

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

+ W.P.(C) No. 1292/2002

% **24th March, 2015**

SMT. ROOPA SHARMA & ORS. Petitioners

Through: Ms. Madhumita Bhattarcharjee, Adv.

versus

THE DIRECTOR, DIRECTORATE OF EDUCATION & ORS.

..... Respondents

Through: Ms. Anchal Chaudhary, Adv. for Ms.
Avnish Ahlawat, Adv. for R-1 and 2.

Mr. R.K.Saini, Adv. for R-3 and 4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioners, who are teachers in the respondent no.3/School, seek the benefit under Section 10 of the Delhi School Education Act and Rules, 1973 (DSEAR 1973) that they should be paid monetary benefits which are payable to employees of corresponding status in schools run by the government.

2. That the petitioners are teachers in the respondent no.3/School is an undisputed fact. I may note that respondent nos. 3 and 4 being the School and the Society have not filed their counter-affidavits but have only filed written submissions. In the written submissions, and before this Court orally, what is contented on behalf of respondent nos. 3 and 4 is that petitioners are not entitled to the benefits under Section 10 of the DSEAR 1973 inasmuch as, petitioners do not have the qualifications for being appointed as teachers of the respondent no.3/school.

3. The defence raised by the respondent nos. 3 and 4 is liable to be rejected for various reasons. Firstly, in the absence of counter-affidavit, no defence can be seen inasmuch as, respondent nos. 3 and 4 were bound to file their stand on affidavit but they have not done so. Secondly, for the sake of argument if the stand of the respondent nos. 3 and 4 has to be looked into, yet, the mandate of Section 10 of the DSEAR 1973 is clear. Section 10 of the DSEAR 1973 specifically states that teachers and employees of a recognized school have to get the same monetary benefits as payable to employees of a government school. Thirdly, the difference between a recognized and unrecognized school has now been done away with in terms of a Division Bench judgment of this Court in the case of ***Social Jurist, a Civil Rights Group Vs. GNCT & Ors., 147 (2008) DLT 729*** and which

holds that the provisions of Delhi School Education Act and Rules, 1973 apply to all schools in Delhi, whether they are recognized or not recognized, with the sequitur that it cannot be argued that respondent no.3/School would be de-recognized on account of petitioners not having the requisite qualifications. Fourthly and finally, the argument urged on behalf of the respondent nos. 3 and 4 cannot be looked into because how the petitioners are disqualified for appointment ie how the petitioners lack eligibility is not found in any manner even in the written submissions filed by respondents no. 3 and 4 much less by filing an affidavit specifically dealing with each of the 8 petitioners as to how these petitioners do not have necessary eligibility criteria for being appointed as teachers of the respondent no.3/School.

4. Therefore, for all the above reasons defence of the respondents no. 3 and 4 that petitioners are not entitled to benefit of Section 10 of the DSEAR 1973 is rejected.

5. In view of the above, the writ petition is allowed and the petitioners who are employees of respondent no.3/School, will be entitled to be paid all the monetary benefits which are payable to employees of equivalent status in the government schools.

6. Petitioners however will only be entitled to monetary benefits in terms of Section 10 of the DSEAR 1973 for the period of three years prior

to filing of the writ petition and for the period of pendency of the writ petition and till the services of the petitioners continue with the respondent no.3/School.

7. Since, however, qua each petitioner, what are the amounts which will be payable under which heads, pertain to an administrative matter viz calculation of amounts under different heads after adjusting the amounts already received by the petitioners, it is deemed fit that the respondent no.1/Director of Education or his nominees will hear the petitioners as also respondent nos. 3 and 4, either personally or through nominees/advocates, and thereafter pass a detailed speaking order qua each of the petitioners with respect to the monetary benefits which have now to be paid to the petitioners. Respondent no.1 will pass a speaking order after hearing the parties and which speaking order will be communicated both to the petitioners as also to the respondents no.3 and 4. Respondent nos. 3 and 4 will pay the amounts due to the petitioners within a period of three months of passing of the order by the Director of Education and in case the amounts due to the petitioners are not paid within three months thereafter petitioners will be entitled to interest for the subsequent period at 9% per annum simple on the amounts which have to be paid to the petitioners.

8. Parties to appear before the Director of Education or his nominee on 29th April, 2015 and for which purpose the counsel who appears before me on behalf of the Director of Education/respondent no.1, agrees that necessary intimation in writing will be given to the counsels who are appearing before me on behalf of the petitioners as also to the petitioners as to on which date, and before which authority and at what time parties or their nominees must appear.

MARCH 24, 2015
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VALMIKI J. MEHTA, J.