

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

Date of decision: 19th May, 2011.

+ W.P.(C) 12894/2009 & CM No.13664/2010 (for directions)

% SUBODH SINHA Petitioner

Through: Mr. Puneet Mittal & Mr. Manoj Kumar, Advocates.

Versus

STATE OF NCT DELHI AND ORS Respondents

Through: Mr. Alok Gupta, Advocate for Ms.
Purnima Maheshwari, Advocate for
R-1 & 2.
Mr Vinay Sabharwal, Adv. for R-3.

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 petitioner, at the time of the filing of this writ petition being a teacher employed with the respondent no.3 Cambridge Primary School and

since retired on attaining the age of superannuation, preferred this writ petition seeking, (i) mandamus directing the respondent no.3 School to implement the orders dated 18th July, 2009 and 2nd September, 2009 of the respondent no.2 Directorate of Education (DoE), Govt. of NCT of Delhi and fixing the salary of the petitioner with effect from 1st January, 1996 in accordance therewith; (ii) relief of quashing of the communication dated 15th November, 2008 of the respondent no.3 School denying the claim of the petitioner; and, (iii) the relief of directing the respondent no.3 School to make the contribution to the Provident Fund of the petitioner in accordance with the revised scale.

2. Notice of the writ petition was issued and pleadings have been completed. The counsels have been heard.

3. The respondent no.2 DoE on representation of the petitioner and after considering the response of the respondent no.3 School thereto, found merit in the claim of the petitioner and as aforesaid, vide orders dated 18th July, 2009 and 2nd September, 2009 supra, directed the respondent no.3

School to fix the salary of the petitioner with effect from 1st January, 1996 as directed therein.

4. I am of the opinion that the writ petitions qua grievances of teachers/employees of recognized Schools within the meaning of Delhi School Education Act, 1973 are entertained by this Court to ensure that the Directorate of Education exercises the powers which it is required to exercise under the provisions of the Act and the Delhi School Education Rules, 1973 vis-a-vis Schools. Else, it is a matter of debate whether writ petitions qua reliefs claimed against the Schools would be maintainable. It is the contention of some of the petitioners in other matters that the Schools being engaged in the public function of imparting education, are amenable to writ jurisdiction even where no supervisory or controlling function of respondent no.2 DoE are involved. However, in the present case, need is not felt to consider the said aspect inasmuch as under Section 10 of the Act, the scales of pay and allowances etc. of the employees of recognized private Schools are required to be not less than those of the employees of the corresponding status in Schools run by the appropriate

authority and the respondent no.2 DoE has been empowered to issue directions directing the Managing Committees of such recognized private Schools to bring the scales of pay and allowance upto the level of those who are employed on corresponding status in Schools run by the Govt. of NCT of Delhi. The orders dated 18th July, 2009 and 2nd September, 2009 supra to the respondent no.3 School have been issued by the respondent no.2 DoE in exercise of the said powers.

5. The respondent no.3 School having not complied with the directions/orders of the respondent no.2 DoE, it is felt that the petitioner has become entitled to the mandamus directing the respondent no.2 DoE to take action consequential to the non-compliance by the respondent no.3 School of the directions. The proviso to Section 10 requires the respondent no.2 DoE to de-recognize the School which fails to comply with the directions issued to the Managing Committees of the Schools thereunder.

6. In the circumstances, it has been enquired from the counsel for the respondent no.3 School whether the respondent no.3 School has challenged

the said direction of the respondent no.2 DoE. The answer is in the negative.

7. The counsel for the respondent no.3 School however contends that the direction of the respondent no.2 DoE in the orders dated 18th July, 2009 and 2nd September, 2009 *supra* is wrong and erroneous. However, the respondent no.3 School cannot, merely by taking a stand that the direction is wrong, refuse to comply with the same and such refusal/failure requires the respondent no.2 DoE to de-recognize the School.

8. It has been next enquired from the counsel for the respondent no.3 School whether any representation even has been made against the said direction. Though the counsel had initially stated that no such representation is required to be made but now draws attention to the order dated 18th July, 2009 which refers to an earlier letter of the respondent no.3 School. However the same only indicates that the order dated 18th July, 2009 has been issued after considering the representation of the respondent no.3 School and if thereafter the respondent no.3 School does not choose

to challenge the same, there is no option but to presume that the respondent no.3 School has acceded to the same.

9. The counsel for the respondent no.3 School has next contended that since all the parties concerned are present before this Court, this Court in the present proceeding only considers and adjudicates the merits of the said orders/directions of the respondent no.2 DoE.

10. I am unable to agree. There is no challenge before this Court to the said directions. The present proceedings are concerned only with the enforcement of the said order/direction issued in exercise of powers under Section 10(1) of the Act. If the respondent no.3 School was/is desirous of impugning/challenging the same, it is for the respondent no.3 School to take action therefor and to after satisfying the Court as to *prima facie* case if any in its favour, obtain stay of the said directions. Without the respondent no.3 School taking any such steps, the petitioner cannot be denied the relief to which he has become entitled upon non-compliance by the respondent no.3 School of the directions.

11. The counsel for the respondent no.3 School has next contended that the petitioner has not even sought any relief against the respondent no.2 DoE and all the prayer paragraphs in the writ petition are directed against the respondent no.3 School. Though it is correct that the prayer paragraphs are not expressly directed against the respondent no.2 DoE but as aforesaid, the purport of the writ petition is to activate the respondent no.2 DoE into action and else as aforesaid it is doubtful whether the writ petition qua the grievance against the respondent no.3 School would be maintainable or not. Moreover, under the residuary prayer paragraph, appropriate relief can be granted.

12. The counsel for the respondent no.3 School at this stage states that since the respondent no.3 School was under the impression that the validity of the said orders/directions of respondent no.2 DoE shall be adjudicated in the present proceedings only, an opportunity be granted to the respondent no.3 School to now take appropriate remedies thereagainst.

13. In the circumstances, it is directed that unless there is any stay of the orders/directions dated 18th July, 2009 and 2nd September, 2009 of the respondent no.2 DoE to the respondent no.3 within two months of today, the respondent no.2 DoE to take action in accordance with the law (Section 10(1) of the Act) against the respondent no.3 School for non-compliance of the directions aforesaid. The same is however subject to the condition that the respondent no.3 School in any such challenge shall implead the petitioner herein as a party and shall also place before the fora concerned a copy of this order.

14. It is also the grievance of the petitioner that the respondent no.3 School to harass the petitioner and to coerce the petitioner into the withdrawing the writ petition has not even released to the petitioner the admitted retiral benefits. An application in this regard has been filed and which is pending consideration.

15. Accordingly, while granting liberty to the respondent no.3 School to take remedies now, against the directions aforesaid of the respondent no.2

DoE, further condition is imposed on the respondent no.3 School to within fifteen days of today, pay to the petitioner all undisputed retiral benefits if any remaining together with a computation thereof.

The writ petition is disposed of with no order as to costs.

Copy of this order be given *Dasti* to the counsels for the parties under the signature of the Court Master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 19, 2011
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