

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

+ **W.P.(C) No. 13883/2006**

Cont. Case (C) No. 176/2008

% Judgment delivered on: 08.02.2010

Shri Sahib Singh Petitioner
Through: Mr. A. Asthana, Advocate
versus

Government of NCT of Delhi and others Respondents
Through: Mr. Paramjit Singh,
Advocate for R-4 & R-5.
Mr. R.S. Mathur, Advocate for
Mr. Amitabh Marwah, Advocate for
R-1 and R-2 .
Mr. Sameer Vijay Singh,
Advocate for Mr. Jagjit Singh
Chhabra, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

1. This common order shall dispose of W.P.(C) No.13883/2006 alongwith Contempt Case (C) No. 176/2008. By the contempt case, the petitioner

seeks to initiate contempt proceedings against the contemnors no.1 to 3.

2. Brief facts relevant for deciding the present case are that the petitioner was appointed as a peon in respondent School-Guru Harkishan Public School in 1988 and his services were terminated. The petitioner challenged his termination before the Labour Court. Vide an award dated 28.10.1994 the petitioner was reinstated with full back wages and the petitioner was paid Rs.3, 73,048 as result of the implementation of the said award. Thereafter the respondent management challenged the award in a petition bearing No.3028 of 1996 before this court and in the said petition, the parties were sent for exploring the possibility of resolving their dispute which resulted in a settlement agreement dated 8.8.2007. Thereafter the petitioner preferred a petition bearing no.13883/2006 before this court for the payment of back wages in compliance with award of the Labour Court as per the recommendation of the 4th and 5th Pay Commission as applicable to the other employees of the school of his category. Thereafter it was alleged by the petitioner that the respondent school failed to implement the terms of the settlement arrived at on 8.8.2007 because of which the petitioner filed the present contempt case bearing No.176/2008.

3. Counsel for the respondent submits that the respondent Nos. 1 and 2 have fully honoured the terms of the settlement and now it is for the petitioner to withdraw the main writ petition which so far he has not

withdrawn.

4. I have heard counsel for the parties.

5. This Court under the mandate of Section 89 of the Civil Procedure Code, 1908 sent the parties to explore the possibility of settling their differences and for putting an end to the litigation. Consequently the dispute was before the Delhi High Court Legal Services Committee which vide its order dated 8.8.2007 set forth the terms and conditions of the settlement and endorsed the same. The parties voluntarily agreed to settle their disputes during the pendency of the writ petition No. 3028 /1996 and they arrived at a settlement which is reproduced as under:

"08.08.2007

Present:- Sh. Paramjeet Advocate for the Management/petitioner.

R-1 Workman Shahib Singh along with h. Javed Ahmad, Advocate

The particulars of this case were called from the Registry of the High Court targeting individual workman to explore possibility of settlement by way of Mediation/Conciliation.

In pursuance to the notice issued, the parties have appeared before the undersigned.

R-1 Workman was appointed as a Peon with the Management schools sometimes in the year 1988. It is the case of the Workman that his services were terminated arbitrarily, without any justification and contrary to law on 2nd February, 1990. Workman raised Industrial Dispute and an award was passed in his favour in the year 1994 thereby directing reinstatement of the workman along with the back wages etc. The Award has been challenged by the management in the High Court and parties have voluntarily agreed to settle their dispute on the following terms and conditions:-

1. It is agreed that workman resumed his duties with the management w.e.f. July, 2004 and hitherto has been paid his salary as per the rates of minimum wages prescribed by the Government of NCT of Delhi;
2. It is agreed that the workman shall be paid the entire arrears of his wages and other benefits as per the recommendations of the 5th Pay Commission w.e.f. the date of resuming his duties in July, 2004;
3. It is agreed that the total period of the services of the workman shall be counted without any break and with all benefits in regard to the continuity of service for the purpose of assessment of gratuity and other retirement benefits on reaching the age of superannuation;

4. It is agreed that the arrears shall be worked out as above and shall be given to the workman within three months from today and it is also agreed that the workman shall be given the benefits of 6th Pay Commission as and when such recommendations come into operation;
5. It is agreed that the workman shall withdraw Writ Petition bearing no. 13883/06 filed by him in the High Court after the payment of the arrears calculated as above;
6. It is also agreed that the management shall withdraw the petition bearing no. 3028/96 pending in the High Court.
7. It is agreed that parties shall bear their own costs."

6. The main grievance raised by the counsel for the petitioner is that para 3 of the said settlement has not been honoured by the respondents and nor the wages of the petitioner effective from 1988 have been taken into consideration. Counsel for the respondent, on the other hand, submits that an amount of Rs.1,01,000/- was paid by the respondents in terms of the settlement and the petitioner has already acknowledged the receipt of the said amount. Counsel further submits that in a separate Industrial Dispute raised by the petitioner (LCA No. 92/06/04) the petitioner himself has admitted this fact that he had already received a sum of Rs.1,01,000/- and presently there are no dues payable by the respondent. In terms of the settlement, the petitioner workman had resumed his duties with the management w.e.f. July, 2004 and the petitioner has been paid his salary as per the rates of minimum wages prescribed by the Government of NCT of Delhi. So far the payment of arrears of wages as per the recommendation of 5th Pay Commission are concerned, it was agreed that they will be paid from the date of the petitioner resuming his duties in July, 2004. So far the total

period of service of the petitioner from the remaining period effective from 1988 is concerned, the parties have agreed that the said service shall be counted without any break for the purposes of assessment of gratuity and other retirement benefits on reaching the age of superannuation. The respondent No.2 shall implement the said term in true letter and spirit. Similar is the position with clause 4 of the settlement whereby the said benefit shall also be given by respondent Nos. 1 and 2 as and when such recommendation comes into operation. So far as the issue of transfer of the petitioner is concerned, this is beyond the scope of the writ as well as the terms of the settlement but the petitioner is at liberty to pursue an independent remedy for the same.

8. In the light of the aforesaid terms of the settlement, nothing survives in the present contempt petition and rather the petitioner should have been honest enough to have withdrawn the present petition after the said settlement. Be that as it may, the contempt petition bearing no.176/2008 is disposed of in terms of the above directions. In view of the said settlement being honoured by the petitioner nothing survives in the present writ petition bearing no.13883/06 and being infructuous, the same is hereby dismissed.

February 08, 2010
pkv

KAILASH GAMBHIR,J