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

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Reserved on 23.09.2019

Pronounced on: 12.05.2020

+ W.P.(C) 8352/2018 & CM APPL. 32050/2018

DR R S GUPTA Petitioner

Through Petitioner in person

versus

GOVT OF NCT OF DELHI & ORS Respondents

Through Mr.Gautam Narayan, ASC with
Ms.Shivani Vij and Ms.Dacchita
Shahi, Advs. for GNCTD.
Mr.Parvinder Chauhan and Mr.Nitin
Jain, Advs. for R-9

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. This Writ Petition is filed by the petitioner seeking to impugn the order passed by respondent No.3 under the Delhi Right to Information Act, 2001 (hereinafter referred to as DRTI Act).
2. On 24.5.2017 the petitioner filed an application under the DRTI Act, 2001 seeking following information before respondent No.5 and respondent No. 6 from respondent No.9 i.e. Principal, Geeta Sr. Secondary School No.2, Sultanpuri, Delhi:-

“1. A complete and certified copy of the SchoolStaff Attendance Register of Geeta Senior Sec. School No.2, Sultanpuri from January, 2012 to May, 2017 /till the date of supply of information.

2. A certified copy of the RESOLUTION passed by School Managing Committee & Chairman, Hindu Shiksha Samiti to mark in the Attendance Register as "ON H.S.S. DUTY" along

with period as for how long this resolution is valid to mark "ON H.S.S. DUTY" and the its complete provisions and criteria to apply for daily for a week/weekly/ fortnightly/monthly/minimum/maximum type of employees/ teachers/ Teachers Representatives/ Principal/Vice Principals caste of employees/flatterers/ paralysis employees.

3. A certified copy of the approval obtained from Director of Education to mark in the Attendance Register "ON H.S.S. DUTY".

4. Any other information in this regards may be provided.”

3. On 20.07.2017 the petitioner filed an appeal before the respondent No.2 under section 7 of the DRTI Act, 2001 as it is pleaded that the petitioner failed to get the necessary information.

4. The case of the petitioner is that respondent No.2 fixed the date of hearing as 4.9.2017. On the said date, namely, 4.9.2017 respondent No.2 passed an order directing respondent No.6 to provide information whether attendance record is submitted alongwith monthly salary bills from aided schools to release their salary through ECS. The next date of hearing was fixed as 11.12.2017. However, subsequently by corrigendum the said date was changed to 12.2.2018.

5. Grievance of the petitioner is that in the hearing that took place on 12.2.2018 one Shri P.K.Sharma, UDC/Steno conducted the hearing instead of the appellate authority respondent No. 2/3. However, respondent No.3 without having attended the hearing is said to have disposed of the appeal vide impugned order dated 21.3.2018. The petitioner is said to have protested on 13.2.2018 through an email and requested for re-conducting the hearing. A request was also sent on 5.3.2018 to re-conduct the hearing. On 26.3.2018 the petitioner served a legal notice. Hence, the present petition.

6. I have heard the petitioner in person and learned counsel for the respondent. Both the parties have also filed written submissions.

7. The petitioner in his written submissions has reiterated that in the impugned order the respondent No.3 has mentioned date as 23.3.2018. It is stated that this is not the date of the order but is the date of dispatch of the order. It is further stated that respondent No.3 had no official power to work as an Appellate Authority as the order of the LG appointing respondent No.3 as the Appellate Authority was received on/after 22.3.2018.

It is also reiterated that the appeal was heard by Shri P.K.Sharma, Upper Division Clerk in the Conference Room in the absence of the Appellate Authority. It is also pleaded that the impugned order is even otherwise erroneous as it wrongly records the submission of DDE that copy of attendance register of the school staff concerned need not be sent alongwith the monthly salary bills to the department. Reliance is placed on RTI replies of different schools who have said that the schools are enclosing records of attendance of the employees.

8. Learned counsel for the respondent states that the Department of Education on 1.9.2017 had supplied the information in respect of the attendance record of the petitioner. However, Attendance Register with salary slip of other employees cannot be provided, same being a third party information, under section 8(i)(j) of the Right to Information Act, 2005. He further clarifies that respondent No.3 was appointed by Notification dated 12.12.2017 as a Whole Time Member of the Public Grievance Commission and vide office order dated 20.3.2018 he was declared as the Head of Department of the Commission as the post of Chairman was vacant at that time. The order dated 21.3.2018 bears the signatures of respondent No.3.

9. The relevant part of the impugned order dated 12.2.2018/21.3.2018 reads as follows:-

“Relevant facts emerging during the hearing

3.1 At the last hearing held on 04.09.2017, directions given by the PGC were as follows-

“Competent Authority i.e. Additional Director (Act-II), Directorate of Education is directed to clarify whether as per the Act and Rules or under any other order of the Directorate, it is mandatory for the aided schools to submit copy of attendance register every month to the Education Department. Competent Authority shall further clarify what documents are required to be submitted by the aided school authorities for release of salary to the staff members. The clarification should be submitted to the Appellate Authority/Chairman (PGC) before the next date of hearing.

A senior officer, well conversant with the facts of the case must be deputed on the next date of hearing.”

3.2 At today's hearing on 12/02/2018, Sh. Bharat Bhushan Gupta, DDE (Zone-XII), Directorate of Education submitted a reply dated 09.02.2018 before the Appellate Authority (copy placed in the file). A copy of the same was given to the appellant during the hearing,

3.3 DDE (Zone-XII) further informed that as per the order No, F.DE15 (265)/ACT/POLICY/2008/6718-6741 dated 05/09/2008, issued by the Director (Education), copy of attendance register of the school staff concerned need not to be sent along with the monthly salary bills to the Department. He has also mentioned the documents which are attached with the salary bills each month by the school.

4.Directions of the Appellate Authority / PGC

4.1 On perusal of the reply, it is observed that the department has provided satisfactory reply to the clarification sought by the Appellate Authority /PGC on the last date of hearing.”

10. It is clear from a perusal of the RTI application filed by the petitioner that he was seeking the complete copies of the school staff attendance registers. This has been rightly refused as the information pertains to private information of other employees and would tantamount to invasion of the Right to Privacy. The petitioner has received his personal information. Accordingly, in my opinion, there is no infirmity in the impugned order to warrant any interference by this court.

11. It is also quite clear that under section 22 of the RTI Act the provisions of the said Act would have effect notwithstanding anything inconsistent contained in any other law for the time being in force or any instrument having effect by virtue of law other than the Act. Section 22 of the RTI Act reads as follows:-

"22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

12. Keeping in view the said provisions and section 8(1)(j) of the RTI Act, the principles stated in the said section would apply to the facts of this case. Section 8(1)(j) of the RTI Act reads as follows:-

"8. Exemption from disclosure of information.—
(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

....

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

13. Clearly giving personal information to the petitioner of other employees would be an invasion of the privacy of the individual. There is no larger public interest involved to warrant taking a different view.

14. Another plea raised by the petitioner was that some of the schools have in response to separate RTI applications confirmed that attendance record of the staff is sent to respondents No.5 and 6. Merely because some of the schools in response to the RTI Application sent by the petitioner have mentioned that they are sending the attendance sheet to the Govt. of NCT of Delhi cannot be a ground to give copies of the said attendance sheet to the petitioner. This plea of the petitioner is misplaced.

15. As far as the plea of the petitioner that the hearing was not given by the concerned functionary, respondents No.2 and 3 in their counter-affidavit which is sworn by the Deputy Secretary, Public Grievance Commission, Govt. of NCT of Delhi clearly states that the hearing was given by respondent No.3. Respondent No.3 has signed the order and dated it as 21.3.2018. I see no reason to disbelieve the said averment of respondent

No.2 and respondent No.3. This plea is rejected.

16. Even otherwise as noted above, there is no merit in the contentions raised by the petitioner.

17. There is no merit in the petition. Petition is accordingly dismissed.

18. As the court is presently hearing matters vide video conferencing, the court master may also inform Ld. Counsels for the parties on phone about the present pronouncement.

12th May, 2020
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JAYANT NATH, J.



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