

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

+ **W.P.(C) No.10153-55/2005**

% **30th January, 2017**

ANSHU SHARMA AND ORS.

..... Petitioners

Through: Mr. Vimal Kumar, Advocate for
petitioner Nos.2 and 3 with
petitioner no.2 in person.

versus

DIRECTOR OF EDUCATION

..... Respondent

Through: Mr. Naushad Ahmed Khan,
Advocate.

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 three petitioners impugn the order of the Director of Education dated 11.5.2004 and seek directions that they should be paid their complete salaries and for which purpose they had filed the earlier writ petition being CWP No.2882/2002, and which was disposed of in terms of the order of a learned Single Judge of this Court dated 15.12.2003. This order dated 15.12.2003 reads as under:-

“1. Rule

2. With the consent of the parties, matter is being heard for disposal.

3. The grievance of the petitioners is that Petitioner No.1 was employed as Assistant Teacher in July, 1987. Petitioner No.2 was appointed as untrained Teacher in 1990 and Petitioner No.3 was appointed as a L.D.C. on 1.9.1995. Employment being under Mount Abu Senior Secondary School, grievance is that neither correct wages have been paid to the petitioners nor are their services records being maintained correctly. Service rendered by the petitioners is not being correctly reflected in the service books of the petitioners.

4. Counter affidavits have been filed. Pleadings are complete.

5. Pleadings of the parties reveal that there are large arrears where disputed question of facts arise between the parties which require investigation on facts.

6. Present proceedings being writ proceedings, it would not be possible to record evidence and dispose of the matter post evidence. Counsel for the parties agree that keeping in view the peculiar facts and circumstances of the case, matter requires to be properly investigated by the Director of Education. Parties agree that directions can be issued to the Director of Education to nominate an officer to hold an enquiry after giving opportunity to the parties and submit his report. Thereafter, Director of Education will afford personal hearing to the parties and pass a reasoned and speaking order with communication to the parties.

7. The Writ Petition is accordingly disposed with the following directions.

“A) Petitioners would make a detailed individual representations to the Director of Education enclosing copies of documents on which they rely within a period of three weeks. Advance copy thereof would be sent to the School.

B) Mount Abu Senior Secondary School shall represent its case in writing within a period of three weeks thereafter. In the reply, the School would annex all the documents on

which the School relies. Advance copy of the reply would be sent to the petitioners.

C)Petitioners would respond in writing to the reply of the school. Any further documents, on which petitioners would rely, would be annexed along with the counter reply.

D)Director of Education shall nominate an Officer no below the rank of Deputy Director preferably a lady Officer, who would hold enquiry into the grievances of the petitioners as contained in the representations made by the petitioners pursuant to the present order. The Officer so nominated shall fix a date for enquiry under intimation to the petitioners and the school. After giving hearing to the parties and if required, further opportunity of leading evidence, report would be submitted to the Director of Education. Copy of the report would be made available to the petitioners and the School by the Directorate of Education, who would proceed to hear the parties in respect of the report submitted to him by the Officer concerned.

E)The Director of Education will pass a speaking and reasoned order. Same shall be given to the parties.”

8. Needless to say that either party aggrieved would be entitled to take recourse permissible in law. It is further clarified that if Director of Education hold in favour of the petitioners, he would be under an obligation to ensure that his orders are complied with since Mount Abu Senior Secondary School is admittedly a recognized school and is governed by the provisions of Delhi School Act, 1973 and the rules framed therein.

9. It is hoped and expected that the Director of Education will expeditiously deal with the matter and pass necessary orders preferably within a period of six months from today.

10. The writ petition stands disposed.

11. Copy of the order be given dasti to counsel for the parties on payment of usual charges.”

2. It is found that the Director of Education invited representations from both the parties. Written representations were given by both the parties being the petitioners and the school. Director of Education thereafter heard the parties and in terms of representations and documents filed passed the impugned order dated 11.5.2004. The operative portion of the impugned order dated 11.5.2004 reads as under:-

“All the three petitioners have stated that they are not shown their service books at the end of the session which has been found to be true. It has also been observed that there was some internal arrangement made by the school management with the petitioners on the issue of raise of salary for the previous years. As far as the current position goes they are being paid salary as per their entitlement. The school management ought to show the service books to the petitioners on yearly basis and get their signatures appended at appropriate place as token of having checked and verified the entries made in the service book. Likewise, the management should not obtain their signature in advance on the blank cheques where the petitioners could not control their accounts in the bank. Henceforth, the management is directed to make the payment of the salaries of the incumbents through cheque and liberty should be given to them to open their accounts in any bank where they intend to open their accounts. Further the petitioner should also refrain from issuing the blank bearer cheques signed by them as a matter of caution. The school management may consider the promotion of Smt. Rajni Singh, U.D.C in accordance with the rules in force.

In the backdrop of the discussion as above, the school management is directed to the pay salaries as per their entitlement. And the instances of getting outflow the amount from their accounts should not be allowed to re cur in future with the advice to the petitioners to refrain from signing the blank cheques.

With these directions as aforesaid, the representation/matter of the petitioners stands disposed of and the directions of the Hon'ble High Court complied with.

sd/-
(RAJENDRA KUMAR)
DIRECTOR OF EDUCATION”

3. A reading of the operative portion of the impugned order of the Director of Education dated 11.5.2004 shows that so far as petitioners status at the time of passing of the order was that petitioners were getting paid their actual salaries in accordance with law. I have confirmed from the counsel for the petitioners that the actual salaries as per law are being paid to the petitioners from 1.1.2002.

4. The only issue therefore is whether petitioners were or were not paid complete salaries by the school for the three year period prior to 1.1.2002 i.e from 1.1.1999 to 21.12.2001, and which period of three years is in view of the Limitation Act, 1963, principles of which also apply to a writ petition as per *State of Orissa and Another Vs. Mamta Mohanty (2011) 3 SCC 436*.

5. The sum and substance of the grievances of the petitioners before the Director of Education was that they were being paid salaries as per cheques but amounts of the salaries of the petitioners were used

to be encashed by the Management of the school by the self cheques of the petitioners, and the petitioners were only paid lesser amounts than as those given in the cheques. These are issues of evidence and these issues of evidence had to be proved by the petitioners before the Director of Education, and I do not find that petitioners have filed any evidence before this Court to show that such evidence was led before the Director of Education who passed the impugned order that the petitioners in fact were receiving actually lesser salaries. The stand of the petitioners is a stand as per facts, and taking the stand pleaded to be true, however, yet, the stand had to be established in accordance with law, and a self-serving statement cannot be a substitute for evidence as required by law, more so when it would result in fastening of substantial monetary liability against the school. It is not disputed that cheques were signed by the petitioners, were bearer cheques, and were encashed as bearer cheques under the signatures of the petitioners. If that be so, surely it was impossible for the petitioners to prove, and which in any case they failed to prove, that the cheques were encashed not by the petitioners but by the Management of the school.

6. Accordingly, the Director of Education passed the impugned order dated 11.5.2004 protecting the interests of the

petitioners to the extent the Director of Education could, by ensuring that the service record is regularly available to the petitioners, the cheques should be deposited by the petitioners in their own accounts in a bank of their choice and encashed by them and the Management of the school will ensure that they will not take blank cheques from the petitioners. The entitlement of Smt. Rajni Singh for being considered for promotion in accordance with rules was accordingly directed.

7. In view of the above, the impugned order of the Director of Education cannot be faulted with in the facts and circumstances of the present case. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.

JANUARY 30, 2017
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VALMIKI J. MEHTA, J