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

\+ W.P.(C) 2362/2015

VIJAY PATHAK ..... Petitioner

Through: Ms. Indrani Ghosh, Adv.

versus

MANAGING COMMITTEE, NATIONAL PUBLIC SCHOOL & ORS ..... Respondents

Through: Mr. R. A. Iyer, Adv. for Mr. Gautam Narayan, ASC for R-2 (DOE)
Mr. Pradeep Kaushik, LA Zone-27, DDEC/ND, Jhandewalan, New Delhi.
Dr. Bipin K.Dwivedi, Adv. for R-1 & 3

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

<u>O R D E R</u>

% **24.04.2017**

1. The present petition has been filed by the petitioner with the following prayers:-

> "*(a) Issue an appropriate writ, order or direction in the nature of declaration declaring that the respondent no.1 was bound to release leave encashment dues of the petitioner as per rules and could not avoid paying the same in view of Rule 111 r/w Rule 39(2) of the CCS Leave Rules;*
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> *(b) Issue an appropriate writ, order or direction in the nature of mandamus to the respondent no.1 to release the leave encashment dues of the petitioner as detailed in para 30, in compliance of the undertaking given on 3rd September, 2014 in LPA 379/2014;*
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> *(c) Issue an appropriate writ, order or direction in the nature of mandamus commanding the respondent no.1 to produce the Service Book of the petitioner which carries her leave record from*

1980 to 31.03.2014.

Any other further orders as this Hon'ble Court may deem it fit and proper in the facts and circumstances of the case."

2. It is noted that the petitioner was appointed as a primary teacher in the respondent nos.1 and 3 school. It is noted that the petitioner had earlier flied a writ petition being WP(C) no.7127/2012, which was disposed of by this Court on 26th September, 2013 by holding as under:-

"*1) Petitioners in this petition claim the relief of being granted monetary benefits which are payable to teachers in government schools. This relief is claimed as per Section 10(1) of the Delhi School Education Act, 1973 which provides that teachers in private schools will at least get such monetary emoluments which are being given to teachers in government schools.*

2) Counter affidavit of respondent nos.1 to 3 has been taken in Court today. A reading of this counter affidavit does not show as to why the respondent nos.1 to 3 (the school) should not comply with the provision of Section 10(1), and which is a provision which mandates the schools to give all necessary monetary benefits including pay and allowances, medical facilities, pension, gratuity, provident fund etc. etc. to teachers of private schools as are given to teachers in government schools.

3) Though counsel for respondent no.3-school argues paucity of funds to not comply with the provision of Section 10(1), in my opinion, this is not a valid defence as I have held in many cases, including the case of ***Meenu Thakur vs. Somer Ville School & Ors.*** *WP(C) 8748/2010 decided on 13.2.2013, that paucity of funds is not a ground to not comply with the requirement of law of payment of monetary benefits to teachers. A Division Bench of this Court in LPA 286/2010 titled as* ***Rukmani Devi Jaipuria Public School vs. Sadhna Payal & Ors.*** *decided on 11.5.2012 has also held that paucity of funds is not a ground not to make payments of monetary benefits to teachers.*

4) in view of the above, the writ petition is allowed and disposed of by directing that petitioner nos.2 to 6 will be granted all benefits in terms of Section 10(1) of the Delhi School Education Act, *1973 by respondent no.3-school. It may be noted that petitioner no.1 has already compromised with the respondent no.3-school and therefore, no directions are passed so far as the petitioner no.1 is concerned.*

5) Petitioner nos.2 to 6 be now paid arrears which are legally payable within a period of three months from today along with interest at 5% per annum simple from the date from which the amounts become due till the date of payment. After a period of three months from today, petitioner nos. 2 to 6 will be entitled to interest at 7½ % per annum simple on the unpaid amounts. If there are any disputes as to calculations of arrears, then after the petitioner nos.2 to 6 receive amounts from the respondent no.3-school, petitioner nos.2 to 6 can point out deficiencies in the amounts paid, and if still the petitioners are not paid the amounts due as per law, petitioner nos.2 to 6 will make a representation to the Director of Education who will appoint a nominee to determine the amounts which are in law payable to petitioner nos. 2 to 6. The nominee of Director of Education will pass a speaking order with respect to the disputed amounts after hearing both the parties or their representatives, and which will be communicated to the petitioner nos. 2 to 6 as also respondent nos.3-school.

6) The writ petition is allowed and disposed of in terms of the aforesaid observations, leaving the parties to bear their own costs."

3. The school/respondent no.1 filed an intra court appeal before the Division Bench of this Court being LPA no.379/2014. During the pendency of the LPA, a memorandum of understanding was arrived at between the parties, including the petitioner herein on 1st August, 2014.

4. Suffice to state, some of the conditions of the memorandum of understanding are as under:-

"*(iv) That both the parties i.e. Appellant and respondents have agreed to the term that in case of closure of the National Public School, Daryaganj, and the respondents will be absorbed in the*

National Public School, Kalindi and the salaries of the respondents will not be interfered with by the Appellant in any condition. And also at the time of the retirement, all the retirement benefits shall be provided to the respondents herein.

(v) That the appellant agreed to pay the salaries to the respondents at par the similarly placed teachers in National Public School, Kalindi regularly and in compliance of Section 10(1) of Delhi School Education Act, 1973.

(vi) That the Appellant shall withdraw the present Appeal i.e. LPA No.379/2014 and the respondents shall withdraw the contempt petition i.e. Contempt Petition No.87/2004 pending before this Hon'ble Court.

(vii) That after arriving at present settlement, the all the disputes between the parties to the present suit shall stand settled and no party shall be left with any claim."

5. Learned counsel for the petitioner states that the petitioner retired from service on 31st March, 2014. On the date of his retirement, the petitioner was denied the benefit of the leave encashment. She states that reliance placed by respondent nos.1 and 3 on the memorandum of understanding that all disputes between the parties to the writ petition having been settled and the petitioner is not entitled to leave encashment is not tenable. She has drawn my attention to clause IV of the MOU which has already been reproduced above to contend that the settlement was only with regard to the arrears of salary pursuant to the recommendations of 6th CPC. She also states that it was the understanding between the parties that all retirement benefits shall be provided by the school to the respondents therein including the petitioner. She has drawn my attention to pages 46 and 47 which is the leave record of the petitioner to contend that the petitioner shall be entitled to leave encashment as per the said record. She has also drawn my attention to the stand taken by the Directorate of Education in para 2 of

the counter affidavit, wherein the following has been stated:

> "2) *It is submitted that the respondent nos. 1 and 3 are bound to abide by and implement the mandate of the Delhi School Education Act, 1973 (hereinafter referred to as the '**DSEA**') and the Delhi School Education Rules, 1973 (hereinafter referred to as the 'DSER'). It is therefore submitted that the respondent nos.1 and 3 are bound to pay the leave encashment dues of the petitioner.* "

6. On the other hand, learned counsel for the respondent nos.1 and 3 would submit that the petitioner is not entitled to leave encashment as in terms of the memorandum of understanding, all disputes between the parties (including the petitioner) stood settled. Reliance has been placed on a circular dated 14th May, 2004 to contend, the petitioner is not entitled to leave encashment.

7. Having heard the learned counsel for the parties, insofar as the memorandum of understanding is concerned, the same relates to arrears of salary which was the claim of the petitioner in the earlier round of litigation. It was specifically mentioned in clause IV that all retirement benefits shall be provided to the respondents therein that is the petitioners in the writ petition including the petitioner herein. Reliance placed by the learned counsel for the respondent nos.1 and 3 on clause VII only depicts all disputes between the parties to that suit (should be appeal) have been settled. In other words, the memorandum of understanding was relatable to the issue in question in the appeal, which was pending before the Division Bench when the memorandum of understanding was entered. Insofar as the reliance placed by the learned counsel for the respondent nos.1 and 3 on circular dated 14th May, 2014, is concerned, suffice to state, the said circular has no applicability on the grant of leave encashment to the regular

employees. The very subject matter of the said circular would make it clear that the same relates to sanction of earned leave to the persons serving in the vacation department. Further, the learned counsel for the petitioner is right in drawing my attention to the following para of circular dated 14th May, 2004, which reads as under:

> "*Further the earned leave so admissible under rule 28(3) (b) of CCS (leave) rules will be encashable in accordance with the provisions of rule 39 of the rules ibid subject to the prescribed conditions therein.*"

8. I note that in para 2, which has been reproduced above, the Directorate of Education has stated that the respondent nos.1 and 3 are bound to pay the leave encashment dues of the petitioner.

9. In view of the aforesaid position, the petitioner is entitled to leave encashment in accordance with Rule 111 r/w Rule 39(2) of the CCS Leave Rules. The same shall be released to the petitioner within eight weeks from today with interest at 9% per annum.

10. The petition is disposed of. No costs.

V. KAMESWAR RAO, J

APRIL 24, 2017
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