

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

+ W.P.(C) No. 2583/2014

% **26th March, 2015**

CAMBRIDGE FOUNDATION SCHOOL & ANR. Petitioners
Through: Mr. K.R.Sunder Rao, Adv.

versus

SH. V.R. SUBRAMANIAN & ANR. Respondents
Through: Mr. Santosh Kumar, Adv. for R-1.
Ms. Purnima Maheshwari, Adv. R-2.

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 Articles 226 and 227 of the Constitution of India, petitioner-School-Cambridge Foundation School Rajouri Garden Extension, New Delhi impugns the judgment of the Delhi School Tribunal dated 29.10.2013 by which the Delhi School Tribunal allowed the appeal filed by the respondent no.1 herein and directed that the action taken by the petitioner herein/School for reduction of basic pay of the respondent no.1 herein from that of a Lab-Assistant to a Lab-Attendant – Class-IV employee, is quashed. Putting it differently, the Tribunal has, by

the impugned judgment, directed that the respondent no.1 herein, should continue to receive the pay-scale of a Lab Assistant inasmuch as, respondent no.1 since the beginning of his employment was getting the scale of pay of a Lab Assistant and not a Lab Attendant.

2. The facts of the case are that the respondent no.1 was employed by the petitioner-School in 1993 vide letter dated 29.6.1993 to the post of Lab Attendant with the pay-scale of Rs. 1200-30-1560-40-2040. Though appointment of the respondent no.1 was as a Lab Attendant, the pay-scale of Rs.1200-30-1560-40-2040 was the pay-scale of a Lab Assistant. Respondent no.1 continued to receive this pay scale till April, 2009, when the petitioner was granted the basic pay starting from Rs.10,970 of a Lab Attendant and not Rs.17,290 and which later basic pay was the basic starting pay of a Lab Assistant. The petitioner/School herein reduced the pay-scale on the ground that respondent no.1 was not qualified for being appointed as a Lab Assistant inasmuch as, respondent no. 1 did not have his schooling qualification upto 10+2 level in the science stream, and which qualification a person was bound to have for being appointed as a Lab Assistant in terms of the relevant circular of the Director of Education dated 21.3.1990.

3. The case of the respondent no.1, appellant before the Tribunal was that since he was given the basic scale of pay of a Lab Assistant from

the beginning, therefore w.e.f April, 2009 also, respondent no.1 must continue to receive the basic pay of a Lab Assistant and the basic scale could not be reduced which was payable to the post of a Lab Attendant- a post lower than the post of Lab Assistant.

4. It is not disputed by the respondent no.1 that there is no post of a Lab Attendant in the schools in terms of any of the circulars or guidelines or notifications issued by the Director of Education and the post is only of a Lab Assistant. This post of Lab Assistant requires that a person who is appointed as a Lab Assistant must have the qualification of senior secondary or intermediate in the science stream. The post of Lab Attendant is actually a misnomer in a way because actually a Lab Attendant is not a feeder cadre to the post of Lab Assistant and appointment of Lab Attendant is appointment of a Class-IV employee.

5. The issue is that whether petitioner/School could have reduced the pay-scale of the respondent no.1 w.e.f April, 2009 on coming into force of the 6th Central Pay Commission Report and from when the respondent no.1 has been granted the pay-scale not of a Lab Assistant but of a Class-IV employee.

6. I may at this stage take on record the statement of the counsel for the petitioner/School that petitioner is not seeking to make any recovery

against the respondent no.1 for any amount paid to the respondent no.1 before April, 2009 and the only intention of the School is to reduce the basic pay of the respondent no.1 from the post of a Lab Assistant to a post of Lab Attendant w.e.f April, 2009.

7. In view of the aforesaid statement made on behalf of the petitioner/School, this Court only has to examine the issue as to whether petitioner/School is violating the provision of Section 10 of the Delhi School Education Act, 1973 (hereinafter referred to as 'the Act') on coming into force the 6th Central Pay Commission Report with respect to payment of salary etc to teachers and employees of schools of Delhi. Section 10 of the Delhi School Education Act and Rules, 1973 reads as under:-

“10. Salaries of employees- (1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit month, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the

Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.”

8. A reading of the aforesaid Section 10 of the Act shows that the only duty which is cast upon a school in Delhi in terms of this provision is that an employee of a private school will not be paid less monetary and other prescribed benefits than those payable to employees of corresponding status in a school run by the government. Therefore, the only mandate of law is that petitioner/School must comply with Section 10 of the Act and give the respondent no.1 the same salary and other prescribed benefits as payable to an employee of corresponding status in the government school.

9. Status of respondent no.1 is not of a Lab Assistant inasmuch as, respondent no.1 does not have the qualification for being appointed as a Lab Assistant inasmuch as he did not have the science stream while passing out from the school at the 10+2 level. Respondent no.1 therefore is only qualified to be a Class-IV employee and therefore the status of the respondent no.1 has only to be equal to a corresponding status in government school given to a Class-IV employee of a government school. Respondent no.1 therefore can seek application of Section 10 of the Act only for the purpose of claiming the scale of pay as payable to a Class-IV employee in a government school. It is not disputed that with effect from

April, 2009 respondent no.1 is getting the basic salary as payable to a Class-IV employee in a government school and that he is only not being paid the higher salary which was payable to the post of Lab Assistant. Therefore the petitioner/School is not violating the law but following the law by giving the same salary to the respondent no.1 as payable to a Class-IV employee in a government school.

10. As already stated above, respondent no.1 is not entitled to basic pay of a Lab Assistant but is only entitled to basic pay of a Class-IV employee as per his qualification for being appointed as an employee of a school in Delhi.

11. In view of the above, the present writ petition is allowed. The impugned judgment of the Delhi School Tribunal dated 29.10.2013 is set aside. Action of the petitioner/School in not giving the respondent no.1 basic pay from April, 2009 of a Lab Assistant, and only giving the basic pay of a Class-IV employee on implementation of the 6th Central Pay Commission Report is upheld.

MARCH 26, 2015
ib

VALMIKI J. MEHTA, J.