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

+ LPA 415/2017 & CM No.21230/2017 (stay)

SATBIR SINGH & ANR

..... Appellants

Through: Mr.Vivek Singh, Mr.Rahul Godia and
Mr.Onkar Nath, Advocates.

versus

DELHI SIKH GURDWARA MANAGEMENT COMMITTEE &
ORS Respondents

Through: Mr.Jasmeet Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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27.08.2018

CM No.21282/2017 (delay)

1. This is an application filed by the appellants seeking condonation of delay in filing the appeal.
2. Notice. Counsel for the non-applicant accepts notice. The prayer made in this application is not opposed. Accordingly, the delay of 59 days in filing the appeal is condoned.
3. The application stands disposed of.

LPA 415/2017 & CM No.21230/2017 (stay)

4. Challenge in this appeal is to the order dated 20.02.2017 passed by the learned Single Judge of this Court by which the writ petition was allowed in part. The School was directed to pay the service benefits to the appellants as per the Sixth Pay Commission report from 11.02.2009 onwards but the relief was restricted to last three years of filing of the writ petition i.e. from 2016 onwards.

5. Counsel for the appellants conceded that although the prayer clause may not be happily worded but paragraph 18 of the writ petition would clearly show that the appellants have not been paid back wages on account of dispute which had arisen between the appellants and the respondent No.2/School.

6. Counsel for the appellants pointed out that both the appellants and employees of the respondent No.2/School were transferred from the School to the society. This order of transfer was assailed by filing a writ petition in the year 2007 which was allowed by an order dated 01.05.2013. Attention of this Court is drawn to the concluding para of the order which is reproduced below:-

“10. So far as the facts of this particular case is concerned, counsel for respondents sought to argue that the petitioners are not entitled to the reliefs claimed as they have not joined the services of the respondent No.1-society from April, 2009, however, I have already held above that petitioners could only have been asked to join duties with the school and not with the society. In any case, it is upon the respondent No.2-school to take action in accordance with the provisions of Delhi School Education Act and Rules, 1973 if assuming there is any violation by the employee of his obligations to his employer.

11. I further clarify that if the petitioners have not performed duties, then it will be open to the respondent No.2 (of course in accordance with the Delhi School Education Act and Rules, 1973) to apply the principle of 'no work no pay' provided that the principle is found to apply to the facts of the present case as per applicable law with respect to the principle of 'no work no pay'. I must hasten to clarify that I am not observing one way or the other for the petitioners or against the petitioners on the aspect of the entitlement of the petitioners for complete pay or the entitlement of the respondent No.2-school to claim that the petitioners will not be paid at all. If any such dispute arises then the petitioners will be entitled to approach an appropriate court in accordance with law with respect to such issue of denial of arrears of salary including of obligation of school to pay as per the Sixth Pay Commission Report".

7. Counsel for the appellants submits that after the decision in the writ petition, the appellants made a representation to the school. Since the representation was not favourably decided they filed a writ petition in the year 2016. Counsel submits that the learned Single Judge completely lost track of the fact that till the writ petition challenging the order of transfer was not decided their rights were not crystallized and only upon decision on 01.05.2013 which was assailed by the respondent by filing a LPA which was decided in August, 2015, the appellants filed writ petition in the year 2016. Thus, the delay, if any, has been satisfactorily explained.

8. Mr.Jasmeet Singh, learned counsel appearing for the respondent submits that the appellants are not entitled to any back wages as atleast one of the two respondents had failed to join the duty at the society. He further submits that the question with regard to the payment of back wages, salaries etc was left open by the Single Judge while deciding the Writ Petition

bearing No. 2845/2016 which is evident upon reading of paragraphs 10 and 11 which have been extracted above.

9. We have heard the learned counsel for the parties. Para 18 of the writ petition bearing No.2845/2016 reads as under:-

“That the petitioners for the last two years have tried their best in regards to persuade the respondents to grant their arrears of pay and made requests to the respondents, number of times to release their arrears of salary along with the dues as per Sixth Pay Commission but all of the requests and persuasion went in vain.”

10. Counsel for the appellants has contended that the Single Judge has restricted the relief only for the last three years of filing of the writ petition while taking note of the previous litigation.

11. No doubt the opening paragraph of the order dated 20.02.2017 shows that only a limited relief was sought and that the payment of service benefits as per the Sixth Pay Commission however, the learned Single Judge has not taken note of the previous dispute between the parties and the time spent in litigation which is required to be examined and taken into account since the parties were locked in the previous litigation being subject matter of Writ Petition No.8060/2007. In our view this aspect was either not brought to the notice of the learned Single or not decided. It is only upon examining as to whether the delay in approaching the Court has been satisfactorily explained or not and the relief sought can be considered whether the appellants are entitled to any back wages or not.

12. In the light of the above discussions, we set aside the order dated 20.02.2017 and remand the matter back to the Roster Bench for fresh hearing of the Writ Petition No.2845/2016 on 25.10.2018. The rights and contentions

of both the parties are kept open. Counter affidavit in Writ Petition No.2845/2016 shall be filed by the respondents within six weeks.

13. Parties to also explore the possibility of one time settlement. In case, the appellants are interested, they may approach Mr.Jaspreet Singh, counsel for the respondents in the matter.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 27, 2018

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