

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

**+ Review Petition 13638/2002, CM.No.13639/2002 (for condonation of delay) and CM.No.13640/2002 (for stay) and W.P.(C) 1651/2002**

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**Date of decision: 20<sup>th</sup> May, 2010**

**AGYA KAUR & ORS.**

..... Petitioners

Through: Mr. Sarvesh Bisaria and Mr. Prakash Chandra Sharma, Advocates.

Versus

**GOVT. OF N.C.T. OF DELHI & ORS.**

..... Respondents

Through: Ms. Sana Ansari for Ms. Zubeda Begum, Advocate for R-1/DOE.

Mr. V.K. Tandon and Ms. Parul Sharma, Advocates for R-3.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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

**RAJIV SAHAI ENDLAW, J.**

1. The four petitioners, claiming to be employed with the schools run by the respondent no.2 Police Families Welfare Society, have instituted this writ petition impugning the order of termination of their services and seeking a direction for their reinstatement with backwages and continuity of service. The writ petition was also accompanied with an application for interim relief. This Court vide order dated 13<sup>th</sup> March, 2002, while issuing notice of the petition, directed that any fresh appointment by the aforesaid Society shall be subject to further orders in the writ petition. On the next

date i.e. 8<sup>th</sup> August, 2002 none appeared for the Society aforesaid. This Court issued Rule in the petition and also allowed the petition. The orders of termination of services of the petitioners were quashed and the petitioners were reinstated in service and also held entitled to the same pay scale as was given by the Society to other similarly situated employees. The Society thereafter applied for review of the aforesaid order but which Review Application was also dismissed on 23<sup>rd</sup> July, 2003. The Society thereafter preferred an appeal being W.A.586/2003. It was the contention of the Society before the Division Bench of this Court that the Single Judge in the order dated 8<sup>th</sup> August, 2002 while allowing the writ petition had presumed that the schools being run by the Society were governed by the provisions of the Delhi School Education Act, 1973 and Rules framed thereunder and granted relief on the said basis; this was however not correct inasmuch as the schools of the Society were not recognized schools and thus not covered by the Delhi School Education Act, 1973 and Rules framed thereunder. The Division Bench set aside the order of dismissal of the Review Application and revived the Review Application and directed the same to be heard. Opportunity was also granted to the Society to file a counter affidavit to the writ petition. The counter affidavit has since been filed. The Review Application is still pending.

2. The Society has in its counter affidavit stated that the petitioners were working as teachers in the crèche/pre-nursery schools being run by it; that

the said Society is not a State and hence no writ petition lies against it; that its schools are neither receiving any grant from the respondent no.1 Government of NCT of Delhi nor require any recognition from the Directorate of Education; that for this reason also the remedy of writ petition is not an appropriate remedy. It is further pleaded in the counter affidavit that the Society is financed by the funds raised by annual subscriptions and grant in aid from Delhi Police Amenities Fund; that the Society is not financed either by Government of NCT of Delhi or by Education Department and /or any other department/agency of the Government in any way and is not controlled by any Government agency. With respect to one of the schools, in which the petitioner no.2 was employed, it is pleaded that it was closed down due to non availability of children / students to make it viable and as such services of the petitioner no.2 were not required. With respect to the other petitioners it was stated that their services were also not found satisfactory and accordingly their services were dispensed with by giving one month's notice period salary.

3. The respondent no.1 Government of NCT of Delhi has also filed an affidavit of the Deputy Director of Education to the effect that the schools in which the petitioners were employed were not recognized by the Directorate of Education and thus the Delhi School Education Act, 1973 and Rules framed thereunder were not applicable thereto.

4. In view of the direction of the Division Bench, the delay in applying for review is condoned and CM.No.13639/2002 is allowed. The first question which arises is whether any ground for review has been made out. The Division Bench in the order dated 23<sup>rd</sup> March, 2004 while restoring the Review Application held that in the order dated 8<sup>th</sup> August, 2002 the Court had on its own concluded that the schools in which the petitioners were employed were governed by the Delhi School Education Act, 1973 and Rules; that the said conclusion was not based on any discussion or reason; that since same goes to the root of the matter, the Court ought to have satisfied itself before granting relief on that basis. Thus, the scope of review has to be guided by the aforesaid order of the Division Bench. Moreover, the order sought to be reviewed is in fact more of an *ex parte* order and the Division Bench having permitted the filing of the counter affidavit and having required this Court of review to satisfy itself of the applicability of the Delhi School Education Act, 1973 and Rules, the said questions have to be gone into.

5. The counsel for the petitioners, at the outset contends that the School Act applies to all schools in Delhi. However, the provisions of the School Act on the basis whereof the order under review was made, apply to recognized schools only. Admittedly there is nothing to show that the schools in which the petitioners were employed were recognized schools. The said fact is further confirmed from the affidavit aforesaid of the Deputy

Director of Education. The premise on which the order dated 8<sup>th</sup> August, 2002 is based is thus without any basis and the order is entitled to be recalled/reviewed and is recalled/reviewed. Review Petition No. 13638/2002 is thus also allowed and disposed of.

6. Counsels have also been heard on the merits of the writ petition.

7. It was inquired from the counsel for the petitioners as to how the remedy of a writ petition is available when the School Act and Rules and/or the Director of Education are not involved. The counsel contends that the Society aforesaid is a State and the remedy of writ lies thereagainst. The position with respect to the Society has however been noticed above in the counter affidavit and to which there is no rejoinder. The question which arises is whether the said Society can be said to be a State within the meaning of Article 12 of the Constitution of India and/or whether a writ would be maintainable against it. The Society is registered under the Societies Registration Act, 1860 and has the family members of the Police Officials as its members and their welfare as its objective. Merely the fact that the members of the Society are Government servants or family members of the Government servants would not give the colour of a State to the Society. The counsel for the petitioners however relies on the judgment dated 15<sup>th</sup> September, 1999 of the Division Bench of this Court in WPC 48/1999 titled ***Dr. Tara Chand Sharma Vs. Lt. Governor of Delhi***. The petitioner in that case was working with the State Council of Education

Research and Training (SCERT) and the question therein also was of maintainability of a writ petition against SCERT. The writ petition was held maintainable against SCERT. The counsel for the petitioners contends that similarly this writ petition is maintainable against the Society which is also engaged in the field of education as SCERT and which is also financed by the Government of NCT of Delhi and the Delhi Police.

8. I have gone through the judgment aforesaid of the Division Bench. SCERT was a creation of the Delhi Administration itself, with the object to provide better opportunities and facilities in all spheres of education and at all stages. The Division Bench held SCERT to be not a Department or adjunct of the Delhi State. However, a writ of mandamus was held to lie against SCERT for the reason that mandamus was held to lie to compel the official to carry out the terms and conditions of statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them. It was further held that duty need not be imposed by the Statute – It is only if the doing of that duty is of a public function and is having public character and such duty is adjudged in the light of the positive obligation owed by the authority to the affected party. The Division Bench found that the regulations framed by SCERT were being flouted and hence a writ of mandamus was held to lie against SCERT. However, in the present case no such Rules and Regulations have been cited. Further the involvement and contribution of SCERT in the field of education

cannot be compared with that of the Society in the present case. The Society in the present case is stated to be running crèche / pre nursery schools which are not even recognized or required to be recognized by the Delhi School Education Act. Thus, it cannot be said that the Society is involved in the field of education so as to be held to be performing a public function.

9. Faced with the aforesaid, the counsel for the petitioners contends that though the schools in which the petitioners were employed were pre nursery and unrecognized but the same Society is also running a recognized school in the name and style of Delhi Police Public School. Reliance is placed on *Ajay Singh Vs. Delhi Police Public School* 117(2005) DLT 516 where a writ was entertained against the said school. The petitioners have nowhere on affidavit stated that the Society is also running / managing the Delhi Police Public School. The counsel for the Society states that he has no instructions in this regard. The counsel for the petitioners makes a positive assertion. However, a perusal of the judgment in *Ajay Singh* (supra) does not find any reference to the Society running/managing the said school. During the course of hearing the file of *Ajay Singh* was requisitioned in the court. However, no reference to the Society managing the Delhi Police Public School is found therein also. Moreover, a visit to the website of Delhi Police Public School at <http://delhipolicepublicschool.org> and to its related links shows that the said school is not run/managed by the Society respondent in the present petition but by Police Foundation for Education,

Delhi, also a Society incorporated in 1989. Thus, it cannot be said that the Delhi Police Public School is being run/managed by the respondent Society in the present case.

10. A Division Bench of this court recently in ***Centre for Policy Research Vs. Brahma Chellaney*** MANU/DE/0715/2010 has again discussed in detail the various judgments on the persons/entities against whom writ petition would lie. Reference therein is made to ***Dr. Tara Chand Sharma*** (supra) also. However, there also it was held that if the rights are purely of a private character, no mandamus can issue and if the management is a purely private body with no public duty, mandamus will not lie. The rights sought to be adjudicated by the petitioners herein are purely private rights and no public duty is found to be breached. The respondent Society running crèche/pre-nursery schools is also not found to be performing a public function. No case for issuance of mandamus to any official of the respondent Society to carry out the terms of any Rule or Regulation under or by which the society is constituted or is governed is also made out. No public element is found in the service conditions including termination and grievances arising therefrom of the petitioners with the respondent Society.

11. The writ petition having thus been found to be not maintainable, the same is dismissed with liberty to the petitioners to seek appropriate remedy in law. The counsel for the petitioners has contended that since the petitions

have remained pending in this Court for the last eight years, the petitioners may face the bar of limitation in seeking other remedies. The petitioners would be well advised to invoke the provisions of Section 14 of the Limitation Act, 1963 in this regard. The fact remains that Rule was issued and the petition was allowed on 8<sup>th</sup> August, 2002. Thus, the *bona fides* of the petitioners in pursuing the present petition cannot be doubted and I see no difficulty in the petitioners' availing the benefit of the said provision of the Limitation Act.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**20<sup>th</sup> May, 2010**  
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