

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

Date of Decision: January 16, 2018

- (i) + **W.P.(C) 9392/2015 & CMs 21916-17/2015**
- (ii) + **W.P.(C) 9410/2015 & CMs 22005-06/2015**
- (iii) + **W.P.(C) 9413/2015 & CMs 22011-12/2015**
- (iv) + **W.P.(C) 9425/2015 & CMs 22025-26/2015**
- (v) + **W.P.(C) 9445/2015 & CMs 22073-74/2015**

**SCHOOL MANAGEMENT OF RAO MOHAR SINGH
MEMORIAL SENIOR SECONDARY SCHOOL & ANR**

..... Petitioners

Through: Mr. A.K. Singla, Senior Advocate
with Mr. H.D. Sharma and Mr. Rahul Shukla,
Advocates

Versus

**GAURAV SHARMA & ANR.
CHIRANJEEV SARKAR & ANR.
BRIJESH UPADHYAY & ANR.
SUMIT TANDON & ANR.
NEERAJ TRIVEDI & ANR.**

..... Respondents

Through: Mr. Saurabh Chadda and Mr. Rohit
Bhagat, Advocates for respondent No. 1
Mr. Devesh Singh, ASC and Ms. Neelam
Kholiya, Advocate for respondent No. 2 with
Mr. Rahul Dav, Legal Assistant, Zone-22

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT
(ORAL)**

1. The above-captioned petitions are directed against common impugned order of 15th September, 2015 vide which *Delhi School*

Tribunal has directed reinstatement of respondents-Teachers and regarding back wages, Rule 121 of *the Delhi School Education Act and the Rules 1973* has been invoked to permit respondents-Teachers to make Representations to petitioners to seek back wages.

2. Since these petitions are directed against common impugned order, therefore, with the consent of learned counsel for the parties, these petitions have been heard together and by this common judgment, they are being disposed of.

3. The facts giving rise to these petitions are already noticed in impugned order and so, need not be reproduced. Suffice to note that respondents-Teachers are Trained Graduate Teachers (TGT) and Post Graduate Teachers (PGT), who were appointed, but no formal appointment letters were issued to them and they were given salary in cash. It is the case of respondents-Teachers that when they had agitated their claim for proper salary, they were forced to resign. On the aspect of validity of resignation tendered by respondents-Teachers, learned Tribunal has held as under: -

“There is no mention in the above quoted minutes of the Managing Committee allegedly held on 10.10.2012 that the resignation of the Appellants has been accepted. There is no mention of the names of the employees whose resignation has been accepted, mentioning of the names of the employees whose resignation has been accepted is most important thing in the circumstances when according to the R1 and R2 that one of the signatory of the alleged resignation Mr. Kamal Narain had withdrawn his resignation and according to R1 and R2 Avinash was not an employee of the Respondent School. No date is

mentioned from which the resignation has been accepted in the said minutes of the meeting. In these circumstances the alleged acceptance of the alleged resignation of the Appellants is also against the provisions of Delhi School Education Act and Rules-1973”.

4. At the hearing, learned senior counsel for petitioners assails impugned order while relying upon decision of Division Bench of this Court in *Deepshikha Saxena v. Management Committee of Shiksha Bharti Senior Secondary Public School and Anr.*, 2011 SCC OnLine Del 4962 to submit that there is breach of trust between the parties and so, in lieu of reinstatement, respondents-Teachers can be adequately compensated. It is pointed out that in case of *Deepshikha Saxena (Supra)*, composite compensation of ₹4 lacs was awarded to respondent-Teacher. Thus, it is submitted that a reasonable compensation be awarded to respondents-Teachers instead of their reinstatement.

5. It is urged by learned senior counsel for petitioners that the resignation letters were tendered by respondents-Teachers but somehow, they were replaced by photocopies and that respondents-Teachers are running their own coaching centres and are also employed elsewhere. This is refuted by learned counsel for respondents-Teachers, who submits that impugned order is justified in the facts and circumstances of this case and so, these petitions deserve dismissal.

6. Upon hearing and on perusal of impugned order, material on record and the decision cited, I find that the decision in *Deepshikha Saxena (supra)* would not apply to the facts of the instant case as in the said case, it was found that the concerned Teacher was gainfully employed,

whereas, in the instant case, there is nothing on record to show that respondent-Teachers are gainfully employed. Since the original resignation letters are not with petitioners, therefore, I find that there is no palpable error in the impugned order.

7. So far as petitioners' plea of there being no vacancy is concerned, I find that respondents-Teachers are required to be reinstated against the existing vacancies or against the vacancies which arise in future. The stand of learned counsel for respondents-Teachers is that the vacancies are existing. On this aspect, respondent-*Directorate of Education* shall ensure that respondents-Teachers are reinstated against the existing vacancies, if available, within a period of twelve weeks and if there is no existing vacancy, then respondent-*Directorate of Education* shall ensure that respondents-Teachers are accommodated against first available vacancy. It would be open to respondents-Teachers to make Representations within a period of four weeks by recourse to Rule 121 of *the Delhi School Education Act and the Rules 1973* to seek back wages.

8. While upholding impugned order, the above captioned petitions and the applications are disposed of with the aforesaid directions.

(SUNIL GAUR)
JUDGE

JANUARY 16, 2018

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