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

+ **W.P.(C) 7700/2018**

VIDYA BHARATI SCHOOL Petitioner
Through **Mr.Atul Bandhu, Advocate.**

versus

DIRECTORATE OF EDUCATION AND ORS. Respondent
Through **Mr.Gautam Narayan, ASC with**
Ms.Shivani Vij and Ms.Mahamaya
Chatterjee, Advocates.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% 25.07.2018

CM 29489/2018 (Exemption)

Application is allowed subject to just exceptions.

W.P.(C) 7700/2018 & CM 29488/2018 (Stay)

The present writ petition has been filed with the prayer as under:

(i)issue a writ of mandamus or any other appropriate writs(s) or directions(s) thereby calling for the records of the case from the Respondent No.1 and 2;

(ii)issue a writ of mandamus thereby quashing/setting aside the order dated 22.02.2018 (impugned order) passed by respondent no.2 by virtue of which the petitioner has been illegally directed to make payment of money; and further to issue a writ of mandamus thereby directing the Respondent No.1 & 2 to not to insist/force the Petitioner school to pay the amount which it (School) is not liable to pay.

It has been argued by the counsel for the petitioner that the order has been passed in favour of respondent no.3 to pay him the arrears of 6th Pay Commission. The 6th Pay Commission was ordered to be implemented by the virtue of order dated 11.02.2009 by passing a detailed order to fix the salary of respondent no.3-Teacher and pay him arrears. Thereafter, the management had discussion with the staff members in the meeting dated 13.03.2009 where it has been record that the teachers agreed to forgo the arrears keeping in mind the benefit of the school. Admittedly, even thereafter the benefits of 6th Pay Commission were not extended to the respondent no.3. Ultimately, the respondent no.3 filed a writ petition bearing W.P.(C) No.11800/2015 which came before the High Court and this Court vide order dated 21.12.2015 ordered that the respondent no.4 shall call for the comments from the respondent no.1 to 3 and thereafter pass a speaking and reasoned order as to whether the petitioner's pay fixation w.e.f. January 01, 2006 was proper or not within six weeks from the date of the order. As a result, a detailed order was passed by respondent no.4 on 10.10.2016 but the arrears were not paid. Ultimately, as a consequence of 6th Pay Commission; order dated 11.02.2009; order dated 21.12.2015 passed by this Court; and the detailed order dated 10.10.2016; a consequential order dated 22.02.2018 as mentioned above was passed.

Undisputed position is that the order passed by the Education Department dated 11.02.2009 directing for fixation of pay and payment of arrears and salary in accordance with 6th Pay Commission is not under challenge in any court of law by the petitioner.

However, counsel for the respondents submitted that in other case i.e. in W.P.(C) 7777/2009 titled Delhi Abhibhavak Mahasangh & Ors. v. GNCTD & Ors (decided by this Court on 12.08.2011), the order was upheld by Hon'ble Supreme Court. Similarly, the order passed by this Court on 21.12.2015 in W.P.(C) No.11800/2015 is also not in question before the High Court or before Hon'ble Supreme Court of India and even in the present writ petition. The impugned order challenged in this Court is with regard to arrears in consequence of order mentioned above.

Arguments advanced by the counsel for the petitioner is that he has challenged the order passed by the Education Department dated 22.02.2018 for payment of arrears and the respondent no.3 is not entitled for arrears as the period of limitation for claiming the arrears is only three years and the same has already been lapsed.

Admitted position is that by the virtue of order dated 11.02.2009, the respondent no.3 is entitled for fixation of pay and arrears w.e.f. 01.01.2006 and the petitioner is liable to pay the same without any representation or request as the fixation of salary is the mandatory duty of the employer in accordance with the instructions issued by the Government from time to time, failing to comply with the mandatory duty to make the payment, does not give cause to the petitioner to claim the limitation. It is not the case that the respondent no.3 was not entitled for fixation of salary and payment thereof which is the mandatory duty of the petitioner.

Argument with regard to limitation also does not survive as consistently the respondent no.3 has been running pillar to post for

arrears which he was legally entitled to. It cannot be termed as individual recovery, rather the management is required to be penalised for not complying with the binding duty and to make the poor employees running pillar to post. The petitioner could have argued the limitation if there is any fresh claim; made today w.e.f. back date, but the petitioner cannot be the beneficiary of failing to comply with its own duty and then to avoid the payment on the ground which is not even available to it. Argument even otherwise fails as the order of calculation has been passed by the Directorate of Education on 22.02.2018 which accrued the cause in favour of respondent no.3 for receipt of payment. Under no circumstance, the claimed benefit of period of limitation of three years for making payment is applicable or available to the petitioner.

As discussed above, it is unfortunate that the 6th Pay Commission granted the enhanced salary from 01.01.2006 and presently we are in the year 2018. 12 years have been passed and still the management on one or the other pretext is delaying the payment despite the instructions issued by the Education Department vide order dated 22.02.2018. This Court is of the considered opinion that the respondent no.3, a poor employee, is entitled for payment forthwith. Even this Court is further of the opinion that if the same is not being done, the respondent no.1 and 2 should not hesitate to take any action on account of non-payment of arrears as it is binding duty of the State who is supervising the schools to get the due and proper salary to the teaching staff to be paid regularly and in case of non-compliance by the petitioner-management, to take appropriate action.

This Court has further observed that there is lapse on the part of the Government also for not taking any action against such managements who pushed the poor teachers into litigation for their bread and butter which they are entitled by the virtue of duty rendered towards the school.

In the facts and circumstances, it is directed that the respondent no.1 and 2 shall get the compliance of the order forthwith. The writ petition is dismissed.

It is made clear that if the payment of arrears is delayed beyond period of one month, then the respondent no.3 would be entitled for interest @ 12% per annum from the date when the said amount became due for payment.

The present petition is accordingly dismissed. The pending application is also disposed of accordingly.

P.S.TEJI, J

JULY 25, 2018
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