

the date of termination of service which is complained of as retrenchment. After ascertaining the date, move backward to a period of twelve months just preceding the date of termination and then ascertain whether within a period of 12 months, the workman has rendered service for a period of 240 days. These facts, if answered affirmatively in favour of the workman, it will have to be assumed that the workman is in continuous service for a period of one year. Thus, he would be taken to have satisfied the eligibility qualifications enacted in Section 25-F of the Act.”

(11) In view of the above, I am in respectful disagreement with the judgment in the case of **Suraj Pal Singh and others** (*supra*) passed by the Hon’ble Delhi High Court.

(12) The present writ petition is allowed and the impugned award dated 20th May, 2005 (Annexure P-3) passed by the Industrial Tribunal-cum-Labour Court, Hissar, is set aside.

R.N.R.

Before M.M. Kumar & Jora Singh, JJ.

**TAKSH-SHILA VIDYAMANDIR EDUCATION SOCIETY
AND ANOTHER,—Petitioners**

versus

**HARYANA URBAN DEVELOPMENT AUTHORITY
AND OTHERS,—Respondents**

C.W.P. No. 11416 of 2007

24th February, 2009

Constitution of India, 1950—Art. 226—Haryana Urban Development Authority Act, 1977—S.17(3)—Haryana School Education Rules 2003—Chapter II, RI.4—Allotment of plots by HUDA for establishing Primary/High School—Petitioners running schools for last 10 to 30 years—No classification with regard to Nursery/Primary/ Middle/Secondary and Senior Secondary level of

classes at time of allotment of plots—Enactment of 2003 Rules—2003 Rules classifying Pre-Primary, Primary, Middle, Secondary, Senior Secondary Schools—Categorization of sites after 2003 Rules—Applicability of—Only such allotments made after that period—Petitioners running schools for such a long time—Not equitable to close their schools in toto—Sites allotted for Primary/High Schools cannot be considered to have excluded use of land for Nursery or Pre-Nursery Classes—Impugned orders passed by Estate Officer quashed and petitioners held entitled to continue running Nursery/Pre-Nursery Classes.

Held, that the officers of HUDA have exercised their power arbitrarily because it defies ignorance that in the absence of any order by this Court, any such show cause notices could be issued, as has been done in these cases. Moreover, there is no prohibition in any of the allotment letter allotting land for Primary and High School, that Pre-Primary Classes would not be permissible. The concept of Nursery and Pre-Nursery Classes was introduced only by the Rules in 2003.

(Para 16)

Further held, that all the school sites must be considered to be allotted for the purpose of pre-nursery/nursery and primary classes because it cannot be imagined that students seeking admission in pre-nursery and nursery classes would be without any schools for the period when the allotments were made to these schools. Therefore, the categorization of sites after 2003 Rules would be applicable to any allotment made after that period. Moreover, the petitioners have been running schools for such a long time and it would not be equitable to close their schools in toto. They can be directed to act in accordance with the terms of allotment. The sites which have been allotted for primary/high schools cannot be considered to have excluded the use of land for nursery or pre-nursery classes. Accordingly, the impugned orders in respect of each of the petitioners dated 5th July, 2007 passed by the Estate Officer, HUDA, Faridabad are hereby quashed and the petitioners would be within their rights to continue running nursery/pre-nursery classes.

(Paras 18 & 19)

Aashish Chopra, Advocate, *for the petitioners.*

Ajay Nara, Advocate, *for the respondents.*

M.M. KUMAR, J.

(1) This order shall dispose of a bunch of 19 petitioners filed under Article 226 of the Constitution because in all the petitions common questions of law have been raised. Moreover, in all the petitioners challenge is to the separate but identical orders dated 5th July, 2007, passed by the Estate Officer, Haryana Urban Development Authority, Faridabad. The petitioners have also prayed for directing the respondents not to interfere in running of their schools including pre-primary/nursery classes.

(2) Petitioners No. 1 in these petitions are various privately managed educational Institutions/Societies, who are imparting education to the children of the residents by running their schools in different sectors of Faridabad. The Haryana Progressive School's Conference (Regd.) petitioner No. 2 in these petitions is an association of about one hundred and ninety eight un-aided privately managed schools in the State of Haryana. The petitioners established their schools after raising construction over the plots allotted to them by the Haryana Urban Development Authority between 1979 to 1996. It would be appropriate to gather the details of allotments made in favour of the petitioner schools, Sector, size of plot and the purpose of allotment as indicated in the allotment letters as well as the lease deed/Deed of Conveyance which were subsequently executed between HUDA and the various allottees. The aforementioned details are depicted in the following chart :—

Sr. No.	C.W.P. No.	Allotment letter/Deed of Lease/Deed of Conveyance	Sector	Size	Purpose of allotment of site as mentioned in the allotment letter/Deed of Lease/Deed of Conveyance
1	11405 of 2007	RA-III-93/301, dated 24th August, 1993 Deed of Lease dated nil.	15 Faridabad	1.5086088 acre (7301.6 sq. yds.)	Primary School

Sr. No.	C.W.P. No.	Allotment letter/Deed of Lease/Deed of Conveyance	Sector	Size	Purpose of allotment of site as mentioned in the allotment letter/Deed of Lease/Deed of Conveyance
2	11415 of 2007	RA-III-93/563-64, dated 14th February, 1994 Deed of Lease dated 28th May, 2004.	28 Faridabad	1.36 acre, 5.0051652 acre	Primary School
3	11416 of 2007	Memo No. RA-III-95/80, dated 13th November 1995	3 Faridabad	One acre	Primary School
4	11430 of 2007	RA-III-93/571, dated 18th February, 1994 Deed of Lease dated 17th August, 2001	21-C Faridabad	0.9548473 acre	Primary School
5	11431 of 2007	RA-III-94/1137, dated 10th June, 1994 Deed of Lease dated 7th December, 2001	29 Faridabad	7257.17 sq. yds.	Primary School
6	11432 of 2007	RA-III-93/556, dated 27th January, 1994 Deed of Lease dated 27th September, 2000	9 Faridabad	1.4903574 acre (7213.33 sq. yds.)	Primary School
7	11435 of 2007	RA-III-94/550, dated 27th January, 1994 Deed of Lease dated 14th May, 2001.	16-A Faridabad	1.4994 acre	Primary School

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Sr. No.	C.W.P. No.	Allotment letter/Deed of Lease/Deed of Conveyance	Sector	Size	Purpose of allotment of site as mentioned in the allotment letter/Deed of Lease/Deed of Conveyance
8	11577 of 2007	RA-III-93/3806-08, dated 26th November, 1993 Deed of Lease dated 29th December, 1999	3 Faridabad	1.4648527 acre	Primary School
9	11578 of 2007	RA-III-93/291, dated 20th March, 1993 Deed of Lease dated 24th September, 2003	28 Faridabad	1.41 acre	Primary School
10	11579 of 2007	RA-III-93/767, dated 18th March, 1994	16-A Faridabad	1.2774448 acre	Primary/High School
11	11590 of 2007	RA-III-941/1155, dated 29th June 1994	21-A Faridabad	5.0051652 acres	Primary/High School
12	11591 of 2007	RA-I-96/241-42, dated 5th June, 1996 Deed of Lease dated 16th February, 2005	21-B Faridabad	5 acres	As per allotment letter for 'High School', whereas Deed of Lease describes 'primary school building'
13	11592 of 2007	58041, dated 6th December, 1979 Deed of Lease dated 8th October, 1997	7 Faridabad	3.97 acres (19239 sq. yds.)	Nothing specified in the allotment letter, whereas Deed of Lease describes 'Primary School'
14	11594 of 2007	RA-3-86/16143, dated 10th November, 1986	17 Faridabad	1½ acre	Primary School

Sr. No.	C.W.P. No.	Allotment letter/Deed of Lease/Deed of Conveyance	Sector	Size	Purpose of allotment of site as mentioned in the allotment letter/Deed of Lease/Deed of Conveyance
15	12271 of 2007	RA-III-93/454, dated 15th December, 1993 Deed of Conveyance dated 20th July, 1998	21-A Faridabad	1,501376 acre (7266.66 sq. yds.)	As per allotment letter for 'Primary School', whereas Deed of conveyance describes 'to be used as a site for residential purpose in the urban area of Faridabad'
16	12272 of 2007	RA-III-94/565, dated 14th February, 1994 Deed of Lease dated 19th November, 1997	8 Faridabad	1,0319545 acre (4994.66 sq. yds.)	As per allotment letter for Primary 'High School', whereas Deed of Lease describes 'for St. Thomas School, Faridabad'
17	12273 of 2007	(i) 17575-77, dated 17th June, 1980 (Ann. P-2) (ii) RA-3-85/77/12986, dated 16th July, 1985 (iii) RA-III-93/579, dated 24 February, 1994 (iv) Deed of Lease dated 13th May, 1997	16 Faridabad	1/2 acre (2420 sq. yds.) Additional land 1 acre Additional land 1.47 acre	(i) Nothing specified in the allotment letter dated 17th June, 1980. (ii) As per allotment letter dated 16th July, 1985 additional land was allotted 'for the purpose of school'. (iii) As per allotment letter dated 24th February, 1994 land was 'for Play Ground'. (iv) Deed of Lease describes 'Senior Secondary School'
18	13020 of 2007	RA-II-99/388,, dated 16th July, 1999 Deed of Conveyance dated 1st July, 2002	21-D Faridabad	484 Sq. Yds.	As per allotment letter for 'Primary School', whereas Deed of Conveyance describes 'to be used as a site for school purpose in the urban area of Faridabad'

19	13034	RA-3-61-	16-A	1.68	Primary School
	of	84/18393, dated	Faridabad	acres	
	2007	9th May, 1984			
		Deed of Lease			
		dated 21st			
		March, 1997			

(3) It is clear that various sizes of plots in different sectors were allotted by the HUDA in favour of the petitioners for establishing Primary School/High School. The petitioners raised construction of the buildings after seeking permission and approval from the competent authorities. The petitioners have claimed that they are running their respective schools for the last 10 to 30 years and there was no statutory classification with regard to nursery/primary/middle/secondary and senior secondary level of classes in the State of Haryana when land was allotted to them for running the schools. The classification for the first time was made by the Haryana School Education Rules, 2003 (for brevity, 'the Rules'), which were enforced on 30th April, 2003. The aforementioned classification in respect of schools is contained in Chapter II, Rule 4 of the Rules.

(4) The trouble for the petitioners started when the Estate Officer, HUDA, Faridabad, issued show cause notices under Section 17(3) of the Haryana Urban Development Authority Act, 1977 (for brevity, 'the Act'). The reason disclosed in the show cause notices was that the petitioners are running 'nursery schools', which is termed as 'illegal'. The Estate Officer called upon the petitioners to show cause as to why the site and building be not resumed alongwith forfeiture of whole or any part of the money paid.

(5) The petitioners have claimed that the basis of issuance of such show cause notices to them and other schools is the judgment delivered by the District Consumer Disputes Redressal Forum, Faridabad, dated 7th November, 2005, on a complaint filed by one Disha Education Society. The other basis for issuance of show cause notice to them is the purported reliance of the respondents on a Public Interest Litigation filed in this Court by way of C.W.P. No. 4434 of 2007 (Comprehensive Child Development and Welfare Society and another v. The Administrator, HUDA). It is claimed that this Court had directed the respondents to examine each individual case and to pass speaking

order. The petitioners have also relied upon the terms and conditions of the lease deed which postulate that the petitioners were required to establish 'a school' without restricting the operation of the school to primary/middle/secondary and senior secondary classes. They have asserted that the expression would include all the classes of nursery etc.

(6) It has been disclosed by the petitioners that on 4th April, 2007, when C.W.P. No. 4434 of 2007 (supra) involving PIL camp up for consideration, the learned Advocate General, Haryana, brought to the notice of the Court that Estate Officer, HUDA, Faridabad had already issued notices for resumption of sites under Section 17(3) of the Act and hearing in pursuance to the said notices was fixed for 16th April, 2007. This Court while observing that the Estate Officer, HUDA, Faridabad, should pass a speaking order in order to ascertain the stand of the authorities for consideration of the matter pending before this Court, adjourned the matter for 25th July, 2007 for further consideration. On the said date, the petitioners in C.W.P. No. 4434 of 2007, made a statement that since the Estate Officer, HUDA, has passed the orders, the said writ petition be dismissed as withdrawn. This Court ordered accordingly.

(7) On 5th July, 2007, the Estate Officer, HUDA, Faridabad, passed separate but identical orders in respect of all the schools and directed them to stop the alleged misuser within 15 days from the date of order, failing which the site was to be resumed without any further notice. In the speaking order dated 5th July, 2007, the Estate Officer after referring to the proceedings of C.W.P. No. 4434 of 2007 (supra) held on 4th April, 2007, mentions that in order to give effective opportunity to all the affected parties, a public notice was published in the leading newspapers requiring all such persons who were running pre-primary/nursery classes in their respective schools in violation of the allotment letter, to make their submissions in writing as well as to appear before him on 16th April, 2007 to show cause as to why action under the Act for violations of the terms and conditions of the allotment letter may not be taken against them. A perusal of order further shows that the authorised representatives of the schools pleaded before the Estate Officer that there was no concept to separate pre-primary schools

since pre-primary as an integral part of primary. The Central Board of School Education and the Indian Council of School Education also recognises the pre-primary as a part of formal school of the level of High School or Senior Secondary School. It was also disclosed that on the basis of directives of Hon'ble the Supreme Court and High Court of Delhi, a committee under the Chairmanship of Shri Ashok Ganguly, Chairman, C.B.S.E. was formed to prescribe the norms for admissions in Nursery and K.G. Classes in C.B.S.E. affiliated Secondary and Senior Secondary Schools. The HUDA had allotted nursery school sites after 1999 whereas the schools in question are running nursery/ pre-primary classes since their inception, which is also in the larger interest of the students as well as the institutions. After noticing the aforementioned stand, the Estate Officer proceeded to record the following findings in all the cases :—

“I have also gone through the provisions of the Haryana School Education Rules, 2003. As per these Rules, the schools are classified as pre-primary, Primary, Middle, Secondary, Senior Secondary Schools. Moreover, it has also been clarified that the pre-primary schools are those schools, which impart education below primary stage whereas primary schools and middle schools have been described as schools imparting primary stage of education having classes 1st to 5th and classes 1st to 8th respectively. Similarly Secondary School and Senior Secondary Schools have also been classified for imparting secondary stage of education having classes up to 1st to 10th or 6th to 10th and schools having classes up to 12th with or without primary classes.....The school site was allotted by HUDA just to run a Primary School and not the nursery or Pre-nursery school. In the light of the terms and conditions of the allotment letter, wherein it has been specifically mentioned that sites allotted by HUDA have to be used for the purpose stated in the allotment letter and the Haryana School Education Rules, 2003, which have provided for the classification of schools and also the clarification given by C.B.S.E. regarding as to whether C.B.S.E. affiliated schools

can run Nursery classes or not, I have formed an opinion that the allottee has violated the terms and condition of allotment, thereby, necessitating resumption of the site. However, since the schools have been running the Pre-primary/Nursery Classes, I grant them an opportunity to stop misuser of the allotted site within a period of 15 days, failing which the site in question shall stand resumed without any further notice or order. It is made clear that no further time shall be granted to stop the misuser and if the intimation regarding stoppage of misuser with an undertaking not to restart the misuse of allotted site is not filed with the office within the above stated stipulated period of 15 days, the order of resumption shall come into force immediately.”

(8) Feeling aggrieved against the order dated 5th July, 2007, certain schools alongwith Haryana Progressive Schools Conference—petitioner No. 2 filed C.W.P. No. 10909 of 2007 (Haryana Progressive Schools Conference and other v. State of Haryana and others in this Court. On 25th July, 2007, the said writ petition was dismissed as withdrawn enabling the petitioner schools to file separate writ petitions. Accordingly, order dated 5th July, 2007 passed by the Estate Officer, HUDA, Faridabad, has been challenged in this bunch of writ petitions. Certain other petitions were also filed, which have already been allowed by us on 4th November, 2008 (C.W.P. Nos. 10749, 12305, 11372, 18315 and 13030 of 2007).

(9) It is pertinent to mention here that on 25th July, 2007, when C.W.P. No. 10990 of 2007 (The Delhi Public School Society and another v. HUDA and others came up for consideration before the Hon’ble Ist Division Bench, the following order was passed :—

“It has been contended before us by Shri M.L. Sarin, learned senior counsel for the petitioners that the writ petition, on the basis of which the impugned order has been passed, has been withdrawn by the petitioners and in that petition, no order was passed by this Court directing the said officer to pass the impugned order. Another submission of the counsel for the petitioners is that the reliance placed

by the Estate Officer on Haryana School Education 2003 Rules is misplaced. It was also further contended that in terms of allotment, there was no bar for running a pre-nursery school in a Residential Senior Secondary School otherwise it would have also encompassed in its folds a bar for running a pre-nursery school. Had there been such an intention of the authorities then to mean to the contrary at the time of allotment, then the same would have provided in the terms of the lease agreement.

Without advertent to the arguments advanced by the learned counsel for the petitioners, we would like Mr. Ajay Nara, counsel appearing for HUDA to place on record the status of the School sites which have been allotted specifically for pre-nursery Schools. Mr. Nara is also directed to file an affidavit as to what would be the availability of the students who would be seeking admission to pre-nursery Classes in the next ten years. The affidavit should also specify that prior to coming into force Haryana School Education 2003 Rules, whether there were different sites for School, as has been done pursuant to Haryana School Education 2003 Rules i.e. pre nursery, Primary, Middle, High and Senior Secondary School. We would also like to know from the counsel appearing for the petitioners whether the petitioners are fulfilling the condition of the lease by giving admission to the children from weaker sections of the society up to 10% as per the term of allotment.

Counsel appearing for HUDA prays for some time to file affidavit. Let the same be filed within 4 weeks. Rejoinder, if any, be filed by the petitioner within 4 weeks thereafter.

Meanwhile, the operation of the impugned order is stayed.

Copy of the order be given dasti on the payment of the usual charges.”

(10) Similar orders were also passed on 1st August, 2007, 10th August, 2007 and 22nd August, 2007 in C.W.P. Nos. 11577, 12272 of 2007 and 13034 of 2007 respectively. A bare perusal of the orders dated 25th July, 2007, 1st August, 2007, 10th August, 2007 and 22nd August, 2007, passed by the Hon'ble 1st Division Bench shows that the HUDA was required to place on record the status of the School sites which have been allotted specifically for pre-nursery schools. It was further directed to file an affidavit as to what would be the availability of the students who would be seeking admission to pre-nursery classes in the next ten years. Specific information by way of affidavit was also sought that prior to coming into force of the Rules, whether there were different sites for Schools, as has been done pursuant to coming into force of the Rules i.e. pre nursery, Primary, Middle, High and Senior Secondary School. This Court also sought information whether the petitioners are fulfilling the condition of the lease by giving admission to the children from weaker sections of the society up to 10% as per the term of allotment.

(11) In the written statements filed in these cases, common stand has been taken by the respondents. It has been asserted that writ petitions against order dated 5th July, 2007 are not maintainable because the petitioners have not availed the remedy of appeal. It has further been mentioned that there is arbitration clause in the letter of allotment which postulate that all dispute and difference arising out of or in any way touching or concerning the allotment whatsoever has to be referred to the sole arbitration of the Chief Administrator or any other nominee appointed by him, whose decision is to be final and binding on the concerned parties. It has further been submitted that once the purpose of allotment has been specifically mentioned in the letter of allotment i.e. Primary/High/Higher Secondary/Senior Secondary School etc. then the same creates a restriction and the petitioners cannot plead that allotments were made for the purpose of running pre-nursery schools. It is, however, claimed that for the first time, the respondents came to know about the violation of the lease deed/allotment letter when they were supplied a copy of C.W.P. No. 4434 of 2007 (supra). Other broad facts have not been disputed although it has been claimed in a blanket

manner that the impugned order dated 5th July, 2007 does not suffer from any legal infirmity.

(12) In pursuance to interlocutory orders dated 25th July, 2007, passed in C.W.P. No. 10990 of 2007, the Estate Officer, HUDA, Faridabad, has filed an affidavit dated 14th February, 2008 mentioning that 14 sites have been allotted for pre-nursery school, out of which only 9 sites are fully constructed and schools are running therefrom. With regard to availability of students who would be seeking admission to pre-nursery Classes in the next ten years, the figures of 70,000 approximately has been mentioned. It has further been mentioned that the HUDA has allotted 66 school sites for Primary, Middle, High and Senior Secondary Schools other than 14 pre-nursery school sites. In all these 66 schools pre-nursery Classes are running. A Civil Misc. No. 22978 of 2008 in C.W.P. No. 11405 of 2007 was also filed on behalf of the respondents for placing on record 9 photocopies of the allotment letters pertaining to land allotted to nursery schools at Faridabad.

(13) We have heard learned counsel for the parties and minutely gone through the paper books of each case with their able assistance.

(14) The allotment letters issued to the petitioners clearly postulate that allotment of plots has been made to them for running Primary and High Schools, as detailed in para 2 above, on lease hold basis. Even clauses 18 and 20 of the lease deed talks 'school only'. According to clause 18 in most of the cases, it is mandated that the school is to reserve 10% seats for students belonging to economically weaker sections of the society and the fee which is charged by the Government schools would be charged from students admitted under 10% category. Likewise, clause 20 fixed the priorities and postulate that the children of plot holders/residents of the sector should be admitted on priority basis and the school is primarily meant for the residents of the sector only. There is nothing in the allotment letters which may distinguish the expression Primary and High School from that of Pre-nursery/Nursery School.

(15) It has also come on record that the petitioners have raised the issue before the respondents during the course of personal hearing

that there was no concept of separate pre-primary schools at the time when allotments were made to them and pre-primary was considered as an integral part of primary. They had further pleaded that Central Board of School Education and Indian Council of School Education considered the pre-primary as a part of formal school education at the level of High School or Senior Secondary School. The petitioners have been running pre-primary programmes like nursery classes since their inception. In the speaking order dated 5th July, 2007, primary reliance has been placed on the concept of pre-primary, primary, middle, secondary and senior secondary schools. The aforesaid classification flows from the Rules, the relevant portion of which has already been extracted in para 7 above. It is, thus, clear that such a stand would be unsustainable because new conditions restricting the scope of allotment letters cannot be imposed by the Rules framed in the year 2003. The rules of the game cannot be written after the game is over. Therefore, it would be wholly arbitrary to apply the Rules of 2003 to the allotments made between 1979 to 1996. It cannot be concluded that there is any violation of the terms and conditions incorporated in the allotment letters or the provisions of the Act. Moreover, during all these years pre-nursery, nursery and other classes are being run by the petitioners and they have been executing lease deeds with the respondents. We further find that no objection at any stage has ever been raised by them, which has emanated only on the enactment of the Rule in 2003. Therefore, they would be estopped from continuing with the interpretation of including pre-nursery and nursery schools in the expression 'primary school'.

(16) During the course of arguments it was also pointed out that the respondents have taken shelter under proceedings initiated by way of PIL in C.W.P. No. 4434 of 2007 (supra), which has subsequently been withdrawn. It is pertinent to mention that no order was passed by this Court directing HUDA to issue show cause notices or pass resumption orders in respect of the schools which are running pre-primary classes. We find that the officers of HUDA have exercised their power arbitrarily because it defies ignorance that in the absence of any order by this Court, any such show cause notices could be issued, as

has been done in these cases. Moreover, there is no prohibition in any of the allotment letter allotting land for Primary and High School that pre-primary classes would not be permissible. The concept of nursery and pre-nursery classes was introduced only by the Rules in 2003.

(17) It is not out of place of notice that in pursuance to order dated 25th July, 2007 passed in C.W.P. No. 10990 of 2007, the Officiating Principal and Manager, Delhi Public School, Sector 19, Faridabad, has filed an affidavit dated 10th November, 2008 by stating that 10% of the students are being admitted, which is evident from para Nos. 2 and 3 of the affidavit and the same reads as under :—

- “2. That for the session 2007-2008, there were 1 student in the Nursery Class, 61 students each in class 1 to 3; 1 student each in class IV, VII, IX and X; 2 student each in class VIII and XII and 9 students in class IX i.e. total of 201 students under the EWS/Shiksha Kendra Category. The total expenditure/fee concession for the EWS/Shiksha Kendra Category students for the session 2007-2008 was 17,18,969.
- “3. That for the session 2008-2009, there were 1 student each in Preparatory Class as also in class IX and XII; 31 students in class I; 63 students in class II; 61 students each in class III and IV and 2 students in class XI i.e. total of 221 students in the EWS/Shiksha Kendra Category. The total expenditure/fee concession of the students for the EWS/Shiksha Kendra Category for the session 2008-2009 is Rs. 7,91,178 till 31st October, 2008 against the proposed budget of Rs. 18,00,000.

(18) The irresistible inference would be that all the school sites must be considered to be allotted for the purpose of pre-nursery/nursery and primary classes because it cannot be imagined that students seeking admission in pre-nursery and nursery classes would be without any schools for the period when the allotments were made to these schools. Therefore, the categorisation of sites after 2003 Rules would be applicable to any allotment made after that period. Moreover, the

petitioners have been running schools for such a long time and it would not be equitable to close their schools in toto. They can be directed to act in accordance with the terms of allotment.

(19) As a sequel to the above discussion, we are of the considered view that the sites which have been allotted for primary/high schools cannot be considered to have excluded the use of the land for nursery or pre-nursery classes. Accordingly, the impugned orders in respect of each of the petitioners, dated 5th July, 2007, passed by the Estate Officer, HUDA, Faridabad, are hereby quashed and the petitioners would be within their rights to continue running nursery/pre-nursery classes.

(20) The writ petitions stands disposed of in the above terms.

R.N.R.

Before Ashutosh Mohunta and Rajan Gupta, JJ.

SAMPURAN SINGH,—Petitioner

versus

STATE OF PUNJAB AND ANOTHER,—Respondents

C.W.P. No. 12289 of 2007

27th February, 2009

Constitution of India, 1950—Art. 226—Motor Vehicles Act, 1988—S. 146—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rl.5 Part (III)—Instructions dated 21st March, 2002 issued by State Govt.—Accident due to rash and negligent driving—MACT awarding compensation—Govt. ordering recovery of 50% of amount of compensation from salary of driver of official jeep—Challenge thereto—MACT holding driver of official jeep squarely responsible for accident—Provisions of Rl. 5 provide that pecuniary loss caused by an employee by negligence can be recovered by him—Petitioner liable to pay atleast half of compensation amount in accordance with instructions dated 21st March, 2002—Action of respondents directing recovery held to be in accordance with rules and instructions.