

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

+ **WP(C) No.3530/2008**

% **Date of decision: 20.05.2008**

Mrs.Parveen Thakran Petitioner
Through: Mr.G.B. Bhandari, Advocate

Versus

Govt. of NCT of Delhi & Ors Respondents
Through : Mr.Madan, Advocate for the
respondent No.1.

CORAM :-
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

1. The petitioner has sought directions to the respondents to make her payments of the salaries and allowances in accordance with the prescribed scale of pay and for quashing the memo dated 21st April, 2008 seeking the explanation of the petitioner for not issuing the receipt of Rs.910/-. The petitioner has also sought direction to the respondent not to pass any adverse order without due process of law.

2. The petitioner contended that she is working as clerk and the respondents are only paying basic salaries and other facilities are not extended to the petitioner despite specific and unambiguous terms and conditions laid down in the appointment letter. The petitioner has claimed in the circumstances ancillary allowances like HRA, DA, CCA etc. The petitioner has also claimed yearly increments.

3. The petitioner has also contended that even other employees of the schools were not granted ancillary allowances and for various other grievances, other writ petitions by the teachers and employees are pending where notices have been issued.

4. The petitioner has also contended that in another petition being W.P(C) No.5075/2003 by order dated 11th May, 2004 the respondent school was directed not to take any action without the approval and permission of the Director of Education which writ petition is still pending. It is also alleged by the petitioner that the trustee of the school management committee are divided into groups and are involved in a chain of litigation for the purpose of controlling the school and other institution established by Sir Chottu Ram Educational Trust and the staff is picked up for harassment and victimization based on their allegiance to one or the other groups.

5. The petitioner in the circumstances has challenged the memo dated 21st April, 2008 whereby the petitioner has been asked to give explanation regarding non issuance of a receipt of Rs.910/- received by her on the ground that respondent No.5 is not competent to issue the said memo to the petitioner.

6. A Division Bench of this Court in Kathuria Public School and Ors Vs. Director of Education and Anr, 2005 VI AD (Delhi) 893 relying on T.M.A.Pai Foundation Vs. State of Karnataka, AIR 2003 SC 345 had held that it is advisable that the specialized Tribunal constituted should look after the **legal matters relating to hearing of grievances of teachers and employees**. The Division Bench relying on T.M.A.Pai Foundation (Supra) had held that specialized Tribunal should hear **any** grievance of the teacher and employees. It was further held that no restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal and consequently the Tribunal should be able to hear all the grievances including in respect of suspension of a teacher or an employee and, therefore, the Tribunal constituted under the Delhi School Education Act should be able to hear all the grievances of the staff and teachers and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act. The Division Bench in para 42 at page 910 had held as under:-

“42. No restriction has been placed on the scope and ambit of the consideration of the grievances of the teacher or employee by the Tribunal. Under the said Act in question, the Tribunal is already constituted. Thus, all that is to be done is that the Tribunal should be able to hear all grievances including in respect of suspension by a teacher or an employee. Taking into consideration the observations made by the Apex Court in T.M.A.Pai Foundation case (supra), we are of the considered view that pending necessary legislative action by the State, **the Tribunal constituted should be able to hear all grievances of the staff and teacher and not necessarily as restricted to in sub Section (2) of Section 8 of the said Act.** The result would be that if a teacher is aggrieved by a suspension order or its prolongation, the grievance can be made before the Tribunal depending upon the fact and circumstances of the case.”

7. In the circumstances all the disputes raised by the petitioner can be adjudicated by Delhi School Tribunal. The learned counsel for the petitioner is unable to point out anything to the contrary as to why this Court should exercise its jurisdiction under Article 226 of the Constitution of India when the disputes can be adjudicated and resolved by a competent Tribunal.

8. There cannot be any doubt whatsoever that the question as to when a discretionary jurisdiction is to be exercised or refused to be exercised by the High Court has to be determined having regard to the facts and circumstances of each case where for no hard-and-fast rule can be laid down. But normally, the High Court should not entertain

writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. To the doctrine of exhaustion of alternative remedy there are two exceptions. One is when the proceedings are under a provision of law which is ultra vires which will entail quashing of same on the ground that the proceedings are incompetent without a party being obliged to wait until those proceedings run their full course. The other exception is when an order is made in violation of principles of natural justice and the proceedings itself are an abuse of process of law. A Division Bench of the Supreme Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* ((2004) 3 SCC 553 : JT (2003) 10 SC 300 [12]) observed that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition and it is the Court that has imposed upon itself certain restrictions in the exercise of this power. The Supreme Court had held on page 572 in para 28 as under:

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. ***The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain***

restrictions in the exercise of this power. (See *Whirlpool Corpn. v. Registrar of Trade Marks*¹³.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

9. Though the show cause notices have been issued in some other writ petitions, however, that in itself will not be a ground for this Court to exercise jurisdiction under Article 226 of the Constitution of India in the present facts and circumstances. The order challenged by the petitioner directing her to reply to the allegation of not issuing receipt despite collecting a certain amount, is not under a provision which is ultra vires nor it is in violation of the principles of natural justice. The non payment of certain allowances as claimed by the petitioner is also not such a situation where this Court should exercise its jurisdiction under Article 226 of the Constitution of India in the present facts and circumstances.

10. Therefore, in the facts and circumstances this Court is not exercising its jurisdiction under Article 226 of the Constitution of India for the relief claimed by the petitioner and it is for the petitioner to exhaust her alternative remedy available to her under the Delhi School Education Act and Rules, 1973 and to approach Delhi School Tribunal.

11. The writ petition is therefore, disposed of in terms hereof. All the applications filed with the writ petition are also disposed of.

May 20th , 2008
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ANIL KUMAR, J.