

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

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Date of decision: 19th April, 2011

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W.P.(C) No.9119-29/2006

MANGAL MOHAN & ORS

..... Petitioners

Through: Mr. K.C. Dubey, Advocate.

versus

DIRECTOR OF EDUCATION & ANR

..... Respondents

Through: Mr. R.K. Vats & Mr. Keshav Ranjan,
Advocates for R-2.

AND

CONT. CAS(C) No.1016/2006

SHEEL KUMAR

..... Petitioner/Relator

Through: Mr. K.C. Dubey, Advocate.

versus

V.K. PANDEY & ORS.

..... Respondents/Contemnors

Through: Mr. R.K. Vats & Mr. Keshav Ranjan,
Advocates for R-1&2.

AND

CONT. CAS(C) No.1210/2006

CHIRANJILAL

..... Petitioner/Relator

Through: Mr. K.C. Dubey, Advocate.

versus

V.K. PANDEY & ANR.

..... Respondents/Contemnors

Through: Mr. R.K. Vats & Mr. Keshav Ranjan,
Advocates for R-1&2.

AND

CONT. CAS(C) No.1019/2006

RAVINDER GAURA

..... Petitioner/Relator

Through: Mr. K.C. Dubey, Advocate.

versus

V.K. PANDDY & ANR.

..... Respondents/Contemnors

Through: Mr. R.K. Vats & Mr. Keshav Ranjan,
Advocates for R-1&2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 eleven petitioners claiming to be employees of the respondent no.2 Manav Bharti India International School have filed this petition claiming the following reliefs:-

- “a) Direct the respondents to grant the prevailing pay scale of the posts on which the petitioners are working.*
- b) Direct the respondents to pay the revised pay scale as per Fifth Pay Commission Report.”*

2. It is the case of the petitioners that by virtue of Section 10 of Delhi School Education Act, 1973, the respondent no.2 School being an aided recognized school is liable to pay to its employees wages not less than those of the employees of the corresponding status in the schools run by the Government of NCT of Delhi and which were not being paid to them.

3. Notice of the petition was issued. The respondent no.1 Directorate of Education in its counter affidavit has affirmed that the petitioners are entitled to scales of pay and allowance, pension, gratuity and other prescribed benefits under the aforesaid provision of law.

4. The counsel for the respondent no.2 School invites attention to the affidavit dated 11th October, 2007 filed by the respondent no.2 School in which it is stated that the respondent no.2 School has been paying the salaries/wages and prescribed benefits in terms of Section 10 (supra) from the month of September, 2007.

5. The counsel for the petitioners also does not controvert so. He however states that the eleven petitioners were employed with the respondent no.2 School on dates varying from in the year 1991 till the year 2003 and they are entitled to the emoluments in accordance with Section 10 with effect from the date of their appointment, and which have not been paid

so.

6. The counsel for the respondent no.2 School contends that the first representation by the petitioners to the respondent no.1 Directorate of Education in this regard was only in the month of March, 2006. The counsel for the petitioners is unable to show any representation of a date prior thereto but states that even without the petitioners making such a representation the respondent no.2 School was obliged under the law to pay emoluments in accordance with law to the petitioners.

7. The second proviso to Section 10 (supra) provides that the default by the respondent no.2 School in paying the emoluments as provided therein can lead to withdrawal of recognition. Now that the respondent no.2 School has been paying the emoluments in accordance with law for the last at least four years and soon after filing of the petition, it is not deemed expedient to entertain this writ petition qua the arrears. The writ remedy is not to be a substitute for the remedy of the petitioners to recover the arrears. Moreover the prayer of the petitioners in the writ petition also was with respect to the prevalent scales only and not with respect to the arrears. The petitioners having not made any grievance since the date of their appointment, cannot now claim a mandamus to the respondent no.1 Directorate of Education to

de-recognize the respondent no.2 School for non-payment of arrears and which de-recognition would affect the students and the others employed therein also.

8. The three contempt petitions were filed averring the respondent no.2 school to be in disobedience of the interim order dated 24th May, 2006 in the writ petition. Though the writ petition, as aforesaid was claiming only the relief of granting the pay scale in accordance with the law but the petitioners filed CM.No. 6751/2006 seeking interim relief. It was the case of the petitioners in the said application that the petitioners apprehended that owing to their having preferred the present petition, the respondent no.2 School may become vindictive towards them. The petitioners thus sought to restrain the respondent no.2 School from terminating, degrading or transferring their services from their then position.

9. On the aforesaid application of the petitioners for interim relief, vide order dated 24th May, 2006 the respondents were directed to maintain status quo with respect to the petitioner's employment. The said order has continued in force, though not confirmed till now.

10. CM.No.5/2008 has been filed by the respondent no.2 school for vacation of the said order.

11. It is the case of the petitioners/relators in the contempt petitions that notwithstanding the order of status quo, departmental proceedings were commenced against them.

12. The counsel for the respondent no.2 School states that departmental proceedings, as far as contempt case No. 1016/2006 is concerned were commenced prior to the filing of the writ petition and as far as the other two cases are concerned, the departmental proceedings were commenced, though after the order dated 24th May, 2006 but prior to service thereof on the respondent no.2 School. It is further informed that on receipt of notice of contempt, further proceedings were not undertaken and vacation of the interim order was sought.

13. The counsel for the petitioners / relators with reference to reports of service of the notice of the petition and the interim order on the respondent no.2 School has contended that the respondent no.2 School first evaded to receive the service and thereafter the process server was not permitted to enter the school and the notice of the interim order received at the gate of the school by the watchman. It is thus contended that the commencement of the disciplinary proceedings was after the service of the interim order and thus it is disobedience of the order of the status quo.

14. It has been enquired from the counsel for the petitioners/relators as to whether there can be a blanket stay on any proceeding against an employee merely because the employee has raised a dispute against the employer.

15. Though the counsel for the petitioners/relators initially admitted that there can be no such blanket stay but subsequently contends that in the present case since this Court had passed an order directing the *status quo* to be maintained and which order is in the nature of the order under Section 33(2)(b) of the ID Act, 1947, not only could the terms of employment of petitioner be not changed but even the disciplinary proceedings could not have been initiated. He further informs that the petitioner in Cont Cas(C) 1210/2006 has since been allowed to rejoin the duty but relief is however sought by the said petitioner qua his claim from the respondent no.2 School of his seniority and backwages etc.

16. I am of the view that initiation of disciplinary proceedings against the workman cannot be said to be in violation of the interim order. The *status quo* in the context in which it was sought cannot be construed as restricting the right of respondent no.2 School of commencing the disciplinary proceedings also. Taking the parity of Section 33(2)(b), relied upon by the counsel for the petitioners himself, the same also requires only approval of

the order of punishment ultimately passed and not the approval of initiation of the disciplinary proceedings. No case of contempt is thus made out.

17. The counsel for the petitioners/relators however states that since the petitioners/relators did not participate in the disciplinary proceedings initiated against them claiming protection of the interim order, they should now be permitted to participate in the disciplinary proceedings.

18. The counsel for the respondent no.2 School has stated that the final order in the disciplinary proceeding has not been passed owing to the pendency of the present proceedings. He further states that the petitioner/relator in Cont.Cas1210/2006 was allowed to rejoin his duty without prejudice to the pending disciplinary proceedings. In the circumstances, it is deemed expedient to direct that the Disciplinary Authority/Inquiry Officer before concluding the proceedings gives a fresh notice to the petitioner/relator and gives an opportunity to the petitioner/relator to putforth their defence.

19. The writ petition is therefore disposed of with liberty to the petitioners to agitate their claims if any for arrears before the appropriate Fora. It is clarified that the respondent no.2 School shall be entitled to take all defences available to it in opposition to the said claim if any made by the petitioners.

20. Interim order stands vacated.

21. The three contempt cases are therefore dismissed save for the aforesaid direction.

22. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

19th April, 2011
m/pp