

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

+ W.P.(C) No.3855/2015 & C.M.Nos.6903/2015 (Stay), 6904/2015
(Exemption)

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21st April, 2015

KAVITA GOSAIN

..... Petitioner

Through: Mr. N.M.Popli, Advocate.

versus

LT. GOVERNOR OF DELHI & ORS.

..... Respondents

Through: Ms.Nikhita Khetrapal, Advocate for R-
1 & 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. I fail to understand as to why certain litigants unnecessarily file writ petitions, the present writ petition being one such petition which really ought not to have been filed. The reasons for the same are stated hereinafter.

2. By this writ petition filed under Article 226 of the Constitution of India, petitioner, who is working as an employee with the respondent no.3/ Khrist Raja Secondary School, impugns the order of the Director of Education/respondent no. 2 dated 09.10.2013. The Director of Education/respondent no. 2 after giving hearing to the petitioner has given the following observations and the effective directions:

“(i) The allegations made by Ms.Kavita Gosain regarding writing the letter to the manager of the school under compulsion has not been substantiated/established. **However, in view of the fact that the Ms. Kavita Gosain has herself requested that the written statement dated 22.12.2011 may not be considered, the same is hereby declared null and void.**

(ii) The requested of Ms. Kavita Gosain for her transfer to any other school is not legally viable as there is no provision in aided schools to transfer the employee from one Govt. aided school to other Govt. aided school except where a society runs more than one school and joint seniority is maintained for all employees of the said schools. This is not the case in the matter under consideration.

(iii) Regarding the issue of granting of ACP/MACP, it is seen that Ms. Kavita Gosain, Asstt. Teacher has been awarded MACP vide office order No.F.DDE/Central/ND/Admn/MACP/2012/3785-3792 dated 11.12.2012 granting MACP-1 w.e.f. 30.10.2008 i the pay bank of Rs.9300-34800 in the grade pay of Rs.4600 (Pay Band-2) as per her entitlement on completion of 10 years of qualifying service. Therefore no further action is required to be taken in this regard.

(iv) Regarding the issue of promotion of Ms. Kavita Gosain, it is seen that the school authorities have informed that no teacher junior to her has been given a functional promotion and her case would be considered as and when vacancy arises in future, subject to fulfillment of the eligibility criteria.

In view of the above facts, it is observed that most of the issues raised by Ms.Kativa Gosain, Asstt. Teacher of Khrist Raja Sec. School, New Delhi have already been redressed and what so ever was due to her has already been granted as per provisions contained in Act and Rules. Further s already discussed in preceding paras the allegations regarding being forced to write the letter dated 22.12.2011 cannot be established by the Education Department. However as mentioned above, the written statement dated 22.12.2011 is hereby declared null

and void. The representation dated 16.03.2012 of Ms. Kavita Gosain is accordingly disposed off in compliance of the directions given by the Hon'ble High court of Delhi vide its order dated 06.05.2013 in Writ Petition (C) No.2873/2013 in the matter of Kavita Gosain V/s Director of Education & Ors.

Sd/-
(AMIT SINGLA)
DIRECTOR OF EDUCATION"

3. I put it to the counsel for the petitioner specifically as to what are the reliefs which the petitioner is seeking through this writ petition i.e of grant of MACP benefits or with respect to grant of promotion or what. To this query, the counsel for the petitioner states that through this writ petition, the petitioner is not seeking promotion, and so far as MACP benefits are concerned, they are claimed that the same are not given from March 2013, but, there are no averments nor any cause of action nor any chart filed to show as to how the petitioner has not got MACP benefits from March, 2013. Be it noted that the Director of Education/respondent no. 2 has already held in favour of the petitioner that the petitioner is entitled to MACP benefits from 30.10.2008, and the only aspect urged by the petitioner is not being granted arrears of MACP benefits since March, 2013, and with respect to which as already stated above, there is absolutely no pleading or any document to establish the same.

4. The only issue which was argued with lot of vehemence by the counsel for the petitioner before this Court is that the petitioner was wrongly confined by the respondent no. 3/School to a room on 06.3.2012 and made to sign an ante-dated letter dated 22.12.2011 that she will not claim promotion, and the finding of the Director of Education to the contrary that the petitioner was not confined is not correct. In this regard, I note that the Director of Education has recorded that allegations made by the petitioner are not substantiated, and in fact the petitioner has herself requested that the written statement dated 22.12.2011 be not considered. In any case, I fail to understand as to how any confinement of the petitioner in one way or the other would in any manner be an issue qua the duties of the Director of Education once the issue of confinement is really an issue of the petitioner writing a letter that she will not claim promotion, but even assuming that the letter dated 22.12.2011 is not written because of illegal confinement, yet it is of no consequence because no promotion is claimed by the petitioner as already stated above. Therefore, an act of confinement has nothing to do with respect to any aspect of any right to be granted to the petitioner under the Delhi School Education Act and Rules, 1973. In this regard, also, no finding can be given by the Court not only because it is of no effect and purpose inasmuch as the same at best relates to the promotion and which right of promotion is not claimed by the petitioner,

the issue with respect to the confinement is really a finding of fact, and this Court in a writ petition cannot go into an isolated disputed issue, which is not connected to any relief claimed.

5. I may also note that before the Director of Education, the petitioner had asked for her transfer from one school to another, and which request had been declined by the Director of Education since there is no provision of transfer from one aided school to another. The Director of Education has also recorded in the impugned order that there is no case of the petitioner being granted promotion and that no person junior to the petitioner has been promoted.

6. In view of the above, the writ petition is really a rambling narration of unnecessary facts and unnecessary challenges to the impugned order of the Director of Education which either in fact grants the benefits which the petitioner had sought of MACP benefit or finds that the benefit sought by the petitioner of promotion or transfer cannot be granted to the petitioner in the facts of the present case.

7. Dismissed.

APRIL 21, 2015
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VALMIKI J. MEHTA, J