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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 262/2016

ABHA GUPTA

..... Petitioner

Through: Mr. Rajiv Aneja, Adv.

versus

DIRECTOR OF EDUCATION, GOVT. OF NCT OF DELHI & ANR

..... Respondent

Through: Mr. Anuj Aggarwal, ASC for GNCTD
with Ms. Niti Jain, Adv.

Mr. Pradeep Kumar, L.A. Zone-27

Mr. Sunny Choudhary, Adv. with Mr.
Abhimanyu Singh, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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17.07.2017

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

“It is therefore most respectfully prayed that this Hon’ble Court may be pleased to:

A. *Issue a writ order or direction in the nature of certiorari thereby quashing/setting aside orders/letters/memo/circular dated 29/09/13, 17/03/15 and 01/09/15 issued by respondent No.2 and treat the petitioner in service with effect from 29/08/13 and thus award full salary and allowances and other consequential benefits w.e.f 29/08/13 till date.*

B. *OR IN ALTERNATE WITHOUT PREJUDICE TO PRAYER A:*

Issue writ order and direction in the nature of certiorari thereby quashing/setting aside orders/letters/memo/circular dated 17/03/15 issued by respondent No.2.

C. Issue a Writ order or direction in the nature of Mandamus thereby directing the respondent School to treat the petitioner as having voluntarily retired and award gratuity, PF and Leave encashment by considering the petitioner as regular in service from the date of her appointment till her 29/08/13.

C. Direct the respondent School to count the period of illegal termination of services of the petitioner w.e.f 12/08/2008 to 11/05/2012 and from 11/05/2012 till 29/08/2013 as her active service for the purpose of calculation of Gratuity, Leave Encashment and PF.

D. Direct the respondent School to furnish full details of Earned Leaves, leave record along with leave application and relevant attendance register deducting leave of the petitioner if any and produce the same before the Hon'ble Court.

F. Pass such other orders or directions which this Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

2. The facts of the case are, services of the petitioner were terminated on August 12, 2008. The termination was a subject-matter of an appeal before the Delhi School Tribunal, which was decided on May 11, 2012 directing the reinstatement of the petitioner with 50% back wages. The said order of

the Tribunal was upheld by this Court and also by the Supreme Court. The petitioner was allowed to join her duties in the month of December, 2012.

3. The issue, which has arisen in this petition is, whether her services could be dispensed with, even though the petitioner had made a request for voluntary retirement by treating the same as a resignation.

4. The School has filed a counter-affidavit. I may only note here, the School has been resisting the request of the petitioner of voluntary retirement on the ground that she has not completed 20 years of mandatory service. Be that as it may, the School in their initial communication dated March 17, 2015 has expressed its desire to release the provident fund and the leave encashment. Subsequent thereto, the School has reviewed its stand and on November 16, 2016 decided to release the Gratuity also to the petitioner.

5. Mr. Aneja makes two submissions; (i) the period during which the petitioner was out of service between 2008 to 2012 need to be counted for the purpose of the terminal benefits; (ii) the petitioner is entitled to interest on the delayed Gratuity payment.

6. The learned counsel for the respondent No.3 School states that the School is counting the period between 2008 and 2012 for the purpose of

payment of all terminal benefits, as is evident from para k (iii) (page 7 of the counter-affidavit filed by the respondent No.3 School). If that be so, suffice to state the petitioner shall be entitled to the counting of period between the date of termination and the date of reinstatement in December, 2012.

7. Insofar as the other submission of Mr.Aneja that the petitioner is entitled to interest on Gratuity is concerned, noting the facts as above, inasmuch as the respondent No.3 School had not expressed any desire to release the Gratuity, and on a re-consideration decided to pay the same only on November 16, 2016, and holding the respondent no.3, School could have taken such decision earlier also at least on August 23, 2013 when the request for voluntary retirement was rejected, I deem it appropriate to grant nominal interest @ 6% per annum on the Gratuity w.e.f. August 23, 2013 till the date of payment.

8. It is expected that the payments on account of Gratuity, Leave Encashment and Provident Fund shall be released on or before July 31, 2017 as stated by the learned counsel for the respondent No.3.

9. Petition stands disposed of.

V. KAMESWAR RAO, J

JULY 17, 2017/ak