

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

+ **W.P.(C) No. 7331/2008**

% **6th February, 2017**

REKHA SABHARWAL Petitioner

Through: Ms. Padma Priya, Advocate.

versus

DIRECTOR OF EDUCATION & ORS. Respondents

Through: Ms. Jyoti Taneja, Advocate for
GNCTD.

Ms. Palak Rohmetra, Advocate
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. By this writ petition under Article 226 of the Constitution of India, the petitioner, who was an Assistant Teacher in the respondent no. 3/school at the relevant time from 1.4.2003 till September, 2006, challenges the Inquiry Report dated 15.12.2006 of the respondent no. 1/Director of Education which has rejected the complaint filed by the petitioner claiming that she had been paid less salary. I may note that the petitioner was suspended by the respondent no. 3/school in September, 2006, and therefore, the issue as regards

payment of complete salary qua the period in question is from 1.4.2003 when the petitioner was appointed as an Assistant Teacher and till September, 2006.

2. Petitioner filed the following complaint dated 22.11.2006 to the respondent no. 1/Director of Education and which reads as under:-

“To
Court Sh. P.C. Ranga Sahab/Copy/Case No. 311/05/A 13241 dated 11.11.05

Permanent Legal Service Authority, Shaheed Bhagat Singh Market.

Present: Prakash Keswani, Chairman, Sai Memorial Girls School, Sai Bhawan, Geeta Colony Delhi 31 (information)

The Director of Education Old Secretariat, Govt. of Delhi, Delhi.

PETITION OF Smt. Rekha Sabharwal D/o Sh. Kulwant Singh, R/o H.No. 260-B, Gali No. 4 & B-A, New Lahore, Shastri Nagar, Delhi 31.

Sir,

MOST RESPECTFULLY SHOWETH:-

1. That the applicant is an assistant teacher in Sai Memorial Girls School, Sai Bhawan colony Delhi – 110031, since 01.04.2003.
2. That since the beginning of my appointment the School Management have been showing big salary in my name and had been paying a very small salary i.e. Rs.2500/- in the first year.
3. That the management of the School has always been victimizing me and harassing me without my just cause or reason, in this respect the applicant had made several complainants sent through registered post and in this connection I was summoned for a public hearing by your honour good offices.
4. That the applicant has unjustifiably and wrongfully suspended from the school and in his respect the applicant had given a representation to your honour by hand.
5. That since 15.4.2004 the management showed my salary in their record as Rs.11,400/- but I never received full salary from the

management and this way the management fraudulently have been misappropriating a major part of the applicant's salary. The management gave only Rs.3700/- as my salary of July 2005 in August 2005 and the salary of August 2005 was given to me was Rs.4010/- in September 2005 and thereafter the applicant had stopped her account in the concerned bank on 7.7.2005 and this matter was investigated by the Education Officer at Zone 3rd, Rani Garden, Delhi and the Management had shown photocopy of receipt of Rs.10,849/-.

6. That the management by putting pressure and force wanted me to acknowledge the full receipt of the salary amount without paying the same in full to which the applicant had refused to sign before the education officer.

7. That the to the several complaints made by the applicant against the Management, the management has become hostile towards the applicant and other teachers and as a part of harassment have wrongfully suspended the applicant from the school and have initiated a disciplinary inquiry against the applicant.

8. That the applicant appeared before the inquiry committee on 20.11.2006 and the matter has been adjourned to 28.11.2006 as the applicant had denied all the allegations levelled against her. It is apparent that the Management is taking revenge on the applicant only due to her legitimate and right demand of her full salary as prescribed by the government.

It is therefore, prayed that your honour be pleased to consider this application sympathetically and a fresh inquiry of the entire matter be initiated at your honour's level.

It is further prayed that the management be directed to also consider the complaints made by the applicant against them so that justice be done to the applicant.

Delhi

Dated 22.11.2006

Applicant
Smt. Rekha Sabharwal
D/o Sh. Kulwant Singh,
R/o H.No. 260-B, Gali No. 4&8-A
New Lahore Shastri Nagar
Delhi 31

Enclosed copy of Pay Bill
Showing a salary Rs.11,400/-
Copy to

1. Lieutenant Governor Raj Niwas Delhi.
2. Chief Secretary Govt. NCT ITO Delhi.
3. Education Minister Govt. of NCT ITO Delhi.”

3. It is seen from the above complaint that petitioner the claims that she was not paid full salary but was paid less salary by the respondent no. 3/school. In this complaint there is no allegation against the respondent no. 3/school that the respondent no. 3/school had taken cheques in advance and got the cheque book signed by the petitioner.

4. The impugned report of the Director of Education dated 15.5.2006 reads as under:-

“DETAILED INQUIRY REPORT REGARDING A PETITION OF SMT. REKHA SABHARWAL D/O SH. KULWANT SINGH, R/O H.NO. 260-B, GALI NO. 4&8-A NEW LAHORE, SHASTRI NAGAR, DELHI 31. ADDRESSED TO WORTHY DIRECTOR OF EDUCATION DATED 22.11.06.

On the first instance a parawise reply to the petition sought from the school concerned vide Letter no. EO/Zone-II/20064724 dated 5/12/06 (Copy placed at 20C) and the said reply was obtained vide Ref. No. SM/SB/Zone-III/2006/07/281 dated 9/12/06 (Copy Placed at ... 27C)

However, the Undersigned alongwith Sh. Ram Kishan V.PI/DDO, Govt. CO FD Sr.Sec.School, Lalita Park, Delhi who has been asked to help in the inquiry process visited the Sai Memorial Girls School on 14.12.06 for physical verifications of the related documents in accordance with each of the 8 paras of the petition and of the reply of the school thereupon.

Since the parawise inquiry has been conducted hence the report submitted below accordingly.

1. It has been authenticated by a copy of appointment letter dated 27/3/03 (copy enclosed at 28 C) that Smt. Rekha Sabharwal joined this school as Asst. Tr. Nursery on 1.4.2003.

2. Regarding submission of the school that they paid salary to Smt. Rekha Sabharwal in accordance with section 10 of DSER Act and Rules, 1973. The photocopies of acquaintance roll Register were obtained and placed in this file at 29C.

It has been found in the said acceptance roll register that Smt. Rekha Sabharwal might have got her salary in cash. Otherwise because cheque numbers have not been given below the amount as in the case of other

teachers whose names given below the name of Mrs. Rekha (as highlighted) in the copies of acquaintance roll register. From April 3 to Oct. 4 but duly signed by the said teacher on revenue stamp.

However, from Nov. 4 to July 5 as per the copies of acquittance roll register cheque numbers have been given below the name and amount of Smt. Rekha Sabharwal also. And from August 5 to Sept. 6 copies of the debit vouchers duly signed by Mrs. Rekha on revenue stamp have been obtained and placed at (30-C)

Pertinent to submit that from the month of October 6. She has been paid subsistence allowance as Rs.5,591 (Five Thousand five hundred ninety one only) through cheques upto 8/12/06. Copies placed at 30-C)

3. As for the allegations of victimizing and harassment, it has not been found that there is any authentic incident of harassment or victimizing as such. Moreover, four teachers have given collective statement in waiting that the teacher concerned Smt. Rekha Sabharwal has not been harassed by the school management at all. (Statement in original placed at 31-C) rest of the reply of para 3 is the school's conclusion/opinion as far as concerning the teaching ability of the teacher.

4. It is true on the part of school that they have been conveyed by E.O vide letter no.DE-47/Z-II/PS/6/4448 dated 29/9/06 that approval for suspension of an employee of public school is not required in view of the judgment of Hon'ble Delhi High Court in case of Kathuria Public School V/S Director of Education (Copy of Judgment placed at 32-C).

5. The school has been proved correct as stated in their that it might have been due to typographical mistake as was written Rs.11,400/- instead of Rs.10849/-. The entires for April 05 in the pay bill in R/o Smt. Rekha Sabharwal shown as below:

Basic Pay	4750/-
D.A.	2375
A.D.A	1211
HRA	2138
CCA	200
MA	75-
TA	100-
G. Total	<u>10849 and not 11,400</u>
(Copy of pay bill at 33-C.)	

As for the payment of less salary the applicant/complainant has not given any evidences to prove that she was paid Rs.3700/- as salary for july 05 and August 05 contrary to the above the applicant/complainant has duly signed on revenue stamp meaning thereby she has received the amount written besides her signature. Without prejudiced to the above the school submits debit voucher for payment in case of Rs.10849/- for the month

July 05 and August 05 duly signed by the teacher concerned Smt. Rekha Sabharwal on revenue stamp.

6. The allegation of putting pressure and force in para 6 of the petition, no such incidents appear to have been taken place, as no other teacher of the school has agreed or supplemented the incident. The allegation as such seems baseless.

7. The allegations of para 7 of the petition have absolutely denied by the school as the applicant mentions "other teachers" but not mentions the names of the "other teachers" so that those could have been enquired upon accordingly.

8. As para no.8 of the petition is matter of record and nothing to be inquired into.

In the conclusion of the inquiry it appears prima facie that the allegations of the applicant in the petition have not been authenticated with evidences as such, whereas the replies of the school have authenticated by documentary evidences as placed in the file.

Hence, there is no harassment's or victimization as such, and also there is no misappropriation or manipulation of payment of salary to Smt. Rekha Sabharwal, the suspended Asstt. Teacher (Nursery) of the Sai Memorial Girls School.

Submitted for perusal and necessary action please.

DEO-III
V. Principal/DDO
G.Co.Ed. SSS, Lalita Park
Delhi"

5. A reading of the aforesaid report shows that either the petitioner was paid by means of cheques in her account or when she was paid amount in cash then there exist signatures of the petitioner across the revenue stamp in the register of the respondent no. 3/school. Petitioner does not dispute her signatures across the revenue stamp in the register of the respondent no. 3/school.

6. Exercising extraordinary writ jurisdiction under Article 226 of the Constitution of India this Court can interfere with the report prepared by the Director of Education only if the same is illegal on the

face of it. If two views are possible from a situation in terms of the evidence available before the Director of Education for passing of the impugned order, and the Director of Education has taken one possible and plausible view in terms of the impugned order, this Court in exercise of extraordinary jurisdiction will not be justifiable in coming to a different finding than the impugned report dated 15.12.2006. The impugned report dated 15.12.2006 is clear that the petitioner received her salary either by cheque or in cash by signing across the revenue stamps, and therefore, this is one such possible and plausible view that petitioner has received complete salary. Also, the complaint of harassment against the petitioner was found to be baseless because no other employee of the school supported the petitioner as regards the harassment of the petitioner.

7. Learned counsel for the petitioner sought to argue that the petitioner never knew about the Inquiry Report dated 15.12.2006 and petitioner only came to know of the Inquiry Report in response to an RTI query, and thereafter, petitioner filed her representation dated 8.6.2007 for challenging the report, and since petitioner was not heard, therefore, the Inquiry Report should be set aside. I, however, do not find that there is any specific provision of giving personal hearing as

per any provision of the Delhi School Education Act and Rules, 1973, and in any case, even if hearing was given, the evidence which had to be considered by the Director of Education as regards payments of salary was payments by cheques, which was found for a particular period, or payment in cash which were supported by signatures of petitioner across the revenue stamps. If there is any other evidence as regards any inference to be drawn, then as stated above, Director of Education as per the record and evidence before it was entitled to take one possible and plausible view, and which has been taken, and this Court cannot become an Inquiry Officer or a Civil Court deciding a civil suit to again start deciding disputed questions of fact, and which will fall in the realm of the Director of Education who has given the impugned report dated 15.12.2006.

8. In view of the above, there is no merit in the petition and the same is therefore dismissed.

FEBRUARY 06, 2017

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VALMIKI J. MEHTA, J