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TERMINATING EMPLOYEES NOT EASY ANYMORE FOR SCHOOLS

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With strict regulations being implemented on schools from time to time, the Delhi schools have been saddled with another compliance to be followed before terminating services of their employees as has been clarified by the Supreme Court of India (“**SC**”) in its recent judgment passed in the matter of Raj Kumar vs. Director of Education & Others (“**Judgment**”). While considering in detail the provisions of the Industrial Disputes Act, 1947 (“**ID Act**”) and the Delhi School Education Act, 1973 (“**DSE Act**”) relating to termination of services of employees by schools, the SC interpreted Section 8(2)¹ of the DSE Act which requires obtaining prior approval of the Director of Education (“**DoE**”) before passing any order of dismissal or termination of services of its employees by school. The SC in its Judgment has, inter alia, observed that Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that an order of termination or dismissal is not passed without the prior approval of DoE.

Though Section 8(2) was existing in the DSE Act since its enactment, the High Court of Delhi (“**DHC**”) had in the matter of Kathuria Public School vs. Director of Education and Another struck down the provision by placing reliance on the judgment of TMA PAI Foundation vs. State of Karnataka passed by the Constitution Bench of the SC in the year 2002. However, the SC has in its recent Judgment clarified that the DHC erred in striking down Section 8(2) of the DSE Act and also distinguished the law laid down by the Constitution Bench in TMA PAI. The SC also observed that functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, however the same should be in tandem with the conditions of employment of employees in these institutions.

While discussing the power of the State Legislature to legislate, the SC concluded that the State Legislature is empowered in law to enact provisions similar to Section 8(2) of the DSE Act, with the intent to provide security of

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tenure to the employees of the school and to regulate the terms and conditions of their employment. This is a crucial observation made by the SC in its Judgment as it upholds the power of legislature of other States to enact such provisions for their respective States as well as to the role of judiciary to enforce such protective provisions in the education sector.

Remarks: The observations made by the SC in its Judgment being significant, are a wake-up call for the schools pan India to assess the applicable provisions of law especially related to termination and retrenchment of employees and take measures to ensure compliance. On the other hand, the Judgment certainly is a sign of relief for the employees of the schools in Delhi, especially the ones who are not “workman” and thus do not have the shelter of ID Act and end up suffering the unfair treatment at the hands of the school management. While the Judgment deals with a case falling within the provisions of the ID Act and the DSE Act, (thus its applicability to the schools in Delhi), it would be necessary for the schools in other States to assess provisions of the applicable educational laws (particularly the ones relating to terms of employment and dismissal similar to Section 8(2) of the DSE Act) to evaluate its implication and the consequent impact of the Judgment, on its power of termination.

[¹] Section 8: Terms and conditions of service of employees of recognized private schools –

- (1)
- (2) Subject to any rule that may be made in his behalf, no employee of a recognized 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.

Feedback

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