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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 12698/2009

8th February, 2017

SURENDER KUMAR

..... Petitioner

Through: Mr. Shaminder Kadian, Advocate.

versus

THE MANAGEMENT, MANN PUBLIC SHOOOL & ANR.

..... Respondents

Through: Ms. Jyoti Taneja, Adv. for
R/GNCTD.

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 seeks direction against the respondent no.1/school for payment of an amount of Rs.63,645/- towards salary arrears by application of the Sixth Pay Commission Report, as also an amount of Rs.1,12,815/- towards House Rent Allowance besides Rs.22,276/- towards earned leave. All the amounts which are claimed by the petitioner are on the basis that the Sixth Pay Commission Report has been made applicable to schools in Delhi.

2. The facts are that the petitioner was appointed as a Post Graduate Teacher (Maths) with the respondent no.1/school on probation by

letter dated 7.7.2003 and services commenced w.e.f 16.7.2003. Petitioner was confirmed in his job after completion of probation vide letter of the respondent no.1/school dated 8.7.2004. Petitioner however resigned from his job by giving the requisite notice dated 29.8.2006 and was accordingly relieved w.e.f 24.11.2006. Petitioner claims that the Sixth Pay Commission Report became applicable to schools in terms of the circular of the Director of Education dated 15.10.2008, and therefore, petitioner should be granted the payments in terms of the circular of the Director of Education dated 15.10.2008.

3. No doubt, the respondent no.1/school in its counter-affidavit has only claimed financial difficulties for non payment of the amount to the petitioner, however, it is seen that petitioner's services with the respondent no.1/school came to an end on the 30th day after serving of the notice of resignation dated 29.8.2006 in accordance with Rule 114-A of the Delhi School Education Rules, 1973 and which Rule reads as under:-

“114A. Resignation- The resignation submitted by an employee of a recognised private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director:

Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expire of the said period.”

4. I have recently had an occasion to examine this aspect in the judgment in the case of *The Managing Committee of Rani Dutta Arya Vidyalaya & Anr. Vs. The Director of Education, Govt. of National Capital Territory of Delhi & Ors.* W.P.(C) No. 20218-19/2004 decided on 11.01.2017 that resignation becomes final definitely within 30 days of giving of the same under Rule 114-A of the Delhi School Education Rules unless the resignation is withdrawn before acceptance and prior to 30 days period. Even taking that petitioner's services came to an end on 24.11.2006, yet, petitioner claims benefit of the Sixth Pay Commission Report but the said Report for increase of pay-scales was applicable only to schools by virtue of the subsequent orders of the Director of Education dated 22.9.2008 and 15.10.2008. The order dated 15.10.2008 reads as under:-

"No.DE/15/ACT/7645-7666

Dated: 15/10/08

CIRCULAR

Section 10(1) of Delhi School Education Act 1973 provides that—

"Scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in the school run by appropriate authority."

Therefore, the Management of all private recognized, (Aided as well as unaided) schools are directed to implement the Sixth Pay Commission recommendations-fixation of pay and payment of arrears in accordance with circular no. 30-3(17)/Cood/Cir/2008 dated 22.09.2008 vide which it has been implemented in r/o employees of Government Schools.

This issue with prior approval of competent Authority.

Sd/-

(Dr. R.K.Sharma)

Additional Director (Act)

Managing Committee

(Through Manager)

All Private Recognized (Aided and Unaided) school.

Copy to:-

1. P.S. to Hon'ble MOE
2. P.S. to Secretary (education)
3. P.S. to DE
4. Rds
5. DDEs with request to issue the circular to all recognized school under their jurisdiction
6. OS(IT) with a request to upload circular on website

Sd/-
(Abha Joshi)
Assisstant Director of Education"

5. Once therefore the Sixth Pay Commission Report became applicable to teachers and employees of schools only w.e.f 15.10.2008, the petitioner on this date no longer was the employee of the respondent no.1/school as his services with the respondent no.1/school no longer existed at the maximum after 24.11.2006, and hence petitioner cannot be given the benefit of the subsequent circular dated 15.10.2008.

6. In view of the above discussion, petitioner cannot be granted the monetary emoluments as per the Sixth Pay Commission Report and as claimed by the petitioner. Dismissed.

FEBRUARY 08, 2017
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VALMIKI J. MEHTA, J