

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

+ **W.P.(C) No.1174/2008**

% **27th January, 2017**

SONICA JAGGI Petitioner

Through: Mr. Rajiv Aneja, Advocate.

versus

LT. GOVERNOR AND ORS. Respondents

Through: None.

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 under Article 226 of the Constitution of India, the petitioner who is working as Physical Education Teacher in Shakti Mandir Premwati Public School, represented by respondent nos.4 to 6, seeks the relief of being granted the pay scale of Physical Education Teacher at Rs.5500-9000/- inasmuch as the petitioner pleads that she is being granted a lower pay scale of Rs.4500-125-7000/-.

2. The petitioner admittedly was appointed as a Physical Education Teacher with the Shakti Mandir Premwati Public School and

this is clear from the certificate annexed as Annexure-A to the writ petition which reads as under:-

“Shakti Mandir Premwati Public School

(Affiliated with C.B.S.E.)

1024, SHAKTI MANDIR, DARYA GANJ, NEW DELHI-110002

Ref. No.

Dated 13-5-03

To Whom So Ever It May Concern

This is to certify that Mrs. Sonica Jaggi is working in this institution from 2nd July 2001 as a Physical Education Teacher. Her Pay Scale is 4500-125-7000.

She is found a very hardworking and dedicated teacher. I wish her success in life.

Manager

sd/-

Principal”

3. The pay scale of a Physical Education Teacher as per the recruitment rules is Rs.5500-9000/- as per the 5th Pay Commission Report in terms of the recruitment rules of the Physical Education Teacher which has been filed as Annexure A-5 to the writ petition. Petitioner therefore being appointed as a Physical Education Teacher would be entitled to the pay scale of Rs.5500-9000/- in terms of circular of Director of Education dated 23.2.1984 read with Section 10 of the Delhi School Education Act, 1973 which states that teachers and employees of the private schools will not get monetary benefits which are lesser than similar employees of government schools. The respondent nos.4 to 6/school in the present case is a private unaided school.

4. The only defence raised by the respondent nos.4 to 6/school in its counter affidavit is that the petitioner with open eyes took appointment as an Assistant Teacher, was appointed as an Assistant Teacher, the pay scale of an Assistant Teacher is Rs.4500-125-7000/-, and therefore, now the petitioner cannot claim the higher pay scale of a Physical Education Teacher.

5. In my opinion, the writ petition is bound to succeed in view of Section 10 of the Delhi School Education Act read with circular of the Director of Education dated 23.2.1984 showing recruitment rules for appointment to the post of Physical Education Teacher providing the scale of pay of Rs.5500-9000/- to a Physical Education Teacher. Merely because the school is violating the law and paying less does not mean that there is an estoppel against the law, and which law is Section 10 of the Delhi School Education Act. Petitioner hence will be entitled to the pay scale of Rs.5500-9000/-, however, in view of law of limitation being applicable to writ petitions by virtue of the judgment of the Supreme Court in the case of *State of Orissa and Another Vs. Mamta Mohanty (2011) 3 SCC 436*, petitioner will be entitled to the higher scale of pay with consequential benefits prospectively from the date of three years prior to filing of the writ

petition viz from 13.2.2005 prospectively and not for a period prior to 13.2.2005.

6. In view of the above, this writ petition is allowed and respondent nos.4 to 6/school, namely Shakti Mandir Premwati Public School will pay the pay scale with consequential monetary benefits to the petitioner as a Physical Education Teacher in the scale of Rs.5500-9000/- w.e.f 13.2.2005 and thereafter continuously till date and further till the petitioner continues in her appointment as a Physical Education Teacher with the respondent nos.4 to 6/school.

7. Writ petition is accordingly allowed and disposed of in terms of the aforesaid observations. Respondent nos.4 to 6/school will take steps to calculate the dues of the petitioner in terms of the present judgment and the same be paid to the petitioner preferably within a period of three months from today. Parties are left to bear their own costs.

JANUARY 27, 2017
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VALMIKI J. MEHTA, J