

\$~8

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

+ W.P.(C) 6578/2016

RENU BALA

..... Petitioner

Through: Mr. Jaivir Bains, Adv.

versus

GANGA INTERNATIONAL SCHOOL AND
ANR

..... Respondents

Through: Mr. Kamal Gupta, Adv. for R-1
Mr. Anuj Aggarwal, ASC (GNCTD
for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

18.09.2017

1. The present petition has been filed by the petitioner inter alia seeking a direction for release of arrears pursuant to the recommendations made by the Sixth Pay Commission with interest @ 12% *per annum*. The petitioner was initially employed with respondent no. 1 / School as a PRT (Drawing) w.e.f July 1, 2001 till July 31, 2006 in the Grade of Rs.4,500 – 7,000/-. She was promoted as TGT (Drawing) w.e.f August 1, 2006. She continued to work as such till March 31, 2008 in the Grade of Rs.5,500 – 9,000/-, when she resigned from the respondent no. 1/ School.

2. It is the submission of the learned counsel for the petitioner that

pursuant to the Order / Circular dated February 11, 2009 issued by the Directorate of Education making applicable the recommendations of the Sixth Pay commission, the petitioner has been making representations till 2013, seeking the arrears, unfortunately no response has been given. He would draw my attention to Page 52 of the Paper Book to contend that respondent no. 1 / School in its communication dated July 25, 2014 to the respondent no.2 has acknowledged the payment of arrears to the petitioner as and when the required amount is collected from the students. In other words, it is an acknowledgment of a debt, which admittedly was made within a period of three years, which is the period of limitation for recovering money, prior to the filing of the writ petition in the year 2016, and the same would answer the plea of the respondent no.1 on delay and laches. He seeks grant of reliefs as prayed for in the present petition.

3. On the other hand, Mr. Kamal Gupta, learned counsel appearing for the respondent no.1 would submit that the cause of action, if any, had accrued to the petitioner on the issuance of the Order / Circular dated February 11, 2009 and the petitioner at best could have filed the petition before February 11, 2012 which signifies the expiry of three years period, which is the normal limitation period seeking recovery of money.

According to him, continuous representations would not explain the delay and laches. He also states, the petitioner having resigned on March 31, 2008, surely would not be entitled to benefits which have accrued on the strength of Circular / Order dated February 11, 2009 issued by the Directorate of Education. He would rely upon the judgment of this Court in the case of *Sarita Tiwari and Anr. V. Ganga International School and Ors. W.P. (C) 6456/2014* dated March 2, 2015, which has been upheld by the Division Bench of this court on August 22, 2016 in *LPA No. 96/2016* in support of his submissions . He seeks the dismissal of the writ petition.

4. Mr. Anuj Aggarwal, learned ASC reiterates the stand taken in the short affidavit filed by the respondent no.2.

5. Having heard the learned counsel for the parties, the first and foremost aspect which needs to be decided is whether the present petition is hit by delay and laches. There is no dispute that the petitioner resigned from the services of the respondent no.1 / School on March 31, 2008. The Circular / Order was issued by the Directorate of Education / respondent no.2 on February 11, 2009. As canvassed by the counsel for the petitioner, till 2013, the petitioner has been making representations / approaching the School for grant of arrears. In other words, she did not approach a Court of

Law against her grievance with regard to non-payment of arrears of salary in terms of the recommendations of the Sixth pay Commission. The only plea urged by the Ld. counsel for the petitioner by relying upon the communication dated July 25, 2014 of the respondent no.1 / School to the respondent no.2, is that the same is an acknowledgement to pay arrears is not appealing. This I say so in view of the stand taken by the respondent no.1 in its counter-affidavit that the arrears of salary were paid for the period between October 1, 2008 to March 31, 2009 which period is after the petitioner had resigned and stood relieved from the respondent no.1 / School. Mr. Kamal Gupta has stated during his submissions that no arrears for the period before October 1, 2008 have been paid, as the required amount was not collected from the students. In the communication dated July 25, 2014, the representation of the respondent no.1 / School to the respondent no.2 was to the extent that the petitioner shall get her arrears as and when the required amount is collected from the students.

6. In view of the submission of Mr. Kamal Gupta, the petitioner cannot claim the arrears on the strength of communication dated July 25, 2014. The submission of Mr. Kamal Gupta that even though the communication dated July 25, 2014 is not an acknowledgment, he states the same was not within

the period of limitation of three years. That apart, I note Mr. Gupta is justified in relying upon the judgment of this Court dated March 2, 2015 in **Sarita Tiwari (supra)**, wherein this Court in Para 3 and 4 held as under:-

- “3. The present writ petition however has been filed in September, 2014 ie much after the limitation period expiring in October, 2012, and, even the legal notice preceding the writ petition was given by the petitioners to the respondent no. 1 only on 20.3.2014 ie beyond the three years period expiring on 31.10.2012.
4. Powers under Article 226 of the Constitution of India are exercised in accordance with the laws and not to cause violation of the laws. What is a limitation period for a suit being time barred, is applied qua a writ petition to which Limitation Act, 1963 does not apply, by applying the doctrine of delay and laches. There can be overlooking of the doctrine of delay and laches only in those cases where a representation is given by a petitioner and which is pending for consideration, and in which circumstances depending on the facts of a particular case, since representation is pending consideration, no cause of action can be said to have arisen for the petitioner to approach the court, however, in the present case, once the limitation commenced definitely w.e.f 31.10.2009, and no representation of the petitioners was pending for grant of monetary emoluments, there is no reason why a writ petition filed in September, 2014 i.e beyond 31.10.2012 should be entertained by the Court. Writ petition is therefore clearly barred by the doctrine of delay and laches.”

7. The Division Bench has upheld the order of the learned Single Judge in its order dated August 22, 2016 in LPA 96/2016 by holding:

“In these circumstances, we are not inclined to condone the delay of 266 days for the reasons set out in the application. It is noticeable that the impugned order dismisses the writ petition on the ground of delay and laches noticing the fact that the writ petition was filed in September 2014, whereas the appellant No. 1 had resigned as a teacher on 31st March, 2009 and the

appellant No. 2 had resigned as a teacher on 3rd February, 2009. The circular issued by the Directorate of Education, relied upon by the appellants, is dated 11th February, 2009. This is not a case of continuing cause of action as after the resignation the employer-employee relationship had ceased. The claim raised pertains to arrears of pay.”

8. In view of my above discussion, I do not see any merit in the petition, same is dismissed.

V. KAMESWAR RAO, J

SEPTEMBER 18, 2017/jg