

\$~10

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

Date of decision : 16th August, 2018

+ W.P.(C) 1516/2016

AKSHAYA KUMAR PANDA Petitioner

Through : Mr. Ashok Agarwal and
Mr. Kumar Utkarsh, Advs.

versus

GANGA INTERNATIONAL SCHOOL & ORS... Respondents

Through : Mr. Tamim and Mr. Kamal
Gupta, Advs. for R-1.
Mr. Sanjoy Ghose, ASC with
Mr. Rhishabh Jetley, Adv. for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

%

JUDGMENT (ORAL)

1. Respondent No.1 is a recognized, unaided private school (hereinafter referred to as “the school”).
2. The petitioner, in his writ petition, claimed to have been employed, since 2nd July, 2001, as Dance Teacher in the school, and to have been made permanent from 1st July, 2005.
3. In November, 2013, the petitioner resigned. He was issued an experience certificate, certifying that he had served the school since 14th July, 2004.
4. The petitioner, in this writ petition, contends that he was entitled to revised pay and emoluments, as per the 5th Central Pay

Commission, with effect from 2nd July, 2001, i.e., the date of his appointment, and as per the 6th Central Pay Commission, with effect from 1st January, 2006, till the date of his resignation, i.e., November, 2013.

5. Reliance is placed by the petitioner, for this purpose, on Section 10 of the Delhi School Education Act, 1973 (hereinafter referred to as “*DSE Act*”), which reads thus:

“ 10. **Salaries of employees.**—(1) The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority: 8 Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.”

6. It is also contended in the writ petition, that the benefits of the 5th and 6th Central Pay Commission were extended to other employees of the school.

7. The writ petition further recites that he, along with other employees of the school, moved this court by way of W.P.(C)No.6516/2014 (*Preeti Sharma & Ors. v. M/s. Ganga International School & Ors.*), which was withdrawn, on 6th February, 2015, with liberty to file individual writ petitions.

8. The present writ petition has been filed pursuant to the liberty so granted.

9. The writ petitioner also relies on a show cause notice, dated 5th June, 2009, issued to the school by the Directorate of Education, to which the school responded on 6th February, 2010, submitting that (i) arrears of salary, for the period 1st January, 2006 to 30th March, 2009, were being paid to the employees in instalments, (ii) arrears for the period January to March, 2009 already stood paid and (iii) as and when the school collected tuition fees from the students at revised rates, further arrears would be paid.

10. The petitioner also contends, in the writ petition, that the school was still collecting arrears from the students.

11. The school, in its counter affidavit, submits, on the other hand, that the appointment order, dated 22nd June, 2005, of the petitioner, itself discloses that the petitioner was not an employee of the school,

but of the Respondent No.2-Society, to which Section 10 of the DSE Act did not apply.

12. In this context, the counter affidavit also relies on the resignation letter of the petitioner, which was addressed to the society, and not to the school. Reliance has also been placed, in this context, on *Samarth Shiksha Samiti v. Bir Bahadur Singh*, (2009) 3 SCC 194.

13. The school has also pleaded delay and laches, and has relied, for this purpose, on the judgment of a coordinate bench of this court in *Sarita Tiwari v. Ganga International School*, (W.P.(C)No.6456/2014), stated to have been filed by the colleagues of the petitioner, urging an identical grievance and seeking identical relief.

14. Having perused the judgment of the Supreme Court in *Samarth Shiksha Samiti (supra)* and the judgment of the coordinate bench of this court in *Sarita Tiwari (supra)*, I am of the opinion that the present case stands squarely covered by these decisions and that, therefore, no occasion arises for me to enter into the merits of the controversy.

15. In *Samarth Shiksha Samiti (supra)*, the Supreme Court culled out a clear distinction between the employee of the school, and the employee of the society which runs the school. It was held by the Supreme Court, in the said case, that the DSE Act would not apply to the employee of a society which runs the school.

16. That apart, the reliance by the school, on *Sarita Tiwari (supra)* also appears to be well-taken. The said decision, deals with an identical claim made by teachers who were identically situated to the petitioner in the present case.

17. This court, in the said case, held that the claim, on the basis of 6th Central Pay Commission Report, for fixation of pay and arrears on the basis thereof, filed in 2014, was hit by delay and laches and, on that ground, dismissed the writ petition.

18. *Mutatis mutandis*, the said decision applies in the present case, as the petitioner has approached this court, for the first time, in 2014. There is no whisper of any averment, in the writ petition, explaining the said delay.

19. At this stage, Mr. Ashok Agarwal, learned counsel for the petitioner seeks to distinguish *Sarita Tiwari (supra)*, contending staked their claim; was more than three that the years prior to the filing of the writ petition whereas the claim of this client is up to 2013, and his writ petition stood filed, less than a year therefrom, in 2014. Accordingly, Mr. Agarwal, Advocate would contend that he would be entitled to arrears at least upto the period of three years prior to the date of filing of the writ petition.

20. Though, this writ petition stands otherwise covered by the judgment of the Supreme Court in *Samarth Shiksha Samiti (supra)*, as already observed hereinabove and is liable to be dismissed for the said reason, I have, nonetheless, considered the above submission of

Mr. Agarwal. Though, the submission appears attractive at first blush, it is not possible for me to agree therewith, in view of the following observations of the learned Single Judge in paras 1 to 3 of *Sarita Tiwari (supra)*:

“1. By this writ petition filed under Article 226 of the Constitution of India, two petitioners, seek the relief of being granted by their erstwhile employer/respondent no.1/school, monetary emoluments as per the 6th Central Pay Commission Report which became applicable to schools in terms of the circular of the Directorate of Education dated 11.2.2009.

2. It is an admitted fact that petitioner no.1 worked in the respondent no.1-school till 31.3.2009 and petitioner no.2 worked in the respondent no.1-school till 3.2.2009. Both the petitioners resigned from their services with the respondent no.1/school w.e.f 31.3.2009 and 3.2.2009 respectively. The circular of the Directorate of Education dated 11.2.2009 allowed schools to clear the arrears by 31.10.2009 and therefore *the cause of action accrued to the petitioners for grant of benefits of the 6th Central Pay Commission Report and monetary emoluments thereunder lastly on 31.10.2009. A writ petition therefore had to be filed in around the period of three years, and which is the limitation period applicable if the petitioners had chosen to file a suit against the respondent no.1-school for recovery of monies on the basis of the circular of the Directorate of Education dated 11.2.2009.*

3. *The present writ petition however has been filed in September, 2014 i.e. 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 i.e. beyond the three years period expiring on 31.10.2012.”*

(Emphasis supplied)

21. *Sarita Tiwari (supra)* which binds me, being a decision rendered by a coordinate bench – holds, clearly, that (i) the cause of

action, for filing the writ petition, arose on 31st October, 2009, (ii) the writ petition was required to be filed within 3 years thereof and (iii) *therefore*, the writ petition filed in September, 2014, was barred by time. This dicta applies, on all fours, to the petitioner. It would not be permissible for the petitioner, given this legal position, to file a writ petition in 2014 and claim benefits for a period of 3 years prior to the filing of the writ petition. *Sarita Tiwari (supra)*, clearly, does not permit such a course of action.

22. Accordingly, for the above reasons, without expressing any opinion on merits, the writ petition is dismissed for the above reasons, without any order as to costs.

AUGUST 16, 2018
mk

C.HARI SHANKAR, J

सत्यमेव जयते