

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

+ **WP(C) No.1863/2013 & WP(C) No.1870/2013**

% **March 20, 2013**

1. W.P.(C) 1863/2013

JASBIR KAUR Petitioner

Through: Mr. Rajat Aneja, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR Respondents

Through: Mr. Jagdeep Sharma, Adv. for R-1.

and

2. W.P.(C) 1870/2013

KULJIT KAUR Petitioner

Through: Mr. Rajat Aneja, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR Respondents

Through: Mr. Jagdeep Sharma, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

**CM No.3557/2013(for exemption) in WP(C) No.1863/2013 &
CM No.3565/2013(for exemption) in WP(C) No.1870/2013**

Allowed, subject to all just exceptions.

Applications stand disposed of.

**WP(C) No.1863/2013 & CM No.3556/2013(for direction) with
WP(C) No.1870/2013 & CM No.3564/2013(for direction)**

1. The petitioners claim that they continue to be teachers in the respondent No.2/school. Petitioner in WP(C) No.1863/2013 was appointed as a TGT (English) teacher and the petitioner in WP(C) No.1870/2013 was appointed as TGT (Social Sciences).

2. There is a history of litigations in the present cases in view of the fact that there were earlier writ petitions filed by these writ petitioners, and which were WP(C) No.4061/1997 and WP(C) No.4062/1997. These writ petitions were originally allowed vide judgment dated 29.1.1999. An LPA was filed by the Directorate of Education and which appeal was allowed by directing the Single Judge to dispose of the writ petitions on merits. The writ petitions were ultimately heard on merits and disposed of by the judgment dated 27.11.2012.

3. What the reliefs were, as claimed in the earlier writ petitions

becomes clear from the following prayer clause in one of the writ petitions:-

(a) issue a writ of mandamus or any other writ, order or directions directing respondents 1 to 4 to treat the petitioner as appointed under rule 96 of the Delhi Education Rules, 1973 and make payment of arrears of salary to the petitioner for the period from 01.05.1996 till date as per their respective shares in accordance with the rules applicable to the grant-in-aid school and also continue paying salary from month to month.”

4. By the judgment dated 27.11.2012, the writ petitions being WP(C) No.4061/1997 and WP(C) No.4062/1997 were disposed of. Some of the relevant observations and findings in the said judgment are reproduced below, and they are relevant for the purpose of the present judgment, inasmuch as those paragraphs indicate the existence of disputed questions of fact with regard to whether the petitioners have continued to perform their duties as teachers with the respondent No.2/school. Paras 11, 12, 16 and 17 of the said judgment read as under:-

“11. Ms. Ahlawat then submitted that the letters written by the School to the DoE did not reveal that the two Petitioners were appointed on regular basis as TGTs in the Secondary School. She referred to the letters dated 19th April, 1995 and 25th May 1995. Even on 17th July 1995 the School only informed the DoE that the two teachers have been appointed on part-time basis. She submitted that it was not known as to how they subsequently became regular teachers. She referred to the attendance register and stated that while entries up to March 1998 were acceptable to the DoE, the entries beyond that date could not be accepted as they appear to have been made by

same hand and not countersigned by the management.

12. This Court has perused the original file of the DoE, produced in Court as well as the attendance register. There were admittedly problems with the School and salaried were not being paid even to teachers in the Middle School. They made representations to the DoE, in that regard. On 19th April 1995, in its letter to the Education Officer, the School referred to the appointment of both the Petitioners on honorary basis with effect from 1st February 199 “till further regular arrangement.” It was further stated that “....we could not submit the case in time due to Examination (Annual)”. Then there is a letter dated 25th May 1995 in response to the DoE’s letter dated 9th May 1995. In the said letter it was stated that the two Petitioners were appointed on part-time basis. It was further pointed out that the School had received the post fixation for the academic year 1994-95 “at Middle level only on 26/4/95”. It was stated that School was orally informed by DoE that the post fixation was applicable to aided school only and staff for unaided (minority) school may be appointed by the management without post-fixation. Consequently, it was decided to regularize the services of both the Petitioners with effect from 1st May 1995.

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16. This Court has perused the attendance register produced by the Respondent. While the pages up to March 1998 are properly filled up indicating the names of the two teachers, it must also be recalled that there was a dispute within the management and a separate attendance register was maintained for the Secondary School. Although both the Petitioners appear to have signed the attendance register thereafter, from what is evident from the affidavit filed by Shri Rattan Singh in LPA No.157 of 1999 is that they were assigned duties only till 1st April 2000. They state that they were attending School even thereafter. If they did, then they were doing so at their risk. Applying the principle of ‘no work no

pay', it would not be appropriate to direct the arrears of salaries to be paid to the Petitioners beyond 1st April 2000 since admittedly the Petitioners were not discharging any duties as TGTs after that date.

17. For the aforementioned reasons, this court holds that both Petitioners would be entitled to the arrears of salaries from 1st May 1996 up to 1st April 2000. A direction is issued to the DoE to pay to each of the Petitioners 95% (being the share of the DoE) of the salaries due to them as TFTs from 1st May 1996 up to 1st April 2000 since admittedly the Secondary School was sanctioned grant-in-aid during the aforementioned period. Considering that both Petitioners have been made to wait in Court for 15 long years, it is directed that the said amount should be paid by the DoE, to each Petitioner along with simple interest at 9% per annum for the period 1st April 2000 till the date of payment which should not be later than eight weeks from today. If the payment of arrears of salaries for the aforementioned period together with simple interest at 9% per annum is not made as directed within eight weeks from today, the DoE will pay each Petitioner further penal simple interest at 12% per annum on the aforementioned respective sums for the period of delay.” (underlining and emphasis is mine)

5. A reading of the aforesaid paras shows that there are seriously disputed questions of facts as to whether the petitioners continued to work as teachers from 1.4.2000 or not. The aforesaid paragraphs also show that there is no evidence of the petitioners having attended their jobs of teaching in the school though this aspect was seriously contended by the petitioners. The Court examined the record as also the attendance register and was convinced that the petitioners had only performed their duties till 1.4.2000.

Accordingly, salaries were granted to the petitioners only till 1.4.2000 i.e salaries were not granted till the date of the disposal of the writ petitions on 27.11.2012 and for future also, and which was the prayer made in the writ petitions, and which prayer clause has already been reproduced above.

6. The aforesaid aspects show that there are seriously disputed questions of fact as to whether the petitioners had abandoned their services with the respondent No.2/school or they were not allowed to attend their duties at school. The fact of the matter is that the learned Single Judge in terms of his judgment dated 27.11.2012 invoked and applied the principle of ‘no work no pay’ for granting salaries to the petitioners only till 1.4.2000. Therefore, it is a moot point whether the petitioners continued as teachers or they had in fact abandoned their services with the respondent No.2/school.

7. In my opinion, writ petitions under Article 226 can hardly be the appropriate remedy in cases such as the present where seriously disputed questions of fact arise of whether the petitioners have discharged their duties as school teachers or they have abandoned their services, and which issue of fact can be decided only on evidence being led.

8. No doubt Courts do exercise powers in certain cases of going into disputed questions of fact, however, I am not inclined in the facts of the

present case to consider leading of evidence before this Court and which will be better led in appropriate independent proceedings before the competent Civil Court.

9. I may also note that the respondent No.2/school though an aided school is a private school, and in cases such as the present, the respondent No.2 would not be a State or an instrumentality of State in terms of Article 12 of the Constitution. I am conscious of the fact that a writ petition under Article 226 is also entertained against private persons, however, the jurisdiction under Article 226 is discretionary, and more so when there exists seriously disputed questions of fact.

10. In view of the above, the writ petitions and the applications are dismissed giving liberty to the petitioners to file appropriate independent proceedings in a competent Civil Court in accordance with law.

VALMIKI J. MEHTA, J

MARCH 20, 2013
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