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

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Date of Decision : July 31, 2015

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LPA 494/2015

THE PRINCIPAL/MANAGER

M/S.QUEEN MARY'S SCHOOL & ORS.Appellants

Represented by: Ms.Jyoti Singh, Sr.Advocate
instructed by Mr.Amandeep Joshi
and Mr.Sameer Sharma, Advocates

versus

SUNITA PREM JOHN & ANR.

.....Respondents

Represented by: Mr.G.S.Parashar, Advocate
Mr.Raman Duggal, Advocate with
Ms.Aayushi Gupta, Advocate for
R-2

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

HON'BLE MS.JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

Caveat No.786/2015

Since counsel as above appears for the respondents/caveators the caveat is discharged.

CM No.13460/2015

Allowed subject to just exceptions.

LPA No.494/2015

1. We have heard learned counsel for the parties and are disposing of the appeal at the stage of admission. Vide impugned judgment dated

LPA No.494/2015

Page 1 of 6

April 27, 2015, W.P.(C) No.8474/2011 filed by the first respondent has been disposed of by the learned Single Judge directing that first respondent she be paid wages at par payable to the employees holding similar posts under the schools established by the Government of NCT of Delhi. The learned Single Judge has copiously extracted 9 pages of an earlier decision authored by him on August 30, 2013 concerning W.P.(C) No.1439/2013 in which the issue which arose for consideration was whether the Managing Committee of a school can employ personnel on ad-hoc basis, sans administrative exigencies or on contract.

2. Said decision is wholly irrelevant because instant case does not concern any dispute of contractual employment or ad-hoc employment. The dispute raised by the appellant was to the employer-employee relationship with the first respondent. As per the appellant the first respondent was an employee of Mittal Education Society which had established the appellant-school.

3. Case of the first respondent was that though no formal letter of appointment was given to her, she was appointed as a Maid (Aaya) on July 25, 2003 by the appellant-school at a consolidated salary of ₹2,400/- per month. She annexed as Annexure P-1 (Colly) salary certificate for the year 2005-06 which was issued by the Principal of the appellant-school, EPF statements for the years 2004-08 which showed that the appellant-school had been depositing money in her account required to be so done as per law under the Employees Provident Fund Act, 1991. As per her, the appointment was preceded by an interview. She pleaded that her job was to assist the children in the Nursery and Pre-Primary Classes. She pleaded that she was initially on probation and was confirmed after one year on July 24, 2004. She pleaded that she was not being paid salary in the scale applicable and in fact what was being paid to her was

even less than the minimum wage prescribed under the Minimum Wages Act. She relied upon Section 10 of the Delhi School Education Act, 1973 which prescribes that scales of pay and allowances, medical facilities etc. of employees of a recognized private school cannot be less than those of the employees of the corresponding status in schools run by the appropriate authority. She pleaded that the appellant-school was a recognized unaided school. She pleaded that when she started demanding full wages, with effect from March, 2010 her signatures were obtained on vouchers of Mittal Education Society.

4. In the counter affidavit filed by the appellant it was pleaded that the first respondent was an employee of a preparatory school named Queen's Kindergarten, being managed by Mittal Education Society, which was distinct from the appellant-school and that it had a different set of employees and was maintaining a separate account. It being the compulsion of the appellant to explain as to under what circumstances it was depositing money in the account of the first respondent with the Provident Fund Commissioner in compliance with the provisions of the Employees Provident Fund Act, 1991, the appellant claimed that it did so to extend a social benefit to the respondent No.1 under an arrangement with the society which was refunding the amount to it and pleaded that mere payment of the provident fund was not proof of employer-employee relationship.

5. As is noted above, the first respondent relied upon deposit made by the appellant with the Provident Fund Commissioner as one proof to support her claim. She also relied upon a salary certificate issued by the Principal of the appellant-school certifying the salary which she had received during the financial year 2005-06. She also relied upon a salary sheet for the month of March, 2010 in which her name was shown as an

employee of Queen's Mary School. We simply highlight that the appellant has whispered not a word regarding said documents in the counter affidavit filed by the appellant. Thus these documents remain unexplained.

6. As regards the society, it filed a counter affidavit taking same plea pertaining to the appellant-school depositing provident fund with the Provident Fund Commissioner to the account of the first respondent. Regarding salary certificate for the year 2005-06 the society explained that during said year salary was paid to the first respondent from the account of the Primary Section. Thus the society accepted that during this period the appellant paid the salary to the first respondent.

7. It is thus apparent that the appellant and the society, which has established the appellant, are playing ducks and drakes. The learned Single Judge has therefore returned a correct finding that removing the smoke screen created by the appellant and the society which has established the appellant it is clear that the first respondent is an employee of the appellant.

8. The contention of the appellant that recognition to it by the Directorate of Education concerns Class I to Class 12 is neither here nor there for the reason the so-called preparatory school is the feeder to Class I of the appellant-school. Besides, the core issue is : Whether the first respondent is an employee of the appellant-school. The fact that the appellant-school has shown her name as its employee with the Commissioner of Provident Fund; and to the account of the first respondent provident fund is being deposited is one proof of the employer-employee relationship being between the appellant and the first respondent. Salary being paid to her in the year 2005-06 from the account of the appellant-school pertaining to its Primary Section is

additional proof of the said relationship. The salary sheet of the appellant-school for the month of March, 2010 is another proof of said relationship.

9. The difference between a serf and an employee is that the former is owned by the master and can be lent to a third party. An employee is not owned by the master and the master cannot send the employee to work elsewhere.

10. The contention urged by the appellant that the first respondent had proceeded to the Labour Court and thus the learned Single Judge ought not to have entertained the writ petition is noted and rejected by us for the reason the first respondent made a statement before the learned Single Judge that she would be withdrawing the proceedings initiated under the ID Act, 1947.

11. The last contention urged that there is no post of an Aaya/Maid under the schools established by the Government of NCT Delhi and therefore there is no post of corresponding status and thus Section 10 of the Delhi School Education Act, 1973 would not apply is noted and rejected for the reason the phrase '*employees of the corresponding status in schools run by the appropriate authority*' in Section 10 would mean that the analogy has to be not with reference to the nomenclature/designation of a post but with reference to the corresponding status. A Maid/Aaya would be performing duties which would correspond in status to that of a Class IV employee and thus the wages payable to the first respondent would be in the scale of pay applicable to Class IV employees in schools established by the Government of NCT Delhi, and the post would be that of a peon.

12. There is no merit in the appeal which is dismissed in limine.

CM No.13459/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 31, 2015

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