

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

+ **W.P.(C) No.8315 /2010**

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23rd July, 2013

SMT. SHIV RANI AND ORS.

..... Petitioners

Through: Mr. C.S. Parashar, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Megna Bherara, Advocate for
respondent No.1.
Mr. P.K. Sharma, Advocate for
respondent No.3.
Mr. Arvind Kumar Arora, Zone XI,
Pitampura in person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the four petitioners. The four petitioners are legal heirs of one Sh. Ramphal. Sh. Ramphal worked as a Gardener with the respondent No.2-school. The late Sh. Ramphal just before his retirement claimed certain dues for his entire service period of 17 years from the respondent No.2 on the ground that he was inadequately paid. Sh. Ramphal after receiving his retirement dues initiated proceedings under

the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), and in which proceedings the only relief which was prayed for by Sh. Ramphal was payment of earned leaves. No other benefit of any other monetary emoluments was claimed.

2. Before the Conciliation Officer, under the Act, a Memorandum of Settlement was entered into on 11.1.2010 and which reads as under:-

“That Sh. Ramphal filed a claim petition against the opposite party i.e. Apeejay School, Road No.42, Sainik Vihar, Pitam Pura, Delhi-34 under Delhi Shops and Establishment Acts for the payment of earned leaves. In which he has requested for payment of 45 days in ratio 15 days per year at the rate of ₹3,934/- p.m. which totals ₹5,900/- alongwith interest and penalty. But the opposite party states that the applicant has been given legally due leaves during his employment. The applicant has also been given the due leaves during the claimed period. The applicant retired on 30.06.2009 and at the time of retirement the full and final dues were paid. The applicant admitted the contentions raised by opposite party. The applicant requested opposite party that he is a poor man and some help may be provided to him for his expenses. During the conciliation, the opposite party for avoiding the unnecessary litigation has agreed to compromised the matter on following terms, which has been voluntarily accepted by applicant:-

Terms of compromise:

1. That the management will pay ₹6,000/- to the employee/applicant for all claim, disputes and all payable legal dues which includes re-employment/re-establishment, earned wages, payment against earned leaves, bonus and other payment.
2. That the employee has agreed to give up his all claims, disputes and all payable legal dues which includes re-employment/re-establishment, earned wages, payment against earned leaves, bonus

and any other payment.

3. That both of the parties have agreed that any claim/matter related to employment or money filed by employee against the management pending before any Court, Labour Court, Tribunal or any other authority or arising in future, will be considered to be full and finally settled according to the terms of this compromise and the management will have right to raise this contention and request before the concerned Court, Labour Court, Tribunal or any other authority. The abovementioned claim under Delhi Shops and Establishment Act pending before this Authority is also included.

4. That the compromised amount will be paid to the employee before the Authority, Delhi Shops and Establishment Act.

Date: 11.01.2010

Place: Delhi

Sd/-
(S.C. Dhingra)
Management

Sd/-
(Ramphal)
Employee

Witness:

Sd/-

Jagdish Kumar” (underlining added)

3. A reference to paras 1 to 3 shows that late Sh. Ramphal received the amount of ₹6,000/- in full and final settlement of all his claims of any nature whatsoever including any monetary claims of wages, leaves, bonus or any other payment from respondent No.2. It appears that thereafter Sh. Ramphal as per the petitioners himself wanted to challenge the settlement, however, there is no specific application which was filed in the proceedings under the Industrial Disputes Act that the settlement dated 11.1.2010 was entered into with by fraud. Once the settlement in the quasi

judicial proceedings is accepted, benefits are taken thereupon and the same if not challenged before the concerned authority, surely such settlement is final. Issue is not of what were the dues which were payable but the issue is that for whatever reasons the employee/late Sh. Ramphal thought it fit to receive a particular amount in full and final settlement. May be the amount of settlement may be less, may be late Sh. Ramphal ought not to have accepted the amount, however, this Court cannot decide once the same is not challenged before the authority before whom the settlement was entered into for the sufficiency of amount paid. This Court cannot look into the finality of the settlement dated 11.1.2010. Sh. Ramphal during his lifetime did not file any proceedings. It is only after his death, his legal heirs are now seeking to set aside the Memorandum of Settlement dated 11.1.2010 in this writ petition on the ground of fraud being perpetuated and the petitioners claim that all the service dues which were payable in accordance with law to late Sh. Ramphal taking him to be an employee under the Delhi School Education Act and Rules, 1973 be paid.

4. Counsel for the petitioners also vehemently and passionately contended that the petitioners are poor people and therefore Court must exercise the discretion in favour of these poor people. In my opinion, the

issue of poverty will definitely weigh with the Court provided within the legal bounds it is possible to give relief. The fact of the matter is that the claims which are now made in this writ petition were not made by late Sh. Ramphal under the Act. It is settled law that an employee of a school can either invoke the jurisdiction of a writ petition before this Court or he can exercise his remedies under the Industrial Disputes Act, 1947 vide *Apeejay School Vs. Sh. Darbari Lal & Ors. 170(2010) DLT 608*. Sh. Ramphal did exercise his option to proceed under the Act and that too for limited relief. In those proceedings an exhaustive compromise was arrived at. Therefore, in my opinion, once limited dues are claimed, an all encompassing compromise is arrived at, that compromise is not challenged before the appropriate authority, then, neither Sh. Ramphal, and much less his legal heirs thereafter can claim that monetary dues and that too for the entire service period be now paid to the petitioners.

5. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

JULY 23, 2013

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