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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 4777/2016

8th December, 2016

DOON PUBLIC SCHOOL

..... Petitioner

Through: Mr. Manoj V. George and Ms. Shilpa
George, Advocates.

versus

STATE OF NCT DELHI & ORS.

..... Respondents

Through: Mr. Santosh Kr. Tripathi, ASC and
Mr. Rizwan, Advocate for R-1 and 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 Article 226 of the Constitution of India the petitioner/school impugns the report-cum-order of the Director of Education dated 12.1.2015. The report/order dated 12.1.2015 was issued by the Director of Education pursuant to the directions allowing the writ petition W.P. (C) No. 6868/2012 by this Court vide judgment dated 13.11.2013. W.P. (C) 6868/2012 and which writ petition was filed by the petitioners who are respondent nos. 3 to 7 in this writ petition.

2. W.P. (C) 6868/2012 was filed by the respondent nos. 3 to 7 herein pleading that the petitioner/school, and which was the respondent

no.1 in W.P. (C) 6868/2012, was not giving the necessary monetary benefits payable to these employees/teachers of the petitioner/school. W.P. (C) 6868/2012 was disposed of by this Court by the judgment dated 13.11.2013 and the operative portion of the judgment is contained in paras 7 to 10 and which paras read as under:-

“7. Accordingly, let petitioners now file detailed representations to the Director of Education/respondent no.3 within a period of four weeks from today giving details under different heads and for different periods stating what are the amounts which are due to the petitioners in terms of prayer clauses made in this writ petition. A copy of these representations will be given to the respondent no.1/school through its counsel who appears in this Court. School will give response to these representations and calculation sheets of the petitioners to the Director of Education within a period of four weeks and advance copy of which will be given to the petitioners through their counsel in this Court. The Director of Education will thereafter nominate an appropriate officer to go into the accounting and the amounts due. The officer appointed by the Director of Education should complete the exercise within a period of four months from today. On the amounts which would become due to the petitioners, if the officer as appointed by the Director of Education so finds that amounts are due, then, on such amounts under all heads, petitioners will be entitled to interest @ 9% per annum simple after 30 days from the dates of their resignations/superannuation given to the respondent no.1/school. Amounts which are calculated, if found due and payable to the petitioners, in terms of the specific order to be passed by the officer appointed by the Director of Education, will be paid to the petitioners by the respondent no.1-school within a period of six months from today, failing which interest will thereafter become payable @ 12% per annum simple.

8. The writ petition is accordingly disposed of by holding that the petitioners are entitled to interest @ 9% per annum simple or 12% per annum simple as per the situation as detailed above. With respect to the aspect of resignation it is held that as per the relevant provision of Rule 114A of the Delhi School Education Rules, 1973 will become operative 30 days after giving of notices to the school. The competent officer appointed by the Director of Education after hearing both the parties will pass a speaking order within four months from today and the petitioners if entitled to the amounts should be paid the amounts within a period of six months from today. Speaking orders will be communicated to the respective parties.

9. In case, the petitioners feel that they were entitled to the higher amounts than as awarded by the officer appointed by the Director of Education, then, at that stage petitioners can in accordance with law approach a Court of law.

10. Writ petition is accordingly disposed of in terms of aforesaid observations, leaving the parties to bear their own costs.”

3. Petitioner/school herein was dissatisfied with the judgment dated 13.11.2013 in W.P. (C) 6868/2012, and therefore, the matter was carried in appeal in LPA 21/2014. In this LPA 21/2014, the petitioner/school was directed to file the necessary record before the Director of Education vide order of the Division Bench dated 13.11.2014 and this order reads as under:-

“We are informed that the respondent nos.1 to 5 have made available the details of the period with regard to which they are claiming gratuity to the Deputy Director, Education, Delhi Administration. It is submitted by Ms. Maheshwari, learned counsel for respondent nos.6 to 8 that the service records of these respondents from the school are yet to be submitted.

We therefore, direct that the appellants shall cause to be produced the service records of the respondent nos.1 to 5 before the LPA 21/2014 Deputy Director, Education, Delhi Administration for his scrutiny on the 18th of November 2014 at 12:00 noon. In case, the photocopy of any extract is deemed necessary by Deputy Director, Education, Delhi Administration, the same shall be submitted by the appellants to him. However, it is made clear that these directions are without prejudice to the rights and contentions of the parties.

List on 13th January, 2015 for awaiting the report of Deputy Director, Education, Delhi Administration.”

4. The petitioner/school herein pursuant to the order of the Division Bench dated 13.11.2014 in LPA 21/2014 filed the necessary records before the Director of Education and the nominee of the Director of

Education consequently filed its report dated 12.1.2015, and which would be an order pursuant to the directions contained in the judgment dated 13.11.2013 in W.P. (C) 6868/2012. I am not reproducing the affidavit/order/calculations of the concerned officer of the Director of Education filed before the Division Bench in LPA no. 21/2014 because the same with its calculations is extremely lengthy, however, it is noted that this report-cum-affidavit is accompanied by calculations given by the nominee of the Director of Education with respect to each of the petitioners in W.P. (C) 6868/2012, and who are respondent nos. 3 to 7 herein. The nominee of the Director of Education by giving appropriate calculations has held as to how each of the respondent nos. 3 to 7 herein are entitled to encashment of specific days of earned leaves.

5. The LPA no. 21/2014 before the Division Bench was ultimately disposed of as not pressed with the liberty to approach the learned Single Judge in the writ court with respect to issue of Gratuity calculations, and which is not the subject matter of the writ petition inasmuch as the only issue argued by the petitioner before this Court is as regards the wrong calculations of the nominee of the Director of Education as per the report dated 12.1.2015 submitted before the Division Bench is

that the nominee of the Director of Education has wrongly calculated the earned leaves calculations with respect to respondent nos. 3 to 7 herein.

6. A reference to the calculations qua the respondent nos. 3 to 7 as per the report dated 12.1.2015 shows that so far as the respondent no.3/Smt. Shashi Sharma is concerned, it was held that she had taken 29 earned leaves during her service period. So far as respondent no.4/Smt. Daljeet Kaur is concerned, the nominee of the Director of Education as per the calculations has shown that respondent no.4/Smt. Daljeet Kaur had availed 26 days of earned leaves in her service period. As regards respondent no.5/Smt. Punam Palta, the nominee of the Director of Education as per the record observed that she had obtained a total of 44 days of earned leaves in her service period. Respondent no.6/Smt. Anjana Ahuja was found by the nominee of the Director of Education to have obtained 20 days of earned leaves in her service period. Respondent no.7/Smt. Monica Manchanda was found by the Director of Education to have availed of a total of 12 days of earned leaves in her service period. The detailed calculations and examination of the service records of the employees are annexed to the affidavit/report dated 12.1.2015 and this report/order dated 12.1.2015 is filed at pages 33 to 79 of the paper book of the present amended writ petition.

7. The nominee of the Director of Education for preparing of the report of calculations as regards respondent nos.3 to 7 has observed that there is no record of leave debits substantiated by means of leave applications. The nominee of the Director of Education has given benefit to the petitioner/school with respect to leaves availed which is supported by applications provided for verification by the school authorities.

8. The limited issue before this Court therefore is as regards calculations done by the nominee of the Director of Education pursuant to the directions contained in paras 7 and 8 of the judgment dated 13.11.2013 while disposing of W.P. (C) No. 6868/2012, and in this regard it is found that the nominee of the Director of Education has given detailed report with calculations. Onus was therefore on the petitioner to show as to how the leave credits given to the employees as per the report dated 12.1.2015 are incorrect because the school record shows that more leaves have been taken by respondent nos. 3 to 7 than as given as per the report of the nominee of the Director of Education dated 12.1.2015 i.e the report dated 12.1.2015 shows less leaves whereas more earned leaves were taken by these respondent nos. 3 to 7.

9. I have examined the record filed by the school and heard the arguments of counsel for the petitioner, but the counsel for the petitioner has

not been able to substantiate the arguments as to why the leaves taken qua each of the respondent nos. 3 to 7 as per the calculations of the nominee of the Director of Education are wrong. This I am saying so because if the number of leaves availed of by each of the employees as taken by the nominee of the Director of Education for giving his report dated 12.1.2015 were incorrect then the petitioner would have to show by its record whether it be leave applications or other counter signatures of the respondent nos.3 to 7/employees in the school record as regards earned leaves, and which should show more number of earned leaves then as shown in the calculations of the nominee of the Director of Education, but that has not been done by the petitioner. The argument urged on behalf of the petitioner that each of the respondent nos. 3 to 7 have signed the school record every year and thus the order dated 12.1.2015 needs to be set aside is an incorrect argument inasmuch as even if the employees have signed the school record every year, till such record shows as to how the leaves are those as argued by the petitioner, and which is not substantiated by the record, the order dated 12.1.2015 cannot be said to be illegal or baseless.

10. The writ petition is therefore dismissed.

DECEMBER 08, 2016/ ib

VALMIKI J. MEHTA, J