

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

+ **RSA No. 173/2016**

% **22nd September, 2016**

MUNNA LAL & ORS. Appellants

Through: Mr. Pradeep Kumar Kar, Advocate

versus

SERVANTS OF THE PEOPLE SOCIETY (DELHI) & ANR. Respondents

Through: Ms. Kamini Srivastava, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent Judgments of the courts below; of the Trial Court dated 11.4.2014 and the First Appellate Court dated 6.1.2016; by which the suit filed by the appellants/plaintiffs/employees/sweepers of the respondent no.1/defendant no.1/school seeking relief of implementation of Section 10 of the Delhi School Education Act, 1973 including benefits of the 6th Pay Commission report has been dismissed.

2. The following issues were framed on 29.11.2012 by the trial court:-

“1. Whether the civil court has no jurisdiction to try the present suit?
OPD

2. Whether the suit is bad for misjoinder of parties? If so, its effect?
OPD

3. Whether the plaintiffs are temporary employees of defendant no.1, Society? OPD

4. Whether the plaintiffs are entitled to pay scale and other benefits as per Section 10 of Delhi School Education Act, 1973? OPP

5. Whether the plaintiffs are entitled to relief of mandatory injunction as prayed for in the plaint?

6. Whether the plaintiffs are entitled to relief of prohibitory injunction as prayed for in the plaint?

7. Relief.”

3. All the issues no. 1 to 3 were decided in favour of the appellants/plaintiffs, but, the suit was dismissed by deciding issues no. 4 and 5 against the appellants/plaintiffs by holding that civil court cannot grant the relief because it is the appropriate authority under the Delhi School Education Act which can only grant the relief and which relevant paragraphs read as under:-

“Issue no.4 and 5:

Whether the plaintiffs are entitled to pay scale and other benefits as per Section 10 of Delhi School Education Act, 1973? OPP

Whether the plaintiffs are entitled to relief of mandatory injunction as prayed for in the plaint?

44. The onus to prove these issues is upon the plaintiffs. As the findings of issue no. 5 are dependant upon the finding of issue no. 4 and also to avoid repetition, both these issues are decided together. It was upon the plaintiffs to establish that they are entitled to pay scale and other benefits as per Section 10 of the Delhi School Education Act and also entitled to mandatory injunction directing the defendants to pay to the plaintiffs pay scale, D.A., T.A., Medical facilities, washing allowance, dress and all other benefits under Section 10 of the Delhi School Education Act, including arrears payable on implementation of VIth pay commission and all other benefits available to the plaintiffs including legally recoverable arrears and also maintain service books and issue salary slips to the plaintiffs.

45. In discharge of the onus, the plaintiff no.1 himself stepped into the witness box to state that he and other plaintiffs are employees of the defendant

school. This fact is not denied by the defendants, though they maintained that they are adhoc contractual employees. However, as discussed above, same has not been proved. This was the only defence of the defendants in this case. They also submitted that the sweepers, chowkidars etc. cannot be included in the employee strength. However, these are mere submissions which prove to be hollow and are not tenable. In addition to this, this argument advanced by the Ld. Counsel for plaintiff stands correct that in light of the commencement of operation of the Delhi School Education Act, it is the provision of Act which are applicable. Therefore, as the plaintiffs are employees of a recognized private school and the defendants have failed to establish that they are adhoc employees, they are entitled to same pay and benefits as per Section 10 of the Act.

46. Now perusing S. 10, Delhi School Act, 1973, it states:

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 school to 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.

47. On bare perusal it can be observed that the Section 10 vests that powers in the 'appropriate authority' to direct that management of the school to disburse the pay and other benefits at par with the school under its management. The Act also answers the query that who is the appropriate authority. As Section 2(e) provides:

e) "appropriate authority" means :-

i. in the case of a school recognised or to be recognised by an authority designated or sponsored by the Central Government, that authority;

ii. in the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorised by him in this behalf;

iii. in the case: of a school recognised or to be recognised Municipal Corporation of Delhi, that Corporation;

iv. in the case of any other school, the Administrator or any other officer authorized by him in this behalf;

48. Therefore, it is within the purview of the ‘appropriate authority’ as defined above to direct the management to bring the pay, allowance and other benefits upto the level that is payable to the employees under their management. This is the intention of the legislature to empower the ‘appropriate authority’. It is settled law that the intention of the legislature should prevail.

49. Though, the plaintiffs have established that they are entitled to the pay and benefits as per Section 10, Delhi School Education Act, 1973 but the relief cannot be granted by this forum as it is within the purview of the ‘appropriate authority’. Hence, issue no. 4 is decided in favour of the plaintiffs but issue no. 5 is decided against the plaintiffs.”

4. The First Appellate Court in its Judgment dated 6.1.2016 has concurred with the trial court with respect to issues no. 4 and 5 that civil court cannot grant relief but it is only the appropriate authority under the Delhi School Education Act which can grant the relief to the appellants/plaintiffs.

5. For the purpose of disposal of this second appeal, the following substantial question of law is framed:

“Whether the courts below have not committed complete illegality and perversity by incorrect interpretation of the provisions of Section 10 and Section 2(e) of the Delhi School Education Act, 1973 by holding that on account of these provisions civil court has no jurisdiction to grant the relief prayed for in the suit?”

6. Section 2(e) and Section 10 of the Delhi School Education Act are reproduced in the judgment of the trial court as given above.

7. No doubt when employees of a private school do not get the same monetary benefits payable to the employees of a government school, the appropriate authority can direct the managing committee of a private school to give the same monetary benefits to the employees of a private school as are paid to the employees of a government school, but, that does not mean that there is a bar upon the civil court to grant such relief. In fact on account of failure of the appropriate authority to direct payment of monetary benefits to employees of private school as are payable by a government school, to enforce a legal right under Section 10 of the Delhi School Education Act, a suit will be filed under Section 9 CPC. A suit is only barred under Section 9 CPC if there is an express bar or an implied bar and in the present case there is no express bar in the Delhi School Education Act or an implied bar that employees of a private school cannot approach the civil court for redressal of their grievances to seek equal benefits as they are not receiving the same benefits in equivalent to the benefits being payable to the employees of a government school.

8. I may finally note that hundreds and thousands of writ petitions have been filed and entertained in this Court by the employees of schools in Delhi seeking benefits by implementation of Section 10 of the Delhi School

Education Act, and therefore, surely a suit to enforce a legal right can be maintained before a civil court in view of Section 9 CPC as there is no express or implied bar for employees to approach the civil court.

9. In view of the above discussion, the substantial question of law is answered in favour of the appellants/plaintiffs and against the respondents/defendants. The respondent no.1 is directed that from a period of three years prior to filing of the suit on 16.2.2012, being the limitation period of three years, the appellants/plaintiffs will be granted all monetary benefits as are available and payable to employees of government schools in Delhi. The payment due to the appellants/plaintiffs will be made from three years prior to filing of the suit and till the present judgment and further payments and monetary benefits will be made to the appellants/plaintiffs equivalent to the monetary benefits payable to the employees of a government school and mandatory injunction in this regards is issued to the respondents/defendants for making them necessary payments. Any payments already made by the respondents/defendants to the appellants/plaintiffs for this period would be liable to be adjusted against the payment which is to be made in terms of the present judgment.

10. At this stage, counsel for the appellants/plaintiffs agrees that since the appellants/plaintiffs were reinstated in service by virtue of the order of the

labour court w.e.f 10.8.2010, for the benefits payable for the retrospective period prior to filing of the suit, payment of the benefits be not for three years prior to filing of the suit but only w.e.f August, 2010. Ordered accordingly.

11. Decree sheet be accordingly prepared.

12. This Regular Second Appeal is accordingly allowed and disposed of in terms of the aforesaid observations.

SEPTEMBER 22, 2016

At

VALMIKI J. MEHTA, J

