an order dated 28 March 2026 passed by a learned Single Judge of this Court as, in the opinion of the learned Single Judge, there was a conflict in views between two Division Benches of this Court in *Sharda Devi Sanskrit Vidyapeeth v. Director of Education*¹ and

¹ 2016 SCC OnLine Del 3950



Delhi Public School Dwarka v. Sarika Prasad².

2. The issue in controversy is short.
3. Section 8(4) of the Delhi School Education Act, 1973 reads thus:

“8. Terms and conditions of service of employees of recognised 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.”

4. The referred issue pertains only to the second proviso to Section 8(4). The learned Single Judge observes that there is a divergence of opinion between the two Division Benches regarding the consequence which would result if approval under the second proviso is granted *after the expiry of 15 days* from the placement of the employee under suspension in exercise of the power conferred by the first proviso.

² 2022 SCC OnLine Del 3374



5. We have heard Mr. Khagesh B Jha, learned Counsel for the petitioner and Mr. Rajesh Gupta, learned Counsel for the respondents, at length.

6. Mr. Gupta has drawn our attention to para 16 of the judgment of this Court in *Sharda Devi Sanskrit Vidyapeeth*, which holds that, even if the suspension order would not continue after the period of 15 days envisaged in the second proviso of Section 8(4) expires, it would stand revived if approval is granted thereafter. The paragraph reads thus:

“16. It could be urged that sub-section 4 to section 8 refers to prior approval before an order of suspension is passed, and in the present case Ganesh Ram Bhatt had throughout remained under suspension post 30th April, 2011 and a formal order of suspension after the approval of the Director dated 13th January, 2012, was never passed. *We would not like to read Section 8(4) of the Act in a narrow and technical manner and would rather refer and rely on the intent behind the provision.* Issuing a new or confirmatory letter of suspension on or after 13th January, 2012 would have been a ministerial act and a redundant formality. *It is not that Ganesh Ram Bhatt was not suspended and had not remained under suspension post 13th January, 2012. He had not worked.* We are examining whether the continued suspension of Ganesh Ram Bhatt would be legal and valid. *The appellant-school had always treated and considered Ganesh Ram Bhatt as suspended. Once the approval was granted it can be held that there was compliance with Section 8(4) of the Act and henceforth the suspension was as per the law and valid. The suspension thereafter would be as per the mandate and requirement of the section 8(4) for the approval of the Director exists and is on record.* When approval/sanction is granted after more than 15 days, the approval/sanction is not non est and a nullity. The Full Bench of the Delhi High Court in the *Delhi Public School (supra)*³ had observed that the Managing Committee in the event of non grant of approval by the Director may find it expedient not to take work, but would have to pay the entire salary. Thus Ganesh Ram Bhatt though under suspension,

³ *Delhi Public School v. Director of Education, 2003 (67) DRJ 419 (FB)*



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would be entitled to full salary and allowances for the period when the suspension was unapproved. Post the approval, Ganesh Ram Bhatt would be paid the suspension or subsistence allowance.”

(Emphasis supplied)

7. With great respect to the learned Authors of the decision in *Sharda Devi Sanskrit Vidyapeeth*, we are not able to subscribe to this view. The statute, to our mind, is clear in its terms. In a case where the managing committee decides to suspend an employee with immediate effect without prior approval of the director and, therefore, invokes the first proviso to Section 8(4), that suspension can only extend up to a period of 15 days from the date of passing of the order. In case no approval of the director is received within a period of 15 days, the second proviso to Section 8(4) is categorical that the suspension would come to an end. Any approval granted to the suspension thereafter would, therefore, be of no consequence, as there *was* no suspension in existence. It is not possible to breathe life into a dead body.

8. We are also not, with respect, able to bring ourselves to agree with the italicized observations in para 16 of *Sharda Devi Sanskrit Vidyapeeth*, as extracted *supra*.

9. The Division Bench notes that the petitioner before it had not remained under suspension post the expiry of 15 days from the issuance of the suspension order, and had not worked. That factor, to our mind, is irrelevant. The issue of whether the suspension could be revived *after* 15 days from the date of its issuance under the first proviso to Section 8(4), or not, is agnostic of the issue of whether, in



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fact, the employee worked, or did not work, beyond the said period. In fact, the employee was clearly *entitled* to be allotted work, as his suspension had expired by efflux of time, and, if he was not allotted work, the fault, in that regard, would lie with the establishment, which could not be permitted to earn capital thereby.

10. We are also not in agreement with the observation that the employee had remained under suspension post 13th January 2012, when the period of 15 days envisaged by the second proviso to Section 8(4) expired. He was not under suspension any longer. The default of the employer in allowing him to rejoin work cannot result in continuance of the suspension of the employee, contrary to the clear mandate of the second proviso to the sub-section. If “the appellant-school had always treated and considered Ganesh Ram Bhatt as suspended”, that was clearly illegal, and in the teeth of the statute.

11. The Division Bench also holds that, “once the approval was granted, it can be held that there was compliance with Section 8(4) of the Act”. Again, we respectfully differ. Grant of approval *within* 15 days of the suspension would comply with the second proviso to Section 8(4). Grant of approval *after* 15 days would certainly not.

12. For the same reason, we are unable to subscribe to the further observation, in para 16 of *Sharda Devi Sanskrit Vidyapeeth*, that “the suspension thereafter would be as per the mandate and requirement of Section 8(4)”.

13. Mr. Gupta has also drawn our attention to the judgment of the



Full Bench of this Court in ***Delhi Public School***. Para 30 of the said judgment reads thus:

“30. In fairness to Mr V.P. Singh, we may state that the main ground on which he wanted reading down of the provisions of Section 8 of the Act was his apprehension to the effect that even in a case where the alleged misconduct committed by an employee of the school is serious warranting immediate suspension and further even when the circumstances of the case justify the approval by the Director of Education, the Director of Education and/or his subordinate functionaries may defeat the objective by intentionally delaying the matter and thereby ensuring that no decision is taken within 15 days from the date of communication of the order of suspension. We have already stated that the petitioner has not challenged the vires of Section 8 of the Act. That apart, in such a situation the Managing Committee of the school would not be remediless. Illegal and/or arbitrary exercise of jurisdiction by the Director of Education in a given case can always be subject-matter of judicial review and in such a case it would always be open to the Managing Committee of the school to challenge the inaction and/or wrong decision of the Director of Education. We may observe here that it is the statutory duty cast upon the Director to take appropriate decision within 15 days as to whether approval is to be given or not. He cannot, by delaying the matter beyond 15 days, make it a fait accompli. *No doubt, if no decision is taken within 15 days from the days of communication of the order of suspension, the necessary consequence thereof is that the suspension order lapses. However, that does not mean that if no decision is taken at all or the matter is unnecessarily delayed, it would not be permissible for the Managing Committee of the school to insist the Director of Education to take a decision even after 15 days of the communication of the order of suspension. If such a decision is taken, though belatedly, the fresh order of suspension can always be passed. Further, if the Director of Education takes a decision and refuses to accord his approval to the order of suspension and if the Managing Committee in such a case feels aggrieved by that decision, it is always open for the Managing Committee to challenge the decision of the Director of Education by appropriate proceedings on well-established grounds of judicial review that would be available to the Managing Committee in a given case.*”

[Emphasis supplied]

14. To our mind, the legal position elucidated in the italicised part of para 30 of the decision in ***Delhi Public School*** lays down the



correct principle. In case the order of suspension passed in exercise of the first proviso to Section 8(4) has not received the approval of the Director within 15 days of its passing, the order comes to an end. Thereafter, it is certainly open to the authorities to take a view that the employee is required to be *again* suspended, *in which case they would have to pass a fresh order of suspension*. That is the mandate of the law, and, to our mind, cannot be regarded as either “redundant” or a mere ministerial act, as held in *Sharda Devi Sanskrit Vidyapeeth*.

15. As Mr. Jha correctly points out, the Full Bench has placed reliance on the judgment of the Supreme Court in *Mrs. Y. Theclamma v. UOI*⁴. We may reproduce the following words from the said decision:

“13. One should have thought that in a case like the present where the management charged the petitioner with diversion of funds and communicated the impugned order of suspension pending departmental inquiry to the Director, there would be some response from him. The management did not formally apply for his prior approval in terms of sub-s. (4) of s. 8 of the Act in view of the declaration by the High Court that it being a linguistic minority educational institution, it was protected under Art. 30(1) and no prior approval of the Director was required. Nevertheless, it took the precaution of communicating the impugned order of suspension to the Director. Presumably, the Director refrained from passing any order according or refusing approval having regard to the judgment of the High Court. In view of the recent decision in *Frank Anthony Public School*⁵ case, it must be held that the institution was governed by sub-s. (4) of s. 8 of the Act and therefore there was a duty cast on the Director to come to a decision whether such immediate suspension was necessary by reason of the gross misconduct of the petitioner as required by sub-s. (5) of s. 8. We refrain from expressing any opinion as to the seriousness or otherwise of the charge as that is a matter to be enquired into by a departmental proceeding. *The fact however remains that there was no response from the Director within the*

⁴ (1987) 2 SCC 516

⁵ *Frank Anthony Public School Employees' Assn. v. Union of India*, (1986) 4 SCC 707



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*period of 15 days as envisaged by the second proviso to s. 8(4). As a result of this, the impugned order of suspension has lapsed and it is so declared. Although the impugned order of suspension has lapsed, the management may yet move the Director for his prior approval under sub-s. (4) of s. 8 of the Delhi School Education Act, 1973, and the Director shall deal with such application, if made, in accordance with the principles laid down in **Frank Anthony Public School's** case."*

[Emphasis supplied]

16. Thus, the Supreme Court has also clearly held that, on the expiry of 15 days from the passing of the order of suspension in exercise of the first proviso to Section 8(4), in the absence of any approval from the Director of Education, the order of suspension lapses. In case any fresh order of suspension has to be passed, fresh prior approval from the Director of Education has to be obtained under Section 8(4). This also indicates that there is no question of any subsequent approval reviving the suspension order which had already lapsed.

17. In fact, the decision of the Division Bench in *Sharda Devi Sanskrit Vidyapeeth* is, with respect, contrary both to the judgment of the Supreme Court in *Y. Theclamma* as well as the decision of the Full Bench in *Delhi Public School*.

18. Accordingly, we answer the question referred to us by holding that, if no approval is received to the order of suspension passed in exercise of the power conferred by the first proviso to Section 8(4) of the Delhi School Education Act within 15 days of the passing of the order of suspension, the suspension would automatically come to an end. Any later order of approval passed by the Director of Education would not revive the said suspension. We, therefore, agree, in



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principle, to the view expressed in *Sarika Prasad* and express our respectful disagreement with the view expressed by the Division Bench in *Sharda Devi Sanskrit Vidyapeeth*. The question referred to us stands answered accordingly.

19. List the main writ petition before the concerned Bench as per roster on 31 July 2026, subject to orders of Hon'ble the Chief Justice.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

RENU BHATNAGAR, J.

JULY 3, 2026/AR