

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI  
DIRECTORATE OF EDUCATION  
OLD SECRETARIAT, DELHI-110054

DE/15(154)/Act-I/SLP1020/2011/2016/११७४-११११५ Dated the 20<sup>th</sup> May, 2016


ORDER

**Whereas** Hon'ble High Court of Delhi in Kathuria Public School v. Director of Education in WP © 3935/2005, vide judgment dated 22.07.2005, has held, -

"42. The result of the aforesaid is that the provisions of Sections 8(2) and 8(4) of the said Act, Rules 115(2) & (5) and 120(1)(d)(iii) & (iv) and 120(2) of the said Rules requiring ex-post facto approval for prior and disciplinary proceedings would have no application to private unaided schools. As a sequator to that, sub section (5) of Section 8 would also really have no application to such private unaided schools...."

**And Whereas**, Hon'ble Supreme Court of India in Civil Appeal No. 1020 of 2011 in the matter of Raj Kumar v. Directorate of Education and others vide judgment dated 13.04.2016 has discussed the provisions of section 8 and connected rules requiring prior or post facto approval of the Director of Education for imposing penalty upon the employee of an unaided private recognized schools and the judgment of Hon'ble High Court of Delhi in Kathuria Public School v. Director of Education in WP © 3935/2005 decided on 22.07.2005, and has held as under,-

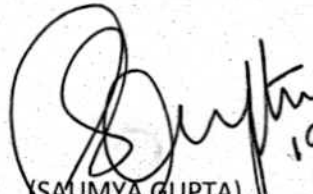
"The Division Bench of the Delhi High Court, thus, erred in striking down Section 8(2) of the DSE Act in the case of Kathuria Public School (supra) by placing reliance on the decision of this Court in the case of TMA Pai (supra), as the subject matter in controversy therein was not the security of tenure of the employees of a school, rather, the question was the right of educational institutions to function unfettered. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be 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. The Division Bench of the Delhi High Court, while striking down Section 8(2) of the DSE Act in the case of Kathuria Public School (supra) has not correctly applied the law laid down in the case of Katra Educational Society (supra), wherein a Constitution Bench of this Court, with reference to provision similar to Section 8(2) of the DSE Act and keeping in view the object of regulation of an aided or unaided recognized school, has held that the regulation of the service conditions of the employees of private recognized schools is

  
19/05

required to be controlled by educational authorities and the state legislature is empowered to legislate such provision in the DSE Act. The Division Bench wrongly relied upon that part of the judgment in the case of Katra Education Society (supra) which dealt with Article 14 of the Constitution and aided and unaided educational institutions, which had no bearing on the fact situation therein. Further, the reliance placed upon the decision of this Court in the case of Frank Anthony Public School Employees Association v. Union Of India & Ors.[11] is also misplaced as the institution under consideration in that case was a religious minority institution. The reliance placed by the learned counsel appearing on behalf of the respondents on the case of TMA Pai (supra) is also misplaced as the same has no bearing on the facts of the instant case, for the reasons discussed supra. The reliance placed upon the decision of the Delhi High Court in the case of Kathuria Public School (supra) is also misplaced as the same has been passed without appreciating the true purport of the Constitution Bench decision in the case of Katra Education Society (supra). **Therefore, the decision in the case of Kathuria Public School (supra), striking down Section 8(2) of the DSE Act, is bad in law."**

**And Whereas,** in view of the pronouncement of the judgment of Hon'ble Supreme Court in aforesaid case, the provisions of sub-section (2) of section 8 of the Delhi School Education Act, 1973 and its connected rule 120 (1)(d)(iii) and (iv) and rule 120 (2) of the Delhi School Education Rules, 1973 became applicable to Private Recognized Unaided Schools with effect from the date of judgment.

**Now, therefore,** all the Private Recognized Unaided Schools are directed to comply with the provisions of sub-section (2) of section 8 of the Delhi School Education Act, 1973 and its connected rule 120 (1)(d)(iii) and (iv) and rule 120 (2) of the Delhi School Education Rules, 1973 with effect from the date of aforesaid judgment of Hon'ble Supreme Court in Civil Appeal No. 1020 of 2011 in the matter of Raj Kumar v. Directorate of Education and others .

  
19/05/16  
(SAUMYA GUPTA)  
DIRECTOR (EDUCATION)

To:

The HoS/Manager of all Private Recognised  
Unaided Schools in Delhi

DE/15(154)/Act-I/SLP1020/2011/2016/ 8878-8885 Dated the 20 May, 2016

Copy for information to:

1. PS to Minister of Education, Govt. of NCT of Delhi
2. PS to Secretary(Education)
3. All Special DE/RD/ADE of Directorate of Education
4. All District DDEs
5. All Education Officers through DDE concerned.
6. All Office Superintendent(Act-1 Branch)
7. OS(IT) with the direction to upload the order on the DoE website in public circular/orders
8. Guard File.

11/19/16

(Anil Kaushal)  
Asstt. Director of Education(Act-1)