

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

+ W.P.(C) No.6456/2014

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2nd March, 2015

MS.SARITA TIWARI & ANR.

..... Petitioners

Through: Mr. Ashok Agarwal, Advocate.

versus

M/S GANGA INTERNATIONAL SCHOOL & ORS. Respondents

Through: Mr. Akhil Sibal and Mr. Kamal
Gupta, Advocates for R-1 and 2.

Ms. Purnima Maheshwari, Adv. for
R-3.

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, two petitioners, seek the relief of being granted by their erstwhile employer/respondent no.1/school, monetary emoluments as per the 6th Central Pay Commission Report which became applicable to schools in terms of the circular of the Directorate of Education dated 11.2.2009.

2. It is an admitted fact that petitioner no.1 worked in the respondent no.1-school till 31.3.2009 and petitioner no.2 worked in the

respondent no.1-school till 3.2.2009. Both the petitioners resigned from their services with the respondent no.1/school w.e.f 31.3.2009 and 3.2.2009 respectively. The circular of the Directorate of Education dated 11.2.2009 allowed schools to clear the arrears by 31.10.2009 and therefore the cause of action accrued to the petitioners for grant of benefits of the 6th Central Pay Commission Report and monetary emoluments thereunder lastly on 31.10.2009. A writ petition therefore had to be filed in around the period of three years, and which is the limitation period applicable if the petitioners had chosen to file a suit against the respondent no.1-school for recovery of monies on the basis of the circular of the Directorate of Education dated 11.2.2009.

3. The present writ petition however has been filed in September, 2014 ie much after the limitation period expiring in October, 2012, and, even the legal notice preceding the writ petition was given by the petitioners to the respondent no. 1 only on 20.3.2014 ie beyond the three years period expiring on 31.10.2012.

4. Powers under Article 226 of the Constitution of India are exercised in accordance with the laws and not to cause violation of the laws. What is a limitation period for a suit being time barred, is applied qua a writ

petition to which Limitation Act, 1963 does not apply, by applying the doctrine of delay and *laches*. There can be overlooking of the doctrine of delay and *laches* only in those cases where a representation is given by a petitioner and which is pending for consideration, and in which circumstances depending on the facts of a particular case, since representation is pending consideration, no cause of action can be said to have arisen for the petitioner to approach the court, however, in the present case, once the limitation commenced definitely w.e.f 31.10.2009, and no representation of the petitioners was pending for grant of monetary emoluments, there is no reason why a writ petition filed in September, 2014 i.e beyond 31.10.2012 should be entertained by the Court. Writ petition is therefore clearly barred by the doctrine of delay and *laches*.

5. Counsel for the petitioners relies upon a judgment delivered by this Court in W.P.(C) No. 237/2013 titled as ***Deepika Jain Vs. Rukmini Devi Public School & Ors.*** decided on 23.9.2013, however, this judgment nowhere shows that the issue with respect to limitation and the doctrine of delay and *laches* was considered and decided in this writ petition, and therefore the judgment in the case of ***Deepika Jain (supra)*** relied upon by the petitioner will not in any manner help the petitioner. For the sake of

convenience the subject judgment dated 23.9.2013 passed in W.P.(C)

No.237/2013 itself is reproduced as under:-

“1. By this writ petition, petitioner seeks implementation of the 6th Pay Commission Report and her consequential up-gradation of salary as also payment of arrears of salary for the period from 1.1.2006 to 11.10.2007.

2. The Director of Education by its circular dated 11.2.2009 has ordered the schools in Delhi to make necessary payments in terms of the 6th Pay Commission Report.

3. I have held in many cases, including the case of ***Meenu Thakur Vs. Somer Ville School & Ors.*** W.P.(C) 8748/2010 decided on 13.2.2013 that paucity of funds is not a ground to not pay amounts as per the 6th Pay Commission Report and the order of the Director of Education dated 11.2.2009. A Division Bench of this Court in LPA 286/2010 titled as ***Rukmani Devi Jaipuria Public School Vs. Sadhna Payal & Ors.*** decided on 11.5.2012 has also held that paucity of funds is not a ground not to make payments as per the 6th Pay Commission Report.

4. Counsel for respondent no.1-school seeks to draw attention of this Court to paras 7,8 etc of the order of the Director of Education dated 11.2.2009 and argues that unless there is a fee hike and parents deposit the higher tuition fees, there is no liability of the school to make payment in terms of the order of the Director of Education dated 11.2.2009.

5. I am afraid I cannot agree with the argument because paras 1 to 3 of the circular dated 11.2.2009 make it clear that a fee hike is not mandatory and schools have to explore payment from the existing funds and the existing reserves to meet any shortfall in payment of salaries and allowances etc as a consequence of increase in the salaries and allowances of employees. It is further made clear in para 3 of the circular that fee hike takes place only after presenting a detailed financial statement indicating income and expenditure on each account, to the Parent Teacher Association and other steps have also been taken for increase of the tuition fees. Therefore, it is clear that no school can claim paucity of funds as the basis for refusing to

follow the order of the Director of Education dated 11.2.2009 and the ground that fee hike has not taken place.

6. In view of the above, the writ petition is allowed and disposed of by directing the respondent no.1-school to make payment to the petitioner of all the amounts in terms of the order of the Director of Education dated 11.2.2009 for the period from 1.1.2006 to 11.10.2007. Petitioner will be entitled not only to arrears which would be payable to her but also the enhancement of salary in terms of the 6th Pay Commission Report for the period from 1.1.2006 to 11.10.2007 as prayed for in the writ petition. Amounts be paid to the petitioner within a period of three months from today alongwith interest at 6% per annum simple from the dates on which the amounts became due till the date of payment. In case the payment is made after a period of 3 months to the petitioner, then, petitioner will be entitled to interest at 9% per annum simple for the period after three months. Parties are left to bear their own costs.”

6. In view of the above, the writ petition is dismissed by applying the doctrine of delay and *laches*. No costs.

MARCH 02, 2015
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VALMIKI J. MEHTA, J.