

* **HIGH COURT OF DELHI : NEW DELHI**

+ **W.P.(C) No. 11563/2009**

% Pronounced on: 02.07.2010

SH. DEV DUTT SHARMA ...Petitioner
Through: Mr. K.K. Sharma, Sr. Advocate
with Mr. Rajiv Bakshi, Advocate.

Versus

MANAGING SOCIETY NATIONAL PUBLIC SCHOOL & ORS.
....Respondents
Through: Mr. S.K. Shukla, Advocate for R-1
& 3.
Ms. Rinchen O. Bhutia, Advocate
for R-2.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India inter alia praying for parity in the salary with other similarly experienced teachers and payment of arrears of salary and allowances w.e.f. 01.04.2006 till date along with interest @ 18% p.a. and other consequential benefits.

2. The matrix facts in the present writ petition are that in the year 1970 the respondent no. 1 society took on rent the premises for running its school namely National Public School at 7, Bela Road where the petitioner was initially posted as P.E. Teacher.

3. In the year 2001, the landlord of the premises filed a suit for possession and recovery of the measne profit/damages of the aforesaid tenanted premises against the respondent society in the District Court.

4. In the year 2005 vide order dated 29.07.2006 the suit was decreed in favour of the landlord. The appeal was disposed of.

5. On 30.12.2005, the respondent no.1 issued a notice for retrenchment owing to the closure of school. The respondent no.1 and 2 in their meeting held on 20.01.2006 decided to adjust the students and employees of National Public School, Bela Road to their other two schools at Daryaganj and Kalindi. The respondent nos. 1 & 2 were maintaining the joint seniority list of the teachers and employees of all their schools therefore as per the petitioner he was entitled for adjustment in Kalindi Branch on transfer.

6. In the year 2006, the petitioner filed writ petition being W.P.(C) No. 2264/2006 against the retrenchment notice dated 30.12.2005. On 31.03.2006, the respondent no. 1 decided to adjust the petitioner in National Public School, Kalindi by way of transfer. In view of the said decision the petitioner withdrew the writ petition.

7. In May, 2006, the petitioner was taken on the strength of National Public School Kalindi against the vacancy which was reflecting in the statement of vacancies of the school.

8. The petitioner wrote various letters requesting respondent no.3 school to pay him salaries like other staff members in the school as per the provisions of Section 10 of Delhi

School Education Act. On 07.03.2007, the respondent no.3 informed that the case of the petitioner is forwarded to the respondent no.1 (society) for appropriate decision. The respondent no.2 vide letter dated 08.05.2007 clarified that the petitioner is being paid in terms of Rule 45 (ii) of Delhi School Education Rules.

9. On 15.11.2007, the petitioner again requested for payment of salary like other similarly placed teachers and the petitioner preferred a Writ Petition being W.P.(C) No. 4824/2008 against the respondents. The same was dismissed as withdrawn on 09.07.2008 due to the judgment passed in W.P.(C) No. 174/2008 titled ***Sonia Jaggi Vs. L.G. of Delhi*** whereby the petitioner was directed to approach to Delhi School Tribunal however, the said judgment was set aside by the Division Bench of this court in L.P.A No. 196/2008.

10. Thereafter, the petitioner wrote various letters dated 26.09.2008, 27.10.2008, 11.11.2008 and 01.12.2008 to the respondent requesting the payment of salary at par with other similarly placed teachers of the school but no positive response was received from the respondent nos. 1 to 3. The respondent no.5 i.e. Deputy Director of Education vide its orders dated 13.13.2009 and 09.04.2009 directed the respondent no.2 to pay the salary and allowances to the petitioner at par with the other teachers in accordance with Section 10 (i) of Delhi School Education Act, 1973. Despite of issuance of letter, legal notice dated 09.06.2009 was also issued to the respondent for compliance of the orders/directions issued to respondent no.3 by

the Deputy Director of Education. The said notice was replied by the respondent no.3 vide letter dated 25.06.2009 whereby it was stated that Rule 47 of Delhi School Education Rules, 1973 is not applicable in the case of the recognized private unaided school. However, in the letter dated 29.06.2009 the respondent no.1 has admitted that the issue may be decided by the High Court as the department and the school authority agree to abide by the decision of this Court.

11. The petitioner again requested to respondent no.3 to revise the salary, however, respondent no.3 vide letter dated 22.07.2009 informed that the decision would be taken by the school regarding the release of installments of arrears. Hence the present writ petition subsequently filed by the petitioner.

12. The main contention of the respondent nos.1 to 3, who are the main contestants, in the counter affidavit is that the petitioner is being paid as per Rule 47 Sub Rule (iii) of the Delhi School Education Rules since the petitioner cannot be treated to be on the rolls of National Public School, Kalinidi. Therefore, the petitioner is to be treated as surplus employee and is governed by Rule 47.

13. On the other hand respondent nos. 4 to 6 in their counter affidavit reiterated that the letter dated 13.03.2009 and 09.04.2009 whereby the respondent nos. 1 to 3 were directed to pay the salary and allowances to the petitioner as per the provisions of Section 10 (i) of Delhi School Education Act. The respondent no.5 also issued show cause notice dated 26.09.2009 to the respondent nos.1 to 3 for non payment of salary and

allowances as per law. The petitioner has filed the comparative statement of salary. Counsel for respondent no.1 also admitted before this court of non compliance of its order by the respondent no.3 who is adamant to pay the petitioner salary and allowances on the basis of last pay certificate. It also appears from the pleadings and documents filed on record that the stand of the respondent nos. 1 to 3 taken in the counter affidavit is contrary to their reply dated 25.06.2009 to the legal notice whereby the said respondents state that the Rule 47 is not applicable in this case being private aided school. The documents and letters filed by the petitioner clearly shows that the petitioner is not a surplus but joined duties by way of transfer and there were two posts of P.E.T. in the respondent no.3 school at the time of joining by the petitioner.

14. The petitioner, on the other hand, has also filed the detail by way of annexure showing teacher-wise allotment of period which shows that the petitioner has been taking the period like other teachers of the school and it appears that the petitioner is only the P.E.T. in the school. Therefore, the petitioner apparently cannot be taken as surplus as the petitioner has been performing the duties like other teachers of the school as appear from the documents filed by the parties. Prima facie, it appears, that the contesting respondents have acted in violation of Section 10 of Delhi School Education Rules.

15. In the similar situation, there has been a discussion in the case of **Veena Sharma (Mrs.) & Ors. Vs. The Manager, No.1 Air Force School Palam & Ors.** 2005 VII AD (Delhi) 517

which is clearly applicable in the facts and circumstances of the present case. The relevant paras 13 to 20 of the said judgment reads as under:

“13. Section 10 (i) of the Act provides as follows:-

the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized 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(i) requires the appropriate authority to direct in writing the managing committee of any recognized 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. The second proviso to Section 10(1) contemplates withdrawal of recognition is 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 4(1) obliges the authorities under the Act to ensure that recognition is granted if the institution/school is possessed of sufficient funds to pay salary and allowances.

14. In the decision of the Supreme Court reported as **Frank Anthony Public School employees Association Vs. Union of India**, AIR 1986 (4) SCC 707 it was held that the excellence of every

school, whether aided or unaided would depend upon the quality of its teachers and that provisions which mandate payment of salary and allowances, like Section 10 cannot be characterized as unreasonable even in respect of unaided minority educational institutions. The inflexible nature of the liability of the every recognized school to follow the provisions of the Act and Rules framed under the Act, was again reiterated by the Supreme Court in the judgment reported as **Raj Soni Vs. Air Officer Incharge (Administration)**, 1990(3) SCC 261. It was in Raj Soni Case (supra) that :-

The recognized private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute.

15. Although the Minimum Wages Act does not apply in terms of teachers and schools, nevertheless Section 10, to the extent it obligates managements of recognized schools to pay the same salary and allowances and grant the same terms and conditions applicable to the staff of school of the appropriate authority, constitutes a minimum standard regarding pay/salary. No management, of an aided or school can legitimately claim exemption from applicability of this minimum standard.

16. It is a settled law that hardship to an employer to carry on its activity, on account of payment of minimum wages is an irrelevant consideration for the determination of minimum wages, see **Unichovi Vs. State of Kerel**, AIR 1962 SC 12; **Hydro (Engineers) Private Ltd. Vs. Workmen**, 1969 (1) SCR 156. It is also been held that the State assumes that every employer must pay the minimum wage before he resorts to employment. These principles have been reiterated time and again, right down to the position in **Air**

Freight Ltd. Vs. State of Karnataka, 1996(6) SCC 547.

17. In respect of Section 10 of the Act itself, the argument of paucity of funds being an irrelevant consideration has been ruled against in the judgment reported as **Samaj Shiksha Samiti Vs. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan,** 2002(97) DLT 802.

18. Two things clearly emerge, from the above position. The respondent school is under an obligation to comply with the provisions of Section 10. This obligation is not relieved in any manner; rather, Section 4(1) reinforces this conclusion. Further, the Director and other authorities under the Act have no power to exempt any recognized school from its liability to comply with Section 10. The reliance of the school on the implied approval by the Central Government, is in my considered opinion of no consequence. There is no dispute about the fact that the Directorate itself has been insisting upon payment of salary and allowances in accordance with Section 10. Indeed that was the condition of recognition itself. The second issue is that financial hardship is also no consideration or ground to relieve an employer of his statutory obligation to pay what society has decreed as the minimum salary of teachers and staff, through the provisions of Section 10 of the Act.

19. The submission of learned counsel for the school that if the relief is granted and the pay scales have to be released in favour of the petitioners, a situation might arise leading to the close of the school is somewhat similar to the apprehensions voiced by the Management in Frank Anthony case (supra). The Supreme Court dealt with arguments in the following terms:-

“We must refer to the submissions of Mr. Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is

largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to put the teachers in their proper place. The fear expressed by the management here has the same right as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.

20. The submission of paucity of funds, has to be, therefore, rejected. The subjective or individual hardship of a management, that too sponsored by no less an Organization of the stature of Indian Air force, which even went to the extent of seeking to deny liability on the ground that the school caters to the children of JCOs (Junior Commissioned Officers) impliedly perhaps suggesting that the children of such employees can be taught without compliance with minimum standards imposed by law, cannot be countenanced."

16. After considering the above judgment, I am of the considered view that the respondent school is bound by the term

of Section 10 of the Act and the said school has to make the payment of salary and allowances in terms and conditions of service to the employees at par with those of the employees of the similar status in the school run by the appropriate authority.

17. There is no impediment in the grant of direction that arrear of salaries is to be paid as per the latest salary statement filed by the petitioner. The arrear should be paid by the school within a period of eight weeks from today.

18. The petitioner is entitled for the pay and allowances and other facilities and benefits as mandated by Section 10 of the Delhi School Education Act equally to those of employees of similar status in the school. The petitioner is also entitled for the cost of Rs. 5,000/- which shall be paid along with the arrear.

19. In view of the above mentioned discussion and finding the present writ petition is allowed. All the pending CMs also stands disposed of.

MANMOHAN SINGH, J.

JULY 02, 2010
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