

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

Date of decision: 12th August, 2011

- + W.P.(C) 4061/2008, CM No.14654/2008 (for recalling of order dated 7th July, 2008), CM No.2212/2009 (for deletion of names of the petitioners no.2,3,5&9 and for stay/direction), CM No.6495/2010 (for vacation of stay), CM No.1657/2011 (for direction) & CM No.6350/2011 (for dispensing services of petitioners no.4,6&10)

SUSHMA ARORA & ORS

..... Petitioners

Through: Mr. Sarvesh Bisaria, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Simran N. Rawat, Adv. for R-1to3.

Mr. P.K. Rawal & Mr. Saurabh Munjal, Adv. for R-4 to 6.

AND

- + W.P.(C) 4062/2008, CM No.3149/2009 (for deletion of name of petitioner no.5 and for ex parte stay) & CM No.19970/2010 (for stay).

MENU & ORS

..... Petitioners

Through: Mr. Sarvesh Bisaria, Adv.

Versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Simran N. Rawat, Adv. for R-1to3.

Mr. P.K. Rawal & Mr. Saurabh Munjal, Adv. for R-4 to 6.

+ **AND**
Cont. Case (C) No.467/2009

KRISHNA SHARMA Relator/Petitioner
Through: Mr. Sarvesh Bisaria, Adv.

Versus

RAKESH MEHTA & ORS. ... Alleged Contemnors/Respondents
Through: Ms. Simran N. Rawat, Adv. for
R-1 to 3.
Mr. P.K. Rawal & Mr. Saurabh
Munjal, Adv. for R-4 to 5.

+ **AND**
**Cont. Case (C) No.467/2009, CM No.21257/2010 (for stay) &
CM No.9078/2011 (u/O 1 R 10)**

SHALINI GUPTA Relator/Petitioner
Through: Mr. Sarvesh Bisaria, Adv.

Versus

O.P. BABBAR & ANR. Alleged Contemnors/Respondents
Through: Mr. P.K. Rawal & Mr. Saurabh
Munjal, Adv.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|---|---------------|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The two writ petitions have been filed by the teaching and non-teaching staff respectively of the respondents M.R.V. Model School, Sector 13, Dwarka, New Delhi and M.R.Vivekanand Model School, Mukhram Park, Tilak Nagar, Delhi, seeking mandamus to the respondent Directorate of Education of the Govt. of NCT of Delhi to ensure compliance by the said schools of the provisions of Section 10 of the Delhi School Education Act, 1973 (DSE Act) and Rule 125 of the Delhi School Education Rules, 1973 (DSE Rules). Notice of the petitions was issued. However on 7th July, 2008 the counsel for the petitioners withdrew the writ petitions with liberty to file a petition for the same relief before the Delhi School Tribunal.

2. The petitioners thereafter filed applications for re-calling of the order dismissing the writ petition as withdrawn. Notice of the said applications was issued. The petitioners thereafter filed other applications averring that the schools had initiated action of termination of services of some of the staff members. Vide order dated 17th February, 2009, *status quo* regarding the services of the petitioners was directed to be maintained.

The said interim order has led to the filing of the Cont.Case (C) 467/2009 and Cont.Case (C) 794/2010.

3. The counsel for the petitioners has today contended that the respondent Directorate of Education has not filed any counter affidavit.

4. The counsel for the schools states that as of today there are no writ petitions and only the applications for re-calling of the order withdrawing the writ petitions are for consideration. He further states that notice of the said applications has not even been served on the schools and as such the schools have had no opportunity to respond to whether the writ petitions should be allowed to be restored or not. He seeks time for filing reply to the said applications but also contends that owing to the interim order, the schools are restrained from taking action against the teachers who are not qualified. It is contended that the schools have been granted only provisional recognition and it is a term of the said provisional recognition that the school is to rid itself of teachers who are not qualified as per the DSE Rules.

5. Though no order has been made reviving the writ petitions but a perusal of the order sheet shows that the matter at least since 3rd August,

2009 is being dealt as if the writ petitions stand revived and time has been sought and granted for filing counter affidavits and rejoinders. The counsel for the schools has also been appearing since 3rd August, 2009 and the order sheets show that the plea as raised today that the writ petitions stand withdrawn and ought not to be revived was not raised. Had such a plea been raised, the orders for completion of pleadings would not have been made. The counsel for the schools also admits that in fact the counter affidavit was filed by the schools during the said time only. Again, if the stand of the schools had been that the writ petitions do not exist, the occasion for filing the counter affidavit would not have arisen.

6. As such, now after two years I cannot entertain the plea of it being required to be first adjudicated whether the writ petitions stand revived or not. The matter is to be proceeded on the premise that the writ petitions stand revived.

7. The counsel for the petitioners has contended that the only order sought is for the schools to comply with Section 10 of the DSE Act and Rule 125 of the DSE Rules (supra).

8. The schools cannot possibly have any objection to the same in as

much as the schools as a condition of recognition are required to comply with the Act and the Rules. The counsel for the schools however states that the provisional recognition was granted to the schools only on 21st July, 2009. He thus contends that the schools would be required to pay emoluments in accordance with the Act and the Rules only with effect from that date and not from prior thereto.

9. The counsel for the petitioners is also agreeable that the directions for compliance of the aforesaid provisions can be from the said date of provisional recognition only.

10. Though the relief claimed in the writ petitions was as aforesaid only but interim orders of maintenance of *status quo* qua employment have also been made. The counsel for the petitioners however fairly agrees that the matter of dismissal by the schools of any of the teachers is to be dealt with separately and not in these writ petitions.

11. Accordingly, the writ petitions are disposed of with the following directions:-

- a. That the respondent schools are directed to, with effect from the month of September, 2011, pay emoluments to

the petitioner in accordance with Section 10 & Rule 125 (supra);

- b. The respondent schools are granted time till 31st March, 2012 to clear the arrears if any of the said emoluments by payment thereof to the teaching/non-teaching staff;
- c. If teaching/non-teaching staff remains aggrieved, they would be at liberty to approach the Directorate of Education and upon being so approached, the Directorate of Education is directed to enquire and if finds schools to be in defiance of this order and/or of the provisions aforesaid, to take appropriate action against the schools in accordance with law but definitely within four months of being so approached by the employees.

12. The interim order aforesaid is vacated. However if any dispute arises as to the action by the schools against any teaching/non-teaching staff, such staff shall have their remedies in accordance with law.

CONT.CAS(C) 467/2009 & CONT.CAS(C) 794/2010.

13. Cont. Cas (C) 467/2009 is not pressed by the counsel for the petitioner/relator.

14. As far as Cont. Cas (C) 794/2010 is concerned, it is the case of the Relator that the affidavit filed by the schools in the writ petitions is false. The counsel for the petitioner / relator however states that a separate writ petition with the same grievances has been filed. The said contempt petition is disposed of with liberty to the petitioners/relators to raise the pleas as raised herein in the separate writ petition stated to have been filed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 12, 2011
pp