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

\+ W.P.(C) 9366/2016

RAMAKRISHNA SR SEC SCHOOL AND ANR ..... Petitioners

Through: Mr. R.K. Saini and Ms. Minal Sehgal, Advs.

versus

COMMITTEE FOR REVIEW OF SCHOOL FEES AND ANR ..... Respondents

Through: Mr. Santosh Kumar Tripathi, ASC with Mr. Rizwan, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% 09.11.2016

1. The challenge in this writ petition is to the order dated 4th July, 2016 of the Committee for review of the School Fees on the ground that the Committee has refused to review its earlier order dated 23rd July, 2013, even though, the review was filed for calculation of the arrears and / or mistakes apparent on the face of the record. Alternatively it has been prayed that the court may review / rectify the order of the Committee dated 23rd July, 2013.

2. I may state here that in the order dated 4th July, 2016, the Committee was of the view that the petitioner is seeking recall / review of the order on merits on various grounds, and since it is not the case of the petitioner that the committee committed any procedural irregularities or mistake of any nature which vitiated the proceedings itself, such review of its earlier order

dated 23rd July, 2013 is impermissible being not maintainable, dismissed the plea of review of the petitioner.

3. In the order dated 23rd July, 2013, the committee has recommended that the Petitioner School was in deficit after implementation of the 6th Pay Commission Report and the School did not have sufficient funds to provide for future contingencies, the petitioner School ought to refund the development fee recovered in the year 2009-2010 and 2010-2011 with interest @ 9% *per annum* amounting to Rs.27,03,054/-.

4. Mr. R.K. Saini, learned counsel appearing on behalf of the petitioner by relying upon the order dated 19th March, 2014 passed in writ petition no. 7777/2009 wherein this Court on the basis of a communication received from the Reviewing Committee had permitted the Committee to review the case of one Rukmani Devi Public School, Pitam Pura, Delhi would urge that the Committee should have also reviewed its earlier order dated 23rd July, 2013 in the case of the petitioner as well. According to him, the conclusion of the Committee that the review is not maintainable is totally untenable. That apart, on merit, his submissions are three fold, i.e., with regard to gratuity, arrears of the 6th Pay Commission and the adjustment for purchase of the bus which has not been allowed by the Reviewing Committee as bad. He also states, the conclusion of the Reviewing Committee that the Petitioner School has not kept the Development Fund in FDRs is also erroneous.

5. In so far as the adjustment of gratuity of Rs.3,60,205/- not given is concerned, he states the said amount was kept, as liability towards gratuity

to staff members in view of Section 4 of the Payment of Gratuity Act, 1972. This submission of Mr. R.K. Saini needs to be rejected. I note the relevant conclusion of the Reviewing Committee in its order dated 23rd July, 2013 reads as under:

> *"The School has claimed a deduction of Rs.4,66,165/- in the calculation sheet submitted by it, on account of accrued liability of gratuity as on 31/03/2008. Further, in the detail of gratuity payable as on 31/03/2010 submitted by it, it has shown the total liability to be Rs.14,32,620. However, in the detail so submitted, the School has also shown liability to staff members who have not completed the qualifying service, i.e., 5 years. The liability of gratuity in respect of qualifying staff amounts to Rs.10,72,415. The Committee agrees with the school that it requires to set aside funds to meet its accrued liability of gratuity. This will be duly taken care of in the final determination."*

6. There is no denial to the fact that the Reviewing Committee was considering the issue of refund of the development fund recovered in the year 2009-2010 and 2010-2011. Mr. Saini concedes to the fact that the liability was shown for staff members who had not completed 5 years of qualifying service as on 31st March, 2010. If that be so, Section 4 of the Payment of Gratuity Act, 1972 is very clear, the liability would only gets accrued if the employee has put in 5 years of qualifying service, except in a case of death or disablement.

7. It is not the case of the Petitioner School that the liability has accrued on account of death or disablement. I do not find any error in the finding of the Reviewing Committee on that account.

8. In so far as the arrears of pay to the extent of Rs.16,63,536/- directed

to be returned back is concerned, the following facts are relevant:

> The total salary paid for the year 2008-2009 was Rs.87,63,996/-.
> The total salary paid for the year 2009-2010 was Rs. 1,26,70,300/-

9. The Committee was of the view that on account of the implementation of the 6th Pay Commission, the incremental salary in 2009-2010 was Rs.39,06,304/- which also factors the annual increment and the additional D.A. announced during 2009-2010. The Committee found that during 2009-2010, the total salary paid by the School was Rs.1,43,33,836/-. In other words, an excess of Rs.16,63,536/- which was directed to be returned back. I do not see any error in such a direction of the Reviewing Committee.

10. In so far as the plea with regard to the purchase of bus is concerned, the Committee was of the view that purchase of bus is not one of the permitted usages of the development fund. The plea of Mr. Saini that the bus has also been permitted in subsequent instructions could not be substantiated by him nor has such a plea been taken in the Review filed by the petitioner. Hence this plea also needs to be rejected.

11. In so far as the plea of Mr. Saini that FDRs have been earmarked for the designated fund is concerned, it is noted a specific query was put by the Committee, to which the School had stated that no earmarking of FDRs or bank deposits were made (Page 23 of the paper book). The reliance placed by Mr. Saini on the balance sheet of the School for the period ending 31st March, 2010 is concerned, the FDRs pointed out by Mr. Saini reads FDR

(Designated Fund) whereas the finding of the Committee at Page 24 of the paper book reads "Further, although the School shows a depreciation fund on its liability side, no earmarked FDRs are held either against unutilized development fund or against the depreciation fund. These funds therefore appear only in the books. No real funds are maintained".

12. In view of the aforesaid finding and the fact that no physical FDR's have been placed on record, the finding of the Committee cannot be interfered with. I do not see any merit in the present petition.

13. The petition is dismissed.

V. KAMESWAR RAO, J

NOVEMBER 09, 2016
jg