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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 1278/2010

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21st May, 2015

MRS. SUDESH JAIN

..... Petitioner

Through Mr.Preet Pal Singh, Advocate.

versus

DIRECTORATE OF EDUCATION & ANR.

..... Respondents

Through

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 under Article 226 of the Constitution of India by the petitioner, who was a teacher in the erstwhile School/Bhagwan Mahabir Sanskrit Vidyalaya, Ahinsha Bhawan, Shankar Road, Rajender Nagar, New Delhi. This Bhagwan Mahabir Sanskrit Vidyalaya became dysfunctional in 1994, and therefore on 05.1.1994, the Directorate of Education passed an order for adjustment of the teachers of the Bhagwan Mahabir Sanskrit Vidyalaya including the petitioner in other aided schools of the Directorate of Education.

2. Petitioner was adjusted in Srimad Dayanand Gurukul Sanskrit Mahavidyalaya, Dhera Khurd, Delhi. Petitioner however was not absorbed in that school, because that school was a Gurukul and thus only had male teachers and to this effect Srimad Dayanand Gurukul Sanskrit Mahavidyalaya wrote its letter dated 27.4.1994 to the Education Officer.

3. Petitioner and other teachers, through an association of her erstwhile School, filed a writ petition in this Court being W.P.(C) No.2828/1992, and this writ petition was decided in terms of the following order dated 25.2.1999:-

“ The petitioner has prayed for the following reliefs:

“That in view of the facts and circumstances, this Hon’ble Court may be pleased to issue writ of mandamus writ/order/direction thereby directing the respondents No.1 & 2 to withdraw letter No.55 dated 8.1.1992 (Annexure No.P-6) and letter No.Des/3I/92/774-75 (Annexure No.P-3) and further directing the respondents No.1 & 2 to absorb/adjust the teachers/employees of respondent No.3 (as detailed in Annexure P-1) in any other school or aided school in Delhi.

Or direct respondents No.1 & 2 to shift the school/respondent No.3 to some other place in Delhi and provide recognition and aid to the said respondent No.3;

direct the respondents No.1 & 2 to continue to provide salary to the teachers/employees of respondent No.3 until final adjudication of the petitioner.

Alternatively it is prayed that this Hon’ble Court may be pleased to direct the respondents No. 1 & 2 to hand over the management of respondent No.3 to a society known as AKHIL

BHARTIYA BRAHMIN MAHASABHA (Regd.), Durga Mandir.
A/364, Shastri Nagar, Delhi – 110 052.”

Six persons are involved in the matter and the names of the said six persons are as under:-

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|----|---------------------------------------|-----------|
| 1. | Sh.Ram Bhaj Sharma,
Acharya, O.T | Principal |
| 2. | Smt.Rekha Das
M.A.B.Ed. | T.G.T. |
| 3. | Smt.Sudesh Jain
M.A.B.Ed. | T.G.T. |
| 4. | Sh.Ajit Kumar
M.A., Acharya, B.Ed. | T.G.T. |
| 5. | Sh.Raj Kumar Shukla,
Shastri | Peon |
| 6. | Smt.Vimla Devi, | Bearer |

Except Smt.Sudesh Jain, all other persons have been absorbed in Sanskrit Vidyalaya. Smt.Sudehs Jain has not been issued with any order posting her in any Government school. She was posted in Srimad Dayanand Gurukul Sanskrit Mahavidyalaya, Khera Khurd, Delhi. It is stated that the said school is exclusively for boys and the lady teachers are not permitted to function. Therefore, she has to be accommodated in one of the Sanskrit Vidyalay. Respondents 1 & 2 are directed to issue appropriate orders giving posting orders to Smt.Sudesh Jain accommodating her in one of the Sanskrit Vidyalaya on or before the 30th of April, 1999.

It is stated by Mr.S.P.Pandey, the learned counsel for the petitioner, that for about 33 months from the 1st of October, 1991 to 15th of July, 1994, all the six persons have not been paid salary. The entitlement of the above said six persons is not disputed. Accordingly, Respondents 3 & 4 are directed to pay the salary to the above said six persons for the period from 1st of October, 1991 to 15th of July, 1994 on or before the 30th of April, 1999.

One more point urged by the learned counsel for the petitioner is that Shri Ram Bhaj Sharma, one of the six persons, was absorbed in Moti Nath Sanskrit Mahavidyalaya on the scale of Rs.1640-2900 while he was already drawing salary in the scale of Rs.2000-3500. That has clearly reduced him

in rank. That is not permissible in law. it is hereby declared that Shri Ram Bhaj Sharma shall be entitled to the salary on the scale on which he was drawing salary i.e. Rs.2000-3500. He shall be paid the salary and arrears of 33 months accordingly.

The writ petition stands disposed of.”

4. In the present writ petition, the petitioner has made the following prayers:-

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a) Direct the respondents to pay the arrears of the salary as per her Grade from 16.07.1994 to 30.04.1999.

b) Direct the respondents to pay the arrears after granting Senior Grade pay scale or alternatively the ACP notionally at the appropriate stage.

c) Direct the respondents to pay the pensionary benefits fixing it at proper pay scale as per her relevant Grade w.e.f. 01.12.2008 and also pay her Gratuity, Commutation and Leave encashment etc. as applicable to her.

d) Direct the respondents to pay the interest upon the all the due arrears and on the pensionary benefits from their due dates till the actual payment thereof.

e) Grant the cost of the litigation in favour of the petitioner; and

f) pass such any other or further order/s which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

5. Independent of the reliefs which are prayed in the writ petition, counsel for the petitioner on instructions from the petitioner who is present in Court, now only prays the following reliefs:

(i) Petitioner was entitled when she joined the respondent no.2/Shri Moti Nath Sanskrit Mahavidyalaya, Ramesh Nagar, Delhi in terms of the order dated 26.7.2000 of the Director of Education, the same scale of pay which the petitioner was last drawing when she was working with Bhagwan Mahabir Sanskrit Vidyalaya in 1994. Petitioner claims that when she joined the respondent no.2/Shri Moti Nath Sanskrit Mahavidyalaya, Ramesh Nagar, Delhi, pursuant to the order dated 26.7.2000, her scale of pay was not the same as she was having when the Bhagwan Mahabir Sanskrit Vidyalaya became dysfunctional in 1994. Therefore, the petitioner seeks the first relief that whatever the pay she had in 1994 the same had to be granted from 2000 till she retired in 2008 by fixing her pay-scale during the years 2000-2008 accordingly, by taking her first pay-scale in the year 2000 as that of the pay-scale which she was last drawing from Bhagwan Mahabir Sanskrit Vidyalaya in 1994.

(ii) Petitioner also seeks benefits of a higher pay-scale, as she claims that she is entitled to the higher pay-scale under an Assured Career Progression (ACP) Scheme.

(iii) Payment of interest is claimed for delayed payments which the petitioner has received on account of her superannuation from respondent no.2/Shri Moti Nath Sanskrit Mahavidyalaya, Ramesh Nagar, Delhi.

6. I may note that, unfortunately, qua all the three reliefs, there are no pleadings in the writ petition. Qua the first relief now claimed, it is not pleaded and substantiated as to what was the scale of pay of the petitioner with the Bhagwan Mahabir Sanskrit Vidyalaya in 1994, and which scale of pay was not given but a lesser scale of pay was given when the petitioner in 2000 joined the respondent no.2/Shri Moti Nath Sanskrit Mahavidyalaya, Ramesh Nagar, Delhi. With respect to the second relief of the ACP Scheme, it is not mentioned that what are the details of this ACP Scheme and how the petitioner satisfies its ingredients for being granted benefits of the ACP Scheme.

7. At this stage, since except the aforesaid three reliefs no other reliefs are pressed before this Court, in the facts of the present case, since issues are of entitlement of a teacher of a school to get the correct scale of pay and consequential benefits of higher pension if applicable, I thus agree with the counsel for the petitioner that with respect to the aforesaid three reliefs which are now sought this matter be decided by the Director of Education, and the Director of Education will treat the present order as a representation made by the petitioner for the aforesaid three reliefs.

8. The Director of Education will after hearing the petitioner and seeking a detailed representation with documents from the petitioner, pass a

speaking order with respect to the aforesaid three reliefs which are now sought by the petitioner. Of course, I make it clear that I am not making any observations in one way or the other on merits of the matter, and the Director of Education will examine the merits of the matter with respect to the aforesaid three reliefs claimed by the petitioner, in accordance with law, including the law of limitation.

9. I also further clarify that limitation would stop running with respect to the reliefs claimed in the writ petition having been filed in February, 2010 i.e when the writ petition was filed. Putting it differently, whatever benefits the petitioner is entitled to in terms of the aforesaid three reliefs which have to be decided by the Director of Education, the same can be granted by the Director of Education for a period of three years prior to filing of the present writ petition in February, 2010 and thereafter till the said amounts will be payable to the petitioner.

10. The writ petition is disposed of in terms of the aforesaid observations.

MAY 21, 2015
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VALMIKI J. MEHTA, J.