*   **THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on:15th January, 2016

\+   LPA 774/2010

CBSE ..... Appellant
Through: Mr. Amit Bansal, Advocate

Versus

MOUNT CARMEL SCHOOL SOCIETY & ORS. ..... Respondents
Through: Mr.K.K. Rai, Sr. Adv. with Mr.A.K. Sakhija, Mr. Puneet Saini, Advs. for Respondents No.1 & 2.
Mr. Raman Duggal, Adv. for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

G. ROHINI, CHIEF JUSTICE

1. This appeal is preferred against the order of the learned Single Judge dated 13.08.2010 in W.P.(C) No.8710/2007.

2. Central Board of Secondary Education (CBSE)/the respondent No.2 in the writ petition is the appellant before us.

3. The controversy in issue relates to continuation of the respondent No.2 herein as Principal of the Senior Secondary School run by the respondent No.1 beyond the age of 60 years.

4. As per Rule 110(2) of the Delhi School Education Rules, 1973, the Principal of a recognized private school, whether aided or not, is entitled to hold office until he attains the age of 60 years. Though the respondent

No.2 herein attained the age of 60 years on 30.08.2001, the respondent No.1 by resolution dated 11.08.2001 granted extension of 5 years in recognition of her contribution as a founder Principal and vast experience of 29 years of teaching and administration. However, CBSE treated the said extension as an irregularity and on that ground rejected the application of the respondent No.1 herein for approval of additional subjects vide order dated 30.07.2007. Subsequently, by order dated 11.09.2007, the first respondent herein was directed by the Director of Education/GNCTD to dispense with the services of the respondent No.2 herein. Assailing the said two orders dated 30.07.2007 and 11.09.2007, the respondent Nos.1 and 2 herein filed W.P.(C) No.8710/2007 contending *inter alia* that the petitioner No.1/respondent No.1 herein is an unaided minority institution which receives no grant from the Government of NCT of Delhi or any other Government authority and therefore CBSE has no right or jurisdiction to interfere with the running and administration of the said school. It was also contended that the post of Principal of an unaided minority school being a key position was outside the regulatory ambit of the State as held in ***Secretary Malankara Syrian Catholic College v. T. Jose & Ors.*****(2007) 1 SCC 386.**

5. On the other hand, it was contended on behalf of CBSE as well as GNCTD that in view of the decision in ***Frank Anthony Public School Employees Association v. Union of India & Ors.*** **(1986) 4 SCC 707** in which it was held that Chapter IV of the Delhi School Education Act, 1973 is applicable to unaided minority institutions also, the writ petitioners are bound by the age of retirement prescribed under Rule 110 of Delhi School Education Rules, 1973 (for short 'the DSE Rules').

6. The learned Single Judge did not agree with the plea of CBSE that the issue involved was squarely covered by the decision in ***Frank Anthony Public School*** (supra) and allowed the writ petition by order dated 13.08.2010 thereby setting aside the impugned orders dated 30.07.2007 and 11.09.2007 and holding that Rule 110 of DSE Rules prescribing the retirement age does not have any application to the schools run by the petitioner No.1/respondent No.1 herein.

7. Aggrieved by the same, the present appeal is preferred by CBSE.

8. It is contended by Shri Amit Bansal, the learned counsel appearing for the appellant/CBSE that the State is always empowered to regulate the standards of education and allied matters and the minority institutions cannot decline to follow the general pattern of education in the guise of the rights guaranteed under Article 30(1) of the Constitution of India. It is further contended by the learned counsel that Rule 110 of DSE Rules prescribing the age of retirement of the employees, teachers and Principal neither amounts to interference in day-to-day administration of the minority educational institutes nor does it affect the right of the minority educational institute to appoint a Principal of its choice, but it is a part of the regulatory regime to maintain standards of the educational institute and consequently in terms of the dicta laid down in ***Frank Anthony Public School*** (supra)***,*** Rule 110 is very much applicable to the school run by respondent No.1 herein despite the fact that it is an unaided minority school.

9. Pointing out that ***Frank Anthony Public School*** (supra) has been followed by the Supreme Court in ***Management Committee of Montfort Senior Secondary School v. Vijay Kumar & Ors.*** **(2005) 7 SCC 472** and

also ***G. Vallikumari v. Andhra Education Society*** **(2010) 2 SCC 497**, it is further contended by the learned counsel for the appellant that the law declared in ***Frank Anthony Public School*** (supra) is binding on this Court.

10. Shri K.K. Rai, the learned Senior Counsel appearing for the respondent Nos.1 and 2/writ petitioners, on the other hand, supported the order under appeal and contended that the same warrants no interference on any ground whatsoever.

11. The Delhi School Education Act, 1973 (hereinafter referred to as 'the DSE Act') which extends to the whole of the Union Territory of Delhi has been enacted primarily for the purpose of better organization and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto. Chapter IV of the said Act consisting of Sections 8 to 12 deals with 'Terms and Conditions of Service of Employees of Recognized Private Schools' whereas Chapter V consisting of Section 13 to 15 contained the 'Provisions Applicable to Unaided Minority Schools'.

12. The expression "private school" has been defined under Section 2(r) of the DSE Act as a school which is not run by the Central Government, administrator, a local authority or any other authority designated or sponsored by the Central Government, administrator or a local authority. Similarly, "recognized school" as defined under Section 2(t) means a school recognized by the appropriate authority. "Minority School" has been defined under Section 2(o) as a school established by a minority having the right to do so under clause (1) of Article 30 of the Constitution and as per Section 2(x) "unaided minority school" means a recognised minority school which does not receive any aid.

13. As noticed above, Chapter IV of DSE Act consists of Section 8 to 12 and deals with terms and conditions of service of employees of the recognized private schools. Section 8(1) empowers the Administrator to make rules regulating the minimum qualifications for recruitment and the conditions of service of employees of recognised private schools. The first proviso to Section 8(1) stipulates that salary and rights in respect of leave of absence, age of retirement and pension of an employee of an existing school at the commencement of the Act may not thereafter be varied to his disadvantage. Sub-section (2) of Section 8 stipulates that, subject to any rule that may be made, no employee of a recognised 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. Section 8(3) enables an employee of a recognised private school who is dismissed, removed or reduced in rank to prefer an appeal to the Tribunal constituted under Section 11 against the order of such dismissal, removal or reduction in rank. Section 8(4) requires the managing committee of a recognised private school to communicate to the Director and to obtain his prior approval before suspending any of its employees. Section 8(5) authorises the Director to accord his approval to suspension of an employee if he is satisfied that there are adequate and reasonable grounds for such suspension. Section 9 prescribes that every employee of a recognised school shall be governed by the prescribed Code of Conduct and that the employee shall be liable to the prescribed disciplinary action for violation of any provision of Code of Conduct. Section 10(1) requires that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding

status in schools run by the appropriate authority. The proviso to Section 10(1) requires the appropriate authority to direct in writing the managing committee of any recognised private school to bring the scales of pay and allowances etc. of all the employees of such schools to the level of those of the employees of the corresponding status in schools run by the appropriate authority. A further proviso to Section 10(1) contemplates withdrawal of recognition if such direction is not complied with. Section 10(2) requires the managing committee of every aided school to deposit every month its share towards pay and allowances, medical facilities etc. with the Administrator and requires the Administrator to disburse, or cause to be disbursed, the salaries and allowances to the employees of aided schools. Section 11 provides for the constitution of a Tribunal to be known as the 'Delhi School Tribunal' for the purpose of disposal of an appeal preferred under the Act and Section 12 provides "Nothing contained in this chapter shall apply to an unaided minority school".

14. The validity of Section 12 of the DSE Act fell for consideration in ***Frank Anthony Public School (supra)***. It was a case where the teachers and other employees of Frank Anthony Public School, a recognized unaided minority school, filed a writ petition before the Supreme Court under Article 32 of the Constitution of India. While seeking a declaration that Section 12 of the DSE Act which provides "nothing contained in this chapter shall apply to an unaided minority school" is unconstitutional as being violative of Articles 14, 21 and 23 of the Constitution of India, the Employees' Association of Frank Anthony Public School sought equalization of their pay scales and conditions of service with the teachers and employees of the Government schools. They also sought a direction to the Union of India and the Delhi Administration to enforce all the

provisions of the Delhi Education Act, other than Section 12, and to fix the pay, allowances, benefits, etc. to persons employed in the schools governed by the Act in relation to unaided minority schools at par with the persons employed in other schools. After considering in detail the rights of the minorities to administer educational institution of their choice in terms of Article 30(1) of the Constitution of India and after referring to the decided cases on the said issue, the Supreme Court held:

> "20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government.
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> 21. **The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. We,**

> **therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2)] in the manner provided in the chapter in the case of Frank Anthony Public School**. The management of the school is directed not to give effect to the orders of suspension passed against the members of the staff."
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> *(emphasis supplied)*

15. As could be seen, it was declared in ***Frank Anthony Public School*** (supra) that except sub-section (2) of Section 8, all other provisions of Chapter IV of DSE Act are applicable to the unaided minority educational institutions. It may be added that sub-section (1) of Section 8 empowers the Administrator to make rules regulating the minimum qualifications for recruitment and the conditions of service of employees of recognized private schools. In terms thereof Chapter VIII of the DSE Rules provides for 'Recruitment and Terms and Conditions of Service of Employees of the Private Schools Other Than Unaided Minority Schools' and the same includes Rule 110 prescribing the age of retirement.

16. The contention of the appellant herein/CBSE is that in view of the declaration in ***Frank Anthony Public School (supra)***, the provisions of Chapter IV(except Section 8(2)) of the DSE Act as well as Chapter VIII of DSE Rules are applicable to unaided minority institutions also and consequently, the first respondent school is bound by the age of retirement prescribed under Rule 110 of DSE Rules.

17. It may be mentioned that the ratio laid down in ***Frank Anthony Public School*** (supra) has been further made clear in ***Montfort Senior Secondary School*** (supra). In the said case the appellant was the Managing Committee of an unaided minority institution and the Supreme

Court was considering an appeal arising out of an order passed by the Delhi School Tribunal on an appeal preferred under Section 8(3) of the DSE Act by an Assistant Teacher working in the said institution challenging the order of the Managing Committee terminating his services. One of the contentions on behalf of the appellant was that though Section 12 of the DSE Act was held to be discriminatory and void in ***Frank Anthony Public School*** (supra), yet the effect of Section 15 cannot be diluted. While taking note of the fact that Section 15 of DSE Act which provides for contract of service in an unaided minority school falls under Chapter V of DSE Act which contained the provisions applicable to unaided minority schools, the Supreme Court observed:-

> "10. …….The effect of the decision in *Frank Anthony* case is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in *Frank Anthony* case the very nature of employment has undergone a transformation and services of the employees in minority unaided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV. ……….."
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> "20. At first flush, Sections 8(3) and 15 of the Act may appear to be self-contradictory. But it is really not so, when considered in the background of what is stated in *Frank Anthony* and *St. Xavier's cases.* By giving benefit of Section 8(3) to the employees of recognised unaided minority schools, they are put on a par with their

> counterparts in private schools. The two provisions serve similar purpose i.e. providing a forum for ventilating grievances before a forum. Once a remedy under one is exhausted it is not permissible to avail the other one."

18. ***G. Vallikumari v. Andhra Education Society*** (supra) arose out of an order of a Division Bench of this Court declaring Section 12 of DSE Act *ultra vires* the provisions of the Constitution and in so far as applicability of the exclusion clause contained therein, it is restricted to unaided minority institutions and that Section 8(2) is not applicable to minority institutions. Having extensively referred to the principles of law laid down in ***Frank Anthony Public School*** (supra) and the later decision in ***Y. Theclamma v. Union of India*** **(1987) 2 SCC 516,** the Supreme Court summed up the propositions from the said two judgments as under:

> "*(i)* Sections 8(1), (3), (4) and (5) of the Act do not violate the right of the minorities to establish and administer their educational institutions. However, Section 8(2) interferes with the said right of the minorities and is, therefore, inapplicable to private recognised aided/unaided minority educational institutions.
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> *(ii)* Section 12 of the Act, which makes the provisions of Chapter IV of the Act inapplicable to unaided private recognised minority educational institutions is discriminatory except to the extent of Section 8(2). In other words, Chapter IV of the Act except Section 8(2) is applicable to private recognised aided as well as unaided minority educational institutions and the authorities concerned of the Education Department are bound to enforce the same against all such institutions."

19. Thus, it is clear that the law laid down in ***Frank Anthony Public School*** (supra) that Section 12 of DSE Act which makes all the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions, has been reiterated by the Supreme Court in various later decisions.

20. However, ***Frank Anthony Public School*** (supra) has been distinguished by the learned Single Judge in the order under appeal observing:

> "17. This Court does not find the decision in ***Frank Anthony*** to be holding that the entire Chapter VIII of the DSE Rules, which talks of recruitment and terms and conditions of service of employees of private schools other than unaided minority schools, is *ipso facto* applicable to unaided minority schools. Given the factual context in which the decision in ***Frank Anthony*** was delivered, there was no occasion for the Supreme Court to consider the position with respect to the key post of the Principal in an unaided minority school and whether the provisions of Chapter IV of the DSE Act would continue to apply to such post and consequently whether Chapter VIII of the DSE Rules would apply. In the considered view of this Court the judgment in ***Frank Anthony*** cannot come to the aid of the Respondents in justifying their impugned orders insisting on the applicability of Rule 110 (1) DSE Rules as regards the retirement age of the Principal of the schools run by the Petitioner No.1 Society."

21. Thus, it was opined by the learned Single Judge:

> "21. It is only where the retirement age for a Principal of a minority school has been fixed at an age lower than a Principal of a government school or an aided or unaided private school, can a comparison be possibly drawn with

> the facts in ***Frank Anthony*** to contend that the terms and conditions of the Principal of an unaided minority school cannot possibly be worse than that of the Principal of a government school or an unaided or aided minority school. Viewed from any angle therefore, the decision in ***Frank Anthony*** cannot come to the aid of the Respondents in seeking to interfere with the decision of the Petitioner No. 1 Society to extend the tenure of Petitioner No. 2."

22. While arriving at the said conclusion, the learned Single Judge relied upon ***All Bihar Christian Schools Association v. State of Bihar*** **(1988) 1 SCC 206**, ***T.M.A. Pai Foundation v. State of Karnataka*** **(2002) 8 SCC 481** and ***Secretary Malankara Syrian Catholic College v. T. Jose & Ors.*** (supra), wherein it was held that subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/lecturers by adopting any rational procedure of selection. Reliance was also placed upon ***St. Xavier's College Society v. State of Gujarat*** **(1974) 1 SCC 717** and ***Secretary Malankara Syrian Catholic College v. T. Jose & Ors.*** (supra) wherein the law regarding the position of key posts in unaided minority institutions has been laid down by the Supreme Court and thus, it was concluded by the learned Single Judge:

> "34. The position in law as is evident from the above decisions is that the post of the Principal or the Headmaster of an unaided minority institution is a 'key post' and therefore apart from mandating that the minimum qualification for such post should not be less than that prescribed for other schools, the State cannot have any say on what should be the terms and conditions of service. The age of retirement of a Principal of an unaided minority institution, being a term of service,

> cannot be more disadvantageous than that of the Principal of a non-minority or aided or unaided private institution. But the converse is not true. If the age of retirement of the Principal of a unaided minority institution is more advantageous, it will not be held to be discriminatory or unconstitutional. It would in fact stand protected under Article 30 (1) of the Constitution.
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> 35. Both the questions posed in para 1 of this judgment are answered in the negative. In other words, the GNCTD cannot insist that notwithstanding the fundamental right guaranteed to the institutions run by Petitioner No. 1 under Article 30 (1) of the Constitution the retirement age of the Principal of such institutions can be no different from that of a Principal of a government school or a private unaided or aided school recognised as such by the GNCTD in terms of the DSE Act. Further, the stand of the GNCTD that Rule 110 (1) of the DSE Rules also governs the retirement age of the Principal of a recognised unaided minority institution is untenable in law. The result is that the Rule 110 of the DSE Rules does not have any application to the schools run by the Petitioner No.1 Society."

23. There can be no dispute about the principles of law laid down by the Supreme Court that the minority educational institutions shall have the freedom to appoint teachers of their choice.

24. While answering the question whether the right to choose a Principal is part of the right of minorities under Article 30(1) to establish and administer educational institutions of their choice and if so, Section 57(3) of Kerala University Act, 1974 would violate Article 30(1) of the Constitution of India, the principles of law laid down in ***All Bihar Christians School Association*** (supra), ***St. Xavier's College Society***

(supra) and ***TMA Pai*** (supra) have been reiterated and it was held in ***Secretary, Malankara Syrian Catholic College*** (supra):

> "27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai[(2002) 8 SCC 481] . Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.
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> 28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.
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> 29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a

> provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions even if they are aided."

25. However, the question that requires consideration in the present case is whether the ratio laid down in the above noted cases can be made applicable to the present case in view of the law declared by the Supreme Court in ***Frank Anthony Public School (supra)*** that Section 12 of DSE Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void, except to the extent of Section 8(2).

26. According to us, the principles of law laid down in ***St. Xavier's College Society*** (supra)***, Secretary Malankara Syrian Catholic College v. T. Jose & Ors.*** (supra) and other decisions relied upon by the learned Single Judge cannot be applied to the case on hand for the following reasons.

27. In ***Frank Anthony Public School*** (supra), it was declared that Section 12 of DSE Act is discriminatory and void except to the extent it makes Section 8(2) inapplicable to unaided minority institutions. Section 8(2) which provides that no employee of a recognized private school shall be dismissed, removed or reduced in rank except with the prior approval of the Director, was excluded because it was found to be interfering with the rights of minorities to administer their educational institutions. It was made clear by the Supreme Court that the provisions of Chapter IV, except Section 8(2), do not encroach upon any rights of minorities to administer their educational institutions and thus it was concluded that Sections 8(1), 8(3), 8(4), 8(5), 9, 10 and 11 of DSE Act do not encroach upon any right of

minorities to administer their educational institutions and therefore they are applicable to unaided minority institutions.

28. Consequently, the provisions in Chapter IV of the DSE Act regarding dismissal, removal or reduction in rank of employees continue to be inapplicable to unaided minority institutions and all other provisions of Chapter IV i.e. Section 8(1), Section 8(3), Section 8(4), Section 8(5) as well as Section 9 which provides that the employees of a recognized school shall be governed by code of conduct that may be prescribed, Section 10 which provides for scales of pay and allowances and etc. of the employees of a recognized private school and Section 11 which provides for constitution of Delhi School Tribunal for the purpose of disposal of an appeal preferred under the DSE Act shall be applied to unaided minority institutions.

29. It may also be added that in ***Frank Anthony Public School*** (supra), the question of constitutionality of Section 12 of DSE Act was directly in issue and it was declared by the Supreme Court that Section 12 is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions. Thus, the issue regarding the validity of Section 12 of DSE Act was concluded by the decision in ***Frank Anthony Public School*** (supra) and the same is a binding law not only on the parties in that appeal but also on all courts within the territory of India in view of Article 141 of the Constitution of India.

30. The issue as to what can be held to be a law declared by the Supreme Court under Article 141 of the Constitution of India has been considered in detail by the Supreme Court in ***Director of Settlements, A.P. v. M.R. Apparao (2002) 4 SCC 638*** and it was held:

"**7.** So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the

relevant provisions were not brought to the notice of the Court (see *Ballabhadas Mathurdas Lakhani* v. *Municipal Committee, Malkapur* [(1970) 2 SCC 267 : AIR 1970 SC 1002] and AIR 1973 SC 794 [(sic)]). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh* v. *Surjit Singh* [(1984) 2 SCC 402] and *Kausalya Devi Bogra* v. *Land Acquisition Officer* [(1984) 2 SCC 324]). We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr Rao in elaborating his arguments contending that the judgment of this Court dated 6-2-1986 [*State of A.P.* v. *Rajah of Venkatagiri*, (2002) 4 SCC 660] cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr Rao relied upon the judgment of this Court in the case of *M.S.M. Sharma* v.*Sri Krishna Sinha* [AIR 1959 SC 395 : 1959 Supp (1) SCR 806] wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject-matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in *Gunupati Keshavram Reddy* v. *Nafisul Hasan* [AIR 1954 SC 536 : 1954 Cri LJ 1704] relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law."

31. It is clear from the settled legal position noticed above that the ratio laid down in a judgment by the Supreme Court cannot be ignored on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court. In ***Frank Anthony Pubic School (supra)***, the Supreme Court decided that Chapter IV of DSE Act except Section 8(2) is applicable to unaided minority institutions and a declaration to that effect has been granted. When the Supreme Court declared that Section 12 of the DSE Act is discriminatory and void, except to the extent that it makes Section 8(2) inapplicable to unaided minority institution, it is a ratio which is binding on all the Courts within the territory of India. Consequently, Section 12 of DSE Act, except to the extent of Section 8(2), cannot be taken notice by any court and no court is empowered to look at that part of the law.

32. We are, therefore, of the opinion that the decision in ***Frank Anthony Public School*** (supra) cannot be distinguished on the ground that while rendering the said judgment there was no occasion for the Supreme Court to consider the position with respect to the key post of the Principal in an unaided minority school and whether the provisions of Chapter IV of the DSE Act would continue to apply to such post and consequently whether Chapter VIII of the DSE Rules would apply. Such interpretation, according to us, would virtually nullify the ratio laid down by the Supreme Court.

33. Consequent to the law declared in ***Frank Anthony Public School*** (supra), the provisions of DSE Rules, 1973 corresponding to Section 8(1), 8(3), 8(4), 8(5), Section 9, 10 and 11 shall also be applicable to the unaided minority institutions. Chapter VIII of the DSE Rules consisting of Rule 96

to Rule 121 deals with 'Recruitment and Terms and Conditions of Service of Employees of the Private Schools other than Unaided Minority Schools'. We have observed that Rule 96 to Rule 114A provide for recruitment, appointing authority, minimum qualifications for appointment, age limit, probation, seniority, retirement age, leave of absence, whereas Rule 115 onwards deal with penalties and disciplinary proceedings. Therefore, Rule 110 providing for retirement age which corresponds to Section 8(1) of DSE Act is applicable to unaided minority institutions in terms of the law laid down in ***Frank Anthony Public School*** (supra).

34. It is no doubt true that in ***Sindhi Education Society & Anr. vs. Chief Secretary, Govt. of NCT of Delhi & Ors.*** **(2010) 8 SCC 49**, the Supreme Court was dealing with the provisions of the DSE Act, 1973, however, the issue raised therein is entirely different from the issue which was considered and decided in ***Frank Anthony Public School*** (supra). The question raised in ***Sindhi Education Society*** (supra) was whether Rule 64(1)(b) of the Delhi School Education Rules, 1973 and the orders/instructions issued thereunder would, if made applicable to an aided minority educational institution, violate the fundamental rights guaranteed under Article 30(1) of the Constitution and whether the respondents therein are entitled to a declaration and consequential directions to that effect. The question as to applicability of Chapter IV of DSE Act and Chapter VIII of DSE Rules, 1973 neither fell for consideration nor decided in ***Sindhi Education Society*** (supra). Thus, the ratio laid down in ***Frank Anthony Public School*** (supra) stands good.

35. For the aforesaid reasons, we are of the view that the decision in ***Frank Anthony Public School*** (supra) is binding and that it is not open to this court to go beyond the law so declared on any ground whatsoever.

36. Therefore, following the ratio laid down in ***Frank Anthony Public School*** (supra), we hold that the retirement age prescribed under Rule 110 of the DSE Rules, 1973 is applicable to the Respondent No.1 institution. Consequently, the action of the Respondent No.1 in granting extension to the Respondent No.2 is illegal being contrary to Rule 110 of the DSE Rules, 1973.

37. In the result, the order under appeal is set aside and W.P.(C) No.8710 of 2007 shall stand dismissed. The present appeal is accordingly allowed. There shall be no order as to costs.

CHIEF JUSTICE

JAYANT NATH, J

JANUARY 15, 2016
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