

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

+ **W.P.(C) No.3812/2010**

% **3rd March, 2017**

SHOSHIT MAJDOOR SANGHATHAN (REGD.) & ANR.... Petitioners

Through: None.

versus

DIRECTOR OF EDUCATION AND ORS. Respondents

Through: Mr. Satyakam, ASC.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, 12 petitioners who are members of the petitioner no.1/Union, seek the relief of being granted the pay scales as per the 6th Pay Commission Report which became applicable to schools in Delhi w.e.f 1.1.2006. Petitioners claim to be the employees of the respondent no.2/Darshan Academy Public School.

2. In support of the contention that petitioners are employees of the respondent no.2/school, no documents showing any employment of the petitioners by the respondent no.2/school have been filed. The only reason given for the petitioners to claim employment

with the respondent no.2/school is that they have provident fund code numbers and provident fund is deducted from their salaries.

3. Respondent no.2/school has filed its counter affidavit denying that petitioners are their employees and has pleaded that petitioners are employees of an independent contractor, and therefore, since petitioners are not employees of the respondent no.2/school, hence they are not entitled to payment of salaries as payable to the employees and teachers of the respondent no.2/school.

4. Section 8A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') reads as under:-

“Section 8A. Recovery of moneys by employers and contractors.(1) The amount of contribution (that is to say the employer's contribution as well as the employee's contribution in pursuance of any scheme and the employer's contribution in pursuance of the Insurance Scheme), and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of any employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution under any scheme by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.

(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Explanation.- In this section, the expressions, “dearness allowance” and “retaining allowance” shall have the same meanings as in section 6.

5. It will also be relevant to refer to Section 2(f) of the Act which defines an employee and which definition of employee reads as under:-

“**Section 2(f)** “employee” means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person,-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;”

6. A conjoint reading of Sections 8A and 2(f) of the Act shows that employees can work with an employer directly or through a contractor, and when an employee works with the employer through a contractor, it is the employer which is responsible for deducting of the provident fund and which amounts can be recovered by the employer from the contractor. A reading of Section 8A of the Act shows that merely on account of provident funds being deducted by the employer, and which is the respondent no.2/school in this case, the petitioners will not be employees of the principal employer, being the respondent no.2/school, and such employees will continue to remain employees of the independent contractor.

7. I have already stated above that no documents whatsoever are filed by the petitioners to show that they are employees of the

respondent no.2/school and reliance is placed by the petitioners only on the aspect of deduction of their provident funds by the respondent no.2/school. In view of Section 8A of the Act, it is held that petitioners were never and are not the employees of the respondent no.2/school and therefore they cannot get benefit of the payment of salaries and other emoluments as payable to the employees and teachers of the respondent no.2/school.

8. Writ petition is accordingly dismissed, leaving the parties to bear their own costs.

MARCH 03, 2017
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VALMIKI J. MEHTA, J