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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 2579/2014

9th January, 2017

MRS. NEELAM KAPUR

..... Petitioner

Through: Ms. Minal Sehgal, Advocate.

versus

THE MANAGEING COMMITTEE QUEEN MARY'S SCHOOL & ORS.

..... Respondents

Through: Mr. Ashok Chhabra and Mr. Nikhil,
Advocates for R-1 and 2.

Mr. Satyakaam, ASC GNCTD with
Mr. Naveen Jakkar, Adv. For R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner by this writ petition filed under Article 226 of the Constitution of India seeks the reliefs of being granted her retirement benefits by the respondent no.1/school. Respondent no.1 is a minority school which is an aided school of the respondent no.3/Director of Education. The reliefs prayed in the writ petition are as under:-

(a) A Writ of Certiorari calling for the records of the case and peruse the same.

(b) A Writ of Certiorari quashing the action of the Respondents No.1 & 2 in withholding the Pension and other Retirement benefits of the petitioner after her retirement on 31.08.2013, being illegal, arbitrary, discriminatory, malafide, unjust and without jurisdiction and in violation of the Rules, Regulations and

Orders/Notification on the subject and the Principles of Equity, Justice and Good Conscience.

(c) A Writ of Mandamus Directing the Respondents to forthwith release the pension and other retirement benefits of the petitioner and pay the same alongwith arrears and interest

(d) A Writ of mandamus commanding the Respondent to pay the costs of this petition to the Petitioner

(e) Any other writ, order or direction which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. Learned counsel for respondent no.1/school argues that petitioner overstayed at the premises allotted to the petitioner as a Principal. These premises are an independent bungalow of around seven rooms situated in the premises of the respondent no.1/school. The period of excess stay of the petitioner in this bungalow is from 31.8.2013 to 31.7.2014 i.e 11 months. Counsel for the respondent no.1/school argues that the petitioner is also further liable to pay charges for not returning in time the vehicle given by the respondent no.1/ school to the petitioner being a car bearing no. DL 11C 3600 (Mahindra XUV 500). It is also stated that respondent no.1 has to seek payment of electricity and water charges paid by the respondent no.1 for the period the petitioner occupied the premises and such unpaid dues for such heads with respect to the bungalow occupied by the petitioner are of Rs.3,25,000/- towards electricity charges and Rs.14,652/- towards water charges.

3. Learned counsel for the respondent no.1/school states that in view of the aforesaid facts respondent no.1 has to recover an amount approximately of Rs. 11 lacs from the petitioner and for which the respondent no.1 has taken only an amount of Rs.60,000/-per month towards the occupation charges of the bungalow for the illegal period of 11 months from 31.8.2013 to 31.7.2014. As against the claims of the respondent no.1 of approximately Rs. 11 lacs the petitioner, as per the counsel for the respondent no.1, is entitled to an amount approximately of Rs.8 lacs.

4. In this writ petition, an order was passed by this Court on 19.1.2015 noting that the order dated 17.2.2014 in CCP No. 725/2013 filed by the respondent no.1 did not entitle any exemption to the petitioner from paying use and occupation charges by the petitioner of the bungalow which was occupied by her. Petitioner was also accordingly directed to approach the court which passed the order dated 17.2.2014 in CCP No. 725/2013.

This order dated 19.1.2015 reads as under:-

“1. The issues in the present case pertain to retiral benefits of the petitioner to be paid by the respondent no. 1/school. Petitioner has received certain amounts but claims additional amounts. Respondent no. 1/school disputes the claim and in fact claims adjustment with respect to the damages/mesne profits payable by the petitioner for the overstay of the petitioner in the house allotted to the petitioner by the respondent no. 1, and which include aspects with respect to the period of the stated overstay as also the rate/amounts damages/mesne profits for the period of said overstay.

2. There are also other claims of the respondent no.1/school against the petitioner with respect to the electricity charges, water charges, charges of illegal user of car of the respondent no.1/school etc etc.

3. Learned counsel for the petitioner counters that the petitioner was not to pay any charges towards any claim of overstay of the petitioner, and this is argued by placing reliance upon the order dated 17.2.2014 passed in CCP 725/2013.

4. Both the parties have respective understanding of this order dated 17.2.2014, however, in my *prima facie* opinion since this order does not explicitly state that the petitioner is exempted from paying any use and occupation charges till the petitioner vacates the house allotted to her by the respondent no.1/school, counsel for the petitioner states that petitioner will file an application for seeking appropriate clarification in the said CCP 725/2013.

5. In view of the above, list for further proceedings on 28th April, 2015.

6. In the meanwhile, petitioner will file rejoinder affidavit to the counter affidavit filed by the respondent nos. 1 & 2 within six weeks. Respondent no. 3/Director of Education which has filed a short affidavit is now directed to file a detailed affidavit in response to the writ petition within a period of six weeks and rejoinder affidavit thereto be filed by the petitioner within six weeks thereafter.”

5. In spite of the aforesaid order dated 19.1.2015, the petitioner, on 28.4.2015 insisted that there was no need to take clarification of the order dated 17.2.2014 in CCP No. 725/2013 and that the case will be argued as it is on the basis of the present record.

6. In view of the above, it is seen that there are disputed questions of fact which require adjudication by a civil court as to what would be the amount which would be payable by the petitioner to the respondent no.1 towards illegal occupation of the bungalow from 31.8.2013 to 31.7.2014. There are also other claims of the respondent no.1. Learned counsel for the

respondent no.1 states that though the respondent no.1 has, for the present, taken the monthly charges as Rs.60,000/-, but this was done in order to finish the dispute with the petitioner but actually since there are no circulars or guidelines issued by the respondent no.1 with respect to monthly charges payable for illegal stay of the petitioner in the bungalow of the respondent no.1, petitioner will be liable to pay mesne profits calculated at the market rate of rent for the period of 11 months from 31.8.2013 to 31.7.2014. This writ petition is in view of requiring determination of disputed questions of fact, therefore is not a proper remedy for determining the disputes between the parties as to what amount would be due from the petitioner to the respondent no.1 for the use and occupation of the bungalow by the petitioner of the respondent no.1 beyond the period of authorized stay and for the period of unauthorized stay from 31.8.2013 to 31.7.2014 for the respondent no.1 to be entitled to adjust such amounts from the claims of the petitioner. I may note that the petitioner has already been paid an amount of at least Rs.37 lacs towards terminal benefits under various heads, and thus it is not as if the petitioner is therefore handicapped by her financial circumstances for initiating the correct civil proceedings being a civil suit for her alleged claim for recovery of an amount of approximately Rs.8 lacs which still remains with the respondent no.1.

7. In view of the above, this writ petition is dismissed with liberty to the petitioner to file a civil suit for recovery of her claims, and in such suit respondent no.1 will be entitled to raise all defences as available in law so as to seek rejection of the claims of the petitioner by seeking adjustment of the dues of the respondent no.1 under the heads of illegal user of the bungalow, user of vehicle of respondent no.1 by the petitioner beyond the prescribed period, electricity charges, water charges, etc etc.

8. The writ petition is accordingly dismissed, however subject to the aforesaid liberty.

JANUARY 09 ,2017
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VALMIKI J. MEHTA, J